VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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TCA TAXCRAFT ADVISORS

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EDITORIAL

Vision 360: Budget & Beyond...

India's finance ecosystem in the month of February is mired with discussions and debates around budget announcements and rightly so. Yet, one cannot afford to lose grip of developments other than these announcements for 'Devil Lies in the Details'!

In this February edition of the VISION 360 we take brief look at developments in the previous month when, India, in its quest to strengthen its ties with global trading partners, have increased its focus on developing trade agreement. India currently has 13 Foreign Trade Agreements and India-Australia Economic Cooperation and Trade Agreement is the latest and most significant addition to the list. This FTA is expected to catapult bilateral trade beyond $70 billion. It covers almost all the tariff lines dealt in by India and Australia respectively. Australia has offered wide ranging commitments in around 135 sub sectors and Most Favoured Nation treatment in 120 sub sectors which cover key areas of India's interest like IT, ITES, business services, health, education, and audio visual. Some of the key offers from Australia in the services space include: Quota for chefs and yoga teachers; Post study work visa of 2-4 years for Indian students on reciprocal basis; mutual recognition of professional services and Other licensed/regulated occupations; and work & holiday visa arrangement for young professionals.

As we write this, India's attempt to ramp up the ties with global trading partners was also furthered by the negotiations between India and UK. The Seventh round of these negotiations was concluded on February 10, 2023 and the eight round is scheduled to take place in March. The officials from both sides were seen and quoted expressing their satisfaction about the progress. Post 'Brexit', the UK too is seen attempting to forge new trading relationships and India seems to be capitalizing on the opportunity here.

On domestic front, the Bureau of Indian Standards aggressively continued expansion of its scope. The Ministry of Consumer Affairs has published the BIS standard to bring 'online consumer reviews' within the BIS framework. This move is triggered by increasing influence of online reviews on consumer's purchasing decisions. The Ministry of Commerce & Industry also has issued a Press Release dated January 20, 2023, wherein it has been confirmed that the Quality Control Orders for leather and non-leather footwears shall be implemented with effect from July 01, 2023. CBIC too issued Instruction No. 06/2023 dated February 13, 2023 to apprise the high-level Authorities of the compliance requirements under Bureau of Indian Standards for importation of toys or its parts. On the other hand the Bureau has also taken cognizance of various the requests and has issued orders to extend the implementation of Indian Standards qua Precast Concrete Pipes, Copper alloy single taps, combination tap assemblies, stop valves and single lever mixers for water services, etc.

Further, the Ministry of Environment, Forest and Climate Change has replaced the E-waste (Management) Rules, 2016 with E-Waste (Management) Rules, 2022 to come into force from April 01, 2023. The New Rules have introduced the concept of modified Extended Producer Responsibility and would focus on the market-based model and all the procedures would be online and seamless. The New Rules would apply to businesses that are generating electronic waste items.

'Digitalization' has been a buzz word for quite some time now. Adding a leaf to its gambit, The Auditing and Assurance Standard Board and the Digital Accounting and Assurance Board of Institute of Chartered Accountancy of India have recently issued the 'Technical Guide on Digital Assurance' to promote use of technology and artificial intelligence in audit so as to enhance assurance on evidence

obtained by way of using technology.

International landscapes in the field of taxation across the globe witnessed numerous modifications and amendments. These span across First tax and customs collaborative transfer pricing management mechanism launched in Shenzhen, China; OECD's update on harmful tax practices for 13 preferential regimes, OECD's economic analysis of gain in corporate tax globally from Global Minimum Tax, and UK government publication on new TP documentation requirements.

In all, we the entire team of TIOL, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMG & Associates**, have made an attempt to capture all these changes developments and many more in this edition of '**VISION 360'**. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

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

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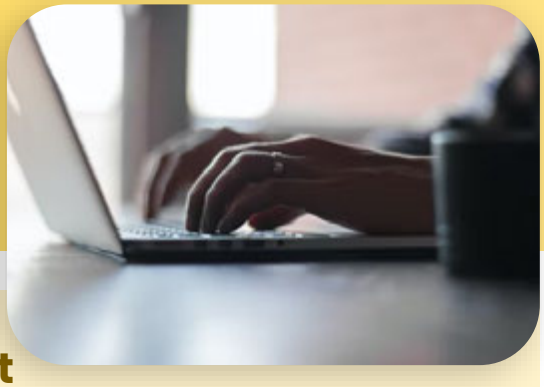

Corporate Social Responsibility- Now Blocked Credit under GST Blocked Credit or Not?

Since India's independence, the GST has been praised as the country's most significant indirect tax reform since India's independence. The GST regime is premised on the uninterrupted and flawless transfer seamless flow of ITC in order to reduce the tax domino effect. This seamless flow of credit is at the core of the GST Law. Since the inception of the GST, ITC has been the subject of considerable dispute. It has experienced many transformations and evolutions over time, and its complexity continues to increase. In the lack of clarification from the Department, there is considerable ambiguity regarding the applicability of ITC for a vast array of activities subject to GST. CSR is one example of this type.The government has been trying to deny ITC on several business expenses by expanding the scope of Section 17 which deals with blocked credit. The recent proposed amendment in Budget 23 pertaining to denial of credit pertaining to CSR expenses is a recent example of this. Let us first understand the background before we dwelvedelve into the implications of this amendment.

ITC provisions under CGST Act

According to Section 16(1) of the CGST Act, every registered person is entitled to take input tax credit on supplies of goods or services or both used in the course or furtherance of business. This is subject to satisfaction of other prescribed conditions as well. The coverage ITC is much wider under GST as compared to The erstwhile CENVAT credit regime, which restricted access to credits to only those items and services that met the strict criteria of being either inputs or input services, or capital goods and used in either manufacturing or provision of outward taxable supplies. In addition,However, despite anything in spite of the broad coverage in Section 16(1) of the CGST Act, ITC is not available in relation to supplies listed in Section 17(5) as it over-rides the provisions of Section 16(1)(5).

The phrase 'course or furtherance of business' appears to have a broad meaning, and it is consequently believed that many tax credits that were previously unavailable are now available under the GST. Let us now discuss whether credit can be availed for expenses incurred in meeting various statutory obligations.

CSR Expenditure a Mandatory Obligation!

Section 135(5) of the Companies Act , requires every eligible company to mandatorily spend at least 2% of the average of net profits of immediately preceding 3 financial years towards CSR activities. To satisfy their CSR obligations, firms the eligible Companies may make charitable contributions or engage in "public benefit initiatives" such as constructing roads, hospitals, and schools or enhancing educational opportunities and rural sports programmes. If a corporation chooses the active route and initiates CSR activities as opposed to donating to certain institutions, it will need to acquire a variety of inputs, including labour, materials, and money various

products to be used or distributed for charitable causes. On some imports & purchases, GST may be applied. In this circumstance, the question of whether or not GST paid on CSR expenses is eligible for ITC under GST may be essential. CSR is mandatory under Companies Act and accordingly, non-compliance with such requirements can have does have adverse implications for businesses. Therefore, one may argue that such expenses are clearly incurred in the course of furtherance of business.

Treatment of CSR Expenditure outlined in other statutes

It is to be noted that no deductions for CSR spending are permitted under the IT Act. Spending on "activities connected to corporate social responsibility" as defined in Section 135 of the Companies Act, 2013 shall not be considered "an expenditure incurred by the assessee for the purpose of business or profession" according to Explanation 2 to section 37(1) of the IT Act. While "the CSR expenditure which is of the form indicated in Sections 30 to 36 of the IT Act shall be recognised as deduction," this only applies to certain types of spending. Based on the foregoing, the IT Act does not permit the deduction of CSR expenses on the grounds that they are not incurred in the conduct of a business. The aforementioned could be used by the Department to argue that such costs do not qualify for ITC under the GST Act because they are not incurred in the furtherance of business. It is, therefore, worth looking into the same under the GST regime. The proposed amendment in the GST Act expanding the scope of Section 17 (5) to include CSR expenses seems to be in line with position under the Income Tax Act.

Judicial precedents in the pre-GST regime

Under the CENVAT Credit Rules, 2004, prior to April 1, 2011, activated relating to business were covered under the inclusion clause of definition of 'inputs services' as defined u/r. 2(1) of such rule. In the case of **Essel Propack v. Commissioner [2018-TIOL-3257-CESTAT-Mumbai],** Hon'ble Mumbai CESTAT observed that CSR is not charity because it affects a company's ability to source raw materials. It also improves the company's credit rating and standing in the business world. It was also pointed out that CSR, which was previously only required of public sector undertakings, has now been extended to the private sector, and that the production and sustainability of businesses are at risk unless CSR is considered an input service in relation to business activities. As a result, the Appellant was given a CENVAT refund. The court ruled that the company's expenditure on CSR qualified as an activity related to its business, making it eligible for ITC.

There are also a number of case laws that can be used to satisfy the two-fold test that businesses must pass in order I to receive ITC. The Karnataka High Court ruled in **Commr. Of CEX, Bangalore v. Millipore India Pvt. Ltd** that a company's CSR expenses are related to its operations because they are a required cost of producing its final products.

Eligibility of ITC on CSR in GST Regime

CSR expenses are mandated by Section 135 of the Companies Act as stated above. Failure to incur these expenses could result in punitive actions and leads to disclosure of non-compliance. Thus, CSR expenses are well needed to run business smoothly in compliance with applicable law. However, to bring a positive change in the society there are several companies who undertake the CSR activates on voluntarily rather than being obligated to do so. Therefore, CSR has a nexus with business and may be considered as business expense. Further the judgments in the IT Act and the Tribunal judgment in case of **Essel Propack**

Limited (supra) also support the point that CSR is a business expense irrespective of the fact that it is mandatory or voluntary.

In the GST regime, apart from requirement of Sec 16(1) of the CGST Act 2017, eligibility of ITC is further subject to satisfaction of other prescribed conditions and restrictions given u/s 17(5). According to this sub -section, ITC is not available for "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples". It is to be seen that the said sub-section merely places ITC restriction on free distribution of goods and does not restrict ITC on provision of services for free. Further, where goods are being distributed to meet the obligation under the law, a question arises to whether the same can be treated as gifts which would reflect giving something away voluntarily. However, it is also possible to interpret Sec 17(5) of the CGST Act 2017 to mean that ITC on CSR expenses would be accessible only if the expenses incurred on CSR do not come under Blocked Credit.

Accordingly, The Union Budget 2023, has been proposed to be amended the clause (f) of Section 17(5) to restrict ITC in respect of goods or services or both, which are used for activities relating to his obligations under CSR referred to in Section 135 of the Companies Act. Further, as a respite to the taxpayers who has already availed / utilized the ITC on CSR expenditures, the amendment has been proposed to be prospective in effect and ITC availed for the period prior to instant amendment may not be contested by the department.

Admissibility of ITC on inputs and input services incurred in connection with CSR expenditure has always been a contentious issue with conflicting AAR decisions. The Kerala AAR in RE**: Polycab Wires Private Limited [2019 (24) G.S.T.L. 103 (A.A.R. - GST)],** had categorially denied the ITC on CSR expenditure on the premises that distribution of necessaries to calamity affected people under CSR expenses would be treated as if they are given on free of charge basis and without collecting any money. Contrary to the above decision, in **RE: Dwarikesh Sugar Industries Limited [2021 (53) G.S.T.L. 482 (A.A.R. - GST - U.P.)],** the UP AAR had held that a company is mandatorily required to undertake CSR activities and consequently, forms an essential part of its business process as whole. Accordingly, the CSR activities are to be treated as incurred in the furtherance of business and as its consequence, the ITC was allowed. The UP AAR had placed reliance on the decision of Mumbai Tribunal in the case of Essel Propack Limited [supra], which allowed the CENVAT credit on CSR expense.

Conclusion

The amendment, proposing reversal of ITC pertaining to CSR expenses, comes as a big blow to the Corporates, who are incurring such expenses mandatorily to meet their obligations under the Companies Act. Section 17 had been amended recently to allow ITC on other expenses such as insurance and rent-a-cab which are procured to meet legal obligations under the law. To carve out an exception for CSR activities, in particular, does not make much sense then. Further, the proposed amendment seems to be prospective and therefore it is hoped that the Department shall not challenge the credit already availed on CSR expenses till the date it comes into effect.

INDUSTRY PERSPECTIVE

VIPUL AGARWAL

Chief Financial Officer
Ecom Express Limited

01 What precisely is E-logistics and how does it differ from conventional logistics. What are the measures that you have taken to overcome the challenges faced in your industry like online security, need for skilled labour force etc ?

The logistics industry has adopted new techniques and technology to support the expansion of E– Commerce. E-Logistics is the management of all physical flows for a business that conducts online sales of items (website, marketplace, and other related processes). Although they can work in tandem, traditional retail logistics is distinct from e-Logistics. Due to its many unique characteristics, e-Logistics can be enticing for many online merchants. However, it necessitates the implementation of particular business executions and processes to benefit from ideal supply chain management. The traditional approach to logistics is mainly concerned with just the efficiency of the supply chain and finding the best pricing for services and goods whereas E-Logistics is more concerned with meeting customer expectations and delivering a stellar experience of online shopping.

E-Commerce enterprises have reached saturation levels and it has become difficult to compete with just traditional supply chain methods. As far as challenges are concerned, it's a significant initial investment on hiring resources who are knowledgeable and proficient with use of emerging technologies, and it surely pays off. With regards to online security, though online cloud-based systems are most protected and stable, they are also at risk of phishing and online fraud. So we work with reliable industry partners with proven track records and security solutions.

02 Extending the date of incorporation for income tax benefits by one more year and increasing the carry-forward of losses on change of shareholding from 7 to 10 years is a big impetus to young Start-ups as introduced in Budget 2023. What is your take on same?

VIPUL AGARWAL
CFO - Ecom Express Limited

In my view the extension of start-up tax incentives until 2024 is a positive step that will foster innovation and growth in the start-up sector. It acknowledges the significance of start-ups by offering tax incentives. Moreover, the emphasis to promote on-job training, industry partnerships, and alignment of courses with the various needs of respective industries under the Pradhan Mantri Kaushal Vikas Yojna 4.0 reflects a progressive and resourceful outlook for encouraging and developing India's start-up ecosystem. Further the enhanced MSME credit guarantee scheme for start-ups will support the growth of start-ups that are in an early stage. This working capital and capex support at a critical juncture of their growth will help large scale development of the start-up ecosystem in the country.

03 What is your take on statement of Finance Minister in Budget 23 when it says for promoting ease of doing business more than 39000 compliances have been reduced and more than 3400 legal provisions have been decriminalized. Is further Decriminalization needed for trust based governance

Government of India has taken various initiatives time and again. For instance in 2020 it had introduced decriminalization of offences under various laws and identified 19 legislations, such as the Negotiable Instruments Act (cheque bounce), SARFAESI Act (repayment of bank loans), and LIC Act. These steps are expected to act as a catalyst to speed up our economy and promote Ease of Doing Business in India. The said amendments are likely to enhance trust-based governance at ground zero.

04 What are the recent developments in tax and regulatory space which you find to have a Significant bearing on business and reasons thereof?

Following the path of evolution, digitalization was always the next logical step to ensure the efforts of authorities are made in right direction. This is also in tandem with the quantum of data and work-load with the Tax Authorities. India like most of the progressive economies have shifted to digitalization when it comes to tax compliances whether it pertains to online filing of returns, online payment of tax dues, faceless assessments etc. The transparency that these procedures bring will ultimately lead to reduced tax evasion and smooth economy.

We believe digitization to be a key pillar to improve governance and compliance, by driving greater security, transparency and efficiency in processes and tax exception! Government's continuous efforts in digitizing the tax space are a welcome move in the right direction. Amendments such as the E-way bill, E-invoicing, IT return defaulters tagging, etc. will bring in more transparency in the market and eventually lead to an equal distribution of wealth.

VIPUL AGARWAL
CFO - Ecom Express Limited

05 E-commerce businesses have picked up exceptionally well vis-à-vis traditional ones more particularly in these COVID times. How do you see this phenomenon shaping up in future?

With most of the population being vaccinated and the new variant not having as adverse impact, most of the companies have increased the capacity of employees working from office. The Government has also been quick in responding to the spread of virus and limit lockdowns and restrictions in dire circumstances. With the Government's support and joint efforts of the company and its employees, the business is surely on the way to operate like Pre-Covid era.

06 From a direct tax standpoint, do you see any gaps when it comes to convergence with accounting treatment accorded in the books of accounts in view of the IND-AS being applicable?

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

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ITAT holds purchases not bogus, absence of delivery challans irrelevant as transactions otherwise substantiated

Infinity Industries Pvt. Ltd

ITA No.2396 to 2399/Mum/2015

The Assessee was in the business of papers, paper boards, inks and offset plates. During search and seizure operation at one of the offices of Reliable Paper (India) Private Ltd., certain documents relating to the Assessee were found. Accordingly, a notice under Section 153A of the IT Act was served on the Assessee. In response to this notice, a return of income was filed by the Assessee and assessment was initiated under Section 153A read with Section 144 of the IT Act.

During the assessment proceedings, the AO considered the purchases amounting to INR 9.41 Crores from Bright Global Paper Pvt. Ltd. ('BGPPL') as ingenuine on the ground that the delivery challans proving the movement of the goods were not furnished and no cash trail was established between BGPPL and the Assessee. Additionally, the AO relying upon the information discovered during a search conducted by the Sales Tax Department that BGPPL was in receipt of bogus sale bills and concluded that the consequential transactions of purchase by the Assessee with BGPPL were bogus. Aggrieved, the Assessee approached the CIT(A) who upheld the disallowance of purchases to the extent of INR 1.41 Crores being 15% of the total purchases, observing that only the profit element embedded in the value of the disputed purchases were to be brought to tax, which were estimated at 15%.

Aggrieved, both the Assessee and the Revenue approached the ITAT which observed that the Revenue failed to establish any cash trail between BGPPL and the Assessee. The ITAT also observed that the Assessee had furnished all the relevant details to prove its genuineness such as purchase invoices issued by BGPPL, copy of bank statement evidencing payments made by the Assessee to BGPPL, details of corresponding sales made by the Assessee and that the Assessee had duly furnished the complete quantitative details of the purchases made from BGPPL and the consequent sales in the form of the stock register. Moreover, placing reliance on the jurisdictional HC ruling in Vaman International [2020-TIOL-391-HC-MUM-IT], wherein it was held that mere reliance on information obtained from the Sales Tax Department without causing further enquiries to ascertain genuineness of the transaction, would not be sufficient to treat the purchases as bogus.

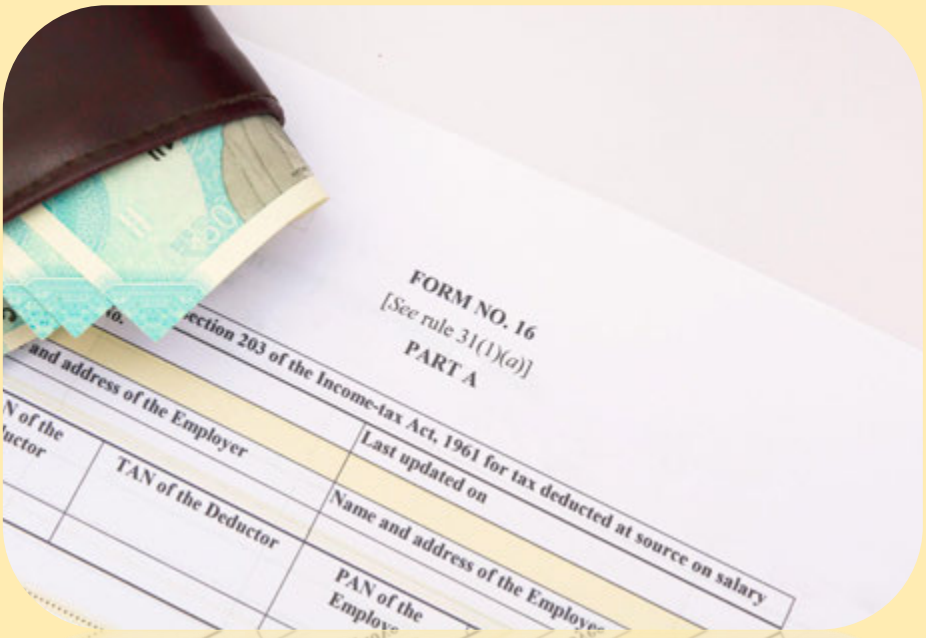
Thus, dismissing the Revenue's contention the ITAT directed the Revenue to delete the disallowances made on account of bogus purchases and discarded the profit estimated on the disputed purchases, allowing the Assessee's appeal.

ITAT holds partner's remuneration as salary, bonus or commission not amenable to TDS under Section 192 of the IT Act

Dhar Construction Company

ITA No.181/GAU/2020

The Assessee was a partnership firm engaged in the business of construction that had filed its return of income and was subject to scrutiny through CASS for high ratio of refund to TDS, large value claim of refund and large increase in capital in a year. The AO made disallowances on various accounts such as excess commission paid under Section 40(b)(v) of the IT Act, non-deduction of TDS on commission paid to partners and disallowance of various expenses claimed by the Assessee which on appeal to the CIT(A) were deleted by the CIT(A).



Aggrieved, the AO approached the ITAT which in relation to the TDS default on commission paid to partners, observed considering the provisions of Explanation 2 to Section 15 of the IT Act which included salary, bonus, commission or remuneration received by partner under the head 'salary' and the provisions of Section 192 of the IT Act which talked about the TDS applicable to the salary given under Section 15 of the IT Act, that

there was no requirement under the provisions of the IT Act for deduction of tax at source by the partnership firm on salary, bonus, commission or remuneration etc or whatever name called given or credited to a partner of a firm and accordingly, deleted the disallowance made by the AO on this account.

Further, on the issue of excess commission, noting that the AO made the addition by observing that the commission to the first partner was paid at 89.09% which was in excess by 51.08% according to the profit-sharing ratio of 38:1:1 and the CIT(A)'s view that the said excess payment of commission to the working partner was in the form of remuneration which was within the permissible limit under Section 40(b)(v) of the IT Act and was in accordance with the partnership deed and also observing that the salary, bonus, remuneration or commission were collectively termed by the Assessee as remuneration and the remuneration paid during the year was within the permissible limit provided under Section 40 (b)(v) of the IT Act, deleted the disallowance made by the AO. However, considering the quantum of expenses, the ITAT partly sustained the disallowance on account of various expenses claimed by the Assessee, observing that the Assessee did not submit sufficient evidence to substantiate the claim of expenses and that the CIT(A) had deleted in entirety the said disallowance on account of conjectures and surmises, which was definitely not permissible. Thus, partly allowing the AO's appeal, the ITAT disposed of the matter.

HC sets aside reassessment proceedings, absent independent enquiry on GST authorities' report

G4S Secure Solutions (India) Private Limited

2023-TIOL-121-HC-DEL-IT

The Assessee was a security services provider to whom a notice under Section 148A(b) of the IT Act was issued basis a report of the CGST Authorities. The report implied that the Assessee was a beneficiary of certain accommodation entries via fake/bogus invoices issued by one Flash Forge Pvt. Ltd. ('FFPL'). The Revenue observed that the Assessee had entered into various transactions with FFPL, which was a bogus entity, therefore, rendering the transactions as sham transactions, the cumulative amount of which had escaped assessment. Consequently, the Revenue passed an order under Section 148A(d) of the IT Act and accordingly, issued a notice under Section 148 of the IT Act.

Aggrieved, the Assessee preferred a writ petition before the HC submitting that it had not entered into any transactions with FFPL and the amount was the basic cumulative value of the invoices (excluding tax) raised by the Assessee for rendering security services which had been duly offered to tax. Noting that the Revenue had made a bold assertion in the order passed under Section 148A(d) of the IT Act that the explanation and supporting documents submitted by the Assessee were not satisfactory and conclusive and placing a reference to the documents which formed the basis of issuance of notice under Section 148A(b) of the IT Act, the HC observed that the entities and companies to whom FFPL appeared to have provided accommodation entries, included not only the Assessee but

also certain renowned public limited companies/PSUs such as Bharat Heavy Electricals Ltd., Indian Oil Corporation Ltd., Godrej and Boyce Manufacturing Company Ltd., Larsen and Toubro Ltd. etc. when there was no material to suggest, that accommodation entries were provided by FFPL to these companies.

The HC further noting that, the notice under Section 148A(b) of the IT Act was issued without conducting an enquiry, as required under Section 148A(a) of the IT Act which required approval of the specified authority for conducting an enquiry, observed that instead of conducting an independent enquiry, the Revenue relied upon the information supplied by the CGST authorities and had such an enquiry been conducted before issuance of the notice, the flaws in the order of the Revenue could have been averted. Thus, quashing the order passed by the Revenue under Section 148A(d) of the IT Act and the consequential notice issued under Section 148 of the IT Act, the HC set aside the reassessment proceedings, holding that the Revenue failed to furnish any material to prove that the Assessee was a beneficiary of the alleged accommodation entries and allowed the Assessee's writ petition, granting the Revenue, the liberty to take the next steps in the matter in accordance with the law.

SC holds order for special audit non est if not duly communicated to Assessee

Rajiv Gandhi Proudyogiki Vishwavidyalaya

2023-TIOL-10-SC-IT

The Appellant was a university set up by the State of Madhya Pradesh that had filed an appeal before the SC challenging the ruling of the HC which rejected the writ petition filed by the Appellant against the notice of a CA for special audit, contending that they were never served with any order under Section 142(2A) of the IT Act which was overlooked by the HC on the ground that the order was not required to be passed, and only hearing was required. Before the SC, the Revenue admitted that the order under Section 142(2A) of the IT Act was never communicated or even uploaded on the portal but a written order was placed in the order sheet file. Not satisfied by the reasoning of the HC that the order was not required to be passed, and only hearing was required, the SC observed that the special audit would have no effect as the order was not communicated to the Appellant as it was fundamental that the order was required to be communicated to the Appellant, so as to inform the Appellant of the reasons of the order under Section 142(2A) of the IT Act and allow the Appellant to exercise the option to challenge the order if they so deemed fit.

However, as the assessment order had not been passed and had become time barred and there was an ambiguity as to whether the special audit report had been filed before the AO, which even if filed before the AO would be of no avail, as no assessment order could now be passed, the SC observed that if the Revenue wanted to conduct another special audit, it could either rely on the original notice or issue a fresh notice after communicating the same to the Appellant and extending a hearing to the Appellant and if an order under Section 142(2A) of the IT Act was to be passed, it would have to be communicated to the Appellant, who would be at the liberty to challenge the order in accordance with law. Further, with the consent of the Appellant, the SC extended the last date for passing of the of assessment order to December 31, 2023 and also observed that if any special audit was directed or ordered to be conducted, the date for passing of the assessment order would get further extended as per the provisions of the IT Act. Thus, allowing the Appellant's appeal, the SC disposed of the matter.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT amends the remarks column in Annexure A of the Guidelines for the preparation of SFT

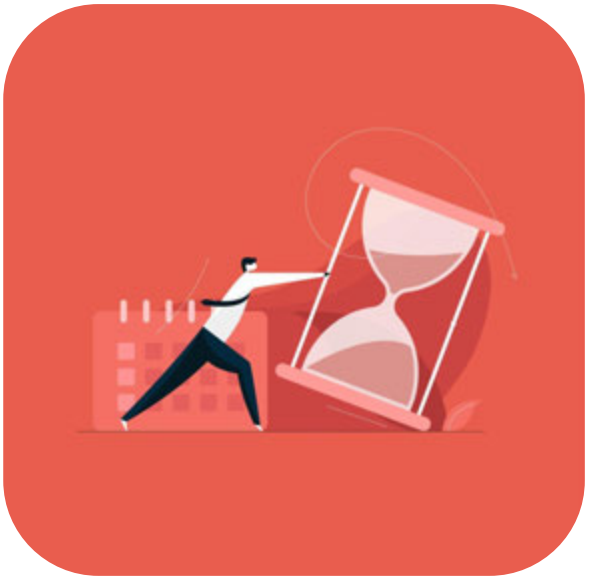
Notification No. 1/2023 dated January 05, 2023

CBDT amends the remarks column of Annexure A of the Guidelines for the preparation of SFT with effect from January 5, 2023 so that interest income of all accounts/ deposit holders except Jan Dhan Accounts are reported. Earlier there was limit of cumulative interest of INR 5,000.

CIRCULARS

Extension of time limit for compliance to be made for claiming any exemption under Section 54 to 54GB of the IT Act

Circular No. 1/2022 dated January 06, 2023



Taking cognizance of increasing COVID-19 cases and representations received on subject matter, CBDT extends the due date of compliances to claim any exemption under Section 54 to Section 54GB of the IT Act to March 31, 2023 (for which the last date of compliance was between April 1, 2021 to February 28, 2022).

Accordingly, taxpayers who have failed to make investment, deposit, payment, acquisition, purchase, construction or such other action to claim exemption under Section 54 to 54GB of the IT Act between April 1, 2021 to February 28, 2022, shall be eligible to claim the said exemption provided the compliances are complied with prior to March 31, 2023.

Further, CBDT appoints Principal DGIT (Admin & TPS) to be in charge of dossiers above INR 500 Crores, with assistance of ADG (Recovery), as against the earlier limit of above INR 25 Crores providing that the Principal DGIT (Admin & TPS) would submit proposals for monitoring very high demand cases for approval of Member (TPS).

TRANSFER PRICING
From the Judiciary

ITAT deletes TP-adjustments for reimbursement of out-of-pocket expenses and software maintenance expenses, follows earlier order

Infinity Retail Limited

ITA No. 461/MUM/2016

The Appellant was engaged in the business of wholesale trading (cash and carry) of consumer electronics and appliances. It had filed its return of income declaring 'Nil' income after claiming set-off for carried forward losses which was selected for scrutiny. Further, the Appellant had entered into international transactions with its AEs and therefore, a reference was made to the TPO for the determination of ALP of the international transactions. The TPO passed an order proposing a TP adjustment on reimbursement of OPE to AE and reimbursement of IT Connectivity Charges/Software Maintenance Charges to its AE. In addition to the above TP adjustments, in the draft assessment order, the TPO also proposed a TP adjustment on account of Software Maintenance Expenses and issued a notice to the Appellant asking why the value of the international transaction of reimbursement of Software Maintenance Expenses should not be determined at Nil. Aggrieved, the Appellant filed objections to the draft assessment order, in relation to the aforesaid proposed additions before the DRP which were rejected by the DRP and the AO passed the final assessment order, basis the directions of the DRP.

Aggrieved, the Appellant approached the ITAT challenging the final assessment order claiming the deductions for payments made to its AEs and contending the same to be reimbursement of OPEs incurred by the AEs on the behalf of the Appellant. The Appellant further submitted before the ITAT that the IT Connectivity Charges pertained to IT Connections expenses incurred in relation to the contractual arrangement with a third-party contractor to provide connectivity and were different from the Software Maintenance Expenses, therefore, could not be determined at Nil.

The ITAT noted that the coordinate bench had deleted the adjustment on reimbursement of OPE for AY 2010-11 by relying on the Appellant's own case for AY 2008-09. The ITAT further noted that the coordinate bench in the Appellant's own case for AY 2010-11, had deleted the TP adjustment made on account of Software Maintenance Expenses by considering that connectivity expenses were separate from Software Maintenance Expenses and as per the Project Closure Report and the monthly intragroup account statements, the same were being reimbursed at cost. Thus, finding no change in the facts and circumstances in the present assessment year, the ITAT following the coordinate bench ruling in the Appellant's own case for AY 2010-11, deleted the TP-adjustments made by the TPO for reimbursement of OPEs and Software Maintenance Expenses and partly allowed the appeal.

ITAT holds book profit increased while computing the same under Section 115JB of the IT Act as incorrect, deletes TP adjustment

Deutsche India Pvt Ltd

ITA No. 1263/MUM/2021

The Assessee was a company that was operating a processing center in multiple cities under STPI/ SEZ, providing back-office services and IT enabled services to support various business entities of the Deutsche Bank Group that had filed its return of income at a total income of INR 305 Crores. The book profit was computed under Section 115JB of the IT Act at INR 246 Crores. As the Assessee had entered into international transaction, a reference was made to the TPO who passed an order wherein he proposed a TP adjustment. Accordingly, a draft order was passed as per normal computation. The book profit of the Assessee was computed as declared by the Assessee.

Aggrieved, the Assessee preferred objections before the DRP which rejected all the objections raised by the Assessee except partial relief for verification. Based on the direction of the DRP, the final assessment order was passed as per normal computation. However, while working out the book profit income under Section 115JB of the IT Act, the AO took the book profit computation offered by the Assessee of INR 246 Crores and also made an addition thereto on account of ALP adjustment in relation to international transactions with the AEs and accordingly, assessed the book profit under Section 115JB of the IT Act at INR 645 Crores. Aggrieved, the Assessee preferred an appeal before the ITAT contending that Section 115JB of the IT Act did not warrant any adjustment and a reference to Explanation 1 of Section 115JB of the IT Act showed that the addition made by AO was not valid. Moreover, the addition was not made in the draft assessment order but was made only in the final assessment order.

Noting that the AO accepted Assessee's book profit computation while passing the draft assessment order without any change, however made addition on account of determination of ALP in relation to international transaction with AEs in the final assessment order, the ITAT observed that the AO could not have changed the draft assessment order without DRP's direction on similar adjustment of ALP in computation of the book profit under Section 115JB of the IT Act. Moreover, Section 115JB had no provision by virtue of which the book profit of the Assessee could be increased by the amount of adjustment proposed by the TPO to determine the ALP of the international transaction. Thus, holding that the book profit increased by the AO while computing the same under Section 115JB of the IT Act was incorrect, the ITAT deleting the adjustment made by the AO, allowed the Assessee's appeal.

ITAT deletes TP-adjustment qua AMP expenditure and interest on AE receivables, follows precedents

Amadeus India Pvt. Ltd

ITA No. 1662/Del/2016 <TIOL Citation Needed>

The Assessee was an Indian company that provided connectivity to the subscribers in India to the host a Computer Reservation System (which was created by its AE) by creation/modification/up-gradation of computer programmes online. The said Computer Reservation System was used by airlines, hotels, tour operators, car rental companies and others to market or distribute their service products for other information. The Assessee had a data processing centre, which provided the above services to its AE.

In the Transfer Pricing study, the Assessee had followed TNMM to substantiate the ALP of its international transaction pertaining to provision of ITes Services with its AE and accordingly, it compared the net operating profit/total cost (OP/TC) earned by it with the mean OP/TC of the comparable companies selected by it and concluded that since the OP/TC of the Assessee was higher than the mean OP/TC of comparable companies, the international transaction was at ALP.

In order to verify this, the AO made a reference to the TPO who accepted the benchmarking of the international transaction. However, the TPO observed that the Assessee had incurred more than normal AMP expenses to build its brand in India which was legally owned by its AE. The TPO held that the Assessee should have been reimbursed with appropriate mark-up on such excessive AMP expenditure identified by him and by applying the Bright Line Test (BLT), the TPO identified the said abnormal AMP expenses and thereafter, applying a mark-up of 11.69%, the TPO proposed TP adjustment for the alleged transaction of brand promotion. Further, the TPO recorded that at year-end, the Assessee had receivables from its AEs. An inference was drawn by the TPO that the payment for invoices raised by the Assessee had not been realized within the stipulated time as provided in the invoice/ agreement. Concluding as such, the TPO proposed another TP adjustment.

Aggrieved, the Assessee approached the DRP which upheld the TP adjustments proposed by the TPO causing the Assessee to approach the ITAT. Placing reliance on a catena of judgments and noting that the coordinate bench in Assessee's own case in previous years had deleted similar adjustment absent existence of a transaction for brand promotion, the ITAT deleted the adjustment on AMP expenses made by the TPO. Further, placing reliance on the Assessee's own case in previous years, the ITAT also deleted the TP adjustment made qua alleged notional interest attributable to delayed payments receivable from AE, rejecting the Revenue's plea that working capital adjustment would not subsume adjustment on account of overdue receivables.

ARTICLE

IMPACT OF BUREAU OF INDIAN STANDARDS ON IMPORTS

The Bureau of Indian Standards ('BIS'), a government agency entrusted with standardisation and promoting qualitative parameters in India have operated in rather dormant mode, until recently! Recently the agency is not only seen rapidly increasing its scope covering more and more products, services, and industries, but it is also conducting enforcement raids, deterring delinquent ones. Steel products to the tune of 300 tonnes found contravening the BIS regulations have also been seized in another raid. Amongst several instances, BIS applicability for toys came to limelight when the Authorities conducted series of enforcement raids on toy retailers and seized about 18 thousand units of toys for want of BIS certification. Same story for gold jewellery.

In order to curb sale of low-quality on e-commerce website, the BIS Authorities have issued notices to the e-commerce operators selling products in contravention of the BIS Standards. Further, the Director General of BIS, Mr. Pramod Kumar Tiwari has stated that a mechanism to ensure that a seller declares having a BIS on e-commerce platform would be placed which would allow automatic verification. Mr. Piyush Goyal, the Hon'ble Minister of Commerce and Industry, has also expressed concern over low-quality of imports in the Country and stated that action would be taken against the importers not complying with the prescribed standards or engage in malpractices.

NEED FOR PRODUCT STANDARDIZATION IN INDIA

While the world leaders, marque investors, global economic organizations and others have time and again emphasized that India is at the verge of experiencing sustainable and tremendous growth - courtesy its domestic consumption, it is very important that India develops its own production capacity. The Government's initiatives viz. Make in India initiative, Production Linked Incentive and Package Schemes of Incentives intend to improve India's manufacturing landscape, inclination of foreign brands to expand its footprint in India along with other conducive geo-political factors has resulted into numerous global organizations setting-up its factories in India. The above factors make it very relevant that the quality of goods or services exported or consumed within the country are monitored and are of highest quality. Certifying standardisation of the goods is one such consumer-protection mechanism which supports economic growth, enhances competitiveness, and fosters technological development.

REVIEWS

Taking cognizance of the fact that reviews posted online play a significant role in making purchase decisions and consumers tend to exceedingly rely on reviews posted on e-commerce platforms, BIS has come out with a new standard for organisations, like e-commerce players, travel portals and food delivery platforms, that publish consumer reviews online as part of the government's efforts to curb fake reviews.

The Indian Standard — IS 19000:2022, 'Online Consumer Reviews - Principles and Requirements for their Collection, Moderation and Publication' has been published. This standard provides requirements and recommendations for the principles and methods for review administrators to apply in their collection, moderation and publication of online consumer reviews and prescribes specific responsibilities for the review author and the review administrator.

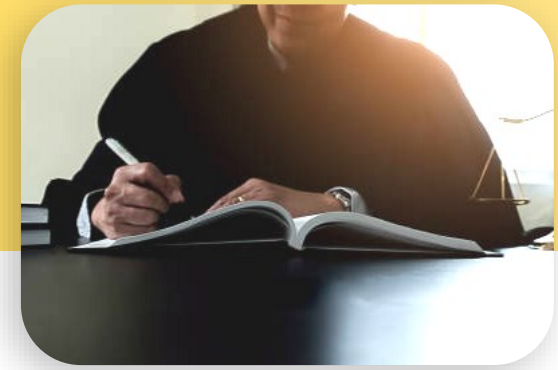
RECENT INCLUSIONS

The BIS has published standards for USB Type-C port, plug and cables used in smart phones, laptop, notebooks and other devices, video surveillance security systems, digital television receiver, etc. The Government's commitment of ensuring supply of only high-quality electronic products gets very well reiterated.

PATH AHEAD

The biggest difficulty while adhering to BIS regulations remains unawareness of its applicability qua imported and/or manufactured goods, caused by rapid pace at which BIS is developing coupled with insufficient dissemination of information. As a matter of fact, in recent times Customs authorities, who themselves were unaware of applicability of certain BIS regulations for considerable time, have now started scrutinising compliance thereof in recent times which has caused sudden disruption of import consignments including rejection of Bills of Entry for want of BIS certification (to cite few sectors, chemical and steel sectors have certainty been at the receiving end on said account).

Presently BIS is focused on traditional manufacturing sector, but it's only a matter of time it will extend to emerging sectors such as IT, Biotechnology, and Health etc. including service sectors. Recently the Hon'ble Ministry of Consumer Affairs has issued a press release committing that all existing BIS labs in India would be modernised and mapped so that the testing facilities can be better utilized. Given the proactive attempt of the Government of India, it is just the time for industry to prepare for adhering to the BIS regulations including evaluation of its supply chain for alternatives.



Pencils and sharpeners sold in sets, classifiable as 'mixed supply' and not 'composite supply'

Doms Industries Private Limited

[Advance Ruling No. GUJ/GAAR/R/2022/52]

The Applicant is engaged in the business of manufacturing and supplying all kinds of stationery items. The Applicant sold ten pencils in sets with the sharpener and eraser in the pack as accessories. Furthermore, the Applicant used to sell the pack under the HSN code of the item with the highest value inside the pack, which also had the highest GST rate, however with the change in the GST rate of the pencil sharpener to 18%, the sharpener now carries the highest tax rate among all products bundled. Hence, the Applicant sought an advance ruling to ascertain whether the supply of pencil sharpeners along with pencils, which, as per the Applicant, is the principal supply, will be considered as 'composite supply' or 'mixed supply.'

The Applicant had argued that sale of such stationary items is naturally bundled, with pencils being the principal sully and therefore, classifiable as composite supply. It had been further argued that in terms of the Rule 3 of General Interpretation Rules for classification of goods, issued by the World Customs Organization, when goods are capable of being classified as under two or more headings, the classification of goods, which are put up in sets for retail sale is to be undertaken basis the product giving providing essential character to the complete set. Basis the above contentions, the Applicant had argued that stationary sets supplied by them are classifiable as composite supply, with pencils being the principal supply, chargeable to 12% GST. The AAR noted that, the pack supplied by Applicant satisfies all the conditions of 'Mixed Supply' u/s 2(74) of the CGST Act and as per the provision of mixed supply, the supply that attracts the higher rate of tax shall be the applicable rate for the supply. Accordingly, the AAR ruled that the supply of sharpeners along with pencils falls under the category of 'mixed supply' and therefore, the Applicant is required to use the HSN code of the product, which attracts a higher rate of tax among all the taxable supplies contained in a pack or box.

Author's Notes:

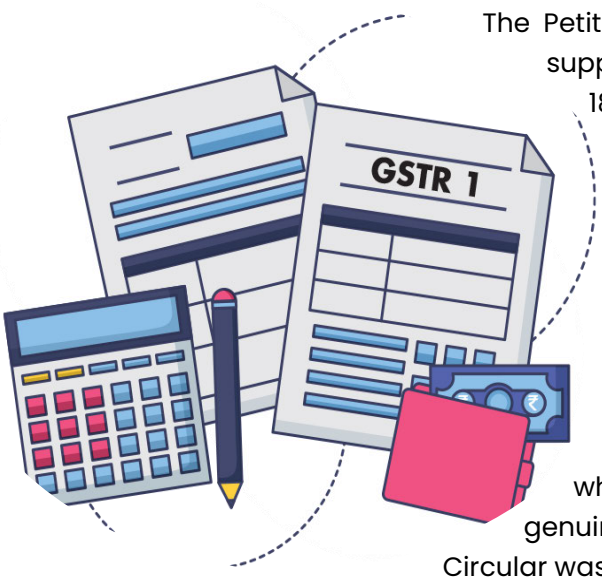
Interestingly, in the instant case, the Applicant had placed reliance on the General Rule of the General Interpretation Rules of Customs to argue that in case of goods sold in sets, the product giving the essential character is to be used for classification. In this regard, it shall be noted that the purpose of classification of goods under the Customs law vis-à-vis the GST law is different. The Rules meant for classification for the purpose of Customs, although having persuasive value for GST classification, cannot be applied mutatis mutandis.

*In **RE: Texel Industries Limited [2022 (61) GSTL 217 (AAR-GST-Guj.]**, it had been held that GST Scheme of law shall be given precedence and compliance for Classification. Further, the explanatory notes issued by the WCO have a persuasive value for determining classification.*

HC allows rectification of GSTR-1 in accordance with CBIC circular

Wipro Limited India

[2023-VIL-22-KAR]



The Petitioner had inadvertently furnished incorrect GSTIN in its outward supplies. Aggrieved, the Petitioner, relying upon the Circular No. 183/15/2022-GST dated December 27, 2022 preferred a writ before the Karnataka HC seeking relief by way of rectification in Form GSTR-1 uploaded between FY 2017-18 and 2018-19 so that their recipient can claim the ITC.

The HC observed that the Circular allows rectification of the bona fide and inadvertent mistakes committed by the assessee at the time of filing of forms and submitting returns is applicable in peculiar and special facts and circumstances. Further, it was also noted that the Petitioner's error in the invoices, which was carried through in the relevant forms, had occurred as a genuine error that arose owing to *bonafide* causes, and hence, the Circular was squarely applicable. Accordingly, the rectification was allowed and the Revenue was directed to follow the procedure in accordance with the Circular.

Orissa HC holds Rule 89(4) of GST Rules as "*Intra Vires*"

Vedanta Limited vs. UOI

[TS-01-HC(ORI)-2023-GST]

The Petitioner had filed a refund application of the unutilized ITC in respect of zero-rated supplies made by all its units together. The said refund was allowed by the Department, however the Petitioner on computing the unit-wise quantum of refund, it was observed that the amount of refund granted by combining all of the units together was considerably less. Therefore, the Petitioner manually applied for a supplementary refund by computing the claim on the basis of supplies made unit-wise, however, the department rejected the supplementary refund. Aggrieved the Petitioner preferred a writ before the Orissa HC.

The HC emphasised that all units of the company having same GSTIN has to be treated as one individual for the purpose of making claims under the GST Act. Further, as the Petitioner had availed the benefits of refund by combining the three units, subsequent thereto, it could not turn around and ask for more refund by filing further application for supplementary refund by computing amount of refund taking into account transaction based on a fresh calculation of individual unit. Accordingly, the HC held that, there is no scope for consideration of a supplementary refund by taking individual unit-wise transactions into account. The bench also declined to read down Rule 89(4) of the CGST Rules, 2017 as it was framed in conformity with the powers conferred on the government u/s 164 of the CGST Act and thus held it as "*intra vires*".

AAR: Supply of Services For Right To Use Car Parking Space taxable at 18% GST

Eden Real Estates Private Limited

The Applicant was engaged in the business of constructing residential apartments and supplying construction services to intended buyers. Furthermore, the Applicant would provide prospective buyers with services related to the right to use the parking space for an additional charge. The Applicant sought advance ruling to determine whether amount charged for right to use of parking space along with sale of apartments would be treated as a composite supply of construction of residential apartment services or not.

The AAR stated that prospective buyers would be offered the right to use a parking space for a charge that would be paid separately by the buyers. It would be up to the buyers to decide whether or not to use the service. Furthermore, if any unallotted parking space remains after distribution among the intending buyers, it will be offered to allottees who require additional parking space. Therefore, the supply is a distinct service that cannot be considered naturally coupled with the construction services. Hence, it was held that supply of services for right to use of car parking space would be a separate supply and not to be construed as a composite supply of construction of residential apartment services. It was also held that supply of services for right to use of car parking space would be taxable at 18%.

HC: Appeal filed offline cannot be denied due to technicalities

Yash Kothari Public Charitable Trust vs. State of U.P

[TS-28-HC(ALL)-2023-GST]

On account of a clerical error, the Petitioner had erred in filing Form GSTR-1 by inadvertently mentioning wrong GSTIN against invoices raised on its purchaser. Consequently, the purchaser withheld payment in respect of the invoice as the invoice was not reflected in their GSTR-2A. Aggrieved, the Petitioner preferred a writ petition before the Jharkhansd High Court seeking relief by way of rectifying the GSTR-1. The HC held that as there was no loss of revenue to Government, on the interest of justice, the Petitioner and their aggrieved purchaser was allowed to make the necessary correction in their GSTR-1 and GSTR -2 respectively. The Assessee is a registered public charitable trust that is establishing a charitable hospital. The assessment order denied several exemptions asserted by the Assessee. Following the issuance of the aforementioned order, the assessee reversed certain ITC using Form GSTR-3B, and thereafter, the Department the issued a summary order. In the meanwhile, the Assessee attempted to file an online appeal against the original order, but it was not accepted and the web portal flashed an error. The assessee also opted for an online appeal against the summary judgement, however, the portal of the department reflected that the order number entered is already under appeal or appeal order has been passed. Consequently, the assessee filed a letter with the authority complaining that the portal was not accepting the appeal against the department's order. The Authorities issued a rectification order, following which the recovery procedure was commenced against the assessee. The Additional Commissioner

demanded the assessee to submit an online acknowledgment of the appeal filing. Aggrieved the Assesse preferred a writ petition.

The High Court emphasised that Section 107 of the CGST Act, which provides for an appeal against the adjudication order, explicitly indicates that any person aggrieved by any judgement or order passed by an adjudicating authority under the Act may appeal to the Appellate Authority. In addition, Rule 108 of the CGST Rules permits online or electronic filing of appeals, however, the UP Commissioner has not advised of any alternative way to file an appeal with the first Appellate Authority. Therefore, the HC stated that, in the lack of any notification, it would be assumed that the alternative way of filing the appeal would be offline. Furthermore, the HC ruled that the Department cannot prevent a taxpayer from asserting his statutory right in the garb of technicality.

GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1.	Circular No. 189/01/2023-GST dated January 13, 2023	**CBIC clarifies on GST rates and classification of certain goods** In line with the recommendation of the 45th, 47th and 48th GST Council meetings, CBIC *vide* the notification has issued GST rate clarifications for the following; • Rab (rab-salawat) is classifiable under CTH 1702 which attracts GST at the rate of 18%; • Fryums manufactured using the process of extrusion is specifically covered under CTH 19059030 and attract GST at the rate of 18%; • Compensation Cess of 22% is applicable to Sports Utility Vehicle (SUV) fulfilling all four conditions, ◊ it is popularly known as SUV, ◊ has engine capacity exceeding 1500 cc, ◊ length exceeding 4000 mm and, ◊ a ground clearance of 170 mm or above; • Goods classifiable in lower rate category of 5% under schedule I of Notification No. 1/2017, imported for petroleum operations will attract lower rate of 5% and the rate of 12% shall be applicable only if the general rate is more than 12%; • GST on Chilka, Khanda and Churi/Chuni which are the by-products of milling pulses/dal are exempted by including it in Notification No. 2/2017 at entry no. 102C; • Carbonated beverages of fruit drinks or with fruit juice shall be taxable at GST of 28% and a compensation cess of 12% .
2.	Circular No. 190/02/2023- GST dated January 13, 2023	**Clarifications regarding applicability of GST on certain services** Incentive paid to banks by MeitY to acquiring banks under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus, not taxable.

Sr No	Notification/	Summary
3.	Press Release No. 567 dated January, 16 2023	**Advisory on taxpayers facing issue in filing GSTR-3B** The filing of TRAN forms was made available for aggrieved taxpayers between October 01, 2022 to November 30, 2022, in accordance with the Supreme Court's directive. It has been observed that, a few taxpayers have submitted their forms on the portal but did not finally file it within the specified time. After submission of the TRAN Forms, only filing was to be done with e-sign. It can be seen that the taxpayers have not filed any tickets in response to the difficulties they had submitting their Trans Forms. Hence, since the TRAN forms of these taxpayers were submitted but not filed, the taxpayers were not able to file their GSTR-3B. Therefore, such taxpayers are advised to raise a ticket on GST Grievance Portal. In doing so they must give their consent that their TRAN filing status may be reset by GSTN. Once this consent is received, the TRAN forms will be reset and the taxpayer will be able to file their GSTR-3B.

CUSTOMS & FTP
From the Judiciary

Incorrect classification alone does not constitute a mis-declaration

Midas Import Corporation

[Customs Appeal No. 52239 of 2021]

The Applicant had imported "0.1 percent natural brassinolide fertiliser" by classifying under chapter 31 of the CTH. The Revenue issued SCN proposing to re-classify imported goods under CTH 3808. The Adjudicating Authority confirmed demand and order for recover of the differential duty. Aggrieved the Applicant filed an Appeal before the CESTAT. The CESTAT ruled that stating a wrong categorization or an ineligible exemption notification is not a misstatement or mis-declaration. Further, when the Appellants have not mis-declared or suppressed any facts, imposing of penalties is unsubstantial. Accordingly, the penalties were set aside.

CESTAT: Customs Broker Not Liable for Undervaluing Exported Goods

M/s. Sri Velavan Logistics Services Private Limited v. The Commissioner of Customs

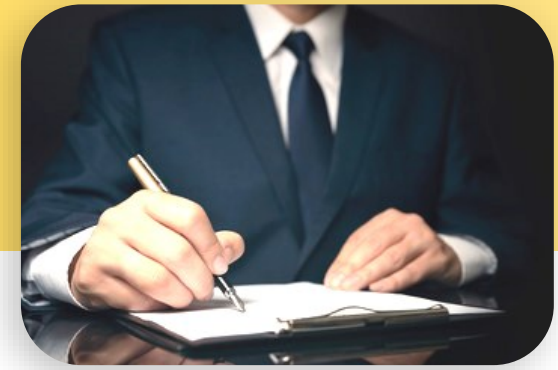
[Customs Appeal No. 40352 of 2022 dated December 21, 2022]

The Appellant was a customs broker. A SCN was issued against the Appellant for alleged attempt to export goods that were undervalued. Further the Appellant was held liable for action under the CBLR, 2013, for contravening the provisions of Regulations 11(n) and 11(d). Subsequently, the Adjudicating Authority imposed a penalty on the Appellant, which was again confirmed by the first Appellate Authority. Aggrieved, the Appellant preferred a writ.

The Tribunal noted that the valuation of any items could never fall under the purview of a customs broker, as this is determined by the contract between the exporter and importer, over which the customs broker would have no control. Further, it was also observed that the Department did not provide sufficient evidence to back up its claims that the declared export value was false or inaccurate. Subsequently, the CESTAT allowed the Appeal and stated the imposition of a penalty was bad in law.

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 03/2023-Customs (N.T.) dated January 11, 2023	**CBIC notifies CAVR Rules, 2023** CBIC has notified the CAVR 2023 to address the threat of undervalued imports. The CAVR 2023 lays down the procedure in respect of identified goods, the specification of identified goods, and the sources for examining cases for identified goods.
2.	Notification No. 99/2022-Customs (N.T.) dated November 29, 2022	**DGFT simplifies composition fee under export advance authorisation** DGFT *vide* the Public Notice has streamlined the Composition Fee for non-fulfillment of export duties under Advance Authorization. Previously, the Composition Fee was computed as a percentage of unfulfilled export requirements. The Composition Fee will now be determined using a fixed amount based on the Advance Authorization's value.
3.	Notification No. 32/2022-Customs (ADD) dated December 27, 2022	**ADD imposed on Semi Finished Ophthalmic Lenses import from China** CBIC *vide* the notification imposes ADD on Semi Finished Ophthalmic Lenses imported from China for a period of five year.



NCLT permits successful bidder to conclude Corporate Debtor's acquisition on going concern basis

Shri. Chandrasekhar Nagaral vs. Vikas Prakash Gupta, Liquidator of Gupta Energy Private Ltd

IA No. 1017/MB/2022, IA No. 1318/MB/ 2021 in CP (IB) No. 43/MB/2017

The Gupta Energy Private Limited (Corporate Debtor) was ordered to be liquidated by the NCLT and a liquidator (Respondent) was appointed. The Respondent, issued a public notice for Expression of Interest (EOI) and all the necessary details were captured in the EOI published by the Respondent. The Applicant (C S Construction) participated in the bid and emerged as the successful bidder. The Applicant was sincerely willing to revive and make operational the Thermal Power Project ('Project') of the Corporate Debtor into valuable assets and also give livelihood to skilled/unskilled workers who lost their livelihood on account of the closure of said project. Accordingly, the Applicant submitted an acquisition plan to the NCLT to execute and conclude the purchase/acquisition of the Corporate Debtor as a whole on a 'going concern' basis.

The NCLT observed that that while the aim of liquidation is to sell-off the assets of the Corporate Debtor at a maximum value for realization, however at the same time, the dissolution of the entity does not necessarily implies liquidating the entity and killing the existence completely. Thus, it permitted the Applicant to execute and conclude the purchase/acquisition of the Corporate Debtor as a whole on a 'going concern' basis under liquidation, by way of implementation of the acquisition plan submitted by the Applicant.

Authors' Note:

It would be interesting to note that in the present case, the NCLT also observed that maximization of value of assets did not mean only direct monetary benefit coming to the Financial Creditors but also meant that the non-monetary assets were put to use and if utilized in appropriate manner, led to the generation of maximum value even in the future.

NCLAT holds amount transferred by Corporate-Debtor to related -party in normal business course, not 'preferential transaction'

Randhir Singh Tomar & Ors. vs. Sunil Kumar Aggarwal

Company Appeal (AT) (Insolvency) No. 917 of 2022

In the instant case, Y.S. Marchandise International Pvt. Ltd (Corporate Debtor) was engaged in the business of selling goods as an aggregator between brands and e-commerce/online market places. Mr. Randhir Singh Tomar ('the Appellant')(ex-director of Corporate Debtor) has stated that due to adverse market conditions corporate debtor was left with a large inventory of goods which had to be disposed of. Later, a new company named Y2Y Fashions Private Limited (Y2Y), was started by Appellant, and it started its own teleshopping platform and the Corporate Debtor started doing business with this new company. In order to carry on its business, Y2Y entered into a T-Commerce Vendor Agreement with the corporate debtor which states that the Corporate Debtor would supply goods to Y2Y on payment of certain commission and that commission is towards the cluster of services offered by Y2Y like hosting of website, technological , backup, packing, logistics etc.

NCLT passed an order for the insolvency resolution of the Corporate Debtor and found that INR 83.97 lacs paid by the corporate debtor to Y2Y who is a related party of the corporate debtor due to common director on Board of both the entities was misappropriated and meant to defraud the creditors. Thereafter the NCLT passed and order directing the Appellant to deposit INR 83.97 Lacs back. Aggrieved, the Appellant approached the NCLAT. NCLAT being convinced by the argument of the Appellant that the transactions took place on purely commercial consideration to let the Corporate Debtor function in the changed business environment and that such an arrangement, even though with a related party, could not be termed as preferential transactions done to defraud the creditors. Thus, setting aside NCLT order, NCLAT held that the Appellant was not liable to make contribution to the extent of INR 83.97 Lacs in the account of the Corporate Debtor, and disposed off the matter.

SEBI dismisses insider-trading charges against 11-entities in "WhatsApp leaks" case concerning Axis Bank's financials

In the matter of Axis Bank Ltd.

Adjudication Order No. Order/SM/RG/2022-23/22676-22686

On November 17, 2017, in a newspaper published a news article with the title "Out on WhatsApp: Prescient messages about Indian firms" which reported that unpublished financial results of some of the major companies were circulated through WhatsApp ahead of their official announcements on the floor of the BSE and NSE for the consumption of the public at large. SEBI initiated a preliminary examination in the matter of the circulation of such UPSI through WhatsApp.

During the investigation, SEBI observed that before the announcement of the financial results of Axis Bank on the BSE and NSE, some of the figures relating to their quarterly results were circulated on WhatsApp. Accordingly, a SCN was served upon the Noticees by the AO. The Noticees replied to the allegations stating that they were unaware that the financial information contained in the aforesaid

messages was unpublished price sensitive information and that they were not benefitted financially from the information contained in message. Also AO failed to appreciate from where WhatsApp message has been originated. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was UPSI.

SEBI further relies on a batch of SAT rulings wherein it was inter alia observed that SEBI had failed to prove an preponderance of probabilities that the impugned messages were UPSI and SAT had held that no violation was committed under the PIT Regulations by the respective Noticees in these cases. Thus, considering the similar nature of facts and circumstances and the aforesaid ruling of SAT, SEBI disposes off the matter.

Authors' Note:

*It would be interesting to note that in **SEBI vs. Shruti Vora & Ors. [Civil Appeal No. 2252-2262/2021],** the SC dismissed SEBI's appeal challenging SAT order setting aside SEBI order imposing penalty upon a group of securities market employees, allegedly involved in circulating the quarterly financial results of several companies in certain WhatsApp groups before its official disclosure by the respective companies, in each of the proceedings.*

NCLT holds share application money does not fall under 'financial debt' ambit, rejects insolvency application

Naman Global Impex Pvt. Ltd. vs. Rathod Pharmachem Pvt. Ltd.

CP (IB) 110/NCLT/AHM/2021

Naman Global Impex Private Limited (Applicant) was a Private Limited Company who was dealing in the business of trading of pharma products. The Applicant submitted that an amount of INR 1 crore was paid to the Rathod Pharmachem Private Limited (corporate debtor) as equity share application money for shares of corporate debtor. As the shares remain un-allotted for a period of more than 60 days and the amount was not refunded, thus the Applicant was eligible to receive an amount of INR 1.04 Crores from the Respondent including interest. However, having failed to receive payment from the corporate debtor, the Applicant filed an insolvency application against the corporate debtor by claiming to be as Financial Creditor.

Noting that none of the parties had provided a copy of the agreement stated to have been entered into between them showing that the money was borrowed against the payment of interest, in order to validate the claim that the amount of INR 1 Crore was given as share application money, the NCLT placing reliance on NCLAT decision in **Pramod Kumar Sharma vs Karanya Heart Care Private Limited [Company Appeal (AT) (Ins.) No. 426 of 2022]** wherein it was held that share application money could not be treated as financial debt, observed in view of the decision of the NCLAT, which was binding on it, in line of the same observation, that share application money did not fall under the definition of 'financial debt'. Accordingly, remarking that the instant, the NCLT dismissed the application filed by the Applicant and disposed of the matter.

HC holds 'Additional Directors' equally responsible for company's affairs as other Directors

Surendra Kumar Singhi vs. Registrar of Companies, West Bengal & Anr.

CRR-531-2022

Registrar of Companies, West Bengal & Anr. had filed a complaint against directors of M/s Mani Square Ltd. before the Chief Metropolitan Magistrate under the provisions of the Companies Act, 1956. According to them, the Board was bound to give fullest information and explanation in its report on every reservation, qualification or adverse remark contained in Auditor's report. However, upon scrutiny of documents as on March 31, 2014 it was found that the Board of Directors did not furnish same information in their Director's report with respect to the Auditors remarks in their report on Balance Sheet for the year ending March 31, 2014. The Chief Metropolitan Magistrate took cognizance of the complaint filed by the complainant and issued Summons against Director, Surendra Kumar Singhi (the Petitioner) and other accused persons.

Aggrieved by this, the Petitioner preferred a revision petition before the HC. HC noted that on the relevant date, the Petitioner was the 'Director' of the Company and on further introspection it was noted that he was serving with the company as 'Director' from September 30, 2014 to December 30, 2016, and was an "Additional Director" from June 2, 2014 to September 30, 2014. Thus, holding that the Additional Directors is also on equal footing, in terms of, of power, rights, duties, and responsibilities, as other Directors, and as the responsibility of an Additional Director is the same as that of any other Director and all of them remain responsible for responsibilities as casted upon directors under provisions of Company Law, hence the HC dismissed the revision petition.

SC allows original writ-petitioners to adduce additional evidence in application for setting aside arbitral-award

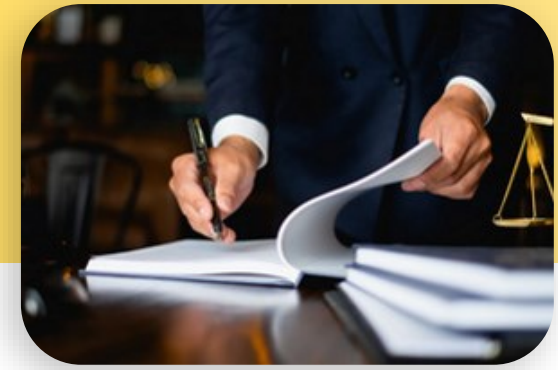
Alpine Housing Development Corporation Pvt. Ltd. vs. Ashok S. Dhariwal & Ors

Civil Appeal No. 73 of 2023

Alpine Housing Development Corporation Pvt. Ltd (the Appellant) filed objections to the application by Ashok S. Dhariwal & Ors (the respondent) seeking permission to adduce evidence on the ground that the same was not maintainable in accordance with the provisions of the Arbitration Act. The Additional City Civil and Sessions Judge dealing with the interim application rejected the said application and refused to permit the Respondents to adduce evidence by observing that if such a permission was granted, it would defeat the object and purpose of early disposal of arbitration proceedings. Aggrieved by this order of the Additional City Civil and Sessions Judge, the Respondents preferred a writ petition before the HC wherein the HC had permitted the Respondents to adduce evidence/additional evidence in the proceedings u/s 34 of the Arbitration Act.

Aggrieved, the Appellant preferred an appeal before the SC. The issue in the present appeal was, whether the applicant can be permitted to adduce evidence to support the ground relating to public policy in an application filed u/s 34 of the Arbitration & Conciliation Act, 1996. Placing reliance on a catena of judgments, the SC observed that if an exceptional case had been made out by the Respondents, they would be permitted to file affidavits/adduce additional evidence. The Court said that the ground that the arbitral award conflicts with the public policy of India, could be available only after passing of the award. Therefore, the same can be permitted to be agitated in an application u/s 34 of the Act and the person shall not have to wait till the execution is filed. The defence that the arbitral award conflicts with the public policy of India itself can be a ground to set aside the award in view of section 34(2)(b) of the Act. However, at the same time, the SC also observed that the Appellant would also be permitted to cross-examine and/or produce contrary evidence. Thus, dismissing the appeal filed by the Appellant against the HC order which permitted the Respondents to adduce evidence in an application for setting aside the arbitral award u/s 34 of the Arbitration Act, the SC allowed submission of evidence in this particular case.

REGULATORY
From the Legislature



SEBI allows Futures Contract on corporate bond indices

SEBI has allowed exchanges to introduce future contracts on Corporate Bond Indices vide Circular no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/11 dated January 10, 2023. SEBI has decided to permit Stock Exchanges to introduce derivative contracts on indices of corporate debt securities rated AA+. The details regarding index composition, contract specifications, position limits, risk management framework etc. for introduction of future contracts on corporate bond indices are annexed with the circular.

Further any Stock Exchange desirous of introducing such contracts shall submit a detailed proposal to SEBI for approval, inter alia, providing the required details. Stock Exchanges and Clearing Corporations are advised to take necessary steps and put in place necessary systems and also bring the provisions of this Circular to the notice of their members as well as circulate the same on their websites.

Authors' Note:

SEBI had constituted a working group of representatives of NSE, BSE and MSEI to enhance liquidity in the bond market and also to provide opportunity to the investors to hedge their positions and the same has been achieved to a large extent by introduction of this circular.

Relaxation from compliance with certain provisions of the SEBI 'LODR Regulations'

SEBI, vide circular no. SEBI/HO/CFD/PoD-2/P/CIR/2023/4 dated January 5, 2023 has further relaxed the requirements specified in regulation 36(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") relating to dispatching physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders who have not registered their email addresses. The said relaxation was initially extended till December 31, 2021 and was subsequently extended up to December 31, 2022 and now it has been extended for the AGMs conducted till September 30, 2023.

Authors' Note:

Relaxation is given only for those shareholders who have not registered their email addresses. Incidentally, MCA, vide General Circular No. 10/2022 dated December 28, 2022, has provided similar relaxations to companies for conducting AGM through Video conferencing and other audio visual means.

Foreign Investment in India - Rationalisation of reporting in SMF on FIRMS Portal

SMF is a master form which provides for reporting of various forms required to be submitted erstwhile for foreign investments viz. FCGPR, FCTRS etc. Further, FIRMS is an online reporting platform for reporting of foreign investments into India brought in accordance with FEMA or rules, regulation thereunder acting as one stop reporting facility for applicants. In this regard, RBI vide Notification no. RBI/2022-23/160 dated January 04, 2023, has issued a circular for the rationalisation of reporting in SMF on FIRMS Portal.

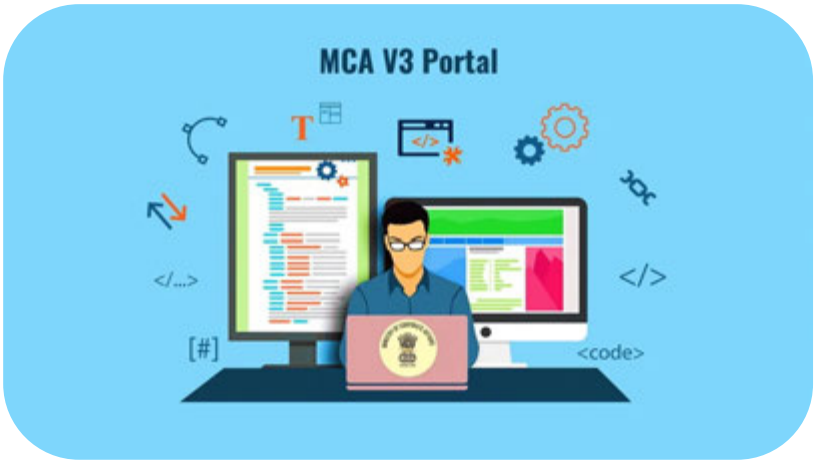
According to this circular, form submitted on FIRM portal will be auto-acknowledged and Authorised Dealer Banks have to verify the same within five working days based on uploaded documents. In case of any delay in filing of SMF beyond the due date but not more than 3 years, then AD Banks will approve the forms, subject to payment of Late Submission Fee and further in case if delay beyond 3 years, the Applicant will have to approach RBI for compounding of offence.

Authors' Note:

The process for filing of forms such as FCGPR and FCTRS has been very smooth during last few years and has facilitated companies to ensure compliances; the above changes will further improve the compliance and reporting requirements. The time window of three years shall be gradually decreased to further strengthen the FEMA compliances.

MCA provides the facility for physical submission of GNL-2 & MGT -14 during the transition from V2 to V3 portal

MCA vide circular No. 02/2023 dated January 09, 2023 clarifies that the companies who intend to file Form GNL-02 (Filing of prospectus related documents) and MGT-14 (Filing of resolutions relating to prospectus) from January 7, 2023 to January 22, 2023 on the MCA-21 portal may file these forms in physical mode duly signed with concerned Registrar without payment of fee and take acknowledgement thereof because portal will be disabled due to transition of V2 version to V3 version. For filling of these forms, companies have to submit undertaking that once the filing is enabled on the portal and the company have to file the relevant form in electronic form on portal along with the fees payable in accordance with the Companies Rules, 2014. Further it is also clarified that no additional fees will be levied in case where due date for filling these forms fall under above said period.



Authors' Note:

MCA has clarified on filing of above-mentioned forms physically when people are facing challenges to file them online due to transition from V2 version to V3 version on MCA 21 portal It may be noted that the forms GNL-2 and MGT-14 filed in physical form shall be placed on the MCA website for the purpose of inspection or obtaining copy thereof in accordance with the provisions of Section 399 of the Companies Act, 2013.

NIDHI (AMENDMENT) RULES, 2023

Nidhi Company is a Non-Banking Finance Company which is formed with the sole purpose of borrowing and lending money only to its members. This company is registered under Section 406 of the Companies Act, 2013 and the procedural aspects of such companies are prescribed vide Nidhi Rules, 2014. MCA vide notification dated January 20, 2023 has made certain amendments to these rules that will be effective from January 23, 2023 onwards. The forms that have been amended are Forms NDH-1, Form NDH-2, Form NDH-3 and Form NDH-4.

The basic purpose of amendment is to include the additional information in the aforesaid forms as below:

Form No.	Nature of Form	Additional Information to be included now
NDH-1	Return of Statutory compliance	• Date of incorporation • Financial year end date
NDH-2	Application to Regional Director	• Purpose of application • Details of branches
NDH-3	Half yearly return	• Number of branches at beginning and end of half year • Profit during previous 3 financial years
NDH-4	Form for filing application for declaration as Nidhi Company and for updation of status by Nidhis	• Financial parameters; • Deposit details; • Profits during the preceding 3 financial years.

INTERNATIONAL DESK

OECD releases update on Harmful Tax Practices for 13 preferential regimes

OECD releases the updated conclusion of FHTP on 13 preferential tax regimes and of second annual monitoring process for the effectiveness in practice of the substantial activities requirements in 'no' or 'only nominal' tax jurisdictions. According to the results, two regimes were found to be not harmful (Cabo Verde and Hong Kong), four regimes are now in the process of being amended (Armenia) and two regimes have been amended to be in line with the standard and are now not harmful (Jamaica and North Macedonia). Further, two regimes are abolished (Honduras and Pakistan), and two regimes were concluded as potentially harmful (Albania) for which the FHTP will assess at its next meeting if these regimes are actually harmful even though the conclusions from the second annual monitoring process of no or only nominal tax jurisdictions pegs their status as not harmful.

In addition to the above, recommendations made for substantial improvement for four jurisdictions (Anguilla, the Bahamas, Barbados and the Turks and Caicos Islands) and also the areas for focused monitoring identified for another four jurisdictions (Bahrain, Bermuda, the British Virgin Islands and the Cayman Islands) remain the same from the first monitoring process. The next annual monitoring exercise for no or only nominal tax jurisdictions is set to take place in the second half of 2023.

OECD's economic analysis suggests 9% gain in corporate tax globally from Global Minimum Tax

OECD Centre for Tax Policy and Administration conducted a webinar on the Economic Impact Assessment of the Two-Pillar Solution, we have captured its key findings below:

- Two-Pillar Solution to address the tax challenges arising from digitalisation and globalisation of the economy to lead additional taxing rights for market jurisdictions and put a floor on tax competition through the creation of a 15% global corporate income tax rate.

- The proposed Global Minimum Tax is expected to result in annual global revenue gains of around USD 220 billion, or 9% of global corporate income tax revenues - a significant increase over the OECD's previous estimate of USD 150 billion in additional annual tax revenues attributed to the minimum tax component of Pillar Two.
- Pillar One is now expected to allocate taxing rights on about USD 200 billion profits to market jurisdictions annually, leading to annual global tax revenue gains of between USD 13-36 billion, based on 2021 data.
- Low and middle-income countries are expected to gain the most share of existing corporate income tax revenues and as an impact of Pillar Two at the jurisdiction-group level, including the impact of QDMTTs.

The economic impact of the Two-Pillar Solution is estimated to be based on updated data and it incorporates most of the recently agreed design features included in the Amount A Progress Report and the GloBE Model Rules.

UK Government publishes new TP documentation requirements, summary audit trail delayed

The UK Government has published a draft statutory instrument (The Transfer Pricing Records Regulations, 2023) to introduce new transfer pricing documentation requirements. The draft regulations are largely expected to be applicable on MNEs with turnover of EUR 750 Million or more having taxable operations in UK, and requires preparation of an OECD-standard Master File and UK Local File for each taxable person in an Accounting Period commencing on or after April 1, 2023.

SPARKLE ZONE

Relief to the ballgame of mismatched ITC under GST !

Relief to the ballgame of mismatched ITC under GST

Matching and reconciling ITC claimed in self-declared tax summary return i.e. GSTR-3B with the data under auto generated form GSTR-2A/ 2B has been the most recurring and aggravating challenge for taxpayers over the past year. It's true to say that disparity of ITC is the officer's go-to topic whenever a notice ought to be issued. Thus, a crucial question arises in the minds of taxpayers and professionals, namely whether input tax credit can be rejected only on the basis of a discrepancy between ITC claimed in GSTR-3B and that reflected in GSTR-2A/2B.

ITC – The Matter of Concerns!

Under GST law, ITC can be availed subject to satisfaction of conditions set out in section 16(2) namely receipt of goods/services, receipt of vendor invoices, tax paid to Govt through cash/credit and return furnished by recipient, payment to vendors within 180 days etc. In addition to above, availment of credit has also been made dependent on the auto-population of the details of the invoice/ debit note in Form GSTR-2B on the basis of the invoices / debit notes uploaded by the supplier in his GSTR -1. However, ITC shall be available to the recipient only if the supplier pays the corresponding tax to the government.

Even in the Pre-GST regime, it was a settled principle that ITC is an vested right of the taxpayer. However, through various judicial precedents, it has been established ITC is not an absolute right but a conditional right. The government has the right to allow IT subject to fulfilment of conditions. However, the conditions have to be falling within the four corners of the law and cannot go against the very objective of the Act itself. Also, it is to be noted that such conditions cannot violate the Article 265 of the Indian Constitution which prohibits the wrongful collection of tax and the denial of ITC cannot result in the taxpayer's loss of this vested right without due process of law. The Government of India, vide Press Release dated October 18, 2018 had clarified that facility to view the outward details furnished by the vendors, in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the CGST Act. It was also clarified that apprehension related to ITC eligibility basis its reconciliation between GSTR-3B and GSTR-2A is unfounded.

Initially, Section 41 of the CGST Act provided that the claim of ITC entitled to be taken on self-assessment basis and such amount is to be credited on provisional basis to the electronic credit ledger until it is matched as per Section 42 and 43 of the CGST Act. Section 42, allowed for the finalisation of Input Tax Credit under GSTR-2 and GSTR-3 Forms. Form GSTR-1, GSTR-2, and GSTR-3 have been developed to facilitate this process. Since Form GSTR-2 and GSTR-3 were not implemented at all because of GST portal

system issues, such matching was not possible and the entire filing process evolved with introduction of GSTR-2A and GSTR-3B. However, recently the Sections 42, 43, and 43A of the CGST Act have also been removed in compliance with Section 107 of the Finance Act of 2022. In the absence of the necessary norms and forms, the concepts of matching, reversal, and reclamation had no legal standing.

It is also interesting to note that by way of Notification No. 49/2019 – Central Tax, the restriction on the availability of ITC based on the matching of Forms GSTR-2A/2B and GSTR-3 was imposed for the first time in 2019. By means of the aforementioned notification, sub-rule (4) of Rule 36 was added, stating that ITC will be granted subject to the supplier providing details in Form GSTR-1 and the same reflecting in Form GSTR-2A/2B of the recipient. Even though the law, rules, and forms have been changed to allow for reversal of credit if a taxpayer's Form GSTR-3B credit isn't reflected in their Form GSTR-2A/2B, such a restriction could be said to go against the spirit of the law because it would violate the Constitution's basic rights and go against a well-established Latin maxim '***Impossibilum nulla oblignto est'*** encapsulates the idea that nobody can be obliged to perform what he cannot perform.

Judicial View on the Recipient liability where default is clearly on supplier end !!

The recent avalanche of judgements and clarifications hasn't been enough to sway the primary purpose of GST, which is the smooth flow of ITC. Denying ITC to a taxpayer on procedural grounds such mismatch between Forms GSTR-2A/2B and GSTR-3B and that too due to supplier default violates Part III of the Constitution of India . 49. In the erstwhile vat regime, in the case of **Sri Vinayaga Agencies v.s The Assistant Commissioner, CT Vadapalani [2013 60 VST]**, it was held by the Hon'ble Madras High Court that the authority does not have the jurisdiction to reverse the input tax credit already availed by the assessee on the ground that the selling dealer had not paid the tax.

Even during the GST regime, the courts are in the favoring view that the recipient cannot be punished for the bona fide mistake by the supplier. Reliance is placed on the judgment of the Hon'ble Tripura High Court, in the matter **Sahil Enterprises vs. The Union of India [W.P. (C) 531/2021]** wherein it was held that, the Petitioner has no control over the seller to ensure that such tax is deposited with the Government. Denying ITC to the Petitioner where they have already paid tax would amount to double taxation.

The new Circular – boon and bane!

On the basis of this ITC disparity, tax officials began numerous reviews, audits, etc., even for the time preceding the insertion of Rule 36(4). Taxpayers have been released from various litigations in the past due to discrepancies between the ITC available as per GSTR-2A and the ITC availed as per GSTR-3B, particularly in the FY 2017-18 and FY 2018-19, and the CBIC has issued Circular No. 183/15/2022-GST dated 27th Dec 2022 ('Circular No 183') to rectify this situation. There have been many alerts for ITC discrepancies between GSTR 2A and GSTR 3B, but these have been offset by the fact that, at least for FY 17-18 and FY 18-19, there was no need for 2A Vs 3B matching because ITC may be availed based on books of Accounts rather than GSTR-2As.

The Circular No 183 has instead contributed to the industry's existing confusion by introducing new ambiguities with regard to appropriate responses to ITC disparities. The Circular utterly destroyed taxpayers' expectations and forced them into unjustified scrutiny proceedings. The Circular No 183 has increased the complexity of the availment of ITC. Since there is no

mechanism for a recipient to verify that his supplier has actually paid the tax, Section 16(2)(c) is widely regarded as the most onerous requirement to comply with. However, the Circular has established certification criteria for prior time periods. If the difference between the ITC claimed on Form GSTR-3B and the ITC reflected on Form GSTR-2A for a given fiscal year is more than Rs. 5 Lakhs, the recipient must provide the Proper Officer with a certificate from the Chartered Accountant / Cost Management Accountant of the supplier, attesting that the supply was made and the appropriate tax was paid. For ITC discrepancies up to Rs. 5 Lakhs, the recipient must submit the supplier's proof of compliance on his own. Proceeding to obtain CA certificates and supplier certificates 4-5 years down the line could pose a practical challenge complying with the Circular No 183.

It is interesting to note that the CGST Act does not contain any enabling provisions that compel a taxpayer to produce the aforementioned certificate. The circular, which was designed to remedy the problems of taxpayers, instead imposed extra conditions without any statutory backing. The exercise for demand of reversal of ITC by the recipient is to be practiced only in exceptional circumstances. In this regard, the Noticee places reliance on the judgement of the Hon'ble Madras HC in **RE: DY Beathel Enterprises vs. State Tax Officer [2021-TIOL-890-HC-MAD-GST].** In this case, the Respondent had ordered for reversal of ITC by the recipient, despite the default by the Supplier, the Hon'ble Court remanded the matter back for fresh adjudication holding that the recovery shall not be made from recipient for supplier's fault. No such exceptional situation is normally documented in the Show Cause Notice to warrant recovery from the recipient and hence such demands are likely to fall in the loop of litigations.

The validity of Rule 36(4), has been challenged before various Courts. The Hon'ble Gujarat HC in **RE: Surat Mercantile Association vs. Union of India [R/Special Civil Application No. 13289 of 2020]** has issued a notice to the Revenue, in a Writ challenging Rule 36(4). Similar writ petitions have been filed before the Hon'ble Rajasthan HC in RE: **GR Infraprojects Limited vs. Union of India [D.B. Civil WP No. 6337/2020 dated 05.08.2020]** etc, wherein the Court has issued notice to the Government, challenging the validity of Rule 36 (4) of the CGST Rules. Consequently, if the validity of Rule 36(4) is in dispute, the validity of Circular 183 also comes into debate.

In an interesting turn of events, the Circular has pushed the taxpayer into potential litigation in the case of differential ITC, especially in the event where their suppliers are no longer in business or are otherwise intractable as on the current date. As a result of this, the actual recipients will have no choice but to consider legal action as a last resort in such cases. As a consequence of this, the taxpayer will be trapped in an endless cycle of misery of litigation, and the Circular will almost probably be challenged in courts.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
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
AMCs	Assets Management Companies
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
ASBA	Application Supported by Blocked Amount
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
BPSL	Bhushan Power Steel Limited
BOI	Body of Individuals
CAG	Comptroller and Auditor General of India
CASS	Computer Assisted Scrutiny Selection
CAVR 2023	Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023
CAT	Common Aptitude Test
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBLR	Custom Broker Licensing Regulations
CBIC	The Central Board of Indirect Taxes and Customs
CCIT	Chief Commissioner of Income tax
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIT	Commissioners of Income Tax
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
ED	Enforcement Directorate
EOI	Expression of Interest

Abbreviation	Meaning
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2023
FHTP	Forum on Harmful Tax Practices
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2023
FHTP	Forum on Harmful Tax Practices
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
G2B	Government to Business
GST	Goods and Services Tax
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
ICDR	Issue of Capital and Disclosure Requirements Regulations, 2009
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
IRP	Interim Resolution Professional
IT Act/ Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
MAT	Minimum Alternate Tax

GLOSSARY

Abbreviation	Meaning
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NFT	Non-Fuungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
OBU	Offshore Banking Unit
OEC	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
PIV	Pooled Investment Vehicle
PMLA	Prevention of Money Laundering Act, 2002
PLR	Prime Lending Rate
PSU	Public Sector Undertaking
PY	Previous Year
QDMTTs	Qualifying Domestic Minimum Top-Up Taxes
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
RPT	Related Party Transactions
RP	Resolution Professional
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty

Abbreviation	Meaning
SCGT	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SFIO	Serious Fraud Investigation Office
SIAC	Singapore International Arbitration Centre
SMF	Single Master Form
SPL:	Special Leave Petition
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TPS	Tax performing system
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
UPSI	Unpublished Price Sensitive Information
UCB	Urban Co-operative Bank
UK	United Kingdom
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VDA	Virtual Digital Assets
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.

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