VISION 360

AUG 2022

EDITION 23

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

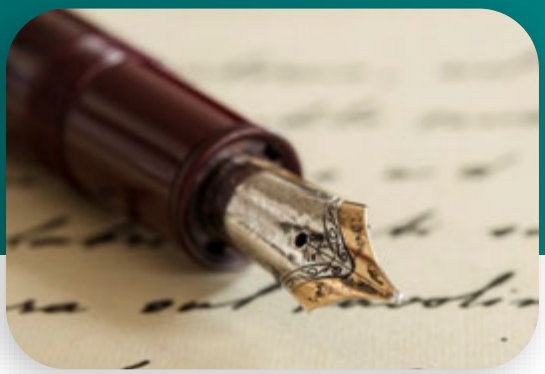
TCA TAXCRAFT ADVISORS

GLS GST LEGAL SERVICES

VMG & ASSOCIATES

tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL



Vision 360: Good times ahead!

On the fifth birthday of the GST law, the Apex Court seems to have given a great birthday gift to the taxpayers in guise of the judgement in RE: **Filco Trade Center Private Limited & Another**. The Court has directed the Revenue to reopen the GSTIN portal for all the taxpayers for a period of 2 months i.e. from September 1, 2022 to October 31, 2022. As per the judgement, all the taxpayer can claim the transitional credit who had missed out on claiming the same, irrespective of whether or not they had filed writ petition or their claim had been rejected on the ground that there were no technical glitches. This judgment comes as a huge relief to various taxpayers.

Similarly, the Jawaharlal Nehru Customs House has also acknowledged the correct interpretation of the Apex Court judgement in RE: **ITC Limited**, and issued a Standing Order, which inter alia allows for re-assessment of Bills of Entry or Shipping Bills, without the need for obtaining an appealable order. This too, is a huge relief for importers, who wish to claim refund of excess duties paid by them.

More on the GST end, in pursuance to one of the most important council meeting i.e., 47th Meet, the CBIC has issued a slew of Notifications and Circulars, which provide rate rationalizations, changes in the return formats, and much-needed clarifications on some burning GST issues such as the GST applicability on perquisites provided by the employer to the employees and the provisions of blocked credit, etc. Further, if rumours are to be believed, the formation of GSTAT is not far away and a Group of Ministers have been working to resolve the issues which had been raised qua the judicial and technical members of the Tribunal.

We have analysed the Apex Court's judgement in a detailed article in this Newsletter, with various expert insights and a brief history of the judicial interpretation on the ITC. We have also analysed the JNCH standing order in the Sparkle Zone of this Newsletter, giving a brief history of the controversy and the what lies ahead for those who seek the benefits.

On the Direct Tax front, the CBDT has been making strides in the 'Digital India' movement by notifying the income tax forms and returns for electronic submission. The Income Tax Appellate Tribunals have also passed a number of reasoned judgements in the month of July, granting stay on an outstanding demand of INR 155 Crores for failure of the AO to comply with DRP's directions and deleting penalties by distinguishing copyright royalty and industrial royalty.

The MCA has also prescribed for launching of first set of company forms on MCA21 V3 Portal. Forms rolled out in this phase are DIR3 – KYC Web, DIR3 – KYC E Form, among others w.e.f. 31 August 2022. Further, SEBI has also provided for implementation of online web-based complaint redressal system to exchanges, which is another great stride towards Digital India. Moreover, the RBI has also introduced an international trade settlement mechanism in INR in order to promote the growth of global trade from India and facilitate the increasing interest of global trading markets in the Indian currency.

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 23rd 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!

Editorial

Vision 360: Good times ahead!

Happy Reading!

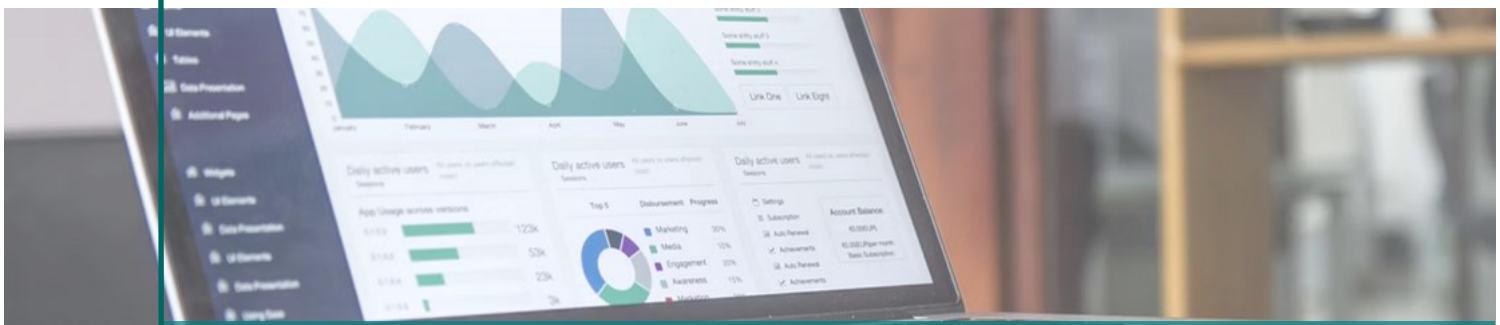
P.S.: This document is designed to begin with couple of articles peeking into recent tax/regulatory issues allowed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, from Direct tax, Indirect tax and Regulatory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

Table of Contents

Vision 360 | August 22 | Edition 23

ARTICLE

INDUSTRY PERSPECTIVE



DIRECT TAX

Table of Contents

CUSTOMS & FTP

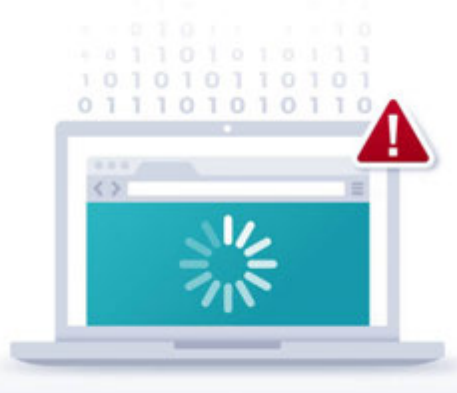
REGULATORY

ARTICLE

Re-opening Common Portal: A Quick-fix for transitional credits forgone

In one-of-a-kind mass disposal of about 400 Petitions in the matter of ***Filco Trade Center Private Limited & Another,*** Supreme Court has finally relieved taxpayers across industries of all their grievances surrounding Transitional Credit. It has directed GSTN to open the common portal during September 01, 2022, to October 31, 2022 and allow all the taxpayers to file/re–file Form TRAN 1/TRAN 2. What's more – it has instructed GSTIN to make sure that the common portal does not suffer technical glitch, the single biggest reason amongst all the transitional credit issues, during this period.

The said court had laid down the following procedures:



- GSTN to ensure that there is no technical glitch during the said period;
- Any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of being the Petitioner in the present Writ Petition;
- Jurisdictional Revenue officer to verify the claim of transitional credit within 90 days from October 31, 2022, and pass appropriate orders;
- Jurisdictional officer to pass the Order only after affording reasonable opportunity of being heard;
- The transition Credit allowed by the Jurisdictional Officer to appear in the Electronic Credit Ledger.

The judgment is an appreciative move and comes as a huge sigh of relief for the entire industry. The decision provides immediate relief even to those taxpayers whose matters are pending before various courts, ITGRC, and the GST council. With this unique one-time opportunity at hand, taxpayers will have to meticulously prepare to make good the loss.

Input Tax Credit – Whether a vested right or concession?

The Supreme Court's direction to re-open GSTN's common portal, based on the principles of equity appears to have sufficiently addressed the one-time issue of entitlement of Transitional Credit . However, the Hon'ble Supreme Court's Order is completely silent on taxpayer's vested right on tax credit.

Before, the loss of credit was mainly contested by taxpayer's basis the vested character of input credit and the taxpayer's right to this credit. This dispute as decided by various High Courts had resulted in divergent and contradictory views, some accepting taxpayers' right to credit in line with the Supreme Court's earlier decisions in ***Eicher Motors Ltd vs. Union of India***, *[2002 – TIOL-149 -SC-CX-LB]* wherein the Hon'ble Supreme Court considered MODVAT credit as an '*indefeasible right*'. Indefeasible right is created only once the same get vested and it cannot be taken away by any authority. Any infringement by any person or authority on such rights can be interfered with by the court. In the case of ***Central Excise vs. Dai Ichi Karkaria Ltd***. *[1999 (112) ELT 353 SC]* the SC had settled the law of the land holding that input tax credit was to be treated as an indefeasible and a vested right .

Re-Opening Common Portal

A Quick-Fix For Transitional Credits Forgone

While referring to the Hon'ble Delhi HC's decisions in ***Brand Equity Treaties Limited v Union of India and Another*** *[2020-TIOL-900-HC-DEL-GST]*, which borrowed limitation from the Limitation Act, 1963 to allow Petitioner the transitional credit, which stood in parlance with the arguments of a vested right. It was observed that Section 3 of the Limitation Act, 1963 applied to any suit instituted, appeal preferred, and application made after the prescribed period and any claim by set-off or counterclaim. Filing of TRAN 1 and TRAN 2, however was not contemplated under Section 3.

Despite these shortcomings, the SC has given a way forward for both the taxpayers and the Department, although the climax would be the Department's execution to meet the need of the hour. This execution of the Court's instruction has always been one of the contentions. It is only recently that the Gujarat HC was compelled to order grant of IGST refund within 6 weeks along with interest for revenue's failure to timely effectuate IGST refund after the SC's judgment in the case of **Union of India vs. Mohit Minerals Pvt.Ltd [2022-TIOL-49-SC-GST-LB]**. It was only prudent for the revenue to implement the decision in Filco Trading (Supra) before the Courts felt the need to take any haphazard action.

INDUSTRY PERSPECTIVE

Mr. ATUL JAIN

Finance Controller

Watson-Marlow India Private Limited

01 With the five years completed from implementation of GST law in India, how do you think GST and GOI has fared so far and what are your expectations going forward?

GST was introduced to end the erstwhile IDT regime of multiple taxes and brought in uniform tax code across all states. During these 5 years, GST addressed most of the issues faced in erstwhile regime viz cascading tax effect, classification disputes of goods or services, manual compliance requirements and so on. The Government also sought to digitalize the processes and make the system work seamlessly to reduce litigation and bring ease in doing business. However, technical glitches in GST portal, automated notices, ITC restrictions, etc. encountered during the implementation of GST have caused trouble to the assessees.

Everything being said, GST was a revolutionary step take by the Government of India. Sooner than later, GST will be able to address these issues and it will in turn be a Good and Simple Tax.

02 Recently, a comprehensive circular has been issued on applicability of GST on liquidated damages, cancellation charges, etc. Do you believe this will address the issues revolving around it?

The Tax Departments as a practice have been issuing circulars to explain the critical tax positions taken by the taxpayers. I think this is a welcome move as it will help in reducing litigation and improving correct compliance. In this Circular on liquidated damages, notice-pay and other related contractual adjustments is very detailed where the law under Service Tax and GST has been explained in a lucid manner along with the spirit of the law and linking the same with the Contract Act. The tax position on the subject matter is clarified along with the examples and importance of correct drafting is highlighted in the Circular.

While the Circular clarifies tax position on various contractual adjustments, it also leaves tax position to be applied on few contractual adjustments unanswered. No doubt, the Circular will more or less address the issues revolving around this matter.

Mr. Atul Jain
Finance Controller - Watson-Marlow India Private Limited

03 Supreme Court has asked GSTN to open window for filing of TRAN-1 and TRAN-2 to claim transitional ITC for the period of two months. How do you see this judgement and will this provide the relief to the aggrieved assessees?

Supreme Court has relieved taxpayers across industries of all their grievances surrounding Transitional Credit. It has directed GSTN to open the common portal during September 01, 2022, to October 31, 2022 and allow all the taxpayers to file/re–file Form TRAN 1/TRAN 2. It has further instructed GSTN to make sure that the common portal does not suffer technical glitch, the single biggest reason amongst all the transitional credit issues, during this period.

The judgment is an appreciative move and comes as a huge sigh of relief for the entire industry. The decision provides immediate relief even to those taxpayers whose matters are pending before various courts, ITGRC, and the GST council. With this unique one-time opportunity at hand, taxpayers will have to meticulously prepare to make good the loss. However, this will also require liaison with the Authorities as they are required to verify the claim of transitional credit within 90 days from October 31, 2022.

04 There have been various technology related amendments in tax space. How do you think 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. 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.

Mr. Atul Jain
Finance Controller - Watson-Marlow India Private Limited

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.

05 After-effects of COVID-19, Russia-Ukraine war are fading away. Any views on uprise in 'Make in India' prospects in these times?

Undoubtedly, the pandemic had hit most of the industries during the first and second wave. However, the pharma industry faced limited impact in terms of demand as it was covered under essential commodities, though we faced constraints in terms of supply chain. Moreover, the second wave was more upsetting due to oxygen shortage and unavailability of hospital beds for people, etc.

Further, the Russia-Ukraine war has also affected the economy, with supply being impacted, and trading also having been restricted.

Currently, India is placed well to make giant leaps in terms of manufacturing and strengthening its position as world's manufacturing hub after China. Incentives from Government along with business fostering environment will be a huge boast for 'Make In India' policy.

06 Do you see depreciating Rupee as serious impact on the business, especially the Companies involved in foreign trade like yourself?

There has been tremendous pressure on Rupee owing to pandemic followed by Russia-Ukraine conflict resulting into increase in fuel costs. While depreciating Rupee will assist the exports as it will automatically make the pricing competitive. However, being an importer, our input costs have gone up and this has added to the trouble caused by increased fuel and shipping charges. It is very much important for the business with USD exposure to follow its FOREX cash flow meticulously and use tools such as hedging to protect itself from FOREX fluctuations to a certain extent.

ITAT holds delay of over 500 days in challenging revisionary order not condonable, ignorance of law no excuse for educated Assessee

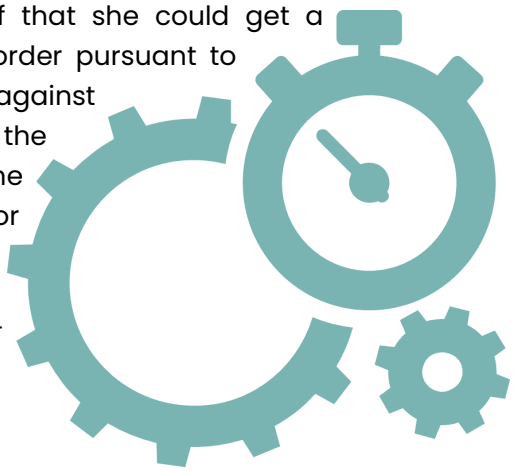
Preeti Madhok

ITA No.752/Chny/2020

The Assessee was subjected to revision proceedings for AY 2014-15 whereby PCIT passed the revision order under Section 263 of the IT Act against which Assessee preferred an appeal before the ITAT with a delay of 581 days for which the Assessee also filed a petition for condonation of delay of 581 days along with an affidavit. The Assessee contended that she was not aware that an appeal needs to be filed against the revision order and it was only after receiving legal advice, that she became aware of the provision to file an appeal against the revision order resulting in the delay.

The ITAT noting that the Assessee was represented by a different counsel before PCIT during the course of revision proceedings and before the Revenue again for consequential assessment proceedings and another counsel for representing the case before the CIT(A) against assessment order pursuant to revisionary order, observed that when she was capable of engaging a professional for appearing before two different authorities at two different points of time, it was impossible to believe her contentions that she was not aware of the filing of the appeal against the order under Section 263 of the IT Act within the due date prescribed under the provisions of IT Act.

The ITAT observed that the Assessee was an educated person and was aware of income-tax proceedings, including the filing of appeal against the order of Revenue. The ITAT, further, observed that the Assessee chose not to file the appeal against the PCIT's order as she pursued an alternative remedy available with her of representing her case before the Revenue on the belief that she could get a favorable order. However, when the consequential assessment order pursuant to revision order under Section 263 of the IT Act was passed against Assessee, the Assessee consulted a different professional and filed the appeal against the order of the PCIT. Moreover, examining the sequence of events furnished in the affidavit by the Assessee for condonation of delay of 581 days, the ITAT observed that the reasons given by the Assessee in her affidavit were not bona fide and the Assessee was not ignorant of the law. Accordingly, ITAT dismissed the contentions of the Assessee.



ITAT grants stay on entire outstanding demand of INR 155 Crores as AO fails to comply with DRP's directions on violation of Section 144B of the IT Act

Ebro India Pvt. Ltd

2022-TII-118-ITAT-DEL-INTL

The Assessment proceedings were taken up under the faceless assessment scheme as contemplated under Section 144B of the IT Act and a draft assessment order had been passed by the NFAC directing the recovery of outstanding demand of INR 155 Crores from the Assessee.

Aggrieved, the Assessee approached DRP, challenging the validity of the draft assessment order due to non-compliance with the procedure under Section 144B of the IT Act and contending that the draft assessment order was proposed without issuing a show cause notice to the Assessee nor any personal hearing. DRP directed the AO to pass a speaking order on the alleged violation of Section 144B of the IT Act, but the AO remained silent on the issue. Further, while the draft assessment order was passed by NFAC under the provisions of Section 144B of the IT Act, the final assessment order was passed by the AO.

Aggrieved, the Assessee filed a stay application before the ITAT requesting the grant of absolute stay on the recovery of outstanding demand of INR 155 Crores, contending that as per the provision of Section 144B of the IT Act, the assessment was required to be conducted by NFAC, except under the circumstances provided under section 144B (8) of the Act. Since the Assessee's case did not fall under Section 144B (8) of the Act, the AO could not have passed the final assessment order. The Assessee further requested that the appeal be heard on an out-of-turn basis. Before the ITAT, the Revenue objected to the Assessee's request for grant of absolute stay on the recovery of outstanding demand of INR 155 Crores submitting that the Assessee be directed to pay at least 20% of the outstanding demand, however, the Revenue did not object to the Assessee's request for early hearing of the appeal.

The ITAT noted that while disposing of Assessee's objections, DRP directed the AO to consider the evidence filed by the Assessee and pass a speaking order. The ITAT noted that the AO failed to implement DRP's directions in letter and spirit and simply repeated the observations from the draft assessment order. Moreover, ITAT observed that the mandatory provisions of Section 144C (10) and (13) of the IT Act were not followed and therefore in view of the facts, materials available before it, and in the light of statutory provisions and the judicial precedents relied on by the Assessee, the ITAT granted stay on recovery of outstanding demand of INR 155 Crores.

ITAT distinguishes copyright royalty from industrial royalty, deletes penalty under Section 271(1)(c) of the IT Act over divergent views on taxability of online database access

Faurecia Systems D'echappement

2022-TII-215-ITAT-PUNE-TP

The Assessee was a tax resident of France who had filed his return of income. During the assessment

proceedings, the AO observed that a sum of INR 12.88 Crores was not included in the total income. This amount consisted of a sum of INR 4.32 Crores towards IT support services and INR 8.56 Crores towards software maintenance services. The AO, therefore, included INR 12.88 Crores in the total income in the draft order. Aggrieved, the Asseessee approached DRP which observed that the receipt of IT support services amounting to INR 4.32 Crores was not chargeable to tax. However, the software maintenance charges of INR 8.56 Crores were added as royalty both under the provisions of the Act as well as the India-France DTAA. The final assessment order was passed giving effect to the directions given by DRP. The Assessee accepted such final assessment order and did not prefer any appeal before the ITAT, thereby, the addition of INR 8.56 Crores as royalty income on account of rendition of software maintenance services was added to the Assessee's income. The AO imposed a penalty of INR 89.99 Lakhs on such addition under Section 271 (1)(c) of the IT Act.

Aggrieved by the penalty imposed, the Assessee preferred an appeal to the CIT(A). Placing reliance on the SC ruling in **Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT [(2021) 432 ITR 472 (SC)]**, the CIT(A) deleted the penalty imposed by the AO. Aggrieved, the Revenue approached the ITAT contending that the SC ruling in **Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT [(2021) 432 ITR 472 (SC)]** applied only to software royalty and not to industrial royalty for use of equipment. Before the ITAT, the Assessee contended that consideration for the use of the IT facility became royalty only after getting access to the underlined technology. The Assessee placed reliance on a plethora of rulings by the Delhi ITAT an contended that consideration received for granting license to access online database did not fall within the definition of royalty.

The ITAT relied on a plethora of coordinate bench rulings wherein a distinction was drawn between copyright royalty and industrial royalty which held that the consideration for the use of software constituted software royalty but the consideration for the use of IT infrastructure facility was an industrial royalty and observed that the amount in question received by the Assessee was a consideration for allowing access to its database abroad and would not be governed by the decision in the SC ruling of **Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT [2021-TII-02-SC-INTL-LB]** as this decision applied only to the cases of software transferred without giving any right to copy. Moreover, noted that the instant transaction pertained to allowing access to the Assessee's database or IT infrastructure facility, which consisted of various components, such as, software, hardware and networking, however, did not involve licensing of any software. Further, the ITAT observed that while software was just computer software, the IT Infrastructure facility was equipment, governed by industrial royalty covered under Explanation 2(iva) of Section 9(1)(vi) of the IT Act and if the Assessee's contention that consideration for the use of the IT facility became royalty only on getting access to the underlined technology was agreed to, then the applicability of clause (iva) of the Explanation 2 of Section 9(1)(vi) of the IT Act would invariably be ousted making it a redundant piece of legislation as there could not be a case of paying something for using equipment by getting access to the underlined technology which led to its creation.

Further, the ITAT observed that merely because the Assessee had not challenged the addition it did not per se lead to imposition or confirmation of penalty under Section 271(1)(c) of the IT Act since it was a well-settled position that the penalty proceedings were different from quantum proceedings and the penalty could not be imposed on a debatable issue with the prevalence of divergent views as is in the instant case with unfavorable rulings by the coordinate bench and favorable rulings by the Delhi ITAT. Thus, observing that the penalty of INR 89.99 Lakhs imposed under Section 271(1)(c) of the IT Act was unsustainable where divergent views were prevalent in respect of the treatment of consideration received for granting access

to online database. The ITAT dismissed the Revenue's appeal.

ITAT holds embezzlement loss, discovered earlier, allowable in the AY in which its non-recovery gets confirmed

George Oakes Ltd

ITA No. 1017/CHNY/2017

The Assessee was a trader of automobile spare parts that wrote off INR 1.07 Crores in AY 2008-09 on account of embezzlement during FY 2001-02 wherein the said amount was embezzled from the bank account by way of old cheques and could not be recovered despite numerous efforts over the years. The Revenue held that since the embezzlement took place in FY 2001-02 and came to knowledge around the same period, the claim should have been made in AY 2002-03 and disallowed Assessee's claim.

Aggrieved, the Assessee approached the CIT(A) who confirmed the disallowance on the grounds that Assessee was entitled for deduction of embezzlement loss either in the year of discovery or in the year in which the amount was crystallized or the year in which the Assessee realized that the amount could not be recovered, whichever was later, since the embezzlement took place in the FY 2001-02 and this was discovered by the Assessee in that very year because the Assessee filed a petition before Banking Ombudsman on October 29, 2004, The CIT(A) noted that the assessee made claim for the FY 2007-08 relevant to AY 2008-09 (the year under consideration), the Assessee could not provide any proof that the bank officials made it clear in March, 2008 that the bank would not be paying any amount to the Assessee.

Aggrieved, the Assessee approached the ITAT which observed that the Assessee became aware of the embezzlement in FY 2001-02 when certain employees of the Assessee clandestinely removed some cheque leaves, forged Assessee's official signature, and withdrew a sum of INR 1.07 Crores from Assessee's bank account. The ITAT further observed that after the embezzlement was discovered, the Assessee lodged a complaint with the Crime Branch of City Police in December 2001 and pursued the matter with the bank. The bank confirmed that there was no fault on their part, and therefore, they were not responsible for paying the amount of the forged cheques. Further, the Assessee even referred the matter to CBI by filing FIR against the accused persons and simultaneously perused the matter with the bank by filing complaint with Banking Ombudsman on October 29, 2004, which was dismissed.

In addition to the above, the ITAT observed that as a final attempt to recover the amount, the Assessee met with the bank officials in March 2008 but the bank officials again refused to pay any amount on this account, pursuant to which, the Assessee, having finally realized that there was no scope of recovery of the said amount either from the accused or from the bank, wrote off the said amount in AY 2008-09 (the year under consideration). Thus, in the light of the above facts, the ITAT allowing the appeal of the Assessee, allowed the loss on embezzlement discovered in earlier years to be written off in the year under consideration, wherein Assessee realised that there was no scope of recovery of the embezzled amount.

NOTIFICATIONS

CBDT specifies 'other condition' under Section 47 (vii) (ad) of the IT Act for original fund transferring capital asset to Category III Alternative Investment Fund

Notification No. 80/2022

July 8, 2022

CBDT notifies Income-tax (21st Amendment) Rules, 2022 to insert Rule 21AL to IT Rules. The Rule specifies 'other conditions' to be satisfied by an original fund for the purpose of Section 47(viiad) of the IT Act as provided in Explanation (a)(iv) thereto.

The Rule applies when a capital asset is transferred to a resultant fund being a Category III Alternative Investment Fund. In this case, the original fund is required to comply with the condition that, the aggregate participation or investment in the original fund, directly or indirectly, by persons resident in India shall not exceed 5% of the corpus of such fund at the time of such transfer.

CBDT notifies Form 8A to defer appeal-filing before ITAT & HC

Notification No. 83/2022

July 12, 2022

CBDT notifies a new Rule 16 in the IT Rules and Form No. 8A pursuant to Section 158AB of the IT Act. As per the Rule, the AO is required to file Form No. 8A for deferring the filling of appeal before the ITAT or

jurisdictional HC by furnishing the particulars as prescribed in the Form.

CBDT notifies Income-tax forms, returns for electronic submission

Notification No. 03/2022

July 16, 2022

CBDT specifies the following forms, returns, statements, reports, orders etc. to be furnished electronically and verified in the manner prescribed under Rule 131(1) of the IT Rules:

Form	Description
3CEF	Annual Compliance Report on Advance Pricing Agreement.
10F	Information to be provided under sub-section (5) of Section 90 of the IT Act or sub-section (5) of Section 90A of the IT Act.
10IA	Certificate of the medical authority for certifying 'person with disability', 'severe disability', 'autism', 'cerebral palsy' and 'multiple disability' for purposes of Section 80DD of the IT Act and Section 80U of the IT Act.
3BB	Monthly statement to be furnished by a Stock Exchange in respect of transactions in which client codes have been modified after registering in the system for the month of --
3BC	Monthly statement to be furnished by a Recognized Association in respect of transactions in which client codes have been modified after registering in the system for the month of --
10BC	Audit report under sub-rule (1) of Rule 17CA of IT Rules, in the case of an electoral trust.
10FC	Authorization for claiming deduction in respect of any payment made to any financial institution located in a Notified jurisdictional area.
28A	Intimation to the AO under Section 210(5) of the IT Act regarding the Notice of demand under Section 156 of the IT Act for payment of advance tax under Section 210 (3)/210(4) of the IT Act.
27C	Declaration under sub-section (1A) of Section 206C of the IT Act to be made by a buyer for obtaining goods without collection of tax.
58D	Report to be submitted by a public sector company, local authority or an approved association or institution under clause (ii) of sub-section (5) of Section 35AC of the IT Act to the National Committee on a notified eligible project or scheme.
58C	Report to be submitted under clause (ii) of sub-section (4) of Section 35AC of the IT Act to the National committee by an approved association or institution.
68	Form of application under Section 270AA (2) of the IT Act.

CBDT authorises Principal CCIT/CCIT to condone delay upto 3 years in filing Form 10BB, Form 10B along with Form 9A and Form 10 for AY 2018-19 onwards

Circular No. 15/2022, Circular No. 16/2022 and Circular No. 17/2022

July 19, 2022

CBDT authorises Principal CCIT/CCIT to admit applications for condonation of delay of beyond 365 days up to three years in filing Form No. 10BB [Audit Report for entities under Section 10(23C) (iv) to (via) of the IT Act], Form 10B and Form No. 9A (Application in case of shortfall in application of funds) and Form No. 10 (Statement for accumulation set apart by Trusts) for AY 2018-19 onwards *vide* Circular No. 15/2022, Circular No. 16/2022 and Circular No. 17/2022 respectively.

While deciding the applications for condonation of delay on merits, the Principal CCIT/CCIT shall satisfy themselves that the applicant was prevented by reasonable cause for filing such form. The applications shall be disposed of within three months from their receipt.

With regard to Form No. 10, Principal CCIT/CCIT shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in modes specified under Section 11(5) of the IT Act and that the applications shall be disposed of within three months from their receipt.

ITAT rejects aggregation of transactions sans common agreement or order, directs adoption of previous years' approach

Liebherr India Private Limited

2022-TII-194-ITAT-MUM-TP

The Assessee was a subsidiary of an Austrian company, engaged in sales promotion, sales/servicing of equipment/spare parts, servicing; and provision of supervisory and after-sales repair & maintenance services.

- In previous years, the Assessee had provided segmental workings in respect of three business segment viz. commission segment having sales commission/agency and marketing income,
- service segment having income from services provided by in warranty and post-warranty period and
- trading segment having income from trading in spare parts and machines. Each of these segments was benchmarked separately using a different MAM - CUP, CPM and RPM respectively.

However, for AY 2012-13, the Assessee benchmarked all three segments on an aggregation basis under TNMM on the basis that all the activities undertaken were closely interlinked and were dependent upon the outcome of each other. Not convinced by this approach, the TPO benchmarked the transaction on the basis for segmental data provided for AY 2011-12 and made an upward TP adjustment for the trading segment using RPM. Aggrieved, the Assessee approached the DRP contending that detailed reasons justifying the adoption of aggregation of transaction approach and use of TNMM as the MAM for benchmarking the international transactions were provided during the course of assessment proceedings. The Assessee further contended that the TPO had disregarded the economic analysis conducted by the Assessee for determination of ALP and thereby, erred in applying RPM by rejecting the aggregation of transaction approach adopted by the Assessee while using TNMM as the MAM.

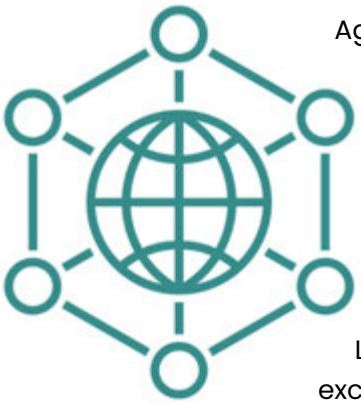
The DRP rejected the objections of the Assessee and confirmed the order of the TPO to adopt RPM method for determining ALP for the international transaction pertaining to the trading segment. Aggrieved, the Assessee preferred an appeal before the ITAT. While the ITAT noted that the principle of aggregation was accepted under TP principles, however, the Assessee's contention of the transactions being closely interlinked could not be a sufficient reason for permitting aggregation. Further, the ITAT observed that there was nothing on record to establish that adoption of the aggregation approach would lead to more reliable results. The ITAT further held that the transactions in prior years under each segment were clearly identifiable and did not emanate from a common source being an order, contract, agreement or arrangement and that the Assessee had provided segmental workings and benchmarked the transactions separately in previous years, the ITAT continued to treat RPM as the MAM for the trading segment. Thus, rejecting Assessee's request for aggregation of transactions without a common agreement or order and considering RPM as MAM for the trading segment, the ITAT directed the adoption of prior years' approach of segmental benchmarking and dismissed the appeal of the Assessee.

ITAT directs exclusion of comparable basis wide difference in functions performed, assets employed and risks assumed by the comparable company

Hydac (India) Pvt Ltd

2022-TII-214-ITAT-MUM-TP

The Assessee was a subsidiary of a German company, engaged in the business of assembly of hydraulic accessories and components along with manufacturing of certain electrical items. The Assessee did not select any comparables in its TP study on the reasoning that it was engaged in the business of manufacturing/assembling of more than 20,000 items and there was no other enterprise which could be functionally compatible with the Assessee. However, during the course of proceedings before the TPO, the Assessee furnished 7 comparable companies. The TPO rejected the 3 companies on the ground that the reporting period of 3 out of the 7 companies was different from that of the Assessee and however, accepted the remaining 4 companies. Noting that the mean of the margins of the accepted 4 companies was greater than the margin of the Assessee, the TPO adopted TNMM as the MAM and proposed a TP adjustment. The assessment order was passed to this effect.



Aggrieved, the Assessee approached the CIT(A) who confirmed the TP adjustment made by the TPO causing the Assessee to prefer an appeal before the ITAT. Before the ITAT, the Assessee contended that one of the comparables - Asco (India) Limited was not comparable with the Assessee at all, in view of the major difference in the FAR analysis and accordingly the Assessee sought exclusion of the said comparable from the list of comparables. Before the ITAT, the Revenue contended that in the TP study only broad compatibility was required. It further contended that so long as the functions of Asco (India) Limited were broadly comparable that of the Asseessee, there was no reason to exclude the comparable from the list of comparables. The ITAT noted that the

Assessee's manufacturing activity contributed 2.27% in the turnover and majority of turnover was achieved from assembling activity only whereas the comparable company was a full-fledged manufacturer that manufactured Solenoid Valves involving high technology and it constituted 74% of the turnover. The ITAT further noted that the comparable company had a technical collaboration to manufacture valves and thus, owned intellectual property rights. Thus, observing a wide difference in the functions performed, assets employed and risks assumed between the comparable company and the Assessee, the ITAT directed the exclusion of the comparable company from the list of comparables and also directed the reworking of the ALP of the Assessee.

ITAT holds Assessee's royalty payment could not be disallowed citing non-charging of royalty by AE, follows precedent

KHS Machinery Private Limited.

2022-TII-213-ITAT-AHM-TP

The Assessee was in the business of manufacturing machines for the beverage and brewery industry which paid royalty to its AE in Germany. The case was referred by the AO to the TPO for determination of ALP. The Assessee had justified the transaction by adopting TNMM method for determination of ALP which was rejected by the TPO noting that the AE of the Assessee had not charged any royalty from its other AEs and accordingly, determined the ALP of the transaction at 'Nil'. The same was confirmed by the DRP. Aggrieved, the Assessee approached the CIT(A) who upheld the order of the DRP/TPO particularly pointing out that the AE had not charged any royalty from any of the other AEs, therefore the payment of royalty by the Assessee to its AE was justifiably treated as not at arm's length.

Aggrieved, the Assessee preferred an appeal before the ITAT which noted that the TPO treated ALP of the royalty transaction as 'Nil' on the premise that the AE did not recover any such payment from its other AEs. The ITAT further observed that there could not be any determination of the ALP of the transaction by comparing it with an AE of the tested party and in the present case the TPO had done exactly that by comparing the royalty charged by the AE of the Assessee from its other AEs. This comparison could not result in determination of the ALP of the transaction. The ITAT further observed that a similar issue was adjudicated in Assessee's favour in previous years wherein identically the ALP of the royalty determined at Nil was rejected by the ITAT noting that similar royalty consistently paid by the Assessee in the past had been allowed and the TPO had failed to bring on record the ordinary profits that the Assessee could earn in such type of business and the expenditure having been incurred for business purposes, could not be denied completely. The ITAT also observed that the HC in a plethora of judgments had categorically held that the only authority of the TPO was to conduct a TP analysis to determine ALP and not to determine whether there was a service or not from which the Assessee benefits. Thus, holding the ALP determination of the royalty transaction at Nil to not be in accordance with the law, the ITAT directed the TP adjustment made by the TPO to be deleted.

ARTICLE

Continued Nuances of Cascading Taxes!

The Constitution (101st Amendment) Act, 2016 paved way for one of the biggest tax reforms in India - **GST**. This new Indirect Tax regime sought to end multiplicity of taxes from pre-GST era and cascading effect thereof. Introduced with the tagline of 'One Nation One Tax', GST aimed to achieve uniformity in tax laws. This was sought to be achieved by realigning distribution of legislative powers that bestowed law making authority upon the Central legislature and the State legislature.

As a result, various Central and State taxes were subsumed into GST, amongst these was Advertisement Tax levied by various States legislature. It is noteworthy that Constitution only provides for Central List (for Central Legislature), State List (for State Legislature) and Concurrent list (for both Central and State legislature). The local governing bodies such as Panchayat, Municipal Council, Municipal Corporation, etc. essentially derive their powers out of delegation by the State legislature.

This being said, although Advertisement tax levied by the State was subsumed by The Constitution (101st Amendment) Act, 2016, the same being levied by the local governing bodies continued and sparked a debate of its constitutional validity.

High Court Judgements:

In case of **M/s Pankaj Advertising Prop. v/s the State of Uttar Pradesh**, the Nagar Palika Parishad slapped Petitioner with a demand of Advertisement tax for affixing Hoardings/Sign Boards/Glow Signs. Accordingly, WRIT petition was filed before the Allahabad HC on the ground that Advertisement Tax was abolished after July 1, 2017 and thus, the levy of Advertisement Tax was illegal. In this case, the Hon'ble Allahabad HC observed that the 101st Amendment to the Constitution of India had major bearing on the levy and collection of the Advertisement Tax.

The Hon'ble HC observed the following:

- States derived power to levy Advertisement Tax from Entry No. 55 of List II – State List which was omitted *vide* 101st Amendment. Thereby, the State Governments do not have the legislative competence to levy or collect taxes on advertisement after July 1, 2017 which was earlier available under Entry No. 55;
- Section 173 of the Uttar Pradesh Goods and Services Tax Act, 2017 eliminated the power to levy tax which earlier vested with the Municipalities under Section 128(2)(vii) of the Uttar Pradesh Municipalities Act, 1916; and
- When the State was denuded of the power to make laws in respect

of tax on advertisement necessarily meant the municipalities also were divested of power to impose any tax on advertisement.

The Allahabad HC had passed a similar judgement in case of **M/s. Selvel Media Services Private Limited v/s the State of Uttar Pradesh** holding that Advertisement Tax charged by Nagar Palika Parishad was without force of law.

While the Allahabad HC judgements seem aligned with the intent of introducing GST, the Hon'able Gujarat HC, in case of the very same assessee - M/s Selvel Media Services Private Limited noted the levy as merely a 'fee' for granting license which allowed placing advertising hoardings on private property. In another case, the Hon'ble Karnataka HC relying on Gujarat HC judgement delivered a similar judgement. It held that the Advertisement Tax charged under the Section 134 of the Karnataka Municipal Corporations Act, 1976 was more of a fee than a tax inasmuch as there was *quid pro quo* by way of permission to put an advertisement hoarding. Thereby, the HC allowed levy of Advertisement Tax by the Municipal Corporation.

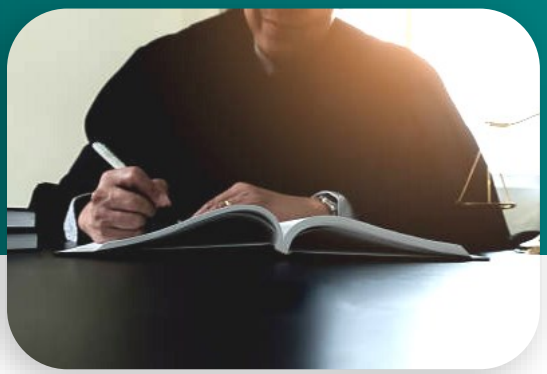
This issue is prevalent in other states where the Advertisement Tax or License Fee is levied by the local bodies. Writ petitions on this issue are pending before the Hon'ble Bombay HC as the various local bodies in Maharashtra continued to recover Advertisement Tax/License Fee post implementation of GST for varied time period.

There exists an inherent difference in 'Fee' and a 'Tax'. A tax essentially calls for determination of 'taxable event', 'rate of tax', 'assessable value' and necessary compliance measure associated with it. On the other hand 'Fee' is linked with the 'intangible right' and need not be assessed with respect to any of the four criteria's specified above. To ascertain the constitutionality of Advertisement tax as a 'Fee' it becomes imperative to analyze the manner in which it is levied and assessed.

It is difficult to digest the fact that when power to levy Advertisement Tax was categorially removed by way a Constitutional amendment is allowed to be collected as 'license fee' by the local bodies. The divergent view of High Courts on the subject matter is likely to open the Pandora box in other states. Further, GST aimed to bring a uniform indirect tax regime where same taxes would apply across India and credit of which would flow seamlessly.

Given that, the entire issues roots back to constitutional validity, GST Council's authority to settle the matter may fall short and the taxpayers need to eventually knock Hon'ble Supreme Court's door for setting the issue ion right path once and for all.

GOODS & SERVICES TAX
From the Judiciary



SC directs re-opening of GSTN portal for filing form TRAN-1 and TRAN-2

Filco Trade Centre Private Limited [2022-TIOL-57-SC-GST dated July 22, 2022]

The SC, in a landmark judgment has ruled that the GSTIN portal shall reopen for all the taxpayers for a period of 2 months i.e. from September 01, 2022 to October 31, 2022. As per the judgement, all the taxpayer can claim the transitional credit, irrespective of whether or not they had filed writ petition or their claim had been rejected on the ground that there were no technical glitches.

The Hon'ble SC has further directed that the GSTN shall take strict measures so that the taxpayers do not face any technical glitch during the said period. Furthermore, once the filing is completed, the field officer shall be given 90 days' time to verify the claim of credit on merits and pass an appropriate order with an opportunity of being heard given to the tax payer before passing any adverse order. Thereafter credit to be reflected in Electronic Credit Ledger. The Hon'ble SC further directed the CBIC to make further directions.

Authors' Notes:

This judgment comes as a huge relief to various taxpayers. There were indeed a lot of issues during the due date of filing Form TRAN-1 and TRAN-2 in 2017, as the GST law was at a nascent stage where both the taxpayers and the authorities were still learning the ropes of the new law. Basis this judgement, those taxpayers who had missed out on filing the transitional forms, be it for the reason of technical glitches or otherwise, or even those who had out-rightly missed out on filing the forms entirely, can claim the transitional credit now. The taxpayers should make the most out of this window opened by the Apex Court, as any relief thereafter would be highly unlikely.

Roof Mounted AC classifiable under Tariff Heading 8607

Daulatram Engineering Services Private Limited [Order No. 02/2022 dated February 08, 2022]

The Applicant had sought an Advance Ruling before the Madhya Pradesh AAR to ascertain whether the roof mounted AC package unit manufactured as per the specifications and drawings issued by the Ministry of Railways are classifiable under CTH 8607.

The AAR observed that roof mounted AC supplied to Indian Railways is meant to be principally used in railway coaches and nowhere else. It was further observed by the AAR that Note 2 to Chapter 86 includes 'coachwork'. The AAR further observed that the roof mounted AC package unit is an integral part of railway coach unit. In view of the above observations, the AAR held that roof mounted AC package unit is classifiable under CTH 8607.

Authors' Notes:

*It would be pertinent to note that the SC in RE: **Westinghouse Saxby Farmer Limited [2021-TIOL-121-SC-CX-LB]** had held that relays, even though specifically covered under a separate heading, would be classifiable under CTH basis the 'sole use / principal use' test. The instant ruling is in*

lines with the said judgement. However, it shall be borne in mind that post the SC judgement, the Board had issued Instruction No. 01/2022 – Customs dated January 05, 2022, suggesting that the said judgement does not have a wide applicability qua the binding nature. The instructions had provided that classification of goods of Section XVII of the Tariff Act, is to be decided taking into account all the facts, details of individual cases, and the judicial precedents.

AAR allows ITC on demo vehicles

Toplink Motorcar Private Limited [Order No. 03/WBAAR /2022-23 dated June 30, 2022]

The Applicant had sought an advance ruling before the West Bengal AAR to inter alia ascertain whether GST liability on sale of vehicle, etc. can be done by utilizing the ITC on purchase of demo vehicle. The AAR observed that Section 17(5)(a)(A) of the CGST Act restricts ITC in respect of motor vehicle for transportation of persons except when they are used for further supply of such motor vehicles.

It was further observed that such restriction will not apply to Demo Vehicles merely on the ground that such vehicles are sold after a certain period of time. The AAR further observed that the intention of the law, is to allow ITC in respect of taxpayers dealing with motor vehicles as they are engaged in further supply of such motor vehicles. In view of the above observations, the AAR held that the Applicant would be eligible to avail ITC on demo vehicles.

Authors' Notes:

*It would be pertinent to note that Haryana AAAR in RE: **BMW India Private Limited [HAR/AAAR/2019-20/02]** had held disallowed ITC on demo vehicles on the premise that such cars lose their character of new vehicle after first run and thereafter, they are sold as second-hand vehicle. The AAAR held that demo cars are not purchased with intent to further supply as such, therefore ITC is not eligible thereon.*

However, it seems that the Haryana AAAR had narrowly interpreted Section 17(5) of the CGST Act, whereas, the West Bengal AAR in the instant case has rightly allowed the ITC on demo vehicles by interpreting the intent of the legislature.

Circular being a subordinate law cannot over-ride the Parent Act

Baker Hughes Asia Pacific Limited [CW-5714/2021]

The Petitioner had entered into a contract for supply essential goods, materials and/or equipment required for carrying out the petroleum exploration and production operations. The Petitioner procured the goods by paying GST from 5% to 28% and supplied the same at concessional GST rate of 5%.

Accordingly, given the case of IDS, the Petitioner had claimed refund of this excess ITC under Section 54(3)(ii) of the CGST Act. However, the refund application had been rejected by the Revenue on the premise that in terms of Circular No. 135/05/2020-GST dated March 31, 2020, refund under IDS would not be

available where the input and output supplies are the same, though attracting different tax rates at different points in time. Aggrieved, the Petitioner preferred a Writ before the Rajasthan HC.

The HC observed Section 54(3)(ii) allows refund of credit accumulated on account of supplies and does not mention that the credit could be claimed only if the supplier has made any value addition/ enhancement to the goods supplied. It was further observed that the circular, being a subordinate legislation, is repugnant and conflicting to the parent legislation i.e. Section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the Petitioner.

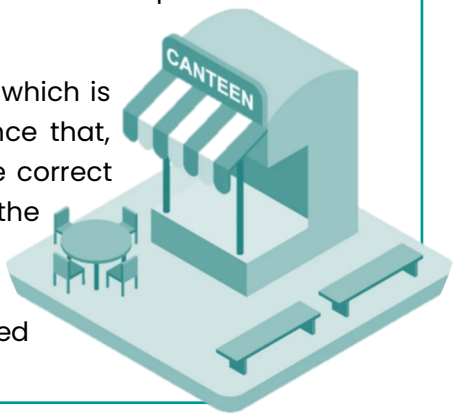
Authors' Notes:

It shall be noted that the subordinate / delegate law cannot make a rule which is not authorized by the parent statute. If the subordinate legislative exceeds the power delegated, then the courts will certainly declare it to be ultra vires. The Apex Court has emphasized in ***RE: Renusagar Power Co.*** *that if the exercise of power is in the nature of subordinate legislation, the exercise must conform to the provisions of the statute.*

Manpower service for maintenance of canteen classifiable as 'temporary staffing service'

Indian Coffee Workers Cooperative Society [Advance Ruling No. RAJ/AAR/2022-23/06]

The Applicant had inter alia sought an advance ruling before the Rajasthan AAR to ascertain whether the classification under which the services provided by it are to be covered for the purpose of taxation under GST. The Applicant had submitted that they are covered under the category of 'Accommodation, food and beverages services' and is covered under Sr. No. 7 (ii) of Notification No. 11/2017 – Central Tax (Rate) dated June 28, 2017 attracting 5% GST without taking any input as is the pre- condition to get covered by the said item.



The AAR observed that while all employees are on payrolls of applicant, which is legally responsible for their actions, the agreement draws clear inference that, they are working under direct supervision of the recipient. Hence, for the correct nature of service when supplying staff/employee/labour to the recipient, the service provided by the Applicant is classifiable as 'Temporary Staffing Services' under Heading No. 998514 chargeable to GST at the rate of 18% as per Sr. No. 23(iii) of the Notification No. 11/2017 – Central Tax (Rate) dated June 28, 2017.

Supplies to Integrated Coach Factory for single price constitutes 'Mixed Supply'

Medha Servo Drives Private Limited [Order-in-Appeal No. AAAR/02/2022]

The Appellant had received an order for design, development, manufacture, supply, testing and commissioning of propulsion system to the ICF, Chennai. The Appellant had sought an advance ruling before the Telangana AAR to ascertain whether the supplies made by them to ICF, Chennai would be classifiable as Mixed Supply or Composite Supply. The AAR had ruled that it would be classifiable as a Mixed Supply. Aggrieved, the Appellant had preferred an Appeal before the AAAR.

The AAAR observed that price break-up of individual items does not necessarily imply that items are being

separately supplied for separate prices. It was further observed that the Purchase Order specified the supply of complete propulsion system and payment thereof was also to be made for complete system though there was requirement to separately specify HSNs and items.

It was also observed by the AAAR that such supply would not qualify as a composite supply as supplies are not naturally bundled and no individual item qualified as principal supply. In view of the above observations, the AAAR ruled that the supplies made by the Appellant to ICF, Chennai would be classifiable as Mixed Supply.

Authors' Notes:

It may be argued that in the instant case, the Appellant had undertaken the supply of the propulsion system. The engineering, designing services, etc. in relation to the system, cannot be supplied on a stand-alone basis. Without the propulsion system, there can be no engineering services in relation thereto. Thus, it can be argued that the supply of propulsion system would be the principal supply and other services would be ancillary supplies.

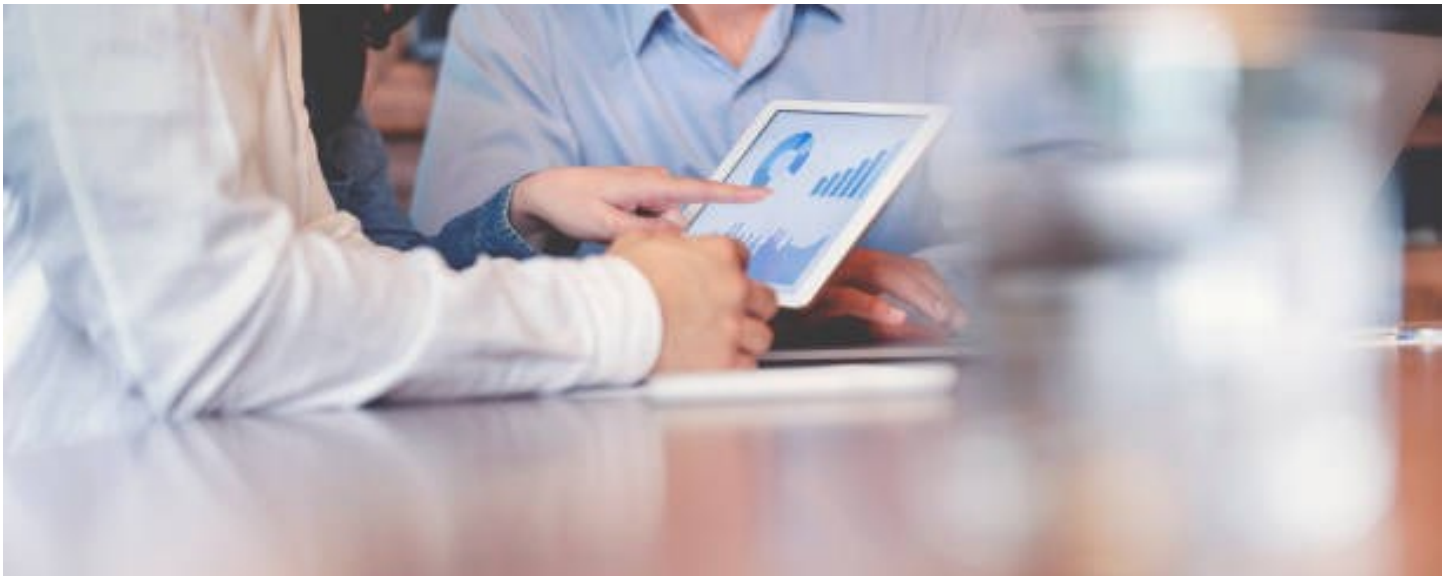
Erstwhile Regime

Service Tax Refund cannot be denied on limitation, where excess duty paid under bona fide belief

Bellatrix Consultancy [2022-TIOL-938-HC-KAR-ST]

The Appellant had entered into an agreement with a Company located outside India to provide support services to real estate property buyers in the USA which involved verifying information on various types of issues related to the property to be purchased by potential customers. The Appellant paid service tax on the consideration charged on the client periodically. Subsequently, the Appellant realized that it was not liable to pay service tax on export of services and filed a refund claim of service tax so paid under a bona fide belief. The refund was rejected on the ground of limitation, which was upheld by the Tribunal. Aggrieved, the Appellant preferred an Appeal before the HC.

The HC relied on the SC ratio in RE: **Shiv Shanker Dal Mills** where it was held that there is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Accordingly, it was held that given such principle of law and the fact that the Service tax liability on such exports was not disputed, refund cannot be rejected on the ground of limitation.



GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1	Notification No. 10/2022 – Central Tax dated July 05, 2022	**Exemption taxpayers from the requirement of furnishing annual return for FY 2021-22** • The CBIC has exempted the taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing Annual Return for FY 2021-22
2	Notification No. 11/2022 – Central Tax dated July 05, 2022	**Extension of due date for filing Form GST CMP-08** • The CBIC has extended the due date for furnishing Form GST CMP-08 the quarter ending June, 2022 till July 31, 2022
3	Notification No. 12/2022 – Central Tax dated July 05, 2022	**Waiver of late fee for delay in filing Form GSTR-4** • The CBIC has waived off the late fees for delay in filing Form GSTR-4 for the F.Y. 2021-22
4	Notification No. 13/2022 – Central Tax dated July 05, 2022	**Extension of due dates of specified compliances w.e.f. 1 March 2020** • Time limit to issue notice u/s 73(10) for recovery of tax not paid, short paid or of ITC wrongly utilized for FY 2017-18 shall be allowed till September 30, 2023; • Time period between 01 March 2020 to February 28, 2022 excluded for the computation of period of limitation u/s 73(9) (issuance of orders for recovery of erroneous refunds); • Time period between 01 March 2020 to February 28, 2022 excluded for the computation of period for filing of refund application u/s 54 and 55 of the CGST Act.
5	Notification No. 14/2022 – Central Tax dated July 05, 2022	**CGST (First Amendment, 2022) Rules, 2017** • Revocation of GST registration Suspension: If the registration has been suspended due to non-filing of GST return but not cancelled by proper officer, shall be deemed to be revoked upon filing of all pending returns. • Duty Credit Scrip: The value of duty credit scripts shall be not included in the aggregate value of exempt supplies for the reversal of common credits under Rule 42 and 43. • Declaration on the invoice: The taxpayers having aggregate turnover exceeding INR 20 crores in any of the FY from 2017-18 and onwards, but not mandated to generate e-invoice shall be required to provide a declaration to that effect in the invoices issued by them.

Sr No	Notification/ Circular	Summary
5	Notification No. 14/2022 – Central Tax dated July 05, 2022	**CGST (First Amendment, 2022) Rules, 2017** • Erroneous refund: If the registered person deposited the erroneous refund amount along with interest & penalty through cash ledger, then an amount equivalent to the deposit by taxpayers through DRC-03, shall be re-credited to electronic credit ledger by proper officer by an order made in FORM GST PMT-03A • UPI and IMPS shall be allowed as modes of payment towards tax, interest, penalty, fees, or any other amount. • Form GST PMT-09 shall be used for the transfer of Cash ledger amount of CGST to the ECL for CGST or IGST of distinct person. • Levy of interest on Net Cash liability and ITC wrongly utilised: Changes has been incorporated in Rule 88B regarding ◊ Interest calculation only on the Net liability after utilising the input for the delay in filing of GST return and ◊ In case of ITC wrongly availed, interest shall be calculated on the amount of ITC availed & utilised • Refund of accumulated ITC on the export of electricity: The documentary evidence for claiming a refund on accumulated credits on the export of electricity has been notified to ease the process of claiming refunds. • Value of exports for claiming refund of accumulated ITC: For claiming refund of accumulated ITC on the export of goods, the value of goods shall be taken as lesser of the ◊ Declared FOB value in the Shipping bill or Bill of Export; or ◊ Value declared in the tax invoice/bill of supply • Refund of accumulated credits due to inverted duty structure: The Formula has been amended to consider utilization of ITC on account of inputs and input services in the same ratio in which ITC had been availed during the said tax period. • Rule 95A providing differential treatment for a refund on supplies from Duty-Free Shops at international terminals has been withdrawn retrospectively from July 01, 2019. • Refund of IGST paid on export of goods: Rule 96 has been retrospectively amended from July 2017 to make refund claims for exports of goods contingent on the matching of shipping details with GSTR-1 and, to provide for withholding of refunds where additional verification may be required.

Sr No	Notification/ Circular	Summary
5	Notification No. 14/2022 – Central Tax dated July 05, 2022	**CGST (First Amendment, 2022) Rules, 2017** • GSTR-3B: The format of GSTR-3B has been revised for reporting the supply of services through aggregators/e-commerce operators, the tax on which shall be paid by such operators. Table 4 for the ITC claims has also been revised. • GSTR-9/9C: The format for GSTR-9 and 9C for FY 2021-22 and other forms have been amended/inserted in line with the changes in relevant provisions.
6	Circular No. 170/02/2022-GST dated July 06, 2022	**Mandatory furnishing of correct and proper information in Form GSTR-1** • Every registered person making interstate supplies to unregistered person, composition dealer and UIN Holder, is required to report the details with POS in table 3.2 of FORM GSTR-3B even though the details of said supply already reported in 3.1 of FORM GSTR-3B. For ease of taxpayers, the details of said supply is being auto-populate from Form GSTR-1. • In Table 4A, taxpayers are required to report Total ITC (eligible as well as ineligible) is being auto-populated from GSTR-2B. (Except ineligible ITC due to time barred and POS of intra state supply is different from the recipient state). • In Table 4B(1), taxpayers are required to report ITC which are absolute in nature and are not reclaimable. • In Table 4B(1), taxpayers are required to report ITC which are not permanent in nature and can be reclaimed in future.
7	Circular No. 171/03/2022-GST dated July 06, 2022	**Clarification on issues relating to demand and penalty over fake invoice transactions** • In case a registered person has issued tax invoice to another registered person without any underlying supply of goods or services or both penal action can be taken u/s. 122(1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services. • In case a supplier has issued tax invoice to a recipient without any underlying supply and the recipient avails ITC on the basis of the said tax invoice and further issues invoice along with underlying supply to his buyers and utilizes ITC he shall be liable for the demand and recovery of the said ITC, along with penal action, u/s. 74 of the CGST Act, along with applicable interest u/s. 50 of the said Act. • In case a supplier has issued tax invoice to a recipient without any underlying supply and the recipient avails ITC on the basis of the said tax invoice and further passes on the said ITC to another recipient by issuing invoices without underlying supply the recipient shall be liable for penal action both u/s. 122(1)((ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply and for utilizing ITC without actual receipt.

Sr No	Notification/ Circular	Summary
7	Circular No. 171/03/2022-GST dated 06 July 2022	• In cases of wrongful/fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 (penal provision) of the CGST Act may also be invokable.
8	Circular No. 172/03/2022-GST dated July 06, 2022	**Clarification on various issues pertaining to GST** • Proviso after clause (iii)of section 17(5)(b) applicable to entire section 17(5)(b) of CGST Act. i.e., if it is obligatory for employer under any law to provide food and beverage, heath services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, membership of club, health and fitness centre, insurance & health insurance, travel benefit etc. as mentioned in Section 17(5)(b) to the employees, then ITC is available to the employer. • Perquisite provided by employer to employee are not subject to GST as same are provided in terms of the contract between the employer and employee. • Balance of electronic credit ledger can only be used for making payment of output tax on taxable supply made by registered person also it can only be use for making payment of output tax on taxable supply made by RP not for interest, penalty and late fee. Whereas electronic cash ledger can be used for making payment of any liability under this act including input supply received on which RCM is applicable. • Conditions of Section 17(5) are not applicable on ITC claimed for refund of tax paid on deemed exports supplies, because ITC on tax paid allowed only for claiming refund, hence is not ITC in terms of chapter V.
9	Circular No. 173/03/2022-GST dated July 06, 2022	**Clarification on issue of claiming refund under IDS** In cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of taxon input supply (of the same goods) at the same point of time due to supply of goods by the supplier under the specified concessional notification, refund of accumulated input tax credit on account of IDS, would be allowed in cases where accumulation of ITC is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.
10	Circular No. 174/06/2022-GST dated July 06, 2022	**Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A** The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger. • Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in prescribed format to jurisdictional proper officer.

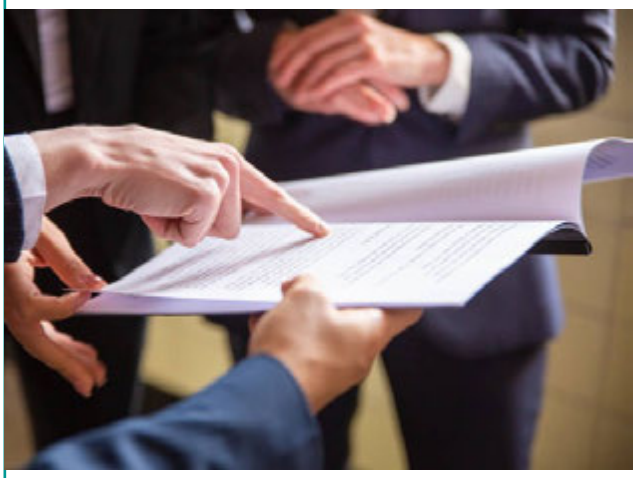
Sr No	Notification/ Circular	Summary
10	Circular No. 174/06/2022-GST dated July 06, 2022	**Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A** The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.
11	Circular No. 175/07/2022-GST dated July 06, 2022	**Refund of unutilized ITC for export of electricity** The details of shipping bill/ bill of export in respect of such refund of unutilized ITC in respect of export of goods to be reported in FORM GST RFD-01.
12	Notification No. 03/2022-Central Tax (Rate) dated July 13, 2022	**GST Rate Changes** GTA is being given option to pay GST at 5% or 12% under forward charge. Option to be exercised at the beginning of Financial Year. RCM option to continue. Option to be exercised by declaration in Annexure V before March 15 of preceding FY. For FY 22-23, option to be exercised before 16 August 2022.

CUSTOMS & FTP
From the Judiciary

HC restraints Revenue from taking coercive action against petitioner challenging MOOWR instructions

ACME Heergarh Powertech Private Limited [2022-TIOL-1007-HC-DEL-CUS dated July 13, 2022]

The Petitioner had obtained deferral of custom duty and IGST by operating under MOOWR Scheme. The CBIC vide Instruction No. 13/2022-Customs dated July 09, 2022 directed the concerned authority to revoke the two licenses issued by Revenue under MOOWR Scheme to the Petitioner. Further, the Instruction denied the benefit on the basis that the resultant goods, i.e. electricity, cannot be stored in a warehouse and cannot be affixed with a one-time lock to the load compartment.



Aggrieved, the Petitioner preferred a Writ challenging the aforesaid Instruction. The Petitioner argued that the Instruction is in the teeth of proviso (a) to section 151 A of the Customs Act as it directs the Custom Officer to review the licenses already granted and to not grant any further licenses in such cases. It was further argued that if the instruction is allowed to operate, Petitioner's consignment for import of solar modules would be subjected to custom duty and IGST, contrary to the provisions of the MOOWR Scheme. The Petitioner further averred that electricity is neither subject to duty under the Customs Act, nor under the CGST Act.

In view of the above, the Delhi HC observed that the Petitioner has set up a prima facie case and the balance of convenience appears to be in favour of the Petitioner. Accordingly, the HC restrained the Revenue from taking any coercive measures against the Petitioner till the next hearing.

Drawback u/s 74 not available to importer availing benefit of notification no. 27/02-Cus

Expotec International Limited [2022-TIOL-1020-HC-MUM-CUS]

Bombay HC determined importers covered by Notification No. 27/02-Cus dated 01.03.2002 aren't eligible for Section 74 drawback. Petitioner was awarded a contract by GAIL for the purpose of laying a pipeline project. Petitioner imported capital goods and paid customs duty under Notification No. 27/02-Cus dated 01.03.2002. Petitioner re-exported the capital items after the GAIL contract completion. Petitioner requested import duty drawback while re-exporting these goods, to which 70% was allowed. Subsequently demand notices were issued to recover the drawback granted to Petitioner.

The HC held that NN 27/02 was a concession provided to importers like Petitioner who would lease the commodities with the intent to re-export them within the requisite period. Therefore, section 25 of NN 27/02 was issued for a separate class of importers (1). So, the concession provided to such importer was that he would pay just 15% or 30% of the customs tax owed under the Act. NN 27/02 recipients aren't eligible for Section 74 drawbacks. If the Petitioner had paid 100% customs duty and not submitted statements under Notification 27/02, they would have been entitled to an 85% or 70% drawback. But the Petitioner was not

entitled to drawback since he had received concessions and not paid 100 percent duty under Notification 27/02.

Re-determination of value, without any case of mis-declaration & undervaluation, not maintainable.

Mydream Properties Private Limited [Customs Appeal No. 86600 of 2021 dated July 01, 2022]

The appellant imported products for duty assessment and clearance. The BOE was recalled and an examination was conducted by the officers and the BOE was provisionally examined. Based on a detailed investigation, the department concluded that the importer mis-declared the description of the imported goods in terms of its model and actual value, resulting in evasion of legitimate customs duty payable on the higher import price for the imported yacht of model 'Azimut 68 Evolution', instead of model 'Azimut68' as declared in the subject BOE. The Appellant preferred a Tribunal appeal.

The Tribunal while adjudicating the instant case placed reliance on case of NPT Papers Pvt. Ltd. & others V. C. C., Mundra & Others, which held that importers must produce evidence that they paid more than the invoice value. Once there's no additional remittance, transaction value cannot be deleted.

The Tribunal noted that Revenue had not shown any misdeclaration and undervaluation of the yacht. Therefore, there was no merit in the re-determination of the value of the yacht and confirmation of differential duty thereon. As the misdeclaration and undervaluation charges fail, so do confiscation and penalties. The order was set aside.

Exporter Not liable for 'Change of Landing Port' Instructions Given by Importer

Janki Dass Rice Mills [Customs Appeal No. 10801 of 2021 dated July 07, 2022]

The appellant exported rice using disputed shipping bills which were originally booked for Iran, but the consignments were transported to the UAE, violating FTP provisions of paras 2.40 and 2.53. The adjudicating body issued a show-cause notice and, after due process, confiscated the goods and assessed penalties. Appellants filed appeals with the Commissioner (Appeals), who upheld and dismissed them. Thereafter, the assessee appealed to CESTAT.

It was held that since all the documents in respect of disputed consignments were in the name of Iranian buyers and there was no evidence that they were changed to allow imports from the UAE. Further the department never offered any evidence that the appellant's export documents were fraudulent.

The department never contested the consignments' Iranian rupee remittances. It was also noted that Appellant lost the ownership of the goods as soon as let export order was issued by the Customs authorities. Therefore, the said let export order was the responsibility of the Shipping Lines to ship the goods to the foreign buyer and the exporter have no control over the goods. Hence, Appellant cannot be held responsible if the importer situated at Iran had given instruction to change the port as after the let export order was issued by the Customs authorities it was the importer at Iran who became the owner of the goods.

Mandatory Pre-Deposit U/S 129E of the Customs Act Is Constitutional

United Projects Writ Petition No. 2883 Of 2018 dated July 12, 2022

A three-judge bench of the Bombay HC upheld the validity of section 129E of the Customs Act compelling pre-deposit on appeals and stated that fiscal legislation might very well stipulate an obligatory pre-deposit as a condition precedent for an appeal to be accepted by the appellate authority.The petitioners/ assessee filed the first quarterly returns for the period 2013-2014 under the MVAT Act, 2002. The assessment proceedings were initiated and further the assessing officer passed an assessment order. The petitioner filed a stay application on Form No. 311 of the MVAT Act, 2002 before the First Appellate Authority. The petitioners also filed an appeal on Form No. 301 before the State First Appellate Authority.

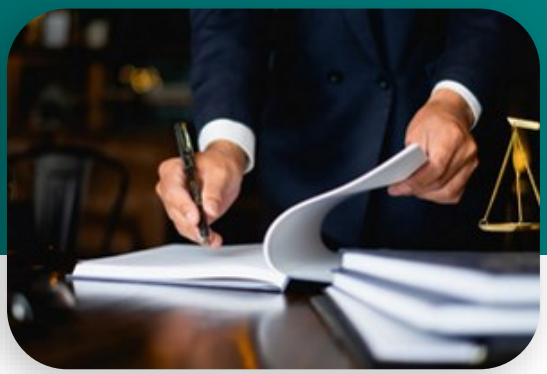
The petitioner raised the issue if the MVAT, 2002 can be amended to to mandate a pre-deposit for any appeals filed after September 16, 2016. (i.e., post 101 Constitutional Amendment Act, 2016). The department argued that the "right of appeal" is neither a fundamental nor a constitutional right, nor part of 'natural justice' It's a statutory right. The Legislature can repeal a statute's right by amending it. Legislative provisions can't be "impliedly" removed.

The bench remarked that holding that the right of appeal can be made conditional, *"with conditions similar to the one inserted by the 2017 amendment in issue, by way of an amendment made with retrospective effect, even if the same adversely affects such a right, much after the 'lis' has begun, containing express words or by necessary implications."* The court found no merit in the petitioner's claim that the state government had no power to legislate, including the right to alter laws, or that such power was taken away by Article 246A of the Constitution. The bench cited the case of M/s. Anshul Impex Private Ltd while holding that the 'right of filing appeal accrues on the date of order of assessment and the requirement of mandatory pre-deposit introduced by way of amendment does not apply to orders passed in the assessment years prior to 15th April, 2017' since the right of appeal can be made conditional by the Legislature with express indication.

CUSTOMS & FTP
From the Legislature

Sr. No.	Notification/ Circular	Summary
1	Notification No. 17/2022-Central Excise dated July 19, 2022	**CBI reduces Special Additional Excise Duty on exports of Petrol & Diesel** • Exemption in the SAED on exports of Petrol from 5% to Nil • Reduction in the SAED on exports of high speed Diesel oil from 12% to 10%
2	Notification No. 18/2022-Central Excise dated July 19, 2022	**CBIC reduces Special Additional Excise Duty on Petroleum Crude Production & Aviation Turbine Fuel export** • Reduction in the SAED on production of Petroleum crude to Rs. 17,000 per ton • Reduction in the SAED on export of Aviation Turbine Fuel to Rs 4 per Litre
3	Notification No. 19/2022-Central Excise dated July 19, 2022	**CBIC exempts Petrol, Diesel & Aviation Turbine Fuel from SAED & RIC when exported from SEZ** • Exemption in SAED on Petrol, Diesel, Aviation Turbine Fuel exported from Special Economic Zone
4	Notification No. 20/2022-Central Excise dated July 19, 2022	**Govt reduces Road and Infrastructure Cess on export of Petrol** • Exemption in the Road and Infrastructure Cess on export of Petrol and Diesel from 1% to Nil
5	Circular No. 11/2022-Customs dated July 29, 2022	**Extension of Customs clearances beyond normal working hours in ICDs** CBIC notifies facility of 24×7 Customs clearance. Inland Container Depots (ICDs) has to facility Customs clearance beyond normal working hours in any of the following ways, namely, • The facility of Customs clearance may be made available on a 24×7 basis, similar to the current Board guidelines for Sea Ports and Air Cargos/Airports; • The facility of Customs clearance may be extended on all seven (7) days of the week (including holidays), with stipulated timings (say from 9 :30 AM to 6 :00 PM) • The facility of Customs clearance may be extended beyond normal working hours for specified days in a week and with specified timings

Sr. No.	Notification/ Circular	Summary
		• The facility of Customs clearance may be extended beyond normal working hours for specified days in a week and with specified timings.
6	Notification No. 38/2022-Customs dated July 04, 2022	**Seeks to extend the exemption from BCD and AIDC upon import of Raw Cotton** Ministry had earlier given Exemption from the duty and Agriculture Infrastructure Development Cess (AIDC) till September 30, 2022, for import of cotton to lower prices in the domestic market. Now CBIC has further extended the exemption of customs duty on till October 31.
7	Standing Order No. 06/2022 dated July 04, 2022	**Appellate order not necessary for re-assessment of bills of entry** JNCH has clarified the correct principle laid down by the Hon'ble SC in **ITC Limited**. It has been clarified that in the said judgement, the Hon'ble Court had ruled that a refund claim cannot be entertained unless the order of self-assessment is modified in accordance with law. If a person is aggrieved with an order (including a self-assessment), he must seek a modification under Section 128 or other relevant provisions of the Customs Act, 1962. The Standing Order further provides that the decision of Bombay HC in the case of Dimension Data India Private Limited [2021-TIOL-224-HC-MUM-CUS], as upheld by the SC, clarifies that apart from section 128 of the Customs Act, the BOE [or Shipping Bill] can also be amended or modified under the provisions of Section 149 or Section 154 of the Customs Act, 1962. In cases where amendments are sought after Out of Charge (OOC), the approval of concerned ADC/JC for cancellation is required. In the case of a BOE where OOC was granted by the RMSFC and amendment is sought u/s. 149 or 154 of the Customs Act, cancellation of OOC for consequential amendment would be made by the Group to which the BOE would otherwise pertain. It has also been provided that all Cases in progress where the amendment under section 149 or 154 of Customs Act, has already been allowed or where refund has been filed after such amendment, will be processed on merits by the Refund section.



NCLT holds Corporate Debtor's future liabilities do not qualify as 'claim' under IBC

State Bank of India vs. Uttam Galva Steel Ltd. [IA No. 1098/MB/2021 in C.P.(IB)920/MB/2020]

The State Bank of India (Financial Creditor) had filed an application with National Company Law Tribunal (NCLT) under Section 7 of the IBC for initiation of the CIRP against Uttam Galva Steel Limited (Corporate Debtor). The said application was admitted by the NCLT, and the Resolution Professional (RP) had published a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and invitation of claims from creditors. The applicant (GAIL India Limited) was a government company that had executed three Gas Sale Agreements (GSAs) for supply of re-gasified liquid natural gas to corporate debtor. Subsequent to the public announcement, the applicant raised its claim towards 'Take or Pay' ('TOP') charges for claiming the payment of gas which was to be paid to the applicant by the corporate debtor. The applicant also filed its claim of INR 9,775.19 crores towards entire contractual obligation under the GSAs for admission of its claim as operational creditor, which was rejected by the RP stating that the said quantum of claim related to the future liabilities under GSAs which was not duly performed and as such was not being covered under the definition of "claim" as defined in section 3 (6) of the IBC.

Aggrieved, the applicant approached the NCLT which observed that the triggering event for accrual of right to payment in respect of TOP liability was yet to happen at a later point in time, when the gas would have been supplied to the Corporate Debtor in the future, i.e., after commencement of CIRP, therefore, the amount claimed in respect of TOP liability did not qualify as a 'claim' in terms of the definition of 'claim' under the IBC. Further, it was a settled position of law that a right to payment that pertains to a period till the end of tenure of the GSAs, i.e., a period beyond the date of commencement of CIRP could not be admitted as claim by RP, hence, the post insolvency commencement date **("ICD")** amount claimed by the applicant towards entire contractual obligation under the GSAs failed to qualify as a claim.

Moreover, a RP was empowered to make a best estimate of the amount of the claim based on the information available under the CIRP Regulations and it was his duty to verify each claim received, and admit the claim only to the extent it pertains to a period prior to the ICD based on the information available with him, Therefore, it was well within the powers of a RP to reject a claim or portion thereof for want of sufficient documents/evidence backing up such a claim.

Thus, NCLT upholds the RP's decision in rejecting the claim of the applicant relating to future liabilities of the corporate debtor. NCLT observed that the amount did not qualify as a claim, as there was no basis for claiming such hypothetical amounts which may or may not be payable at a future date by the corporate debtor.

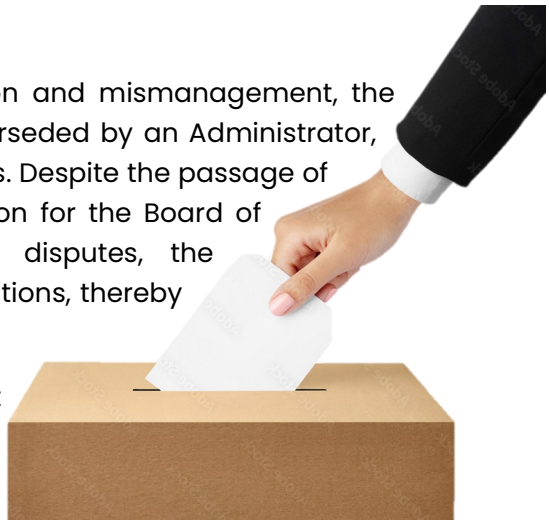
Authors' Note:

In the instant case, the NCLT rightly observed that future liabilities did not qualify as claim under

the IBC as, if such future liabilities were to be accounted for, it would put unnecessary strain on the corporate debtor for hypothetical amounts which may or may not be payable at a future date by the corporate debtor.

NCLT directs Administrator to conduct Board of Directors' election for managing Company's affairs

V.G. Joseph & Ors. vs. Alexander Correya & Ors. [IVNP/1(KOB)/2022 & IVNP/2(KOB)/2022 in TCP/21/KOB/2019]



Pursuant to an application before the NCLT, alleging oppression and mismanagement, the NCLT had ordered the Company's Board of Directors to be superseded by an Administrator, who took over possession and control of the day-to-day activities. Despite the passage of 3 years, the Administrator made no effort to conduct an election for the Board of Directors of the Company. Subsequently, on account of disputes, the Administrator and the Auditor resigned from their respective positions, thereby bringing the functioning of the Company to a standstill.

Aggrieved, the Petitioners approached the NCLT which noted that more than three and a half years had passed since the appointment of the Administrator, wherein, one of the directions in the NCLT order was to conduct an election of the Board of Directors, observed that the Administrator had not taken any steps to conduct the elections. Due to disputes and differences between auditor and administrator, both of them resigned from their respective positions and a new administrator is appointed. Further, the new Administrator's submissions reflected the allegations raised by the former Administrator that the Auditor had not audited the accounts properly, the NCLT observed that such lame excuses could not be accepted for not conducting the election. Thus, NCLT passed an order directing the Administrator to conduct the election of the Board of Directors of the Company within 45 days and hand over the charge and return all records and documents kept under his custody to the Board of Directors when the Board of Directors is elected.

Authors' Note:

It would be interesting to note that in the present case, the NCLT remarked that administrator should make an effort to conduct elections for appointment of board of director immediately after his appointment so that he can hand over all record and documents in his custody. Lame excuses for not conducting election to appoint Board of Directors are not acceptable.

SC calls upon Government to introduce separate law to streamline grant of bails

Satender Kumar Antil vs. CBI & Anr. [Special Leave Petition (Crl.) No. 5191 of 2021]

Taking note of the continuous supply of cases seeking bail, the SC had made an endeavour to categorize the types of offences to be used as guidelines for the future, and accordingly, laid down guidelines for grant of bail to persons not arrested during investigation on filing of charge sheet. The aforesaid guidelines categorized offences into four types –

- Category A - dealing with offences punishable with imprisonment of 7 years or less not falling in category B & D,

- Category B - dealing with offences punishable with death, imprisonment for life, or imprisonment for more than 7 years,
- Category C - dealing with offences punishable under Special Acts containing stringent provisions for bail and
- Category D - dealing with economic offences not covered by Special Acts.

The SC noted that more than 2/3rd of the prison inmates constituted under trial prisoners, and of this category of prisoners, majority were not even required to be arrested despite registration of a cognizable offense, being charged with offenses punishable for seven years or less. Further, the SC noted that statistics showed that more than 1000 children were living in prisons along with their mothers. Accordingly, SC observed that this was an aspect that the courts were expected to take note, as it not only involved the interest of the accused, but also the children who were not expected to get exposed to the prisons as there was a grave danger of their being inherited not only with poverty but with crime as well. Moreover, observing that when a person had undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he was to be released by the Court on his personal bond with or without sureties, SC remarked that there was not even a need for a bail application in a case of this nature particularly when the reasons for delay were not attributable against the accused. Further in case of economic offences, the SC observed that the gravity of the offence, the object of the Special Act, and the attending circumstances were a few factors to be taken care of, along with the period of sentence. As an economic offence could not be classified as such, as it involved various activities and differed from one case to another. In light of the above observations, the SC, therefore concluded that it was not advisable on the part of the court to categorise all the offences into groups and deny bail on that basis and accordingly, so as to streamline the grant of bail, called upon the Government to consider introducing a separate enactment in the nature of a Bail Act as done in various other countries like the UK, holding that there was a pressing need for a similar enactment in our country.

Authors' Note:

It would be interesting to note that in the present case, the SC also remarked that uniformity and certainty in the decisions of the court were the foundations of judicial dispensation and the persons accused with the same offense should never be treated differently either by the same court or by the same or different courts.

SEBI penalizes two employees of company (Mindtree Ltd.) for failing to make requisite disclosure under SEBI (Prohibition of Insider Trading), Regulation, 2015

In the matter of Mindtree Ltd. [Order/PM/SM/2022-23/17289]

SEBI received a letter dated October 26, 2018 from Mindtree Ltd. (Company) informing SEBI regarding

instances of violation of the code of conduct framed by the Company under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) by two of its employees (Noticees) and action taken by the Company pursuant to the same. Accordingly, SEBI initiated an examination in the matter against the employees. SEBI also initiated a separate investigation for ascertaining any violation of the PIT Regulations with regard to the transactions of promoters, directors and employees of the Company, in the Company's scrip, during the Investigation Period. The investigation revealed that the Noticees had transacted in the Company's scrip during the Investigation Period. It was further observed that the Noticees had done transactions aggregating to a traded value in excess of INR 10 Lakh on multiple occasions over a calendar quarter.

Thereafter, the Company was asked to confirm whether the Company or its compliance officer had received any disclosures for trading done by the Noticees in terms of Regulation 7(2)(a) of the PIT Regulations. Company confirmed that it had not received any disclosures from the said Noticees. A Show Cause Notice (SCN) was served on the Noticees through email to show cause as to why an inquiry should not be held against them and penalty should not be imposed under Section 15A(b) of the SEBI Act for the violation alleged to have been committed by him. In the SCN, the Noticees were asked to indicate whether they would prefer a personal hearing before the adjudicating officer in the matter.

An opportunity of personal hearing was granted to the Noticees. On the scheduled hearing date, the Noticees did not avail the hearing opportunity. In the interest of justice, the Noticees were again granted final opportunity of personal hearing. However, the Noticees again did not avail the same. Further, the Noticees had not made any submissions throughout the adjudicating proceedings. Noting that the Noticees had not filed any reply to the SCN, SEBI observed that the Noticees were employees of the Company during the investigation period and had executed the impugned trade without proper disclosure under PIT Regulations, and that the Company confirmed that the Noticees did not submit the disclosures within the time and manner specified, which was sacrosanct as it enabled the public to make an informed investment decision in a timely manner. Further, SEBI noted as per Regulation 7(2)(a), employees were required to submit disclosures to the company within two trading days of transactions if the value of the securities traded, in one transaction or a series of transactions, aggregated to a traded value in excess of INR 10 Lakhs over any calendar quarter. Therefore, SEBI imposed a penalty of INR 1 lakh each on the Noticees for trading in excess of INR 10 Lakhs in Company's scrip on multiple occasions during the investigation period without making timely disclosure to Company in contravention of Regulation 7(2)(a) of the PIT Regulations, SEBI disposed of the matter.

Authors' Note:

In the present case, SEBI also observed that the aforesaid violation by the Noticees affected multiple stakeholders and had an impact on the entire securities market. Accordingly, considering the repetitive nature of the default, SEBI imposed a monetary penalty on each of the Noticees so as to deter the Noticees from committing any violations in the future.

NCLAT holds debt pertaining to unpaid license fee qualifies as 'operational debt', quashes NCLT order

Jaipur Trade Expocentre Pvt. Ltd. vs. Metro Jet Airways Training Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 423 of 2021]

The Appellant (Operational Creditor) had entered into a license agreement with the Respondent (Corporate Debtor) for running an educational establishment on its premises. The cheques issued by the Respondent for payment of license fee were dishonored after which the Appellant sent demand notice under Section 8 of IBC for dues of more than INR 1 Crore to the Respondent. The Respondent did not reply to the demand notice issued by the Appellant. Aggrieved, the Appellant filed an application to initiate CIRP against the Respondent before the NCLT which issued a notice to the Respondent and a reply disputing the debt was filed by the Respondent. The Appellant filed its rejoinder to the reply of the Respondent and the NCLT allowed the Respondent to file additional documents. The NCLT dismissed the application filed by the Appellant observing that the claim arising out of grant of license to use of immovable property did not fall in the category of goods or services, therefore, the amount claimed in the application filed by the Appellant was not an unpaid operational debt and the application could not be allowed. Aggrieved, the Appellant approached the NCLAT which noted that that operational debt as defined under Section 5(21) of IBC includes a claim in respect of the provision of goods or services, however, as 'services' had not been defined under the IBC, the NCLAT referred to the definition under the CGST Act, and the conditions of the agreement, and accordingly observed that the agreement clearly indicated that when the Respondent was to be taxed for GST, it would be taxed for 'services.'

Further, noting that the license agreement granted the Respondent a license for a particular kind of 'service' for running an educational institution, the NCLAT observed that the claim of the Appellant for payment of license fee for use of demised premises for business purposes was an 'operational debt' within the meaning of Section 5(21) of the IBC and accordingly, directed the NCLT to pass an order of admission of Appellant's application within 1 month. NCLAT set aside the NCLT order by noting that the debt pertaining to unpaid license fee was fully covered within the meaning of 'operational debt' under Section 5(21) of the IBC and the NCLT had committed an error in holding that the debt claimed by the Operational Creditor was not an 'operational debt'.

Authors' Note:

*Contrary to the present case, it would be interesting to note that in **M. Ravindranath Reddy vs. G. Kishan & Ors. [Company Appeal (AT) (Insolvency) No. 331 of 2019]**, the NCLAT had set aside NCLT order admitting application filed against the Corporate Debtor (Licensee) for non-payment of rental dues, observing that the lease of immovable property could not be considered as supply of goods or rendering of any services and thus, could not fall within the definition of operational debt. In the given case, NCLT has considered license fees paid for use of immovable property as a service which coincides with definition of services as per GST Act.*

SEBI penalises Company for not disclosing SCNs issued by Pollution Control Board, given 'materiality'

In the matter of Bajaj Hindusthan Sugar Ltd. [Order/GG/BS/2022-23/17877]

SEBI received a complaint through SCORES (an online platform for investors to raise complaints with SEBI against listed companies and SEBI registered Intermediaries) against Bajaj Hindustan Sugar Limited (the Company). The complainant raised concerns regarding false reporting/misreporting in the annual report in respect of SCNs issued by the Pollution Control Board (PCB). Thereafter, SEBI conducted an examination to ascertain non-disclosure of material event. Based on the findings of examination conducted by SEBI, it was alleged that the Company had violated the provisions of the LODR Regulations. Before SEBI, the Company contended that SCNs issued by the PCB were clarificatory in nature and there was no financial limit indicated therein. The Company further contended that closure orders/directions with respect to some distilleries/units issued by PCB were temporary in nature and the criteria for determination of materiality of event/information, was 10% of the annual consolidated turnover as per latest audited financial statements. With regards to the Company's contention that SCNs were clarificatory in nature and there was no financial limit indicated therein, SEBI observed that though the initiation of proceedings by the PCB by SCNs were at initial stages, SCNs were also 'material' for disclosure since the outcome thereof was not certain.

SEBI further observed that the Company's contention that closure orders/directions with respect to some distilleries/units issued by PCB were temporary in nature, did not hold merit as the operations of certain units/distilleries were disrupted during sugar season and matter was still lying in the court in respect of environmental compensation to be paid by the Company or lying unresolved with the Company for want of compliances. Further, with regards to the Company's justification for the non-disclosure, that the criteria for determination of materiality of event/information, was 10% of the annual consolidated turnover as per latest audited financial statements, SEBI observed that it was not out of place to mention that the said criteria of 10% of the annual consolidated turnover for deciding the materiality for disclosure was not traceable in the policy document. Thus, observing that the non-disclosure of orders amounted to breach of the provisions of LODR as alleged and the Company's own Materiality Policy, SEBI imposed a penalty of INR 10 Lakhs on the Company for false reporting/ misreporting in the annual report in respect of SCNs issued by the PCB and thereby violating the provisions of LODR Regulations.

Authors' Note:

It would be interesting to note that in the present case, SEBI observed that the public investors were entitled to know the details of various regulatory actions initiated against the investee company as any such event/information, if omitted to be disclosed would have a severe impact on the market reaction if the same came to light at a later date.

REGULATORY
From the Legislature

Ministry of Corporate Affairs update on v3 Portal

MCA vide an update dated July 15, 2022 prescribed for launching of first set of company forms on MCA21 V3 Portal. Forms rolled out in this phase are **DIR3 – KYC Web, DIR3 – KYC E Form, DPT – 3, DPT – 4, CHG – 1, CHG – 4, CHG – 6, CHG – 8, CHG – 9**. These forms will be launched on August 31, 2022 on V3 portal. E-filling of above-mentioned forms on V2 portal will be disabled from August 15, 2022. Offline payments for these forms using pay later option on V2 portal will be stopped from August 07, 2022 and the payment can only be made through online mode.

Authors' Note:

The MCA has been planning to migrate all forms filing to V3 portal in a phased manner as V3 portal provides various facilities such as list of all forms filled earlier by the company and moreover all forms will be filed electronically and shall not be filled separately and then uploaded. The same will ease the form filing process to a great extent.

SEBI provides for implementation of online web-based complaint redressal system to exchanges

SEBI has already implemented "SCORES", an online platform which is designed to help investors to lodge their complaints relating to securities market against listed companies and SEBI registered intermediaries. On the same line, SEBI vide Circular no. SEBI/HO/MRD1/ICC1/CIR/P/2022/94 dated July 04, 2022 advised that all recognised stock exchanges including commodity derivative exchanges/depositories to design and implement an online web-based complaint redressal system of their own. The new platform will enable investors to file and escalate complaints for redressal, follow up their complaints and track the status of redressal of such complaints from anywhere. Exchanges and depositories shall follow the hybrid mode (both online and offline) for conducting Grievance Redressal Committee ("GRC"), arbitration and appellate arbitration process. The redressal mechanism shall be implemented within a period of 6 months.

Online web-based complaint redressal system should have the following features:

- System should be web enabled and provide 24X7 access.
- Complaints/ GRC/ Arbitration/ Appellate Arbitration/ reminders can be lodged at anytime from anywhere.
- An email should be generated instantly acknowledging the receipt of complaint by allotting a unique registration number for future reference.
- Matter/case should move online to entity (Intermediary or listed company).
- Concerned investor can review the status of complaint online.

- Entity and investor can seek and provide clarification to each other online.
- Concerned entity shall upload an Action taken report on Complaints/ GRC/ Arbitration/ Appellate Arbitration.
- Exchanges can dispose of the Complaints/ GRC/ Arbitration/ Appellate Arbitration on being satisfied that it has been resolved adequately.

Authors' Note:

This system will obviate the need for physical movement of complaints and also reduce the possibility of loss, damage or misdirection of physical complaints. New system will be beneficial to investor as investor will be able to track the status of complaint at any time. Linking of exchanges platform with SCORES will help in speedy redressal of complaints as now SEBI will get status of complaints on real time basis.

Levy of GST on fees payable to SEBI

SEBI vide circular no. SEBI/HO/GSD/TAD/CIR/P/2022/0097 dated July 18, 2022 provides for levy of GST on fees and other charges paid to SEBI. The GST council in its meeting has withdrawn the exemption granted on services provided by SEBI. Therefore, all the Market Infrastructure Institution, listed companies, other intermediaries, other persons dealing in securities market and paying fees, other charges to SEBI shall be subject to GST at the rate of 18% with effect from July 18, 2022.

RBI Introduces Trade settlement mechanism in INR

Reserve Bank of India (RBI) vide its Notification No. RBI/2022-2023/90 A.P. (DIR Series) Circular No.10 dated 11 July, 2022 has introduced an international trade settlement mechanism in INR in order to promote the growth of global trade from India and facilitate the increasing interest of global trading markets in INR.

Broadly the framework of such mechanism in respect of major aspects of import/export is as follows:

Aspects	Notification
Invoicing	The import or export invoices may now be denominated in INR.
Exchange Rate	The exchange rate for the purpose may be determined by markets.
Settlement	The settlement of such trade shall be managed by AD Banks under prescribed mechanism.
Documentation	The export / import undertaken and settled in this manner shall be subject to usual documentation and reporting requirements.
Letter of Credit, Bank Guarantee and Use of Surplus Balance	Letter of Credit and other trade related documents may be decided mutually between banks of partner trading countries.

Aspects	Notification
Advance against Export	Indian exporters may receive advance payment against exports from overseas importers in Indian rupees through the Rupee Payment Mechanism. To ensure that the advance is released only as per the instructions of the overseas importer, the Indian bank, apart from usual due diligence measures, verify the claim of the exporter with the advice received from the correspondent bank before releasing the advance.
Setting Off of export Receivables	'Set-off' of export receivables against import payables in respect of the same overseas buyer and supplier with facility to make/receive payment of the balance of export receivables/import payables through the Rupee Payment Mechanism may be allowed.

Authors' Note:

Amidst the Russian-Ukraine war, rising fuel costs and inflationary trends, the Indian Rupee has been taking beating and resultantly, reached its all-time low. While RBI had been managing its FOREX reserves for long, greater steps were expected to ease out the pressure on INR. With so many moving pieces in global trade, introduction of Rupee Payment Mechanism is likely to address the issue of falling INR to some extent. Further, the exporters will also gain from this move as the conditions to receive FOREX to qualify as 'export' under the Integrated Goods and Services Tax Act, 2017 will effectively get sufficed even when the consideration is received in INR.

CBDT notifies procedures for allotment of PAN to newly incorporated LLPs

For the purpose of incorporation of LLP the Simplified Proforma i.e. Form- FiLLiP is to be filed with MCA. Such Simplified Proforma was notified by the Ministry of Corporate Affairs vide notification G.S.R. 173(E), dated March 4, 2022. However, the LLPs were required to file a separate application with the Income Tax Authorities for the allotment of PAN. Now, in order to ease the applicants CBDT vide its Notification No. 04/2022 dated July 26, 2022, has now allowed the newly incorporated LLPs to apply for allotment of PAN through Simplified Proforma for incorporating LLPs.

The application for the allotment of PAN will be filed in Simplified Proforma form using Digital Signature of the applicant. Thereafter on incorporation, LLP identification Number ('LLPIN') will be generated. After generation of LLPIN, MCA will forward the data in Form 49A to the Income Tax Authority for the allotment of PAN.

Authors' Note:

Inclusion of application for allotment of PAN in FiLLip is a step taken towards the sharing of information received by one Government authority to another. It will also help in early commencement of business operations by newly incorporated LLPs as now they will get their LLP registration and PAN by filing a single application.

RBI Introduce Additional Requirements for Non-Bank Payment System Operators ("PSOs")

A payment system operator means a legal entity responsible for operating a payment system. Examples of PSOs include Google Pay, Amazon Pay, NPCI etc. RBI vide its Notification No. RBI/2022-2023/80 dated July 04, 2022, has introduced additional approval and reporting requirements for Non-Bank PSOs. Such PSOs (authorized to operate any Payment System) will require prior approval of RBI in the following cases:

- Takeover / Acquisition of control, whether result in change of management or not.
- Sale / Transfer of payment activity to an entity not authorised for undertaking similar activity.
- However, in following cases they don't need prior approval but have to inform RBI within 15 calendar days:
- Change in management / directors.
- Sale / Transfer of payment activity to an entity authorized for undertaking similar activity.

Authors' Note:

While digital payments are getting more and more traction each day and number of transactions is growing multifold, government is taking right steps in ensuring governance of such platforms.

MCA Clarifies Spending of CSR Funds under 'Har Ghar Tiranga' are Eligible CSR activities

Ministry of Corporate Affairs (MCA) vide General Circular No. 08/2022 dated July 26, 2022 has clarified that spending of CSR funds under 'Har Ghar Tiranga' (a campaign under the aegis of Azadi Ka Amrit Mahotsav) on activities such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of companies Act, 2013.

Authors' Note:

This step has been taken with aim to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag.

RBI provides on Restriction on Storage of Actual Card Data

Reserve Bank of India (RBI) vide Notification No. RBI/2022-23/95 dated July 28, 2022 has provided for restriction on storage of actual card data. Earlier, it is provided that no entity in the card transaction / payment chain, other than the card issuers and / or card networks, shall store the Card-on-File data **("CoF")**, and any such data stored previously shall be purged. Although, there will be no change in the effective date of implementation of the requirements that is on or before October 1, 2022.

For ease of transition to an alternate system in respect of transactions where cardholders decide to enter the card details manually at the time of undertaking the transaction, the following are being permitted as an interim measure:

- Other than the card issuer and the card network, the merchant or its Payment Aggregator (PA) involved in settlement of such transactions, can save the CoF data for a maximum period of T+4 days ("T" being the transaction date) or till the settlement date, whichever is earlier. This data shall be used only for settlement of such transactions, and must be purged thereafter.
- For handling other post-transaction activities, acquiring banks can continue to store CoF data until January 31, 2023.

SEBI Provide relaxation for Nomination to Mutual Units holders

SEBI vide Circular No SEBI/HO/IMD/IMD-I DOF1/P/CIR/2022/105 dated July 29, 2022 has amended the Circular No SEBI/HO/IMD/IMD-II DOF3/P/CIR/2022/82 dated June 15, 2022 which mandated submission of nomination details/declaration. With such amendments following changes has been made to provide:

- In addition to e-sign facility for validating the nomination form/declaration through online mode now the validation can be alternatively done through two factor authentication in which one of the factor shall be a One-Time Password sent to the unit holder at his/her email/phone number registered.
- Extension of timeline for mandating submission of nomination details/declaration to investors subscribing to mutual fund units on or after October 01, 2022, instead of investors subscribing on or after August 01, 2022 as provided earlier.

SEBI Introduced Framework for Automated Deactivation of Trading and Demat Accounts in Cases of Inadequate KYCs

Securities & Exchange Board of India (SEBI) vide circular no. SEBI/HO/EFD1/EFD1_DRA4/P/CIR/2022/104 dated July 29, 2022, has introduced a framework for automated deactivation of trading and demat accounts of investors in case of inadequate Know Your Client (KYC) details. Such framework will come in to effect from August 31. SEBI clarifies that every address recorded for the purpose of compliance with KYC

procedures has to be accurate. For which, an intermediary is required to update the address from time to time. However, as the SEBI observed that in some cases accurate or updated addresses of clients are not maintained. This is borne out of the fact that when SEBI issues any notices, during the course of any enforcement proceedings on such addresses, the same remains unserved.

Under the rules, Market Infrastructure Institutions (MIIs) which includes stock exchanges, except commodity derivatives exchanges and depositories will have to physically serve SCN or order issued by the SEBI to the concerned entity. The MIIs will have to forward the signed acknowledgement of its receipt by the concerned addressee or its authorized representative to the regulator within 30 days from the date of receipt of such instructions. If none of the MIIs is able to deliver the SCN or order at any of the addresses mentioned in the KYC records linked to any trading or demat account of the entity; and obtain a signed acknowledgement of its receipt from the entity or its authorized representative, then all MIIs will deactivate all trading and demat accounts within five working days from the last unsuccessful delivery report. SEBI clarified that if one of the MIIs is able to deliver the SCN or order, as the case may be, to the entity and obtain signed acknowledgement, then none of the accounts of the entity will be deactivated.

INTERNATIONAL DESK

OECD announces global corporate tax overhaul on course for 2024

The OECD has announced a major overhaul of cross-border tax rules to be made effective in 2024. The objective for drastic reorganisation of the cross-border tax rules as agreed upon by 140 countries, is to take better account of the emergence of big digital companies, that book profits in low-tax countries.

The two-track reform as proposed by the OECD comprises of the dual objective of:

- reallocating 25% of profits from the world's largest multinationals, for taxation in the countries where their clients are regardless of the companies' physical location.
- Setting global minimum corporate tax rate of 15%.

In a report for G20 finance ministers, the OECD stated that the aim is to achieve the first reform by getting ready the multilateral legal framework by mid-2023 and to enforce it in 2024. The OECD stated that the second reform was a work in progress as most countries are planning legislation to adopt the global minimum tax rate of 15% by 2024.

Netherlands introduces new TP decree aligning it with OECD, introduces new Section on Cash Pooling

The Kingdom of Netherlands has issued a new transfer pricing decree that further defines the application of Arm's Length Principle, replacing the decree of the State Secretary of Finance of April 22, 2018. ('old decree') The new decree regulates financial transactions (and new guidance on it affecting MNEs), changes to policy qua intra-group services, support measures from government in response to the pandemic and overall changes reflecting alignment towards the OECD TP Guidelines. The new decree urges the Dutch tax authorities to be flexible in their approach and not require the taxpayer to set its transfer prices with an accuracy that is unrealistic. The new decree briefly mentions the relationship and inter play between the Dutch TP law and the OECD TP Guidelines as well as the recommendations of the EU Joint Transfer Pricing Forum.

Further, the new decree explains the application of arm's length principle and its nuances and also highlights the TP methods, secondary adjustments, Group Services, Cost Contribution arrangement (CCA), Group Purchases, Financial transactions, Documentation obligation, early consultation on possible double taxation, among others. The new decree retains the option to opt for applying the simplified method for low-value added services ('low value-adding intra-group service' as per OECD TP guidelines). Similar to the old decree, a section on Cash Pooling and a new section on financial service entities. Besides the usual CUP approach, the new decree discusses application of cost of funds approach for interest and yield approach for

guarantee, further encouraging taxpayers to strive for elimination of possible double taxation in transfer pricing cases by adopting early consultation *via* the MAP route. The new decree also clarifies that the possibilities of avoiding possible double taxation by exchanging information or jointly performing audit procedures depends on the legal possibilities and the willingness of other countries to cooperate in such a procedure.

CBDT's FT&TR Division publishes International Tax Bulletin discussing VAT Fixed Establishment case, and EU ruling on 'State Aid' among others

CBDT FT&TR Division publishes an International Tax Bulletin that covers the complexity of the EU State Aid Rules and sheds light on the recent case wherein the European General Court ruled against the UK in a state aid case involving tax incentives provided by the UK to domestic and foreign corporations to encourage them to do business in the UK, discussing the case from the perspective of transfer pricing. The Bulletin also covers the OECD Report on "Taxing Wages 2022" as per which the average tax wedge (difference between cost to an employer and the net take-home wage of the employee) for OECD countries is 34.6% of the labour costs and finds a considerable variation in tax wedge between countries, with Belgium's tax wedge being more than 52% of its labour costs, and Colombia's 0%.

Further, the Bulletin covers an interesting case on the issue of interplay between VAT fixed establishment and permanent establishment, and also analyses the public tax disclosures of Irish companies and finds that companies were embracing tax transparency even though tax disclosures were not mandatory in Ireland. With regards to the digital tax arena, the Bulletin finds that Argentina had expressed its support for development of measures aimed at including digital currencies, electronic money and crypto assets in the international mechanisms for automatic exchange of information led by the OECD. The Bulletin also brings to light the case of a man engaged in Romance Fraud Scheme being sentenced for tax evasion, Intuit Inc's case of deceptive trade practices and conviction of professor by Chinese Government for false or fraudulent statement on a tax return.

SPARKLE ZONE

A ray of light in the Bill of Entry re-assessment controversy!

A Brief History of Assessment

Back in 2011, the Government had introduced the concept of self-assessment in Customs. Under this newly introduced assessment method, the importers could file a Bill of Entry under the amended Section 17(1) of the Customs Act, based on self-assessment without any intervention of the proper officer of customs. However, as the Government had not made any corresponding amendments u/s. 47 of the Customs Act, the importers were required to obtain an out-of-charge order from a proper officer of customs before clearance of the goods from the port. Thus, all in all, while the Department's role in assessment had decreased considerably, it was not completely left upon the importers to assess their imports.

Given the mere clerical role of the proper officers' in ordering out of charge, there had been deliberations as to whether such orders can be termed as assessment orders for the purpose of litigation or not. The Madras HC in RE: **Best and Crompton Engineering** opined that the out of charge order passed by the proper officers' is not merely a clerical order but is a quasi-judicial order which can be appealed against.

Thus, in terms of Section 17(1) read with Section 47 of Customs Act, a self-assessed bill of entry becomes an order of proper officer which can be appealed against before appropriate appellate authorities.

However, issues in this regard arose when importers filed refund applications for excess paid duties without submissions of re-assessed BOE. Majorly, the claimants opined that the filing of the refund application ipso facto meant and implied that the claimants are seeking re-assessment of all the BOE. This contention however, was neither entertained by the Revenue authorities nor the judicial authorities.

The Judicial Consequences

Given the differences between the Revenue and the taxpayers, the matter had reached the doors of the SC in RE: **ITC Limited [2019-TIOL-418-SC-CUS-LB]**. In this case, the SC had inter alia held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to appropriate proceedings and it would not be within the ken of section 27 to set aside the order of self-assessment and reassess the duty for making refund.

The SC had reasoned that in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Act. As the judgment pronounced by the SC is the law of land under Art. 141 of the Constitution of India, the Revenue authorities refused refund applications filed against self-assessed BOE for want of an appealable order. Thus, the situation was such that where any person had paid excess duty, he could not claim refund, unless there was a speaking order passed by the Appellate authority. This turned out to be a very tedious, time-consuming and costly affair for the refund claimants.

Making things Right

However, in a stand-out judgement, the Bombay HC in RE: **Dimension Data India Private Limited [2021-TIOL-224-HC-MUM-CUS]**, brought about much clarity on this issue by correctly interpreting the judgement of the Apex Court. It had been held that in RE: ITC Limited, the SC had itself clarified that in case any person is aggrieved by an order which would include an order of self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Customs Act before he makes a claim for refund. This is because as long as the order is not modified the order remains on record holding the field and on that basis no refund can be claimed but the moot point is SC has not confined modification of the order through the mechanism of section 128 only. The SC has clarified that such modification can be done under other relevant provisions of the Customs Act also which would include Section 149 and Section 154 of the Customs Act.

Thereafter, Telangana HC in RE: **Sony India Private Limited [2021 TIOL-1707-HC-Telangana-CUS]** followed suit, wherein it was held that an order of assessment can be modified either under Section 128 or under other relevant provisions of the Act. Thus, it was clarified that modification of an order of assessment can also be sought under Section 149 or 154 of the Act. Similar judgements have been passed by a couple of Tribunals as well.

However, even in light of the above-mentioned judgements, the Customs authorities have been refusing to entertain refund applications on the basis of re-assessed BOE u/s. 149/154 for want of an appealable order as per the SC judgement in RE: ITC Limited. In such mess regarding the re-assessment controversy, the Jawaharlal Nehru Customs House, as a ray of sunshine in darkness, has issued a standing order clarifying various such issues.

The ray of sunshine

The JNCH has issued Standing Order No. 06/2022 dated 04 July 2022, which has acknowledged the judgement of the Bombay HC and clarified that apart from section 128 of the Customs Act, the BOE [or Shipping Bill] can also be amended or modified under the provisions of Section 149 or Section 154 of the Customs Act. It shall be noted that Section 149 of the Customs Act provides for based on the documents available at the time of importation, whereas, Section 154 provides for rectification of clerical mistakes in BOE.

The Standing Order has further clarified that such amendments/modifications may be carried out after out-of-charge has been given for LEO has been granted and may alter the initial assessment made. The standing order has also acknowledged that as a consequence of such re-assessments, refunds may accrue, which are to be claimed u/s. 27 of the Customs Act. It has been clarified that in such cases, the limitation u/s. 27 would apply i.e., 1 year from the relevant date.

It would be interesting to note that Section 149 does not provide any time-limit for amendment of BOE. Thus, it remains to be seen whether the Revenue authorities will consider the original out of charge date for the purpose of refund applications or the date of re-assessment, for processing refund applications. Whatever the case may be, the importers shall bear in mind that going forward, in case any modification / amendment is required in their BOE, post out of charge, they must first get the same cancelled and immediately file an application either u/s. 149 or 154. Thereafter, post the re-assessment, refund, if any, can be claimed u/s. 27 of the Customs Act. It shall also be noted that although this standing order is only binding on the JNCH, it will have a persuasive impact on other customs house as well. Accordingly, the claimants may use the same for their benefit in persuading the proper officers for allowing refund, basis a re-assessed BOE u/s. 149 or 154 of the Customs Act.

GLOSSARY

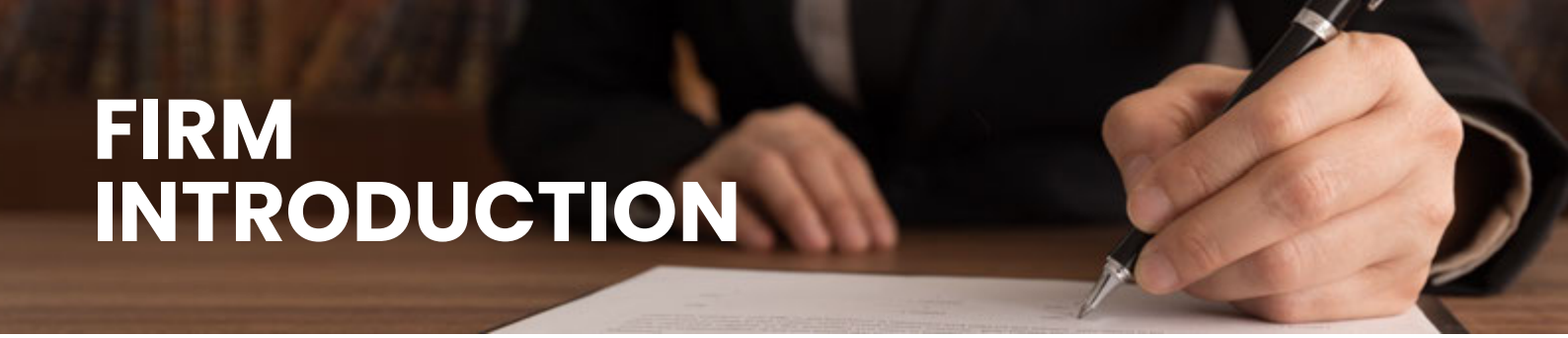
Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
AE	Associated Enterprise
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment 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
COF	Card on File
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
ICD	Inland Container Depots

Abbreviation	Meaning
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IT Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Client
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
MAP	Mutual Agreement Procedure
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
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
PA	Payment Aggregator
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

GLOSSARY

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

Abbreviation	Meaning
TDS	Taxes Deducted at Source
TPO	Transfer Pricing Officer
u/s	Under Section
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

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

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

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

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

Website: **www.taxcraftadvisors.com**

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

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

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

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

Website: **www.gstlegal.co.in**

RAJAT CHHABRA

Founding Partner

rajatchhabra@taxcraftadvisors.com

+91 90119 03015

VISHAL GUPTA

Founding Partner

vishalgupta@taxcraftadvisors.com

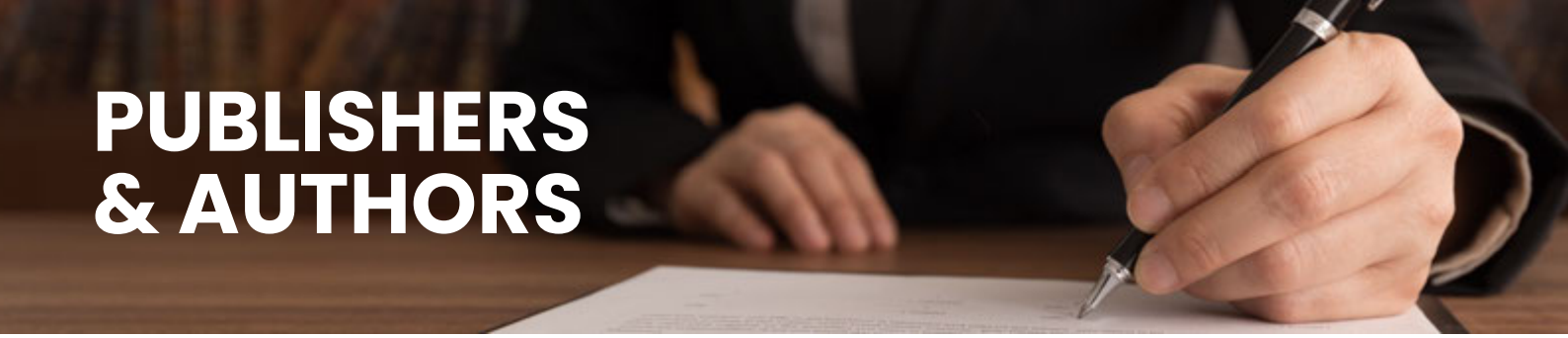
+91 98185 06469

GANESH KUMAR

Founding Partner

ganesh.kumar@gstlegal.co.in

+91 90042 52404



PUBLISHERS & AUTHORS

tiol
ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

Taxindiaonline.com ('TIOL'), is a reputed and FIRST Govt of India (Press Information Bureau) recognised ONLINE MEDIA and resource company providing business-critical information, analyses, expert viewpoints, editorials and related news on developments in fiscal, foreign trade, and monetary policy domains. It covers the entire spectrum of taxation and trade that includes ECONOMY, LEGAL INFRASTRUCTURE, CORPORATE, PUBLIC ADMINISTRATION, INTERNATIONAL TRADE, etc. TIOL's credibility and promptness in providing information with authenticity has made it the only tax-based portal recognized by the various arms of the Government. TIOL's audience includes the ranks of TOP POLICY MAKERS, MINISTERS, BUREAUCRATS, MDs, CEOs, COOs, CFOs, FINANCIAL CONTROLLERS, AUDITORS, DIRECTORS, VPs, GMs, LAWYERS, CAs, etc. It's growing audience and subscriber-base comprises of multinational and domestic corporations, large and premium service providers, governmental ministries and departments, officials connected to revenue, taxation, commerce and more. TIOL also has a huge gamut of various business organisations relying on the exclusivity of its information besides the authenticity and quality. TIOL's credibility in making available wide coverage of different segments of the economy along with its endeavour to constantly innovate makes it stand at the top of this market.

TCA TAXCRAFT ADVISORS

RAJAT CHHABRA
(Partner)

KETAN TADSARE
(Associate Partner)

SAURABH CHAUDHARI
(Manager)

AMIT DADAPURE
(Manager)

RAGHAV PRASAD
(Associate)

GARGEE PADHI
(Associate)

GLS GST LEGAL SERVICES

GANESH KUMAR
(Partner)

BHAVIK THANAWALA
(Associate Partner)

RUSHABH LUHAR
(Associate Manager)

GAURANG JOSHI
(Associate)

PRIYANKA NATHBAWA
(Associate)

SINI ISAAC
(Associate)

VMG & ASSOCIATES

VISHAL GUPTA
(Partner)

ALOK KAUSHIK
(Associate Partner)

PRASHANT SHARMA
(Manager)

ANKIT BANSAL
(Manager)

SAHAJ CHUGH
(Executive)

GAGANDEEP KAUR
(Executive)

TAXINDIAONLINE.COM

RICHA NIGAM, Marketing Head, TIOL Pvt. Ltd.

richa@tiol.in | +91 98739 83092

VISION 360

August 2022 | Edition 23