VISION 360

MAR 2023

EDITION 30

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

Vision 360: Opportunities & Challenges Ahead...

The past month has been an eventful one in the world of taxation, with several major developments taking place both nationally and internationally. In India, the Union Budget 2023 was presented with a focus on rebuilding the economy and promoting growth. The budget proposed several measures to simplify the tax regime, including the introduction of a new tax regime, and offered relief to individuals and businesses impacted by the pandemic.

Internationally, discussions on tax reforms continue to gather steam, with the recent G20 Finance Ministers' meeting focusing on issues such as digital taxation, global minimum tax rates, and the implementation of the OECD's BEPS project. The meeting also saw discussions on the implementation of the proposed Carbon Border Adjustment Mechanism and its potential implications for businesses operating in different jurisdictions.

In addition to these developments, there were also several changes to tax laws and regulations in different countries, including new tax incentives in various countries, changes to VAT regulations in the Qatar, etc. It now also affirms that, international trade has become a close-knit affair than ever before. It has empowered businesses to efficiently function world-wide and tap opportunities that seemed beyond reach so far. While this is a boon, it has also become increasingly vulnerable to adverse events taking place all the way across the globe.

Simply put, global trade has become volatile than ever before and hedging the risk simultaneously with tapping the opportunity is need of the hour. And without any doubt this cannot be achieved without being abreast of latest developments in regulatory, tax, customs and trade laws space, which maintain pace just as rapid as the change in global trade horizon.

The 49th GST Council Meeting was held on 18th February 2023, where several important decisions were taken. The Council decided to clear the entire pending balance GST compensation of Rs. 16982 crores for June 2022. The Council has also approved the report of Group of Ministers for an establishment of the GSTAT with certain modifications. The Amnesty schemes in respect of pending returns in FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 by way of conditional waiver/ reduction of late fee was also proposed. Amendments have been made in Section 30 and 62 of the CGST Act, to increase the time limit for making an application for revocation of cancellation of registration and the time limit for filing a return for enabling deemed withdrawal of best judgment assessment order.

The Council has also rationalized the late fee for delayed filing of the annual return from FY 2022-2023 for registered persons having an aggregate turnover of up to Rs. 5 crores and those having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores in the said financial year.

In line with all the economic development, in the past month the Judiciary, has delivered some spectacular judgements in the tax sphere, which had been deliberated upon for a long-long time. Be it the ruling of that directs incorporation of protective measures for appeals/application in absence of GST Tribunal or following the Delhi HC Blackstone ruling to extend DTAA benefit on capital gains in Direct Tax.

Speaking of regulatory developments, MCA is now allowing the physical filing of forms GNL-2, MGT-14, SH-8, SH-9 & SH-11 . Overall, the MCA's decision to allow physical filing of these forms is a welcome step

towards facilitating ease of doing business in India and ensuring that regulatory compliance is not unduly burdensome for businesses and professionals.

The Customs law too witnessed improvements on Amendment in Para 4.42 of the Handbook of Procedures 2015-2020 for the implementation of PRC decisions. The DGFT has also provided the circular about re-opening of MEIS/SEIS applications pending at Regional Authorities.

As these developments make their way to headlines and board rooms, we at **TIOL**, in association with **Taxcraft Advisors LLP**, **GST Legal Services LLP** and **VMGG & Associates**, are glad to publish the 19th edition of its exclusive monthly magazine '**VISION 360**'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

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

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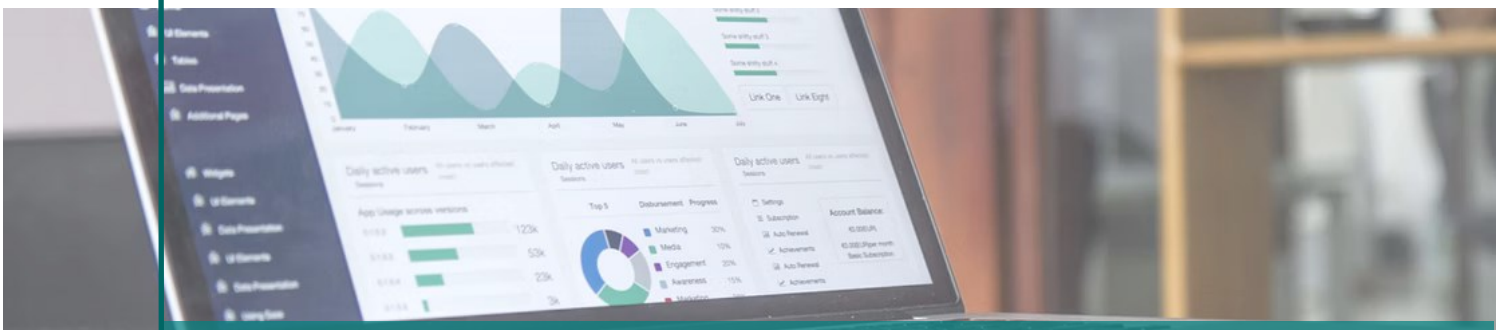

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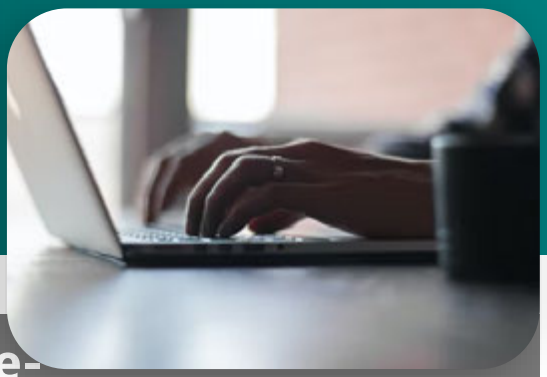
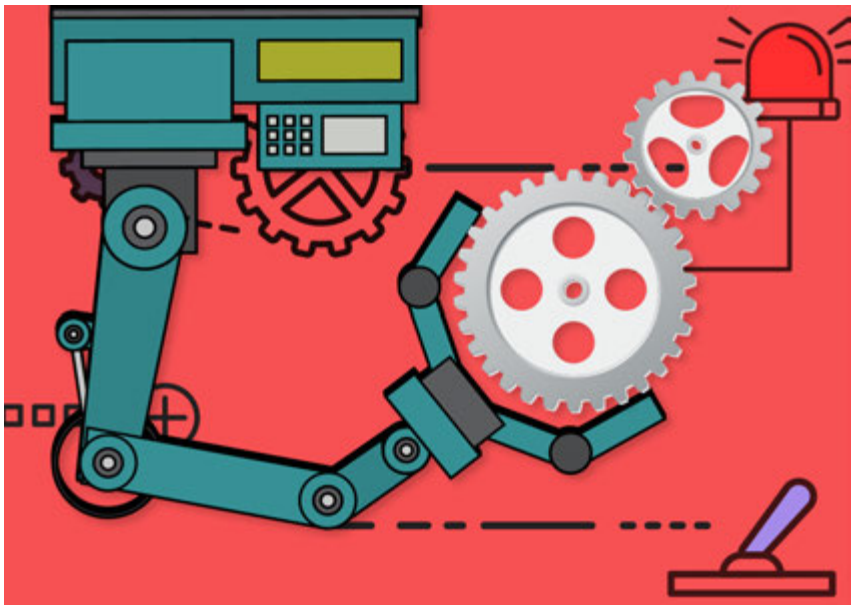


Production-Linked Incentive scheme- A Enabler or A Deterrent

The Production-Linked Incentive (PLI) scheme is a significant step towards achieving the goal of a self-reliant and economically strong India. By offering incentives to both foreign and domestic manufacturers, the scheme aims to boost the manufacturing sector and generate employment in the country. The inclusion of multiple sectors under the PLI scheme is a positive development as it shows the Government of India (GOI)'s commitment to promoting the growth of various industries. The focus on domestic industries is essential to reduce the country's reliance on imports and promote self-sufficiency. By providing incentives to local manufacturers, the GOI is encouraging them to expand their production capacity and become more competitive in the global market. It will also help to reduce the trade deficit and increase the country's exports. It can also attract foreign investment and improve the ease of doing business in India.

The budget 2021-22 for India is aimed at achieving a USD 5 trillion economy, and the manufacturing sector is expected to play a crucial role in this growth. The budget emphasizes the need for the manufacturing sector to grow in double digits on a sustained basis and to become an integral part of global supply chains.

Production-Linked Incentives- Modus Operandi



Production-linked incentives (PLIs) are aimed at boosting domestic manufacturing and investment in select sectors by offering financial incentives to companies that meet specific production and investment targets. The incentives can take many forms, including cash grants, tax breaks, and interest subsidies. The goal is to encourage companies to invest in new technologies and processes that will help them become more efficient and competitive, and ultimately lead to greater economic growth and job creation. The specific sectors targeted for PLIs can vary depending on the priorities of the GOI offering them, but typically include industries like electronics, pharmaceuticals, textiles, and automobiles.

Sectors Covered on Production linked Scheme till now as notified by GOI:

Sectors	Incentive
Mobile manufacturing and specified electronic components	4% to 6% for a period of five years
Manufacturing of medical devices	5% for a period of five years
Critical key starting materials (KSM) 3 / drug intermediaries (DI) and active pharmaceutical ingredients (API)	5% to 20% for a period of six years
White goods (ACs and LEDs)	4% to 6% for a period of five years
Telecom and networking products	4% to 7% for a period of five years
Electronic/technology products	1% to 4% for a period of four years
Pharmaceuticals drugs	3% to 10% for a period of six years
Food products	4% to 10% for a period of six year
Solar PV modules	Based on sales, performance criteria, and local value addition for a period of five years
Advanced chemistry cell (ACC) battery	Based on sales, performance criteria, and local value addition for a period of five years
Textiles Sector	Based on sales, performance criteria, and local value addition for a period of five years
Automotive Industry and drone Industry	Based on sales, performance criteria, and local value addition for a period of five years and three year respectively
Specialty Steel	4% to 12% for a period of five years

Incentives are generally paid as a % on incremental sales , however the calculation are based on terms and conditions mentioned in their respective schemes.

Effective Implementation of Production-Linked Incentives

In addition to these key factors, there are a few other considerations that GOIs should keep in mind when implementing production-linked incentives:

Collaboration with industry stakeholders

To ensure that the PLI program is effective, GOIs should work closely with industry stakeholders to understand their needs and challenges. This can help to ensure that the incentives are designed in a way that is practical and relevant to the industry.

Flexibility

Incentive programs should be flexible enough to adapt to changing market conditions and technological advancements. This may require regular review and revision of the program to ensure that it remains effective over time.

Clarity and simplicity

The incentive program should be easy to understand and access, with clear guidelines and application procedures. This can help to encourage more manufacturers to participate in the program.

Cost-benefit analysis

GOIs should conduct a thorough cost-benefit analysis to ensure that the PLI program is an efficient use of public resources. This analysis should consider both the short-term and long-term costs and benefits of the program.

One of the most anticipated announcements for Budget 2023 was the expansion of the GOI's PLI scheme to newer sectors including toys, leather, renewable energy and a few more. However, there was no mention of the PLI scheme in union Budget.

Overall, the PIL scheme is a milestone step by GOI for making an *"Atma Nirbhar Bharat"*

Semiconductor, IT hardware, medical devices, and drones PLI schemes are turning out to be slow starters due to certain supply chain bottlenecks, unfavourable domestic factors, and insufficient R&D expenditure. We believe that continued government dialogue with industry participants will help bring modifications in the schemes to overcome these challenges and ensure the success of these PLI schemes.

An interesting aspect is that while Indian government is coming up with all these PLI schemes, we need to keep a tab on our WTO commitments as well, as one of the fundamental commitment remains that we shall not unduly subsidize local industry to give them an competitive edge in international market. MEIS [Merchandise Export Incentive Scheme] was one such example where we couldn't hold our stand and had to give up to international pressure. Similarly a careful analysis shall be done to assess which sectors really need PLI scheme support to grow and what is their future potential and contribution as we all have witnessed a sizeable increase in export volumes over last few years. In a recent interaction Hon'ble Commerce Minister indicated an export volume of $750 billion in FY 2023. Therefore PLI scheme shall not simply become an addition to bottom line of companies/sectors which are already performing well. Its success will depend on the effective implementation of the scheme and the continued commitment of the GOI.

The purpose of PLI scheme is to promote new sectors where new age technologies are evolving and companies need a financial support to invest into such products where there is an element of uncertainty is involved. The government needs to carefully craft such schemes and shall have an effective implementation machinery in place which ensures that true purpose of PLI is acheived.

Its success will depend on the effective implementation of the scheme and the continued commitment of the GOI. Currently, PLI schemes are primarily focused on promoting short-term, result-driven industries that can generate quick returns. This is important because capital-intensive industries may take a long time to generate returns, which only foreign funded entities can afford. By focusing on short-term industries, the GOI can boost domestic manufacturing and exports quickly, which can have a positive impact on the country's balance of trade.

Non-Payment of GST by Seller, ITC denied to Buyer - Who's fault?

BACKGROUND

The concept of ITC is a vital component of the GST system, allowing taxpayers to reduce the tax paid on inputs from the tax to be paid on output. To claim ITC, buyers of goods and/or services must meet the requirements outlined in Section 16 of the CGST Act.

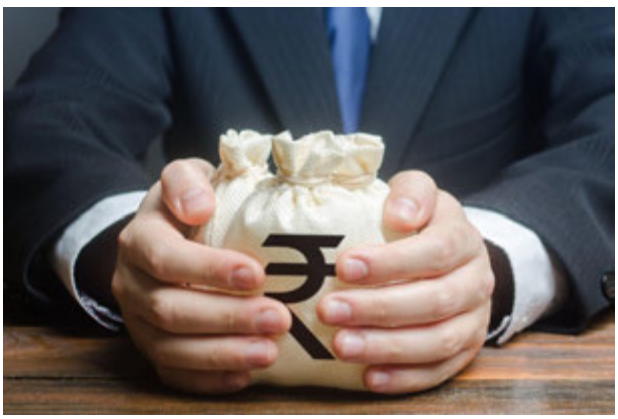
In simpler words, Section 16(2) says, to claim ITC, the buyer should:

- Possess a valid tax invoice/debit note that is issued by the supplier.
- Have received the goods and/or services,
- Ensure that the seller has paid the tax amount to the Government.
- Have furnished the required GST returns.

The question of whether buyers can be denied ITC due to the fault of their suppliers for not paying taxes to the government, even after collecting the tax amount from the buyer, has become a contentious issue in the GST regime. Section 16(2)(c) of the CGST Act stipulates that a recipient of goods and services can claim ITC only if the supplier has deposited the tax to the government. This has led to confusion and uncertainty among taxpayers, especially in cases where the purchaser has no knowledge or control over the non-payment of taxes by preceding sellers.

PROVISION DON'T RESTRICT CLAIMING ITC

It is very simple and precise to understand that GST is a tax levied on the occurrence of a 'supply'. Any supplier who makes taxable supplies is required to pay GST to the government, with the exception of RCM cases. As per the above section, the government allowed the purchasers to avail ITC, provided he should be ensuring that the said payment has been deposited to the Government by the Supplier. Normally, it is the responsibility of the supplier to recover the tax paid. However, the amended Rule 36(4) of the CGST Rules, 2017 specifies that a registered person can only avail ITC in respect of invoices or debit notes for which the supplier has uploaded the details under sub-section (1) of section 37. If the details of the invoices or debit notes have not been uploaded by the suppliers, the registered person cannot claim ITC exceeding 10% of the eligible credit available in respect of invoices or debit notes for which the details have been uploaded by the suppliers.



The Latin maxim *'Impossibilum nulla obligntо est'* encapsulates the idea that nobody can be obliged to perform what he cannot perform.

JUDICAL VIEW

Hence from the above provision it is clear that the buyer can claim the ITC even if suppliers have not paid the liability. However, to further complicate matters, the issue of claiming ITC in case of non-payment of taxes by the supplier is still a matter of debate and interpretation. Despite the decisions of various courts in favour of the buyer, the recent ruling of the Punjab AAR in the case of **Vimal Alloys Private Limited [Order No. AAR/GST/PB/31]** has taken a different stance. The AAR held that a buyer cannot claim ITC on purchases even if the preceding seller has not paid their liability under the Act. This ruling has now caused confusion and uncertainty among taxpayers, especially in cases where the purchaser has no knowledge or control over the non-payment of taxes by preceding sellers.

However, there have been cases where buyers have appealed to the court regarding situations where they are not at fault. In the case of **Sri Ranganathar Valves Private Limited vs AC [W.P.Nos.38488 to 38493 of 2015 dated 02.09.2020]** , the Madras High Court ruled that the purchaser cannot be denied ITC if the seller has not paid the tax to the government. The court referred to a previous case and held that if the purchaser can provide evidence that they have paid the due tax to the seller and the seller has issued proper invoices, they are entitled to the ITC.

The Courts have taken similar stands in others judgements like the **Assistant Commissioner (CT), vs. Infiniti Wholesale Limited [(2017) 99 VST 341 (Mad)],** wherein it was held that if the purchaser can provide evidence that they have paid the due tax to the seller and the seller has issued proper invoices, they are entitled to the ITC. Noting it to be a great matter of interpretation the Delhi High Court the in the case of **Bharti Telemedia Limited [W.P. (C) 6293/2019]** while issuing the notices to the Centre ruled that ITC cannot be denied to the recipient for default on part of the supplier.

In fact, during the VAT regime, various High Courts and Apex courts have held that if the seller has not paid the tax, credit cannot be denied to the buyer especially in cases where the transaction is genuine, without the intention to deceive.In **RE: Arise India Limited [2018-TIOL-11-SC-VAT],** it was held that denial of ITC should be restricted to only those selling dealer who have been failed to deposit the taxes to the Government. It was believed by the Apex Court that failure to distinguish between bona fide and non-bona fide purchasing, the dealer would be hit by Article 14 of the Constitution.

CONCLUSION

The benefit of ITC cannot be denied to a bona fide recipient on account of default of the supplier, over whom the recipient does not have any control, in paying tax to the Government after having collected the same from the recipient. The Latin maxim '*Impossibilum nulla obligntо est*' encapsulates the idea that nobody can be obliged to perform what he cannot perform. The onus that section 16(2)(c) puts on the buyer is nearly impossible to perform. If the buyer has acted bona fide, and the buyer has paid the tax to the seller, such buyer should be absolved of his responsibilities to ensure that the tax has been paid to the Government

Despite the decisions of various courts in favor of the buyer, the recent ruling of the Punjab AAR has caused confusion and uncertainty among taxpayers. It is clear that the issue requires further clarity and guidance from the authorities. It remains to be seen whether the revenue interpretation of denying the credit will continue to prevail in such cases or if the judiciary will take a different approach in the future.

INDUSTRY PERSPECTIVE

Mr. Ramil Gupta

General Manager – Finance,
India Grid Trust

01 The Hon'ble Finance Minister proposed a push in the green energy sector during the Budget. The Government is making constant efforts to reduce carbon emissions and prioritize renewable energy. What are your views on Union Budget 2023-24 from power sector viewpoint?

The Government's budget allocation of INR 35,000 Crores of priority capital investment towards achieving net zero emission by 2070 re-affirms its commitment to foster growth of green energy in India and transition to clean energy while ensuring energy security. Implementation of numerous initiatives to increase energy efficiency and lower carbon intensity fosters renewable energy section growth in the nation.

As numerous studies suggest that India is likely to be the third largest energy consumer by 2030, it drastically increases impetus on the green growth initiative. The Government is putting in efforts to replace the usage of fossil fuels by industries like steel manufacturing, transport, shipping etc. and has launched the National Green Hydrogen Mission which would play an important role in clean energy transmission. The Government policies intend to reduce the country's carbon emissions and develop green jobs. Overall, the Government has taken various initiatives to promote sustainable energy growth in India which should invariably result into better allocation of resources and sustainable environment.

02 The Ministry of Power had issued guidelines for procurement and utilization of BESS last year. BESS seems to be a new and interesting concept in India. Can you explain this new concept to our readers?

The power generation from renewable energy sources happen during the low demand period results into demand-supply mismatch. BESS is one such option to address the demand-supply mismatch in energy where the excess electricity produced is stored in BESS and can be utilized in case of shortfall in energy availability. While the BESS technology is new in India, it has been successfully implemented in many of the developed countries which face similar challenges. Recently, tenders for setting-up of BESS have been

Mr. Ramil Gupta
General Manager – Finance, India Grid Trust

floated in India and we may see exponential growth in future when the cost of setting up BESS is reduced to a certain extent. While majority of the BESS projects are in pipeline, Niti Ayog Report on 'Energy Storage System Roadmap for India: 2019-2032' has estimated that India will have installed capacity of 33 GWh of BESS by 2032.

Currently, there are no exemptions for BESS operations under GST or Income Tax. There is an industry-wide demand that the regulators ought to provide certain exemptions under Income Tax or GST to promote setting-up of BESS and make the operations more viable. Further, the consideration/clarity is required on multiple aspects such as classification of BESS services under GST, coverage of BESS under project import scheme, etc.

03 The Government had extended the benefit of lower tax regime under Section 115BAB to power generation companies with the sunset clause. What are your views on the same?

The Government had categorised power sector as manufacturing sector for extending the benefit of concessional Income Tax rate under Section 115BAB. The lower corporate tax rate was always an ask of the foreign institutional investors looking to invest in India's power sector. However, one of the key aspects to note here is that this benefit is available as substitution for other tax benefits such as Section 80IA and additional depreciation benefits. Therefore, thorough cost-benefit analysis of the said provision before opting to avail benefit under Section 115BAB is pertinent.

The Government had extended the sunset clause from 2023 to 2024 considering the fact that implementation of certain projects was delayed due COVID-19 disruptions along with non-readiness of power evacuation infrastructure.

Mr. Ramil Gupta
General Manager – Finance, India Grid Trust

04 In line with the objective of Digital India, 'Faceless Assessment' scheme has been introduced in Income tax. Whether there is a need to introduce similar mechanism in Indirect Tax regime as well?

Introduction of faceless assessment scheme is undoubtably a major step towards digitalization, as it aims to provide greater transparency, efficiency and accountability in Income Tax assessments. The introduction of Faceless Assessment before IT Tribunals, Dispute Resolution Scheme and prescribing a time -limit for past matters shows the intent of Government to adjudicate the litigation matters in a timely and speedy manner. Further, the Government has been getting numerous requests to introduce faceless assessments and faceless appeals in the Indirect Tax Regime as well so that taxpayers interaction with the officials could be reduced. However, I believe appellate proceedings under GST are lagging behind and the Authorities will have to put in extra efforts to set-up GST Tribunal and implement similar faceless assessment scheme.

What are your views on Production Linked Incentive scheme for renewable energy?

The PLI Scheme for high efficiency solar PV modules and advance chemistry cell battery was introduced to enhance India's manufacturing capabilities in the field of renewable energy and enhance exports. To ensure energy security and reduce reliance on imports, the Government is focusing on building the entire value chain through PLI schemes. The PLI scheme has a capital allocation only for high-efficiency solar modules, advance chemistry cell battery, etc. Representations have been filed before the Government to extend the scheme to electrolysers to reduce green hydrogen production costs. Moreover, the government has removed BCD exemptions on imported solar cells and modules to give domestic manufacturing a boost.

06 Tax incentives given to renewable energy sector are being phased out. What are your views on it?

While the Government had provided tax incentives to encourage growth of renewable sector in the country during its initial stages of growth, the Government has now, however, stopped such schemes as the sector is becoming self-reliant. The renewable energy sector is witnessing significant developments owing technological innovations, availability of capital at competitive prices and reduction in cost through value re-engineering and is at a cusp of self-sustainability. The Government being aware of this, has discontinue tax incentives schemes and is more focused providing stable environment policy. Nonetheless, support small scale renewable projects would still expect certain fiscal incentives from the Government.

ITAT holds assessment on GSK, post-amalgamation with HUL, illegal, follows Maruti ruling over Mahagun

Hindustan Unilever Ltd.

ITA Nos. 1860 & 2125/MUM/2022

The NCLT had approved a scheme of amalgamation effecting absorption of Glaxo SmithKline Consumer ('GSK') into Hindustan Unilever Ltd ('HUL') with effect from April 1, 2020 which was intimated to concerned Revenue authorities and they were also requested to address all future communications with regard to the Assessee to HUL (as successor of GSK). For AY 2017-18, the Revenue passed an order under Section 143(3) of the IT Act read with Section 144C of the IT Act, assessing the total income in the name of GSK. Likewise, the assessment for AY 2018-19 was also framed assessing the total income in the name of GSK despite DRP's directions issued in the name of HUL (as successor of GSK).

Aggrieved, HUL (as successor of GSK) approached the ITAT which noted that at each and every stage the Assessee had intimated to the respective authorities that it was no more in existence with effect from April 1, 2020 and HUL was the legal successor of the Assessee. However, despite this the orders had been passed in the name of GSK which was a non-existing entity as on the date of passing of the assessment orders. Before the ITAT, the Revenue contended that the assessment proceedings were initiated in the name and PAN of GSK, an existing company at that time, by service of notice under Section 143(2) of the IT Act and also that no documentary evidence along with the intimation of merger were submitted to the National e-Assessment Centre, Delhi. Further, the Revenue also contended that the DRP directions were passed in the name of HUL only because the objections in Form 35A were filed in the name of HUL and placed reliance on the SC ruling in **Mahagun Realtors [2022-TIOL-32-SC-IT]** contending that the facts of the case were identical to the present case.

Rejecting the Revenue's submission that the assessment proceedings were initiated in the name and PAN of GSK, an existing company at that time, by service of notice under Section 143(2) of the IT Act and also that no documentary evidence along with the intimation of merger were submitted to the National e-Assessment Centre, Delhi and also disagreeing with the Revenue that the DRP directions were passed in the name of HUL only because the objections in Form 35A were filed in the name of HUL, finding this contention to support the case of the Assessee, the ITAT observed that if this contention was to be believed, then the DRP passed the direction not based on the assessment records and transfer pricing records but on the names mentioned in form number 35A filed by the Assessee.

Further, rejecting the Revenue's reliance on SC ruling in **Mahagun Realtors [2022-TIOL-32-SC-IT]** by finding that the Revenue could not point out anything to suggest that the facts before SC were similar or identical to the facts of the present case and observing that the facts of the present case were almost similar to the SC ruling in **Maruti Suzuki[2019-TIOL-56-SC-IT]**, the ITAT quashed the assessment orders passed in the name of GSK instead of HUL by holding them to be illegal and invalid for being passed on a non-existent entity and allowed the appeal of HUL.

ITAT rules on revenue recognition for builder & developer, applicability of AS-7

Corporate Leisure & Property Development Private Limited

ITA No.1006/BANG/2022

The Assessee was a company engaged in the business of real estate development and construction of residential apartments that had filed its return of income for AY 2014-15 declaring 'Nil' income as per project completion method where revenue was recognized based on transfer of risk and reward of ownership of the flats/units to the purchasers. The case of the Assessee was selected under CASS for scrutiny assessment. During the course of assessment proceedings, the AO rejected the project completion method under Accounting Standards-9 ('AS-9') (Revenue Recognition) and recognized the Assessee's net profit by adopting percentage of completion method under Accounting Standards-7 ('AS-7') (Construction Contracts).

The above view was upheld by the CIT(A) which caused the Assessee to approach the ITAT contending that it was not a builder but merely a developer and accordingly not required to comply with AS-7 (Construction Contracts). Further, the Assessee contended that the revenue had been recognized in accordance with AS-9 (Revenue Recognition) by adopting project completion method which was permitted in law for prior and subsequent years and a change in the method would lead to double taxation. Noting that the Revenue had not contradicted the Assessee's method in the assessment proceedings pertaining to previous as well as subsequent AY's and the said assessments were completed without making any adjustment to the profits from sale proceeds of flats owing to change in the method, the ITAT observed that the year under consideration i.e., AY 2014-15 was the first year wherein the Revenue had resorted to adoption of percentage of completion method without any basis and such approach was contrary to doctrine of consistency.

Further, placing reliance on the jurisdictional HC ruling in **Banjara Developers [2020-TIOL-1309-HC-KAR-IT],** the ITAT observed that it was impermissible for the Revenue to modify the method of accounting for revenue recognition where change in method was revenue neutral and that Section 145(2) of the IT Act

had been amended with effect from April 01, 2015 to substitute 'Accounting Standards' with ICDS and ICDS-III dealing with construction contract was not applicable to the Assessee and that there was no standard for development projects.

Thus, holding that the Revenue erred in adopting percentage of completion method for the revenue recognition in computing the income from business and accordingly, directing the Revenue to continue with the method of project completion, duly followed by the Assessee and accept the net profits reported by it in the computation of income, the ITAT allowed the Assessee's appeal.

ITAT follows Delhi HC Blackstone ruling to extend DTAA benefit on capital gains, rejects GAAR

Reverse Age Health Services Pte Ltd

ITA No.1867/Del/2022

The Assessee was a Singapore based company that had claimed short term capital gains of INR 1.92 Crores arising out of sale of shares which were not taxable for AY 2018-19 by virtue of Article 13 of India-Singapore DTAA. Thereby, the Assessee had claimed refund of the entire TDS on the receipt of subject transactions.

The AO/ DRP denied the benefit under Article 13 (4A) of the India – Singapore DTAA on the ground that the Assessee had no economic substance or commercial substance and that it was a "shell" or a "conduit" company. For this purpose, Article 3 (1) of the 2005 protocol to the India- Singapore DTAA was invoked (which is now incorporated as Article 24A (1) of the India- Singapore DTAA) and, therefore, short term capital gain of INR 1.92 Crores was held to be taxable in India in the hands of the Assessee.

Aggrieved, the Assessee approached the ITAT which noting that the Revenue completely ignored Assessee's tax residency certificate issued by Singapore Tax Authority, tax assessments carried out in Singapore and the financial statements for 3 years i.e., 2016, 2017 and 2018, while denying the benefit under India-Singapore DTAA, observed that the two shareholders of the Assessee were also residents of Singapore as per the tax residency certificate and in light of the SC ruling in Azadi Bachao Andolan [2003-TIOL-13-SC-IT], Section 90(2) of the IT Act allowed the provisions of a DTAA to supersede the provisions of the Income Tax Act in case the application of the former was more beneficial.

Further, the ITAT observed that the Assessee could not be termed as a shell or conduit company since the veracity of the expenditure incurred by the Assessee in Singapore was a subject matter of tax scrutiny in Singapore and the same was found to be genuine by the Singapore Tax Authorities as per the tax assessment orders.

Thus, holding the Assessee to be eligible for tax benefit under Article 13 of India-Singapore DTAA by placing reliance on the jurisdictional HC ruling in **Blackstone Capital Partners [2023-TII-04-HC-DEL-INTL]** wherein it was held that the Revenue could not go behind the tax residency certificate which was sufficient evidence for claiming eligibility for DTAA benefit, residency and beneficial ownership and

also holding that the treaty benefit could not be denied to the Assessee even if the domestic GAAR provisions were applied as the transaction took place prior to the cut-off date of April 1, 2017 and the short term capital was less than the threshold of INR 3 Crores, the ITAT directed the Revenue to delete the addition of short term capital gain and to allow the benefit of Article 13 of India-Singapore DTAA to the Assessee.

The SC allowing the Assessee's appeal, directed the Appellant to be given benefit of the amounts deposited towards first two instalments while reckoning the tax liability of the Appellant after revised assessment, accordingly, disposing of the appeal.

DIRECT TAX
From the Legislature

CIRCULARS

Corrigendum to the Explanatory Notes to Finance Act 2022 issued by CBDT

Circular No. 2/2023 dated

February 06, 2023

CBDT issues a Corrigendum to the Explanatory Notes to the Finance Act 2022 making any person ineligible to furnish an updated return under sub-section (8A) of Section 139 of the IT Act if a notice has been issued to the effect that any books of account or documents, seized or requisitioned under Section 132 or Section 132A of the IT Act in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person, for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made in any assessment year preceding such assessment year instead of the earlier prescribed two assessment years preceding such assessment year.

NOTIFICATIONS

CBDT notifies Scheme for Centralized Processing of Equalization Levy Statements

Notification No. 3/2023

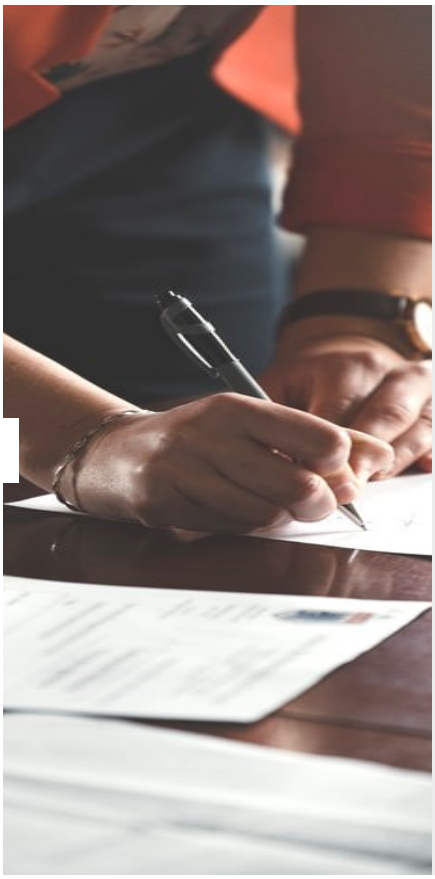
dated February 07, 2023

CBDT notifies 'Centralized Processing of Equalization Levy Statement Scheme, 2023' which requires every Assessee or e-commerce operator to furnish the Equalization Levy Statement under Section 167(1) of the Finance Act, 2016 within the time stipulated under Rule 5(2) of Equalization Levy Rules, 2016.

Further, the Scheme provides that an Assessee or e-commerce operator may:

- furnish the statement or a revised statement at any time before the expiry of two years from the end of the financial year in which the specified services was provided or e-commerce supply or services was made or provided or facilitated.
- furnish a Statement in response to notice sent by the AO under Section 167(3) of the IT Act in accordance with Rule 6 of the IT Rules.

The Scheme also provides for the manner in which the Statement is required to be processed and also the cases where the CIT (CPC) may declare a Statement as invalid.



CBDT notifies ITRs for AY 2023-24

Notification No. 4/2023 dated February 10, 2023 &

Notification No. 5/2023 dated February 14, 2023

CBDT notifies ITR-1 SAHAJ, ITR-2, ITR-3, ITR-4 SUGAM, ITR-5, ITR-6, ITR-7, ITR-V and ITR Acknowledgement for AY 2023-24 well in advance for smoothening compliances. The old ITRs have undergone changes in the light of various statutory amendments such as:

- Except for ITR-1 and ITR-4, disclosure with respect to income from Virtual Digital Assets (VDA) is sought in new Schedule VDA.
- ITRs 2 and 3 require SEBI registration number if the Assessee is an FII or FPI.
- Donation Reference Number is to be provided while claiming 80G deduction in respect of donations entitled for 50% deduction subject to qualifying limit, in ITRs 2, 3 and 5.
- ITR-7 undergoes a slew of changes with introduction of new schedules.

CBDT notifies new audit reports for Charitable or Religious Trusts, Education Institutions, Universities etc.

Notification No. 7/2023

February 21, 2023

CBDT notifies new Form 10B and 10BB by amending Rules 16CC and 17B of the IT Rules. The new rules and forms come into effect from April 1, 2023.

Form 10B is the audit report for fund or institution or trust or any university or other educational institution or any hospital or other medical institution as required under clause (b) of tenth proviso to Section 10(23C) where during the previous year:

- total income without giving effect to the provisions of Section 10(23C)(iv), (v), (vi) and (via) exceeds INR 5 Crores, or
- any foreign contribution is received, or
- part of income is applied outside India.

Form 10B also applies to trust or institution required to furnish audit report under Section 12A (1)(b)(ii) of the IT Act where during the previous year any of the above criteria is met. In all other cases, the audit report is required to be furnished in Form 10BB.

CBDT issues corrigendum to recently notified ITRs for AY 2023-24

Notification No. 8/2023

February 28, 2023

CBDT issues corrigendum to ITR Forms notified for AY 2023-24 by which it has inter-alia implemented the following changes:

- Schedule CG in ITR-2, ITR-3, ITR-5 and ITR-6 has been amended to allow disclosure of amount deemed as STCG/ LTCG (for disclosure of unutilised capital gains amount deposited in Capital Gains Accounts Scheme) on transfer of asset in the Previous Year 2018-19.
- A separate row for disclosure of expense incurred in relation to income chargeable under Section 115BBH (VDA taxation) has been added in Schedule BP of ITR 3, ITR 5 and ITR 6 which was omitted in the earlier notified forms.
- Details of TDS as per Form 16E (TDS on income from Virtual Digital Assets) is now required to be provided in Schedule TDS of ITR 5 and ITR 6.

TRANSFER PRICING
From the Judiciary

ITAT sets aside final assessment order holding it void ab initio, draft assessment order passed in name of merged, non-existent entity, Follows precedent

India Medtronic Private Limited

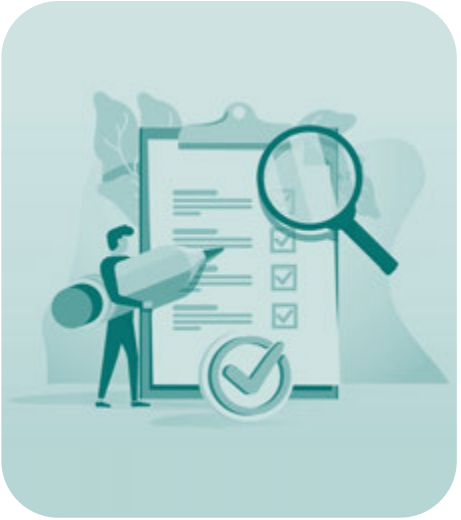
2023-TII-69-ITAT-MUM-TP

The Assessee was a successor to Covidien Healthcare India Private Limited ('CHPL'). CHPL had filed the return for the AY 2014-15 which was selected for scrutiny and notice under Section 143(2) of the IT Act was issued to CHPL. During the assessment proceeding, reference was made to the TPO and before the order of the TPO could be passed, the amalgamation of CHPL with the Assessee was approved by NCLT. Subsequently, the TPO passed an order under Section 92CA (3) of the IT Act in the name of CHPL. Thereafter, a draft assessment order was passed in the name of CHPL by the AO.

Objections were filed before DRP against the draft assessment order by the Assessee as successor to CHPL. The DRP issued directions under Section 144C (5) of the IT Act leading to the passing of the final assessment order, in the name of the Assessee as successor to CHPL. Aggrieved by the final assessment order, the Assessee approached the ITAT contending that the draft assessment order was passed in the name of an entity which was not in existence as on the date of passing the draft assessment order. Further, both the TPO and AO were made privy regarding the merger of such entity with another entity, hence the final assessment was null and void and thus, liable to be quashed given that the entire proceedings were based on invalid TP and draft assessment order.

The ITAT placing reliance on the ITAT ruling in the **Fedex Express Transportation and Supply Chain Services (India) Private Limited[2020-TII-200-ITAT-MUM-TP]** observed that if TP order under Section 92CA (3) of the IT Act was passed in the name of amalgamating company, the AO did not have the jurisdiction to pass the draft assessment order. Relying on plethora of coordinate bench rulings, the ITAT held that such draft assessment order passed in the name of a non-existent entity was illegal and bad in law. Thus, setting aside the final assessment order, the ITAT held that the draft assessment order passed in the name of non-existent entity was *void-ab-initio* making all subsequent proceedings non-est in the eyes of law.

ITAT quashes TP adjustment, final assessment order passed without incorporating DRP's directions



Tata Power Solar Systems Ltd.

IT(TP)A No.709/Bang/2017

The Assessee was a manufacturer of solar cells photovoltaic module and systems. During the year under consideration, the Assessee had entered into certain international transactions with its AEs and had filed its return of income. The Assessee had applied cost plus method being

the MAM for benchmarking using gross profit by direct and indirect cost as PLI and accordingly, concluded the transactions to be at arm's length. The case was selected for scrutiny and statutory notices were duly served on the Assessee. Since the Assessee had international transactions, a reference was made to the TPO who rejected the method adopted by the Assessee and accordingly made a TP adjustment. The AO passed the draft assessment order including the TP adjustment. The Assessee filed its objections before the DRP which issued directions directing the TPO/AO to rework the transfer pricing adjustment with respect to international transactions and the final assessment order came to be passed by the AO.

Aggrieved by the final assessment order, the Assessee approached the ITAT contending that the final assessment order was not in accordance with DRP directions and thus, liable to be quashed. Noting that the AO in the final assessment order retained the original TP adjustment made by the TPO without considering DRP's aforesaid directions, the ITAT quashing the TP adjustment and the final assessment order passed without incorporating DRP's directions, partly allowed the appeal of the Assessee and remitted the matter back to the AO to consider the same on merits, after giving reasonable opportunity of being heard to the Assessee.

ITAT holds TP-adjustment could not be added to MAT book profits, rejects use of multiple-year data in TP analysis for benchmarking international transactions

Normura Research Institute Financial Technologies India Private Limited

ITA No.204/Kol/2017

The Assessee was in the business of rendering software development services. During the year under consideration, the Assessee had rendered software development and software services to its AEs. As the Assessee had entered into international transactions, a reference was made to the TPO who made a disallowance for the purpose of computation of income under Section 115JB of the IT Act and rejected multiple years data used by the Assessee in its TP Analysis to benchmark the international transactions for arriving at ALP and the AO added back the disallowance made by the TPO in the computation of the book profits and passed the draft assessment order.

Aggrieved, the Assessee approached the DRP which upheld the order of the AO and accordingly, the final assessment order was passed, aggrieved by which the Assessee approached the ITAT contending that that adjustment made to ALP of international transaction could not be added back in the computation of book profits under Section 115JB of the IT Act and that the Authorities had erred in rejecting the use of multiple year data for benchmarking of its international transactions.

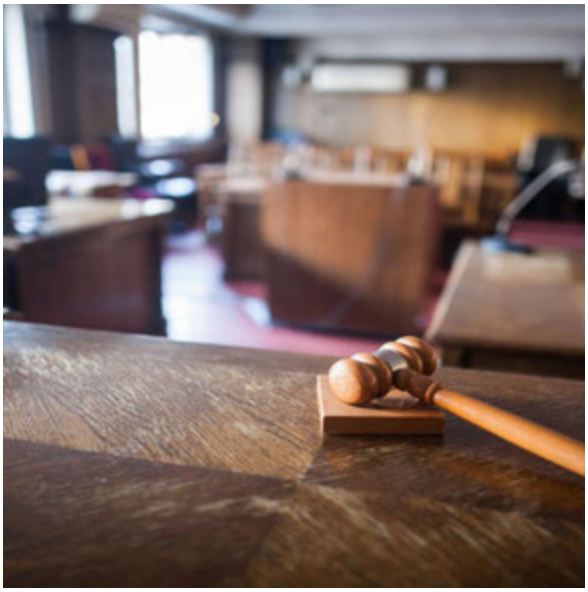
Placing reliance on the Assessee's own case in previous years and observing that the adjustment made to ALP of international transaction could not be added back in the computation of book profits under Section 115JB of the IT Act, however, rejecting the use of multiple years data for benchmarking international transactions in TP analysis for arriving at ALP, the ITAT partly allowed the Assessee's appeal.

GOODS & SERVICES TAX
From the Judiciary

HC directs incorporation of protective measures for appeals/application in absence of GST Tribunal

Gulf Oil Lubricants India Limited

2023-TIOL-253-HC-MUM-GST



The Petitioner had been subjected to a Show Cause Notice, which had been confirmed by the Respondent in the Order. Aggrieved, the Petitioner had preferred an Appeal before the Appellate Authority, which came to be rejected. Given the non-formation of the GST Appellate Tribunal, the Petitioner challenged the order passed before the Bombay HC.

The Bombay HC observed that as per Circular No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated May 26, 2020, the time to file appeals/application to the Appellate Tribunal would be counted from the date the President or the State President enters the office. Further, a declaration has to be filed before the Respondent stating that an appeal is proposed to be filed and if such declaration is not filed, then it would be presumed that the assessee is not willing to file an appeal and recovery proceedings would be initiated.

Thus, it was held that there is no prejudice to the Petitioner or any similarly situated assessee on the ground of the non-availability of the State GST Tribunal. It was further noted that the prescribed time limit had been extended and protective orders are incorporated in Clause 5 of the Circular. Accordingly, the HC directed the Respondent to incorporate a stipulation contained in Clause 4.3 and Clause 5 of the Circular in the OIO and to give 15 days' period to the Petitioner to make such a declaration.

AUTHORS' NOTES :

Even after 6 years' of GST implementation, the GST Appellate Tribunal is yet to be constituted. The decision on the formation of GSTAT was expected to be announced in the Budget '23, however, no such announcement had been made. Further, in the 49th GST Council Meeting, the report of the GOM had been accepted. Accordingly, the decision is now accepted to be announced shortly.

HC allows rectification of GST Return filed in wrong category

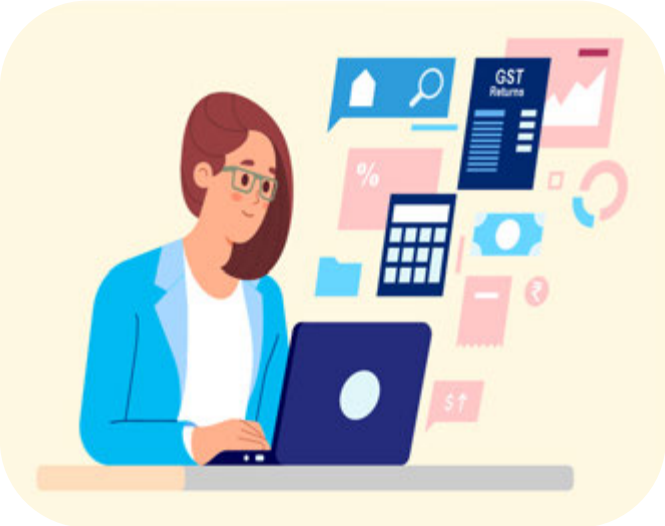
M/s Y.B. Constructions Private Limited

2023-VIL-138-ORI

The Petitioner had erred in filing its GST Returns for the periods 2017-18 and 2018-19. Accordingly, the Petitioner had sought permission to rectify the error in the GST Returns. However, the Revenue Department

stated that rectification of the forms was not permitted beyond the due date and hence no further indulgence would be granted to the Petitioner. Aggrieved, the Petitioner preferred a Writ before the Orrisa HC.

The HC observed that allowing the Petitioner to rectify the mistake will not cause any loss to the Revenue as there will be no escapement of tax, however, denying the request will prejudice the Petitioner, who is entitled to receive the ITC benefit. Accordingly, relying upon the judgment of **Sun Dye Chem vs. [2020-TIOL-1858-HC-MAD-GST]**, the Court granted permission, to resubmit the corrected Form GSTR-1.



AUTHORS' NOTES :

Amendment of GST Return has been a long-standing issue since the inception of GST. However, the Courts on various occasions have allowed the revision / amendment of GST Returns. In RE: ***Mahalaxmi Infra Contract Limited [2022-TIOL-1393-HC-JHARKHAND-GST],*** *the Jharkhand HC had allowed the rectification of GSTR-1 holding that such revision does not impact the State Exchequer.*

AAR: Waste retained by the job-worker to be added in taxable value

Aabhushan Jewellers Private Limited

2023-TIOL-27-AAR-GST

The Applicant had received gold from principal on job work basis which was sent it to another job worker for manufacture of jewellery. The Applicant retained 4% gold as waste from principal and allowed 3% waste to its job-worker. Thus, the Applicant had retained 1% gold as waste for manufacturing jewellery from gold. The AAR held that 4% waste allowed to the Applicant exceeds normal waste as per industry practice. Accordingly, 1% gold retained by the Applicant was held to be additional consideration for job work services.

AUTHORS' NOTES :

It would be pertinent to note that in a similar matter in RE: ***Shirdiri Sainath Industries [2020-TIOL-2052-HC-AP-GST],*** *the Andhra Pradesh HC had held that the value of by-products retained by job worker need not be added in value of job-work services. However, in terms of Section 15(1) of the CGST Act, non-monetary consideration is required to be added in taxable value of job work services.*

HC allows refund of unutilized ITC to SEZ unit

Se Forge Limited

2023-TIOL-243-HC-AHM-GST

The Petitioner, an SEZ unit had filed a refund application for unutilized ITC in its electronic credit ledger, arising out of supplies received from DTA suppliers, who had levied IGST. The Petitioner had claimed the refund under the category of 'Export of Goods/Services without payment of tax'. However, the refund application was rejected, and the provisionally sanctioned refund was recovered. The Petitioner challenged this rejection, and the consequent recovery of the provisionally sanctioned refund, before the HC.

The Court referred to its earlier decision in **Britannia Industries Limited [2020-TIOL-1495-HC-AHM-GST],** wherein it was held that SEZ units are entitled to seek the refund of the ITC on goods or services supplied to the SEZ unit. Relying on the said judgement, the Court held that the Petitioner was entitled to the refund of the unutilized ITC u/s. 54(3) of the CGST Act. However, the Petitioner was required to give a specific undertaking, along with the refund application, that the supplier had not claimed any refund. If the supplier had been given the refund, the Petitioner would be responsible for making good the amount. Accordingly, the Court allowed the Petition.

Cancellation of GST registration caused by pandemic induced financial setbacks restored by HC

Rohit Enterprises

2023-TIOL-231-HC-MUM -GST

The Petitioner's GST registration was cancelled by the Revenue Department after it failed to file GST returns due to financial setbacks caused by the pandemic. The Petitioner filed an application for revocation of the cancellation, but it was rejected. The Petitioner once again preferred an appeal against the cancellation, however, the same was rejected on the ground of limitation u/s. 107 of the CGST Act, as it was filed beyond the prescribed period. Aggrieved, the Petitioner preferred a Writ before the Bombay HC.

The HC observed that the right to trade and commerce is a constitutional guarantee that must be enforced, and denying it would defeat the ultimate goal of the GST regime. The court further held that the Petitioner deserves a chance to return to the GST fold and carry on its business in a legitimate manner, and that the issue of limitation would not be a major concern since the cancellation of GST Registration would not adversely affect any right accrued to the state. It was held that the Constitutional Courts cannot ignore the law nor can it override it. Subsequently, the court quashed and set aside the orders suspending and cancelling the GST registration of the petitioner.

HC quashes SCN issued on the same date as intimation pre-notice

M/s Ravi Enterprises

2023-VIL-142-UTR

The Petitioner had been subjected to notice pre-notice in Form GST DRC-01A and Show Cause Notice in Form GST DRC-01 on the same day. Thus, the Petitioner did not get an opportunity to file a reply against the pre-notice. Aggrieved, the Petitioner preferred a Writ before the Uttarakhand HC.

The HC observed that as per Rule 142 of the CGST Rules, the taxable person has the right to respond to an intimation in Form GST DRC-01A by filing a reply in part-B of the said form before issuing a notice u/s. 73. Subsequently, the HC held that the Petitioner was deprived of the right, hence the impugned order was quashed and remitted back to Competent Authority.

AUTHORS' NOTES:

It would be pertinent to note that in a similar matter in RE: ***Bla Projects Private Limited [2022 (62) GSTL 160 (Jhar.)],*** *the Jharkhand HC had quashed the SCN issued by the Department on the same day when the intimation in Form DRC-01A had been issued. It was held that such notice does not fulfil the ingredients of a valid Show Cause Notice.*

Requirement of goodse-way bill cannot be escaped by undervaluing

Radha Fragrance

2023-VIL-105-ALH

The Petitioner had agreed to supply Pan Masala and Chewing Tobacco to two registered dealers of State of Jharkhand. However, the goods in transit from the State of Haryana to Jharkhand were intercepted and detained by the Mobile Squad in Uttar Pradesh. The goods were not carrying E-Way Bill, as the value of the goods were claimed to be below Rs. 50,000. However the Mobile Squad, concluded that the basic value of the cartons being transported was over Rs.7,00,000/- while the value on the tax invoices was declared collectively as Rs.69,600. Accordingly, SCN was issued, which was followed by an order u/s. 129(3) of the CGST Act directing the Petitioner to deposit the IGST along with penalty. Consequently, the Petitioner filed an appeal wherein, which came to be rejected. Aggrieved, the Petitioner preferred a Writ before the Allahabad HC.

The HC observed that the Petitioner did not report any of their 11 transactions on the Web Portal or download an E-Way bill. The HC further emphasised that the purpose of the e-way bill is to record all goods in transit, but it does not allow the Petitioner to undervalue goods to escape attention. The

Petitioner's actions could lead to a parallel economy, and the purpose of the GST would be frustrated. Accordingly the HC held that, the Petitioner had grossly undervalued the Goods to avoid downloading e-way bill and bringing the transaction on record so as to escape payment of due tax. The Court affirmed the decision of the Revenue to detain the goods and impose tax and penalty on the Petitioner for undervaluation of goods. The writ petition was dismissed.

GST taxability of works contract for desilting and dredging in foreshore

Reach Dredging Limited

2023-TIOL-33-AAR-GST

The Applicant had been awarded a work order by the Water Resources Department, Government of Andhra Pradesh for desilting the foreshore of Prakasam Barrage. The Applicant had sought advance ruling on the taxability of works contracts for desilting and dredging in the foreshore of Barrage with dredger and depositing materials in Government lands/path lands for the Water Resources Department of the Government of Andhra Pradesh. The Applicant argued that the service rendered to the Government of Andhra Pradesh would attract 5% GST up to July 17, 2022, and thereafter, the supply would attract 12% GST.

The AAR held that the work qualifies as a 'works contract' which predominantly involves earthwork, constituting more than 75% of the value of the works contract as specified under serial number 3(vii) of Notification No. 39/2017 dated October 13, 2017. It was further held that supply provided by the Applicant to the Water Resource Department of the Government of Andhra Pradesh qualifies as a supply to the State Government. Accordingly, it was held that the supply undertaken by the Applicant for desilting of the foreshore of Prakasam Barrage is a composite supply of works contract involving predominantly earthwork and would be taxable under entry No. 3(vii) of the Notification No. 39/2017, as amended.

AAR: GST exemption for milling of wheat into flour for PDS distribution

Jai Lokenath Flour Mills Private Limited

2023-TIOL-32-AAR-GST

The Applicant had entered into an agreement with the State of West Bengal for the conversion of wheat into atta or fortified atta for distribution by the State Government through the public distribution system. The Applicant had sought an advance ruling on the tax applicable on the value of supply. The AAR ruled that the activities undertaken by the Applicant for milling of wheat into wheat flour, along with fortification, qualify as a composite supply, where the supply of services by way of milling is the principal supply. The AAR further held that the composite supply made by the Applicant is in relation to any function entrusted to a Panchayat under article 243G of the Constitution. The AAR determined that the value of supply shall be the consideration in money as well as non-cash consideration, and the composite supply is eligible for exemption under serial no. 3A of the Notification No. 12/2017 dated June 28 2017, as amended, since the value of goods involved in such composite supply does not exceed 25% of the value of supply.

GOODS & SERVICES TAX
From the Legislature

Sr. No.	Notification / Circular	Summary
1	Advisory dated February 25, 2023	**GSTN issued advisory on opting for payment of tax under forward charge mechanism by GTA** The GSTN has issued an Advisory dated February 25, 2023 for the payment of tax under the forward charge mechanism by Goods Transport Agencies ('GTA'). The Advisory is in accordance with the NN. 03/2022 dated July 13, 2022, which shall give the existing providers of GTA services the option to pay tax under the forward charge mechanism, which can be exercised by submitting Annexure V FORM. Following are the steps for the payment by GTA after login, to submit their option on the portal; Services > User Services > Opting Forward Charge Payment by GTA (Annexure V). The option cannot be withdrawn during the year. The option of Annexure V is available on the portal for the Financial Year 2023-24 until March 15th 2023
2	Circular No. 214/1/2023 – Service Tax dated February 28, 2023	**CBIC clarifies service tax liability issues for the liquidated damaged under declared services** CBIC relying upon Circular No. 178/10/2022-GST dated August 03, 2022 has inter alia clarified that the Service Tax is not chargeable on liquidated damages, which was a 'declared service' under the erstwhile Service Tax regime. It has been further clarified that the activities falling under section 66E(e) are those where a party agrees to refrain from an act, tolerate an act or situation, or do an act, but only if the agreement specifically mentions such activity and there is a flow of consideration for it. The contractual arrangement must have a sufficient nexus between the supply and the consideration. The taxability of such activities will depend on the facts of each case.
3	Notification No. 01/2023 - Central Tax (Rate) Dated February 28, 2023	**Exemption to National Testing Agency for conducting Entrance Exams** The CBIC has amended Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 in order to clarify that conducting of entrance examination for admission to educational institutions by any authority, board or body set up by the Central Government or State Government including National Testing Agency, shall be treated as educational institution.

Sr. No.	Notification / Circular	Summary
		The notification clarifies that any entity set up by the Central or State Government(s) for conducting entrance exams will be treated as an educational institution for the purpose of providing services related to the conduct of entrance exams.
4	Notification No. 02/2023 - Central Tax (Rate) dated February 28, 2023	**Expanding the definition of 'State Legislatures' to include Courts and Tribunals** Notification No. 13/2017 dated June 28, 2017 has been amended to include services provided by Courts and Tribunals under the category of RCM.
5	Notification No. 03/2023 - Central Tax (Rate) dated February 28, 2023	**GST Rates on Jaggery and Pencil Sharpeners** Notification No. 1/2017 – Central Tax (Rate) dated June 28, 2017 has been amended notifying 5% GST rate for Jaggery of all types, including Cane Jaggery, Palmyra Jaggery, Khandsari Sugar, and Rab, pre-packaged and labelled; Further, 12% GST rate has been prescribed for Pencil sharpeners.
6	Notification No. 04/2023 - Central Tax (Rate) dated February 28, 2023	**Exemption to Rab, from pre-packaged and labelled goods** Notification No. 2/2017 – Central Tax (Rate) dated the June 28, 2017 has been amended to exempt Rab, other than pre-packaged and labelled
7	Notification No. 1/2023 - Compensation Cess (Rate) dated February 28, 2023	**Compensation Cess on coal rejects** Notification No. 1/2017 – Compensation Cess (Rate) dated June 28, 2017 has been amended so that exemption benefit covers both coal rejects supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.

CUSTOMS & FTP
From the Judiciary

HC quashes cryptic and non-speaking order

Flextronics India Pvt Ltd Vs Joint Secretary / Director (Drawback)

W.P. Nos. 2351, 2353, 2356 & 2357 of 2023 and W.M.P.Nos.2418, 2422 & 2424 of 2023

The Petitioner had imported mobile phone accessories from China and claimed duty drawback u/s. 74 of the Customs Act. The claim was rejected due to a delay in filing the drawback application. Aggrieved the Petitioner preferred a writ before the Madras HC. However, the Court held that the Petitioner had met all statutory requirements as per the provision and provided adequate reasons for the delay. The HC further noted that the rejection order was cryptic and non-speaking, accordingly the impugned order was quashed, and remanded back for fresh consideration.

Importer responsible for authorized agent's actions

CCE Vs M/S Hindalco Industries Ltd (Foils Division)

The Appellant was penalized for late filing of documents for BOE assessment u/s. 117 of the Customs Act. Aggrieved the Appellant filed an Appeal before the CESTAT. The Appellant argued that the delay was due to their authorized agent, however the Tribunal held that the Appellant is legally responsible for their agent's actions. Subsequently, the Tribunal dismissed the Appeal and upheld the penalty imposed on the Appellant.

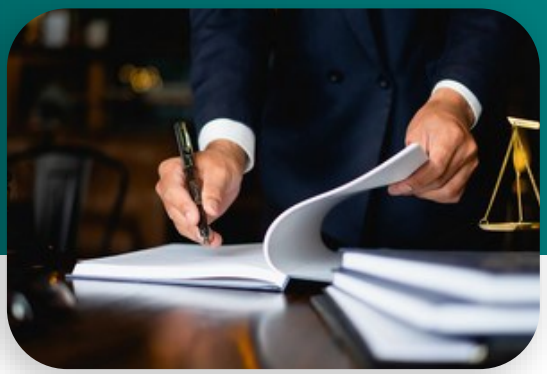
CUSTOMS & FTP
From the Legislature

Sr. No.	Notification/ Circular	Summary
1	Circular No. 05/2023-Customs dated February 21, 2023	**Antecedent verification to be completed within 45 days of receipt of the application** CBIC has issued a circular amending the Circular No. 26/2016 dated June 09, 2016. The circular mandates completion of antecedent verification within 45 days of receipt of the application for licenses under the Public, Private, or Special Warehousing Regulations. The amendment was made in response to unreasonable delays in antecedent verification at certain field formations. The CBIC's decision was influenced by the CAG of India's Performance Audit Report No. 19 of 2022, which observed non-capture of details in several areas related to warehousing licensing and storage of goods in bonded warehouses.
2	Circular No. 04/2023-Customs dated February 21, 2023	**Details of ex-bond BOE / Shipping Bill to be maintained by warehouse licensee** CBIC amends 'Form A' of Circular No. 25/2016 dated June 08, 2016, to include the details of ex-bond BOE or shipping bill for goods removed from warehouse for home consumption or export respectively. The new column titled "Ex. Bond Bill of Entry No. and date/ Shipping Bill No. and date" has been inserted after Column No. 25. This amendment is made to include the additional details in the maintenance of records related to warehoused goods.
3	Policy Circular No. 46/2015-20 dated February 20, 2023	**Re-opening of MEIS/SEIS applications pending at Regional Authorities** The DGFT has issued Policy Circular regarding the processing of all Merchandise Exports from India Scheme ("MEIS") / Service Exports from India Scheme ("SEIS") pending applications at Regional Authorities ("RAs") under Para 3.06 of Hand Book of Procedures ("HBP") 2015-2020. MEIS and SEIS schemes have been discontinued and are on the verge of final closure, the Competent Authority has decided that all pending MEIS/SEIS applications that are deficient may be re-opened and examined on merits/ additional documents submitted by the firms as per extant policy and procedural conditions.

Sr. No.	Notification/ Circular	Summary
		Regional Authorities are advised to provide an opportunity of personal hearing to the applicants before rejecting a case. All transfer requests for applications pending at DGFT HQs are remanded back to the RAs for necessary action as above.
4	Public Notice No. 59/2015-2020 dated February 28, 2023	**Amendment in Para 4.42 of the Handbook of Procedures 2015-2020 for the implementation of PRC decisions** DGFT had amended the Para 4.42 of the Handbook of Procedures 2015-2020 to integrate a uniform and transparent system for implementation of all PRC decisions including previous decisions involving process off levying Composition Fee in case of extension of Export Obligation Period (BOP) and/or regularisation of exports already made under Advance Authorization Scheme, for ease of doing business and reduction of transaction cost. The new sub-para (j) is added, as mentioned below:

CIF Value of AA Licenses Issued	Composition Fee to be Levied
Up to Rs. 2 Crore	25,000/-
More than Rs. 2 Crore to Rs. 10 Crore	50,000/-
Above Rs. 10 Crore	1,00,000/-

REGULATORY
From the Judiciary



NCLT holds CoC cannot extinguish secured creditor's right under "commercial wisdom" garb

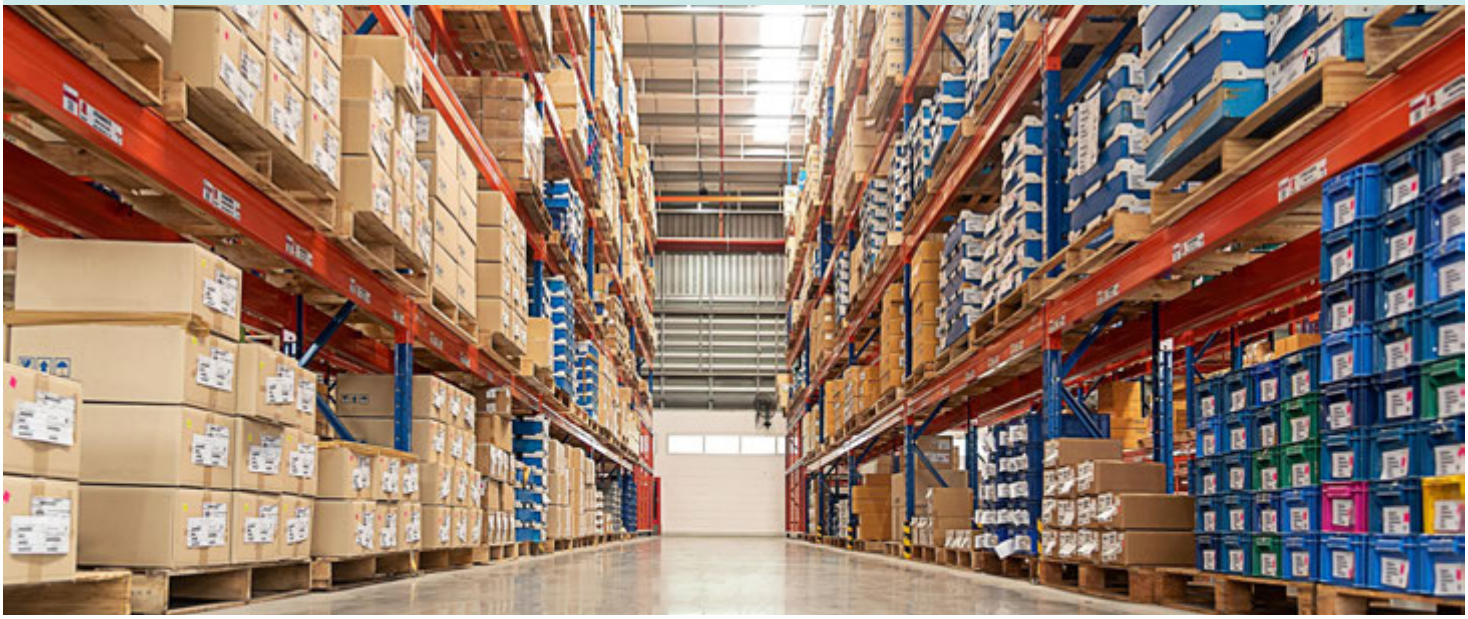
Naveen Kumar Sood & Anr. vs. Ujaas Energy Ltd & Ors

IA/190(MP)2021 & IA/165(MP)2022 in CP(IB) 9 of 2020

In the CIRP of Ujaas Energy Limited ('Corporate Debtor'), the Applicant was appointed as the Resolution Applicant (RP). The Resolution Applicant which was a related party of the Corporate Debtor, submitted a resolution plan, which was approved by CoC.

The same contained a relief to extinguish the personal guarantee given to the lenders on the borrowings of the Corporate Debtor. A portion of the sum under the resolution plan was proposed for release of personal guarantees, in this regard, Bank of Baroda being a member of CoC submitted that the said resolution plan sought extinguishment of liability of personal guarantors of the Corporate Debtor and the Resolution Applicant had proposed extinguishment of personal guarantee on the loan given by them. The other lender banks had agreed to the proposal of the Resolution Applicant made in the resolution plan to extinguish the personal guarantee, however, the Bank of Baroda had objected to the same.

Aggrieved by the objection raised by the Bank of Baroda, the RP filed an application before the NCLT inter-alia seeking the approval of CoC-approved resolution plan that was submitted by the Resolution Applicant. The NCLT observed that a resolution plan without the consent of all the secured financial creditors was not in accordance with the provisions of the IBC and the CoC could only take commercial decisions relating to insolvency of the Corporate Debtor and could not by majority votes enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor of the Corporate Debtor under the garb of its commercial wisdom. Thus, rejecting the application filed by the RP, the NCLT disposed of the matter.



SC dismisses Rana Ayyub's writ challenging summoning order in money-laundering case

Rana Ayyub vs. Directorate of Enforcement

Writ Petition (Criminal) No. 12 of 2023

During the pandemic, Rana Ayyub, ('the Petitioner') initiated a crowdfunding campaign through an online platform named "Ketto". In connection with the same, the Mumbai Office of ED initiated an enquiry against the Petitioner under FEMA. Thereafter, an FIR was lodged against the Petitioner Ghaziabad for alleged offences under various sections of the IPC, Information Technology (Amendment) Act, 2008.

After the Petitioner submitted a detailed response to the Mumbai Office of the ED, the Delhi Office of the ED ('Respondent') registered a complaint in the Court of the Special Judge at Ghaziabad. After the registration of the aforesaid complaint by the Respondent, the Petitioner was summoned to the office of the Respondent and her statement under Section 50 of the PMLA was recorded. Thereafter, a provisional order of attachment of the bank account was passed by the Respondent. Thereafter, the Court of the Special Judge, Ghaziabad, passed an order taking cognizance of the complaint lodged by the Respondent and summoning the Petitioner for appearance. The Petitioner preferred a writ petition before the SC contending that the summoning order lacked territorial jurisdiction.

The SC observed that Navi Mumbai, Maharashtra was a place where only one of the activities listed in Section 3 of PMLA had been carried out and the other activity namely acquisition of the "proceeds of crime" (if they really were) had taken place in the virtual mode with people from different parts of the country/world transferring money online. Therefore, the question of territorial jurisdiction in this case required an enquiry into a question of fact as to the place where the alleged proceeds of crime were (i) concealed or (ii) possessed or (iii) acquired or (iv) used and this question of fact actually depended upon the evidence that would unfold before a Trial Court. Thus, holding that the issue of territorial jurisdiction could not be decided in a writ petition and giving liberty to the Petitioner to raise the issue of territorial jurisdiction before the Trial Court, the SC dismissed the writ petition filed by the Petitioner against the summoning order.

SC holds Company Secretary bound to ensure buyback norms compliance, SAT to re-examine clean chit

SEBI vs. V. Shankar

Civil Appeal No 527 of 2023

The Respondent was a Company Secretary of Deccan Chronicle Holdings Limited ('DCHL') and on an enquiry initiated by SEBI, it proceeded to hold the Respondent liable on the ground that he was a Company Secretary during FY 2010-11 when a buyback offer was made by DCHL in violation of regulatory provisions. SEBI found that the Respondent had ascribed his signatures on the public announcement for buyback in his capacity as a Company Secretary where as a 'statutory official' of DCHL, he should have exercised due diligence and checked the veracity of the buyback offer documents which was found to have violated the provisions of the Companies Act 1956. Accordingly, SEBI has held the

Respondent liable and imposed a penalty of INR 10 Lacs.

Aggrieved, the Respondent approached the SAT which observed that once the offer and the balance sheet were approved by the Board of Directors, the duty of the Company Secretary was only to authenticate the contents indicated in the balance sheet and in the offer document. Further, the SAT observed that the role of the Respondent who was also a compliance officer, was limited to redressing the grievances of investors, by relying upon the latter part of Regulation 19(3) of the Buyback Regulations which dealt with redressal of the grievances of investors. Therefore, the SAT quashed the penalty of INR 10 Lakhs imposed on the Respondent.

Aggrieved, SEBI approached the SC which noting that there was a patent error on the part of the SAT in interpreting the Buyback Regulations, since the compliance officer was also required to ensure compliance with the Buyback Regulations which was expressly stipulated therein in Regulation 19(3). By virtue of this, the SC set aside the impugned decision of the SAT and remitted the proceedings to the SAT for fresh consideration and directed the SAT to endeavor to decide the case within a period of 6 months from the date on which a certified copy of the order was placed on its record.

SEBI restrains MD, Director for planting false news about Company's financials, misleading investors

In the matter of Geodesic Ltd.

WTM/SM/IVD/ID3/22230/2022-23

SEBI has initiated an investigation so as to ascertain the possible violations of the SEBI Act and the regulations made thereunder in the books of accounts of Geodesic Limited ('the Company') to find out the alleged irregularities in the books and accounts of the Company. Pursuant to the aforesaid investigation by SEBI, a common SCN was issued to the MD, Director and Compliance officer ('Noticees') by SEBI levelling charges of violation of various provisions of the SEBI Act and the PFUTP Regulations. Through the investigation along with the forensic audit report, it was observed that the Noticees were engaged in manipulation of the books of accounts of the Company for FY 2011-12 and presenting information to investors which was not providing a true and fair view of its quarterly and yearly financials.

Further the Noticees had evaded the allegation in the SCN pertaining to inter-se cross-holding of fictitious companies and transfer of funds by those fictitious companies to other companies by feigning ignorance about these transactions and it had also come to light as to how the Company had entered into a collusive nexus for obtaining fake bills to show software purchases from bogus companies. Further, SEBI observed that the Noticees did not care to explain the circumstances under which they came in contact with such fictitious companies and what kind of due diligence was carried out before entering into commercial transaction with companies. Accordingly, restraining the Noticees from accessing the securities market for a period of 1 year for violation of various provisions of the SEBI Act and the PFUTP Regulations and thereby misleading the investors/stakeholders, SEBI disposed of the matter.

NCLT admits IndusInd Bank's application to initiate insolvency process against Zee Entertainment

IndusInd Bank Ltd. vs. Zee Entertainment Enterprises Ltd.

I.A. 742/2022 & C.P.(IB)-221/(MB)/2022

IndusInd Bank ('Financial Creditor/Applicant') had granted credit facilities in favour of Siti Networks Ltd. ('Siti'), and Siti appeared to have agreed to maintain a separate debt service reserve account ('DSRA'). Subsequently, Zee Entertainment Enterprises Ltd. ('ZEEL' / 'Corporate Debtor' / 'Corporate Guarantor') and the Financial Creditor executed a DSRA Guarantee Agreement, whereby ZEEL agreed to maintain the DSRA Amount, in the event Siti failed to do so. Pursuant to the alleged defaults of ZEEL to make payment under the DSRA Guarantee Agreement, the Financial Creditor also filed an application for the initiation of CIRP against ZEEL. ZEEL filed a separate interlocutory application inter alia challenging the maintainability of the company petition before the NCLT.

Noting that ZEEL was virtually and legally treated as principal debtor to the lender in so far as recovery of Term Loan was concerned, since ZEEL and Siti were two different companies of the same group, the NCLT observed that the liability of ZEEL under Term Loan was for the whole amount and not to the limited extent of replenishing the shortfall of DSRA amount as contended by them. Thus, finding no merit in the interlocutory application filed by ZEEL that challenged the company petition, the NCLT dismissed the same and thereby admitted the Section 7 application filed by the Financial Creditor for the initiation of CIRP against ZEEL by appointing an IRP to carry out the functions as mentioned under the IBC and declaring moratorium.

REGULATORY
From the Legislature

SEBI

Clarification in respect of compliance by first time issuers of debt securities

SEBI has issued a Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/CIR/P/2023/028 on February 09, 2023 clarifying the compliance requirements in relation to first-time issuers of debt securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. According to such AoA of a company issuer must include provisions regarding the requirement for the board of director to appoint a person nominated by the debenture trustee according to the SEBI (Debenture Trustees) Regulations, 1993. The regulation also allows existing Debt listed issuers until September 30, 2023 to amend their AoA.

With regard to this stringent timelines, first time issuers have represented to SEBI to extend the same considering approval from shareholders, conducting Board and general meetings etc. Keeping the same in mind, SEBI has advised Stock Exchanges to obtain an undertaking from first-time issuers at the time of granting in principle approval to ensure that their AoA is amended within six months from the date of the listing of the debt securities.

AUTHORS' NOTES :

> *This circular aims to protect the investors' interest in securities, and promote the development of and regulate the securities market. This comes after SEBI received representations from first-time issuers, who are in the process of preparing for their first listed privately placed or public issue of NCDs.*

SEBI extends due date for making application for registration by OBPPs as stock brokers

The SEBI has issued Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/025 dated February 07, 2023, providing an additional time period of three weeks from Feb 09, 2023 for Online Bond Platform Providers (OBPPs) to apply for registration as a stock broker the SEBI (Stock Brokers) Regulations, 1992. Consequently, the new deadline for application is now March 01, 2023.

This extension is in resultant to General Circular no. 03/2023 dated February 07, 2023 issued by MCA which allows stakeholders an additional 15 days to file various e-forms without incurring any additional fees due to upgradation of MCA V-3 portal. These includes e-forms required in the process of registration of users on the MCA-21 portal.

AUTHORS' NOTES :

The aforementioned circular was issued due to the difficulties faced by stakeholders during the up gradation of the MCA V-3 portal, and the stabilization of the process of filing e-forms on account of this up gradation.

Further, there has been a significant increase in the number of registered users who have transacted through such OBPPs. While OBPs provide an avenue for investors, particularly non non-institutional investors to access the bond market, their registrations were much needed as per SEBI outlook.

Release of new module for filing of information on BSE under LODR regulations

On February 09, 2023, BSE issued a notice no. 20230209-1 regarding the release of a new module for filing of information required under regulation 46 and 62 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, on BSE Listing Center. Accordingly, listed entities are required to maintain a functional website containing basic information about the Company. To ensure effective enforcement of the Listing Regulations, the Exchange has developed a new module in BSE Listing Centre, where all the listed entities are required to provide the URLs of the information required under Regulation 46 and 62 of Listing Regulations on the path mentioned below.

Equity Listed Entities :

> Submission of information / disclosure: Listing Center > Listing Compliance > Corporate Announcement> compliances> Reg.46 website Link

Debt/CP listed Companies

> Submission of information / disclosure: Listing Center > Listing Compliance > Corporate Announcement> compliances> Reg. 62 website Link

These needs to be filed by February 20, 2023

SEBI prescribes manner of achieving minimum public shareholding by listed entities

It is currently mandatory for all listed companies to maintain a Minimum Public Shareholding MPS of 25%, while newly listed firms are given three years to meet this requirement. In this regard, SEBI has issued Circular No. SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated February 3, 2023, by virtue of which it has modified the methods by which a listed company can achieve the (MPS) of 25%. In this circular, a different method allowed by SEBI to increase public shareholding in accordance with law is through exercise of options and allotment of shares under ESOP, wherein a dilution of a maximum 2% will be allowed.

An additional method stated by the regulator comprises transfer of shares held by the promoter or promoter group to an ETF managed by a SEBI-registered mutual fund. However, only 5% stake in listed companies will be allowed by SEBI to be transferred under this method. Existing methods allowed by SEBI in

order to achieve the minimum public float includes bonus issue, rights issue, Offer for Sale and Qualified Institutional Placement.

AUTHORS' NOTES :

This is a welcome circular SEBI has been receiving representations from listed entities and other stakeholders, requesting relaxation from compliance with the conditions specified in the existing methods and approval for using non-prescribed methods to achieve the minimum public shareholding norm.

RBI

RBI monetary policy committee increases policy rates by 25 basis points

The Monetary Policy Committee increased the repo rate, or the key rate at which the RBI lends short-term funds to commercial banks, to 6.50 per cent from 6.25 per cent. The key rate has now been raised by 250 (225+25) bps since May by the panel. The panel also decided to remain focused on withdrawal of accommodative stance.

Explaining the rationale behind the MPC's policy decision, Shaktikanta Das said: "The rate hikes since 2022 are still working their way through the system. On balance, the MPC was of the view that further calibrated monetary policy action is warranted to keep inflation expectations anchored, break the persistence of core inflation, and thereby strengthen the medium-term growth prospects."

AUTHORS' NOTES

Repo rate (RR) and Reverse Repo rate (RRR) refers to the fixed interest rate at which the Reserve Bank provides overnight liquidity to banks against the collateral of government and other approved securities under the Liquidity Adjustment Facility.

MCA allows physical filing of forms GNL-2, MGT-14, SH-8, SH-9 & SH-11

MCA vide circular No. 05/2023 dated February 22, 2023 clarifies that the companies who intend to files Form GNL-2, MGT-14, PAS-3, SH-8, SH-9 and SH-11 from February 22, 2023 to March 31, 2023, are now allowed to file these e-forms in physical mode with the concerned Registrar without payment of fee and take acknowledgement thereof. MCA has decided to allow extension of 15 more days to file 45 company related e-forms including the PAS-3 e-forms without any additional fees. MCA had previously extended the e-forms filing timelines by 15 days in General Circulars 1/2013 and 03/2023. Furthermore, e-forms PAS-03

whose due dates fall between January 20, 2023 and February 28, 2023 can be filed without any additional fees up to March 31, 2023. The resubmission period this falls between January 20, 2023 and February 28, 2023 is also extended by 15 more days. Such Filing will be accompanied by an undertaking from the Company, that the Company shall also file the relevant Form in electronic form on MCA-21 portal along with fees payable.

AUTHORS' NOTES :

MCA portal enables e-filing, the companies will be able to file the relevant forms electronically without any additional fees. MCA aims to ensure a smooth transition to the new portal and is taking steps to minimize any inconveniences to companies.

INTERNATIONAL DESK

Qatar issues new law amending certain provisions of Income Tax Law 2018

Top of Form on February 2, 2023 the State of Qatar has introduced new provisions in the Tax Law also issued the Law No.11 of the year 2022 for amendment of Qatar Income Tax Law No.24 of the year 2018.

In the Tax Law of 2022, the State of Qatar has expressed its commitment to introducing a global minimum tax at the rate of not less than 15% for covered entities located in Qatar "on the basis of its excess profits" in a manner consistent with international rules (the Global Base Erosion Rules – GloBE Rules) developed as part of the solution to address the tax challenges of the digital economy.

Further it has introduced a tax relief mechanism, under which taxpayers can take credit of the amount of foreign taxes suffered in connection with an income taxable in the State of Qatar, exempt income, income attributable to PE outside State etc. Further, the said law amends the various exiting provisions such as Tax residency criteria for natural persons, Tax residency criteria for legal persons, Definition of Permanent Establishment (PE) etc.

The absence of an explicit effective date could imply that the Tax Law of 2022 is applicable with immediate effect (i.e., from the date of its publication in the official gazette). If this is the case, clarification would be needed on whether the amendments are applicable to tax filings of the financial year ending in 2022, which are due in 2023, or the tax filings of the financial years ending 2023.

OECD releases Manual on handling MAPs and APAs as a part of tax certainty programme

The OECD has released a Manual on Handling of Multilateral Mutual Agreement Procedures (MAPs) and Advance Pricing Arrangements (APAs), jointly produced by members of the Forum on Tax Administration MAP Forum as part of the FTA's tax certainty work program. The MoMA aims to guide multilateral MAP and APA processes from both legal and procedural perspectives, providing tax administrations and taxpayers with information on the operation of these procedures and suggesting different approaches based on the practices of jurisdictions.

The MoMA does not impose binding rules and complements the requirements, best practices, or procedures established by the FTA MAP Forum in connection with Action 14 minimum standard. The MoMA outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally, and tax administrations can assess whether implementing any approach is appropriate considering their own MAP and APA programs and processes and the unique features of each case.

The MoMA clarifies that not all approaches described in the manual may be applicable or appropriate, and that timeframes for various steps in multilateral MAP or APA processes are indicative and should be treated as aspirational by jurisdictions. The MoMA also suggests that the guidance may be incorporated into domestic guidance on MAP or APA processes to provide additional clarity.

Hungary amends decree with significant changes in transfer pricing documentations

Hungary has made significant amendments to its Decree No. 32/2017 as on December 28, 2022 on transfer pricing documentation requirements. The amendment affects HUF 50 million the value threshold for exemption from documentation requirements. Further, the related party transactions which do not exceed HUF 100 million are exempt from registration documentation.

Previously, master file and local file together were considered to be a single document. Post amendment the master file and local file now being considered separate documents. Breaching transfer pricing documentation obligations can now result in multiple administrative default penalties per tax year, with increased penalty amounts for repeat infringements

The amended Decree also conforms to the previous 2022 amendment to the section of Act CL of 2017 on Taxation Rules concerning default penalties. The default penalty was raised from HUF 2 million to HUF 5 million per documentation. For repetitive offences, the previous default penalty of HUF 4 million has been increased to HUF 10 million per documentation.

These amendments are effective from tax year 2022.

SPARKLE ZONE

GST APPLICABILITY ON GIFT VOUCHERS!

Brief Introduction

In this ever-changing business world, it is of utmost importance to offer the best benefits available. In recent times, the gift vouchers have become the vogue in the business world. Essentially, a voucher is a prepaid stored-value money card, usually issued by a retailer, to be used as an alternative to cash for purchases within a particular store or related businesses.

The GST Law defines the term 'voucher' as an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation.

Basis the above meaning of the term 'Voucher' under the GST law, it can be seen that to qualify as a voucher, the following features are essential:

- It must be an instrument where there is an obligation on part of the supplier to accept it as a consideration;
- The supply or the supplier must be indicated on such instrument or other related document.

The above definition seems to be wide enough to cover within its purview various gift cards, discount cards, meal cards, etc. Further, under the GST law while the physical vouchers are chargeable to 12% GST, electronic vouchers are chargeable to 18% GST. As regards the taxability on supply of vouchers, there seems to be great confusion in the industry.

Nature of Vouchers

The Apex Court in RE: **Sodexo SVC India Private Limited [2015-TIOL-293-SC-MISC]**, had held that Meal Vouchers are not 'goods' within the meaning of the Maharashtra Municipal Corporation Act and, therefore, not liable for either Octroi or LBT. It had been further held that vouchers are not 'sold' by a Company to its customers, as was wrongly perceived by the HC, and this fundamental mistake in understanding the whole scheme of arrangement led to wrong conclusion by the High Court.

Without the sanction/ authorisation of the RBI to operate such a payment system under the Payment and Settlement Systems Act, nobody can operate such a system, as the purpose of the said Act is to regulate the payment and settlement thereof by means of 'Paper Based Vouchers'.

In light of the above SC ruling, one can say that vouchers are in the nature of actionable claims. Now, as the GST law does not define the term 'actionable claims' reference has to be drawn from the Transfer of Properties Act. The said Act defines the term as any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accuring, conditional or contingent.

Basis the above definition, it can be seen that for a voucher to qualify as an actionable claim, it must be a debt not secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property. Prima facie, the vouchers issued by various organizations seem to fulfil the above necessary conditions. However, it becomes relevant to see how the same is treated under the GST law, by various judicial and quasi-judicial pronouncements.

Rulings under GST

The TN AAAR in RE: **Kalyan Jewellers India Limited [2021-TIOL-12-AAAR-GST]** had held that Voucher per se is neither a goods not a service. It was held that voucher is a means for payment of consideration. Therefore, it follows that where a voucher identifies the goods or service that can be received on redeeming, the supply of the underlying goods or service takes place at the time of issue of the voucher. The law provides for taxing of the service at the point of time of issue of voucher itself when the supply is clearly known at the time of issue.

It was further held that the supply of underlying goods or service, therefore, gets taxed only at the time of issue of voucher and not at the time of actual availing of service or time of redeeming the voucher. Since the gold voucher clearly indicates that the voucher can be redeemed for gold jewellery at a known rate of tax, gold voucher also falls under this category. Accordingly, it was held that gold voucher (representing the underlying future supply of gold jewellery) would be taxable at the time of issue of the voucher.

It was further emphasised by the AAAR that this interpretation does not result in double taxation as transfer of gold subsequently will not be subject to tax at the time of redeeming the voucher for gold, as the supply is deemed to have been done at the time of issue of voucher itself for future supply. As regards the classification of voucher, it was held that since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer.

However, the Karnataka HC in RE: **Premier Sales Promotion Private Limited [2023-TIOL-158-HC-KAR-GST]** held that vouchers do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking Companies and they can be issued only with the prior approval of RBI. Thus, in substance, the transaction between the assessee and his clients is procurement of printed forms and their delivery.

The printed forms are like currency and the value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to

assessee's client, therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Accordingly, it was held that vouchers are neither goods nor services and, therefore, cannot be taxed.

As regards, the claim of ITC on vouchers, recently, the Karnataka AAAR in RE: **Myntra Designs Private Limited [KAR/AAAR/03/2023 dated 24 February 2023]**, held that the primary condition for the claiming ITC is that there should be tax is charged by the supplier. Therefore, in the instant case, as vouchers are neither goods nor services, the AAAR concluded that the question of eligibility of ITC does not arise. Accordingly, the AAAR upheld the AAR ruling and held that the Appellant is not eligible to avail the ITC on the vouchers in terms of section 17(5)(h) of the CGST Act.

GLOSSARY

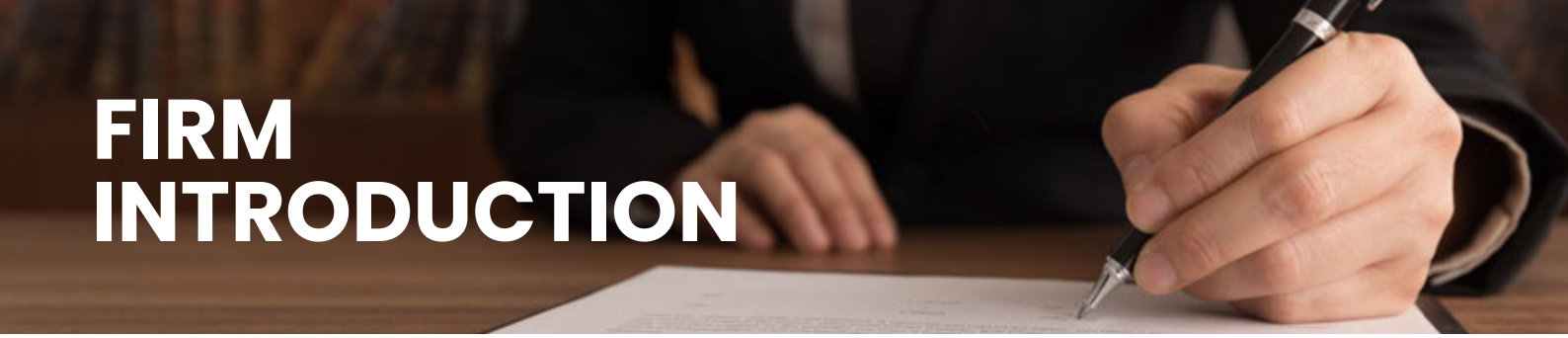
Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment 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
IBC	Insolvency and Bankruptcy Code
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019

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
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty

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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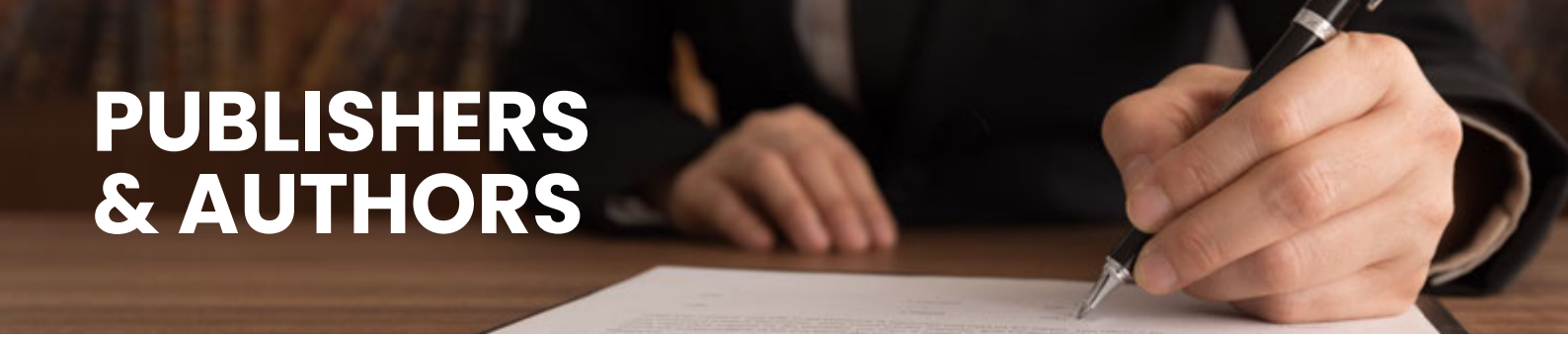

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