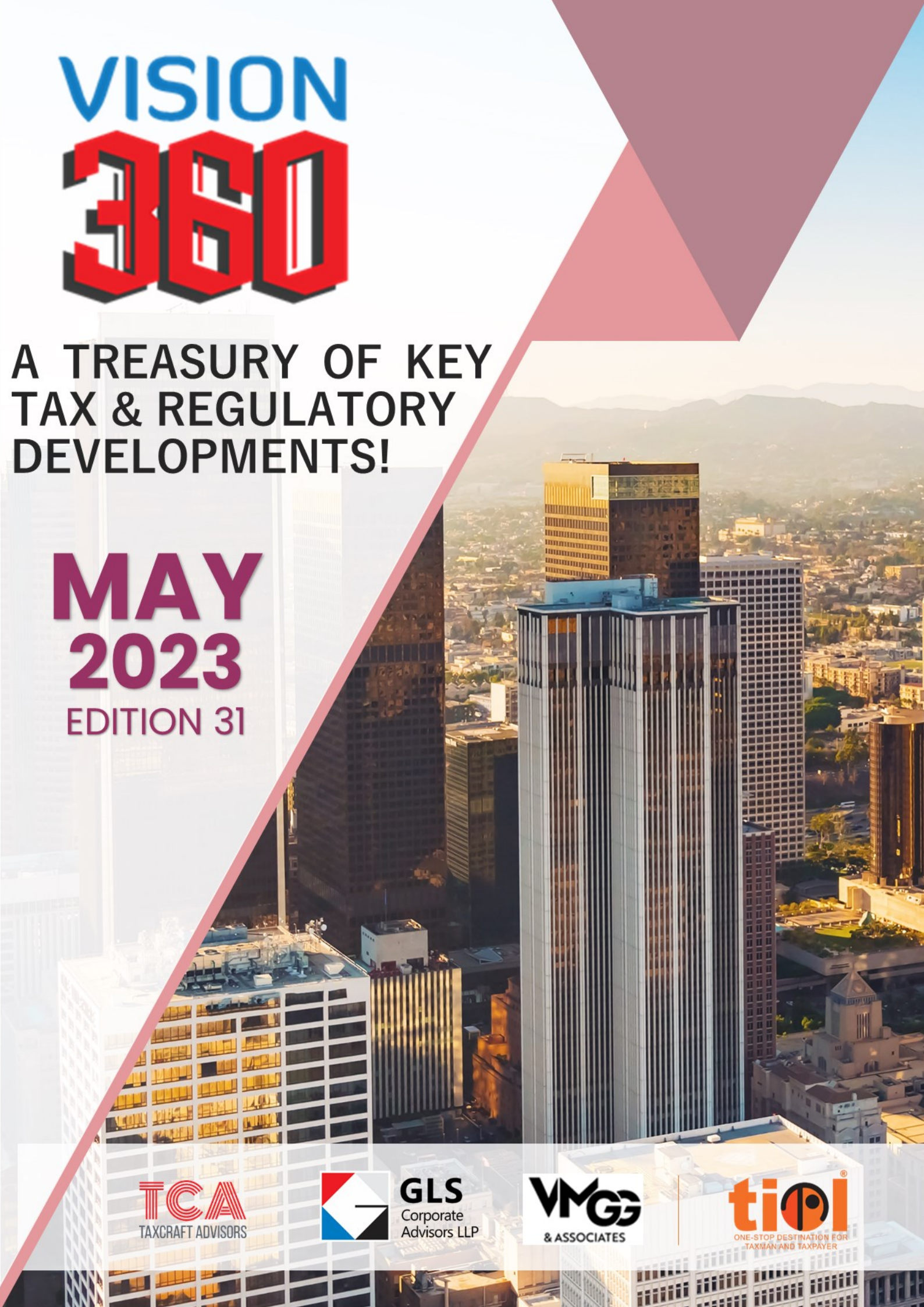
VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!



MAY 2023

EDITION 31

TCA TAXCRAFT ADVISORS
GLS Corporate Advisors LLP
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tipl ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

VISION 360: Bright Beginning to 2023-24!

In the very first month of the new Financial Year, we saw record GST collections! This, coupled with the GDP growth rate, is a good sign of the direction in which the Indian economy is headed. Further, certain significant judicial precedents by the Courts in the month have also left a great impact on the taxpayers.

In this edition of our newsletter, we have curated a diverse range of articles and insights from the industry experts that cover a variety of topics, including recent tax reforms, emerging trends in the industry, and updates from the global tax arena.

India's growth continues to be resilient despite some signs of moderation in growth, says the World Bank in its latest India Development Update. The overall growth remains robust and is estimated to be 6.9 percent for the full year with real GDP growing 7.7 percent year-on-year during the first three quarters of fiscal year 2022/23.

From India's domestic standpoint, the GST revenue collection for the month of April 2023 stood the highest ever at Rs 1.87 lakh crore, which is exceeding the following highest collection April 2022. The gross GST revenue collection grew by 12% and it is the highest monthly mop-up since the rollout of the indirect tax regime in July 2017, the Ministry of Finance said in a statement. It is for the fourth time, in the current financial year that the gross GST collection has crossed marks registering second highest collection since implementation of GST. Moreover, because of strictness in compliance and being the last month of the financial year, the bumper collection was highly expected. This growth is a testament to the country's economic resilience and the government's efforts to promote compliance.

In addition to economic growth, the Indian judiciary has delivered some remarkable judgments in the tax sphere, including rulings on the GST applicability on intermediary services and the allowability of the CENVAT credit for capital goods. These verdicts provide much-needed clarity on contentious issues and have the potential to reduce litigation in the long run.

Speaking of direct tax developments, CBDT has issued clarification for the employer's TDS obligation under new 'default' personal tax regime. The CBDT has also notified the administrative jurisdiction of PCCITs over CIT(A)s. In all the mechanism leads to higher compliance measures to ensures enforcement of law which is essentially Government responsibility *per se.*

The Customs law too witnessed improvements like the one-time amnesty scheme under the FTP 2023 to address default in fulfilment of Export Obligation, and the launch of new version of the web application to monitor AEO-LO applications in real-time.

We have also penned down articles on the debatable issues surrounding the Intermediary Conundrum in GST. The authors have inferred it best for the judiciary itself to analyse the issues, provisions and precedents, in this regard and issue a clarification, which will go a long way in avoiding litigations. We have also written an insightful piece on the MSME sector that has acted as an engine to the development of India.

As these developments make their way to headlines and board rooms, we at **TIOL**, in association with **Taxcraft Advisors LLP**, **GLS Corporate Advisors LLP** and **VMGG & Associates**, are glad to publish the 31st

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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ARTICLE

Decoding the Intermediary Conundrum in GST

Overview

The concept of intermediary services was first introduced in India in 2012 in relation to supply of services. Prior to the introduction of the Intermediary services, a number of Tribunal ruling held that agency and business promotion services rendered to foreign recipient would amount to export of services. The definition of 'intermediary' in the Service Tax law read as "Intermediary means a broker, an agent or any other person by whatever name called, who arranges or facilitates a provision of service or a supply of goods between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account".

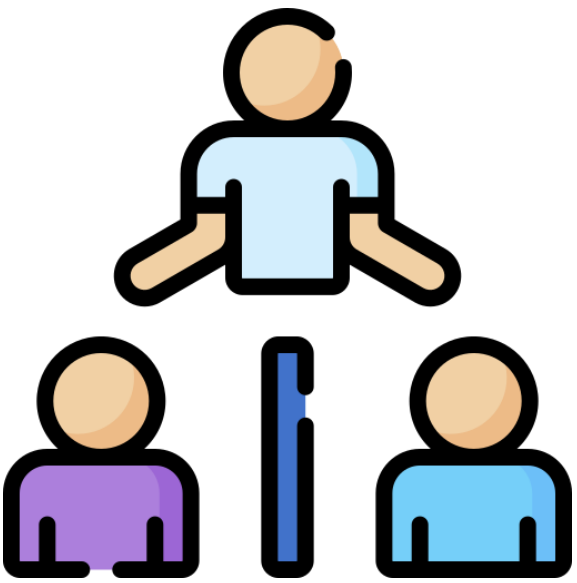
The term 'Intermediary' has been defined under section 2(13) of IGST Act as under-

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

Accordingly, the concept of 'intermediary' was borrowed in GST from the Service Tax Regime.

Export of services vs Intermediary services

In the GST regime, intermediary services by Indian suppliers to foreign principals are taxable supply. However, there has been a lot of confusion regarding tax implications on the export of services vs intermediary services done by Indian suppliers to foreign customers.



The important features of the Intermediary services are highlighted hereunder-

- An intermediary can be a broker or an agent or any other person;
- An intermediary, who between two/ more persons, arranges/ facilitates the supply of goods or services or securities;
- However, an intermediary doesn't include the person who supplies the goods or services or securities on his own account.

The term 'export of services' is defined under section 2(6) of the IGST Act, 2017 . Accordingly, export of services means supplies of services that qualifies all the following conditions-

- The service provider should be located in India;
- Service receiver should be located outside India;
- Place of supply of service should be outside India;
- The payment for the service is received in convertible foreign exchange; and
- Service provider and service receiver is not merely establishments of distinct persons.

In simple terms, the person arranging as well as facilitating supplies between two or more persons are covered within the definition of intermediary. However, an independent supplier is not covered. Thus, even when the intermediary service satisfies all the other conditions of export of services, the same will not qualify as export of services and similarly will not have the benefits of export of services, since it doesn't satisfy the condition of the place of supply being outside India.

Both under service tax law and GST law, the place of supply for an intermediary service is determined as location of the supplier of service. Hence, when a person is held as intermediary or his services as intermediary services, even when such services are provided to a person outside India, they are determined as provided or supplied in India and hence not considered as exported.

Circular No. 159/15/2021 – GST dated 20.09.2021

In order to provide clarity on these issues, the Board has issued a circular providing some clarity on the subject. In para 3 of Circular 159, the CBIC has provided the basic pre-requisites to qualify as an intermediary. Following are the pre-requisites explained in the Circular:

- Minimum of Three Parties;
- Two distinct supplies;
- Intermediary service provider to have the character of an agent, broker or any other similar person;
- Does not include a person who supplies such goods or services or both or securities on his own account;
- Sub-contracting for a service is not an intermediary service.

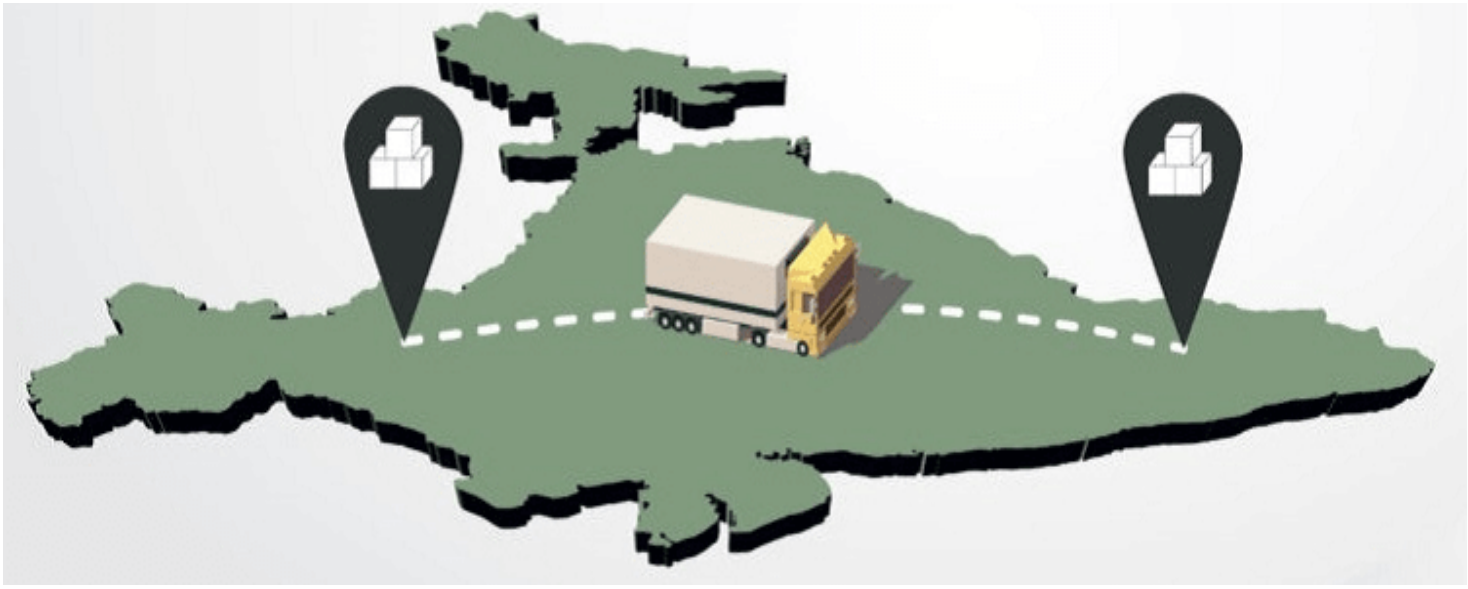
The circular provides a few indicative illustrations to highlight that services in the form of ancillary supplies of arranging or facilitating the provision of main supply would be construed as 'intermediary', and it does not cover services outsourced to a third party. Therefore, the expression 'arranges or facilitates' denotes a subsidiary or supportive role played by an intermediary, thereby suggesting that they do not provide the main supply themselves.

Place of supply of goods or services or both

Section 13 of the CGST Act provides for location of recipient of service as place of supply of services, where the location of supplier or recipient of services is outside India. Section 13(8) provides that where location of recipient of intermediary services is outside India, the place of supply for taxation purpose will be the place of supplier.

However, the constitutionality of provisions of section 13(8)(b) of the Act was challenged recently in **Dharmendra M. Jani v. Union of India [Writ Petition No.2031 Of 2018]**

The matter was first listed before the division bench of the Bombay HC, wherein the One Judge observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of Constitution, and the other judge has expressed his disagreement and has rendered his separate opinion. The Hon'ble Justice had observed that by artificially creating a deeming fiction in the form of Section 13(8)(b) of the IGST Act, the place of supply has been treated as the location of the supplier in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides going beyond the charging sections of both the Acts.



Therefore, in view of such difference in opinion, the matter was listed before the Hon'ble Chief Justice. The Chief Justice of the Bombay HC held that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST and ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid, and constitutional. However, the court has also held that these provisions can only be applied to the IGST Act and can't be used to levy tax on intermediary services under the CGST and SGST Acts.

Even after clarification by government and Judiciary, the companies need to check whether they will pass the test laid down by the Circular and draft their agreements keeping the aforesaid pre-requisite in mind to avoid any future litigation.

INDUSTRY PERSPECTIVE

DURGESH SINGH

Head- Tax & Treasury

Bata India

01 What are your views on new FTP 2023?

FTP 2023 seeks to enhance use of automation and risk management systems for various approvals and implementation mechanisms which appear to be aligned with the moto of increasing 'ease of doing business for exporters'. Notably, the introduction of amnesty scheme for settlement of disputes pertaining to export obligations show the government's resolve to reduce complications for exporters and enable trade facilitation. This coupled with promotion of e-commerce exports, merchanting activities as well as use of the Indian currency in cross-border trade are certainly positive signs for increasing foreign trade for the country.

Overall, the new open-ended FTP is a step in the right direction and the industry expects that this would certainly address some of the concerns of the past policies while simultaneously opening new avenues of growth.

02 The GST revenue has been climbing up the ladder at a phenomenal speed! With the 11% YoY increase, do you think this growth is parallel to the Economy's growth?

I agree, the GST collection has been phenomenal for some time now which is an indicator of economic growth. This mainly appears to be a result of increased consumption in post pandemic period that ricocheted of suppressed spendings during pandemic. Also, now that it has become mandatory for taxpayers having a turnover of more than Rs. 10 cr., to generate /issue e-invoices, the menace of fake invoices has substantially decreased.

Although introduction of GST certainly has revolutionized the tax system in India, I believe there is a lot that still needs to be done by GST council and there exist substantial room for growth in revenue.

Durgesh Singh
Head- Tax & Treasury- Bata India

03 What are your views on recent changes in the Direct tax space, more particularly Section 194 ?

Section 28(iv) requires a 'benefit' or 'perquisite' from business or profession to be charged as 'business income' in the hands of the recipient. However, in many cases, such recipient does not report the same, leading to furnishing of incorrect particulars of income.

To plug this loop, the Finance Act 2022 introduced Section 194R which entrusts 'person responsible for providing such 'benefit' or 'perquisite' to deduct tax thereon. I believe, while it is yet another compliance burden for corporate sector, it will help the exchequer to widen the tax net.

04 The regulatory environment currently is very dynamic and ever evolving, there are scores of changes which department bring in every year which leads to additional compliance burden on corporate sector. What are your thoughts on the same?

Increase in compliance is one of the most significant consequence of GST implementation. Apart from sheer number of returns, the law keeps entrusting the taxpayer with additional burdens. The pinnacle of it is determinations of taxpayers' entitlement to ITC basis compliance undertaken by its vendor! While such an approach causes despaired surprise to taxpayers, there exists a silver lining to it. This compliance burden is also a tool to promote discipline amongst business partners and vendors, as much as it is a burden. Sufficient adherence to it is also a very strong indicator of an organisation's overall health and discipline.

Tax law is an ever-evolving framework and taxpayers too must evolve along with it. These developments including increase in compliance cannot be avoided and the only way it can be faced is if we embrace it and make use of it to our advantage. It's like Winston Churchill had said after World War II, *'Never let a good crisis go waste!'*

05 Government has undertaken major Changes in the tax system by introducing E-Waybill, E-Invoicing, Faceless Assessment etc. How do you see these changes in bringing transparency and efficiency in the tax system?

Tax Leakages and frauds using fake invoices has transgressed from erstwhile tax regime to GST and the government now appears to have raised in vigilance by introducing e-invoicing system. The system has helped tax authorities to monitor B2B transactions where GST is applicable, ensures the legitimacy of ITC claims, created much-needed transparency to curb tax evasion and fraud. This however, to no surprise increased Industry's compliance burden by requiring it to reconciliation e -invoicing with books of account.

Durgesh Singh
Head- Tax & Treasury- Bata India

06 India is the fifth largest economy now. What do you think of India's tax system? Is it in line with its peers?

Aligning Income tax in India with global taxation is a significant step for attracting global investment as well as supporting Indian business. So far as Indirect tax is concerned, introduction of GST in itself is a statement to put India at a globally at par practices, and this despite demographic spread also speaks a volume of India's potential to lead progressive changes. Use of technology, notably in tax administration, litigation, compliance, data processing, communication, etc. aimed at efficiency, transparency as well as accountability is another example of it. The system may have its own shortcomings, but it would be worthwhile to see the direction it picks up in days to come.

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

While E-commerce may have settled with higher demand post 'COVID-fuelled surge', traditional business too may return to normalcy soon. India has led the world from front in successfully undertaking largest ever vaccination drive. Majority of its people are at present vaccinated, besides the newer variants too appear to be less perilous. Even the employees, workforce has either resumed its routine from office or have well adapted to new normal of work from home. Complete normalcy on work front may be a reality sooner than later.

08 What is you take on BIS? it has confirmed that the Quality Control Orders for leather and non-leather footwears shall be implemented with effect from July 01, 2023?

Yes, as per notification. However, the readiness of BIS Standard finalization and timeline is very difficult. Most of the Industry Associations are pushing for extension.

Disclaimer : The views/opinions expressed in this section are personal views of the Author and do not necessarily reflect the views/opinions of the Organisation and/or the publisher.

DIRECT TAX
From the Judiciary

HC imposes personal cost on AO for repetitive reassessment proceedings on non-existent entity

Orbit Projects Private Limited

2023-TIOL-339-HC-KOL-IT

The Assessee filed a writ petition against a notice issued by the AO under Section 148A(b) of the IT Act. The ground of the writ was that the notice was issued in the name of a non-existing amalgamated entity. The Hon'ble HC noted that a notice under Section 148 issued against the very same non-existing entity had already been quashed by the coordinate bench on an earlier occasion. In spite of quashing of such notice, the AO issued the impugned notice against the very same non-existing entity. The HC observed that such conduct reflected total non-application of mind by the AO while being contumacious and in total disregard and defiance of the HC's earlier order.

The Hon'ble HC quashed the impugned notice and observed that the coordinate bench had already imposed personal cost of INR 10,000 on the concerned officer in respect of another Assessee. Further, the HC, imposing a personal cost of INR 20,000 on the concerned officer to be realized from his salary and to be paid to the Assessee , directed that the order be communicated to the Principal CIT, West Bengal and Sikkim, by the office of the Ministry of Law and Justice, in order to take note of the ongoing affairs in his department and take necessary steps accordingly.

HC holds MIAL stake-sale by Mauritian SPV to GVK Group Co. 'grandfathered' under DTAA, overturns AAR ruling

Bid Services Division (Mauritius) Limited

2023-TII-08-HC-MUM-INTL

The Assessee was a Mauritius based SPV, holding a valid TRC, and a member of the consortium called GVK -SA which comprised of GVK Industries Ltd. and SA Airport Operators. The consortium was a successful bidder for modernisation of Mumbai Airport with 74% stake in Mumbai International Airport Ltd ('MIAL') while 26% was held by the Airport Authority of India. The Assessee sold 50% of its 27% stake in MIAL to GVK Group Co. (co-member of the consortium) in FY 2011-12 for USD 231 Million pursuant to which it moved an

application before the AAR whereby the AAR held the transaction to be taxable and not eligible for the benefit of Article 13(4) of India-Mauritius DTAA. Aggrieved, the Assessee preferred a writ petition before the HC. The HC noted that the entire plank of the AAR ruling to deny benefit of Article 13(4) of India-Mauritius DTAA on capital gains arising from share-sale was that the Assessee was incorporated only two weeks before the technical and financial bid by GVK-SA consortium. It had further noted that the Assessee neither had financial nor management capabilities of its own and was therefore, interposed only as a device to avoid tax. The HC observed that the Assessee's incorporation did not appear to be something unusual or suggested that the same was to defraud the Revenue or perpetrate any illegal activity, especially when the Airport Authority of India not only did not raise any objection to the investment but entered into Operation, Management and Development Agreement (OMDA) with MIAL whereby the Assessee invested approximately INR 270 Crores. Further, the HC observed that the AAR ruling did not deny the existence of TRC. The HC further stated that except bald allegations, there was no material had been placed on record to demonstrate that the Assessee was a device to avoid tax or conduct fraud. It also observed that the transaction was executed after taking 'Nil' deduction certificate from the Revenue and if there was any doubt on the Assessee's investment or activities etc., then there was no necessity of permitting the purchase of shares by granting permission to the purchaser to make payment without TDS.

Further, observing that the AAR failed to consider Circular No. 682 of 1994, Circular No. 789 of 2000, the Press Release on TRC, the SC rulings in **Azadi Bachao Andolan [2003-TIOL-13-SC-IT]** and **Vodafone International [2012-TII-01-SC-LB-INTL]** and the applicability of the LOB clause which clearly grandfathered investments made before April 1, 2017. Accordingly, the HC overturned the AAR ruling and remanded the matter back to the AAR for reconsideration with a direction that the same shall be decided within a period of eight weeks after giving a hearing to the parties.

HC holds revenue to re-examine 'Nil' withholding application on INR 418 Crores, basis SC ruling in Engineering Analysis & India-US DTAA

Zscaler, Inc

2023-TII-10-HC-DEL-INTL

The Assessee, a US based company, had entered into various 'Reseller Agreements' with its partners in India for the purpose of providing software-based information security solutions. The Assessee was likely to receive INR 418.41 Crores for AY 2023-24 under the agreements, from its reseller partners based in India. The Assessee had moved an application before the AO under Section 197 of the IT Act requesting a certificate be issued for setting the withholding tax at 'Nil' rate. The AO rejected the application and passed an order fixing the withholding tax rate at 10%.

Aggrieved by the order of the AO, the Assessee preferred a writ petition before the HC assailing the lower withholding tax certificate issued by the AO concerning its application preferred under Section 197 of the IT Act. The HC noted the Assessee's submission that payment received by the Assessee against software-based information security solutions provided to its partners under the Reseller Agreements could not be treated as royalty, both as per Indo-US DTAA and the SC ruling in **Engineering Analysis [2021-TII-02-SC-INTL-LB]** as there was no transfer of copyright owned by the Assessee in favour of its Indian Partners under

Reseller Agreements. For AYs 2019-20 and 2020-21, the Assessee had offered to pay withholding tax at the rate of 10% which were treated as FTS but later a fresh reasoning was accorded by SC in **Engineering Analysis [supra]**. The HC also noted the Revenue's submission that the scope of the proceedings under Section 197 of the IT Act was different from assessment proceedings and observed that in the impugned order of the AO there was no discussion with regard to the provisions of Article 12 of the India-US DTAA and the SC ruling in **Engineering Analysis [supra]**. Thus, the HC set aside the order and directed Revenue to re-examine application filed on behalf the Assessee under Section 197 of the Act, both, in the backdrop of Article 12 of the Indo-US DTAA and the SC ruling in **Engineering Analysis [supra]**.

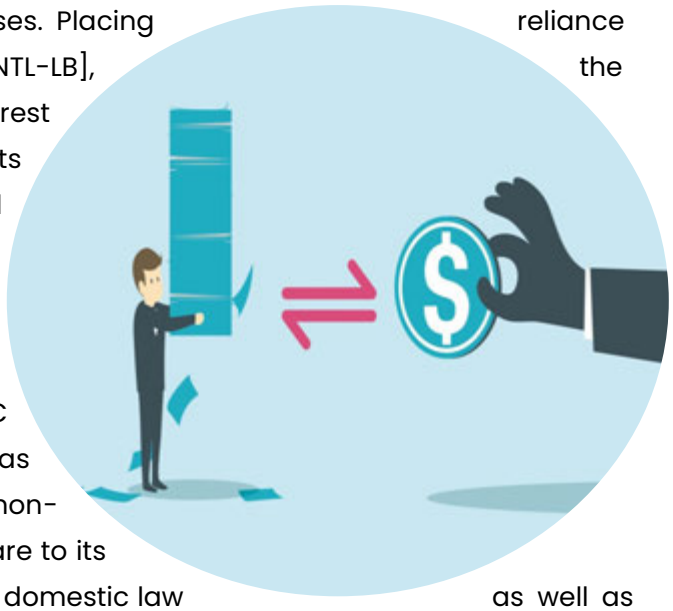
ITAT holds receipts from provision of 'Microsoft' access to group entities, not royalty

Atos IT Solutions and Services Inc

ITA No. 6841/MUM/2017

The Assessee, a US based company, had received an amount of INR 7.55 Crores towards usage of Microsoft license and service desk facility from dealing with IT incidents from Atos India (Indian subsidiary).

The Revenue treated the said services as Royalty as well as FTS and accordingly, made addition of INR 7.55 Crores. Aggrieved, the Assessee approached the ITAT contending that the Microsoft software products were provided to group entitles through a server against which invoices were raised to those entities based on their usage. The ITAT took cognizance of the Assessee's contention that it had entered into a global contract for Microsoft license fees while keeping the ownership with itself and that it had entered into a separate agreement with its Indian subsidiary for recharge of cost pertaining to usage of the Microsoft licenses which was based on usage of the licenses. The Assessee also stated that it had raised the invoices based on the actual utilization of the licenses. Placing reliance on the SC ruling in Engineering Analysis [2021-TII-02-SC-INTL-LB], the ITAT observed that Microsoft did not grant any right or interest to reproduced computer software while selling the products to end user whether through middleman or otherwise and no vestige of copyright was at all transferred either to the distributor or to the end user.



The ITAT further placed reliance on the Delhi HC ruling in EY **Global Services [2021-TII-83-HC-DEL-INTL]** wherein the SC ruling in **Engineering Analysis [2021-TII-02-SC-INTL-LB]** was followed and it was held that payment received by the non-resident Assessee for providing access to computer software to its member firms in India did not amount to royalty under the domestic law as well as India-UK DTAA. Accordingly, the ITAT observed that the subject activities did not constitute royalty or copyright. On the issue of service desk facility, the ITAT observed that although the Assessee had given sub-contract to Indian subsidiary for the services provided to Tower Watson India and the service desk facility was completely different to the sub-contracting agreement and the service desk was provided by the Assessee to all group companies to enable the common services provided to Watson Group employees

and there was nothing on record to indicate any independent service provided to the Indian subsidiary that made knowledge available to that subsidiary. Accordingly, the receipts from the service desk facility were to be considered as business profits in terms of Article 7 of India-US DTAA. Thus, directing the Revenue to delete the addition made, the ITAT allowed the Assessee's appeal.

SC holds DEPB/Duty Drawback receipts lack 'first degree nexus' for deduction under Section 80-IB of the IT Act

Saraf Exports

2023-TIOL-31-SC-IT

The Assessee was in the business of manufacturing and exporting wooden handicraft items. It had filed a 'Nil' return of income claiming deduction for DEPB and receipts under the duty drawback under Section 80-IB of the IT Act. However, the AO disallowed the same during assessment proceedings. Thereafter the matter was contested before CIT(A), ITAT and hon'ble HC wherein the AO's order was upheld while relying on a plethora of SC rulings. Aggrieved, the Assessee approached the SC.

The SC analysed the provisions of Section 28 and Section 80-IB of the IT Act and observed that the legislature had taxed the said incentives under the head of "profits and gains of business and profession" by inserting clauses (iiia), (iiib), (iiic), (iiid) and (iiie) to Section 28 of the IT Act. Further, for claiming deduction under Section 80-IB of the IT Act, it was required to be on the "profits and gains derived from industrial undertakings" mentioned in Section 80-IB of the IT Act. Taking into consideration the DEPB and Duty Drawback Schemes, the SC observed that these incentives flew from the schemes framed by the Central Government or from Section 75 of the Customs Act. Thus, the incentive profits were not profits derived from the eligible business under Section 80-IB of the IT Act and were in the nature of ancillary profits. Moreover, duty drawback, DEPB benefits, rebates, etc. could not be credited against the cost of manufacture of goods debited in the profit and loss account for purposes of Sections 80-IA/80-IB of the IT Act as such remissions (credits) constituted an independent source of income beyond the first degree nexus between profits and the industrial undertaking. The SC held that the Assessee would not be entitled to the deductions under Section 80-IB of the IT Act as such income could not be said to be an income "derived from" industrial undertaking as the profits from DEPB and duty drawback schemes were ancillary in nature and even otherwise as per Section 28(iiid) and (iiie) of the IT Act such an income was chargeable to tax.

SC holds 'failure to pay' not covered by penalty under Section 271C(1)(a) of the IT Act, quashes Kerala HC ruling

US Technologies International Pvt. Ltd. & Others

2023-TIOL-32-SC-IT

The Assessee was subjected to penalty under Section 271C(1)(a) of the IT Act for delay ranging from 5 days to 10 months in depositing TDS pertaining to the salary of about 700 employees, contract payments, etc. totalling to INR 1.10 Crores. The penalty order was upheld right up to the HC and aggrieved by the same, the Assessee preferred an appeal before the SC. Taking note of the provisions under Sections 271C, 201 and 276B of the IT Act, the SC observed that it was required to be noted that wherever the Parliament wanted to have the consequences of non-payment and/or belated remittance/payment of the TDS, the Parliament/ Legislature had provided the same like in Section 201(1A) of the IT Act and Section 276B of the IT Act. Moreover, the failure to pay the whole or any part of the tax fell under Section 271C(1)(b) of the IT Act and the word used between 271C (1)(a) and 271C(1)(b) of the IT Act was 'or' and the scope of Section 271C(1)(b) of the IT Act was limited to failure in paying whole or part of tax as required under Section 115-O(2) and Section 194B of the IT Act.

Further, the SC observed that Section 276B of the IT Act provided for prosecution in case of 'failure to pay' tax to the credit of Central Government which was missing in Section 271C(1)(a) as it talked of only 'failure to deduct' and as the Assessee's appeal was with respect to imposition of penalty on belated remittance of the TDS and not on failure to deduct tax as the tax was duly deducted, the 'fails to deduct' occurring in Section 271C(1)(a) of the IT Act would not include the payer who caused delay in remittance of TDS deducted by him. Furthermore, placing reliance on the CBDT's Circular No. 551 dated January 23, 1998, the SC observed that even the CBDT had taken note of the fact that no penalty was envisaged under Section 271C of the IT Act for belated remittance/payment/deposit of the TDS.

Therefore, adopting a literal and strict interpretation for the penal provision i.e., Section 271C(1)(a) of the IT Act, the SC held that the words "fails to deduct" occurring in Section 271C(1)(a) of the IT Act could not be read into "failure to deposit/pay the tax deducted" and no penalty was leviable under Section 271C of the IT Act, on the mere belated remitting of the TDS after deducting the same by the concerned person/the Assessee. Thus, quashing and setting aside the ruling of the HC, the SC allowed the Assessee's appeal.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT notifies administrative jurisdiction of PCCITs over CIT(A)s

Notification No. 14/2023 dated March 21, 2023

CBDT authorizes the PCCIT to issue orders for the exercise of powers and performance of functions by CIT (A).

Further, CBDT makes it amply clear that that no orders shall be issued so as to interfere with the discretion of CIT(A)s in the exercise of appellate functions.

The Notification shall come into effect from April 1, 2023.

CBDT notifies amended Rule 114AAA on PAN-Aadhaar linkage

Notification No. 15/2023 dated March 28, 2023

CBDT amends Rule 114AAA of IT Rules to specify the manner of making PAN inoperative upon failure to link Aadhaar number

Accordingly, PAN shall become operative within 30 days from the date of intimation of Aadhaar Number and payment of fees specified in Rule 114(5A) of the IT Rules.

In addition to the consequences under the Act for not furnishing, intimating or quoting PAN, the person, whose PAN has become inoperative, shall be liable to following further consequences:

- refund of tax or part thereof shall not be processed;
- interest shall not be payable on such refund for the period during which PAN remains inoperative;
- TDS and TCS shall be deducted /collected at higher rate as per Section 206AA/206CC.

The aforementioned consequences shall have effect from date as may be specified by CBDT and the Rule shall be effective from April 1, 2023.

Form 10F e-filing exemption for Non-Residents without PAN, extended to September 30, 2023

Directorate of Income Tax (Systems) Notification dated March 28, 2023

Directorate of Income Tax (Systems), in partial relaxation of its earlier Notification No.3/2022 dated July 16, 2022, extends the exemption to non-resident taxpayers, who are not having PAN and not required to have PAN as per the law, from mandatory e-filing of Form 10F to September 30, 2023.

Taking into consideration the practical challenges and to mitigate the genuine hardship being faced by such taxpayers, the exemption from mandatory e-filing of Form 10F was provided till March 31, 2023. However, taking cognizance of the continued practical challenges, the exemption has now been extended till September 30, 2023.

CBDT introduces e-filling of Form 15C and Form 15D

Directorate of Income Tax (Systems) Notification No. 1/ 2023 dated March 29, 2023

CBDT introduces the electronic furnishing of Form No. 15C and Form No. 15D prescribed under Rule 29B (3) of the IT Rules. The purpose of such forms is to make an application for grant of certificate to a person entitled to receive interest or other sum on which income-tax is to be deducted under Section 195(1) of the IT Act without TDS.

The Notification also specifies the procedure, format and standards for the purpose of electronic filing of Form No. 15C and Form No. 15D.

CBDT notifies 21 jurisdictions under Rule 114F(6) of the IT Rules for 'passive non-financial entity' definition

Notification No. 17/2023 dated April 06, 2023

CBDT *vide* Notification No.78/2018 had earlier notified 87 jurisdictions and now notifies 21 more jurisdictions for the purpose of 'passive non-financial entity' definition under Rule 114F of the IT Rules in a new list of total 108 jurisdictions. Israel, Turkey, Hong Kong, Oman and Qatar are amongst some of the new notified jurisdictions.

CBDT notifies 348 as provisional Cost Inflation Index for FY 2023-24

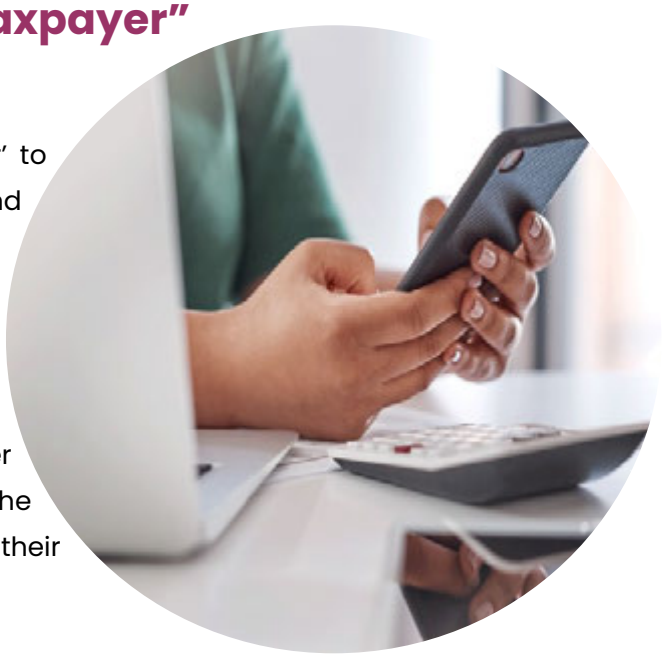
Notification No. 21/2023 dated April 10, 2023

CBDT notifies '348' as Cost Inflation Index (Provisional) for FY 2023-24. The Notification comes into force from April 1, 2024, thus, applies from AY 2024-25 onwards.

CIRCULARS/PRESS RELEASES

CBDT launches mobile app "AIS for Taxpayer"

Press Release dated March 22, 2023



CBDT launches a free mobile application 'AIS for Taxpayer' to help taxpayers view information as available in the AIS and TIS.

The app is designed to provide comprehensive information collected from various sources related to the taxpayer such as details of TDS and TCS, interest, dividends, share transactions, tax payments, Income Tax refunds, and other Information such as GST Data and Foreign remittances. The taxpayers need to verify their email and mobile as per their profile with OTP and they can set 4 digits PAN.

CBDT extends PAN-Aadhaar Linking Deadline up to June 30, 2023

Press Release dated March 28, 2023

CBDT extends the deadline for linking PAN cards with Aadhaar from March 31, 2023, to June 30, 2023. This move aims to provide taxpayers with more time to link their PAN and Aadhaar without facing repercussions.

The linking of PAN and Aadhar has been made mandatory under the provisions of the IT Act, for those who have been allotted a PAN on or before July 01, 2017 and are eligible to obtain an Aadhaar number.

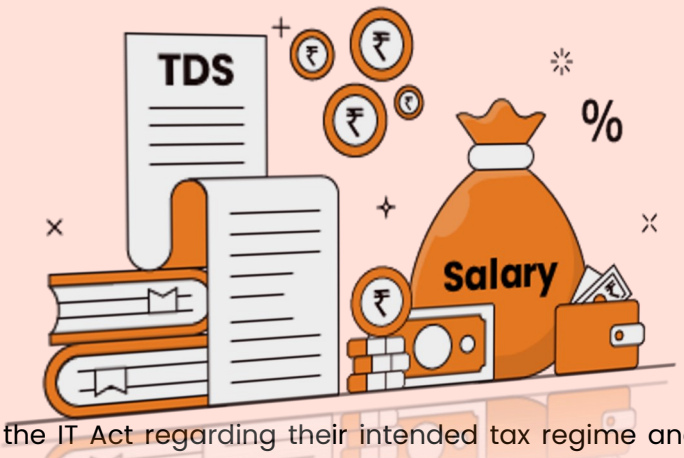
CBDT issues Circular specifying July 1, 2023 for consequences of non-linking PAN & Aadhar

Circular No. 3/2023 dated March 28, 2023

In the Circular, CBDT specifies that the consequences of PAN becoming inoperative as per the amended Rule 114AAA of the IT Rules shall take effect from July 1, 2023 and continue till the PAN becomes operative. A fee of INR 1000 shall apply to make the PAN operative by intimating the Aadhaar number.

The Circular is issued in supersession of Circular No. 7/2022 dated March 30, 2022 wherein it was provided that consequences of non-intimation of Aadhaar shall come into effect on April 1, 2023.

CBDT clarifies employer's TDS obligation under new 'default' personal tax regime



Circular No. 4/2023 dated April 05, 2023

CBDT issues clarification regarding employer's TDS liability on salary in the light of new default personal tax regime introduced by the Finance Act, 2023 under Section 115BAC(1A) of the IT Act.

In the Circular, CBDT directs that an employer, shall seek information from each of its employees having income under Section 192 of the IT Act regarding their intended tax regime and each such employee shall intimate the same to his employer for each year and upon intimation, the employer shall compute the employee's total income and deduct tax at source according to the option exercised.

In the absence of intimation by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Therefore, the employer shall deduct TDS, on income under Section 192 of the IT Act in accordance with the rates provided under 115BAC(1A) of the IT Act. Further, CBDT clarifies that the employee's intimation would not amount to exercising option in terms of Section 115BAC (6) of the IT Act and the person shall be required to do so separately in accordance with law.

CBDT states that the Circular shall be applicable for TDS during FY 2023-24 and subsequent years.

CBDT releases statistics on Direct Tax collection up-to FY 2021-22

Press Release dated April 13, 2023

CBDT releases key statistics relating to Direct Tax collection and administration, as updated up-to FY 2021-22. Some of the key statistics are as follows:

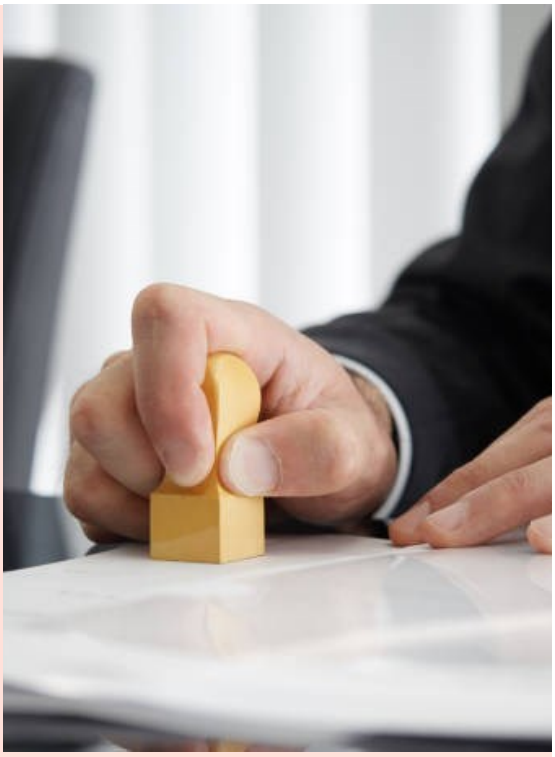
- Increase in Net Direct Tax Collections by 121.18% from FY 2013-14 to F.Y. 2021-22 and by 160.17% for FY 2022-23 as per the provisional figures.
- Increase in Gross Direct Tax Collections by over 126.73% in FY 2021-22 as compared to FY 2013-14 and by over 172.83% in FY 2022-23 as per the provisional figures.
- Direct Tax Buoyancy is at 2.52 in FY 2021-22, highest in over last 15 years.
- Increase in Direct Tax to GDP ratio to 5.97% in FY 2021-22, from 5.62% in FY 2013-14.
- Fall in cost of collection from 0.57% of total collection in FY 2013-14 to 0.53% of total collection in FY 2021-22.

TRANSFER PRICING
From the Judiciary

ITAT quashes final assessment order passed sans draft order, follows precedents

Linc Pen & Plastics Ltd.

ITA No. 1871/Kol/2019



The AO was required to serve the draft of the proposed order of assessment upon the Assessee before issuing the final assessment order as per Section 144C of the IT Act. Since the AO had failed to serve such draft order upon the Assessee, depriving it to file objections against the said draft of the proposed order of assessment before the DRP, the Assessee approached the ITAT. Before the ITAT, the Revenue contended that during the assessment proceedings, the Assessee had stated that they did not intend to exercise the option available under Section 144C of the IT Act to file objections before the DRP and it was in view of the above waiver given by the Assessee, that the AO passed the final assessment order without forwarding any draft of the proposed order of assessment.

Further, the Revenue also contended that the Assessee should not be allowed to take benefit of its own waiver before the AO and come with the plea at the second appellate stage by raising an additional ground that the AO failed to pass the mandatory draft of the proposed order of assessment, seeking quashing of the entire assessment. Noting the above contentions of the Revenue, the ITAT observed that such mandatory requirement could not be done away with by any waiver given by the Assessee during assessment proceedings.

Further, the ITAT observed that the usage of the verbiage "in the first instance" in Section 144C of the IT Act indicated that the eligible Assessee would come to know of any variation being proposed by the AO only by way of forwarding a draft of the proposed order of assessment. Therefore, the Assessee would come to know of any variation which was prejudicial to its interest only by way of forwarding of a draft of the proposed order of assessment by the AO. Accordingly, placing reliance on a plethora of judgements of various ITATs where the final assessment order had been passed sans draft assessment order, the ITAT quashed the final assessment order passed and held that the passing of a draft assessment order was *sine-qua-non* before the passing of the final assessment order.

ITAT remits TP adjustment with reference to marketing support services and mark-up on external cost

Boehringer Ingelheim India Private Limited

ITA No. 6681/Mum/2017

The Assessee was in the business of importation and sale of life-saving drugs and animal health products manufactured by Boehringer Ingelheim Group of Companies. It was also engaged in the provision of marketing support services to its AE. As the Assessee had entered into international transactions with its AEs, a reference was made to the TPO to ascertain the ALP of the international transactions entered into by the Assessee. The TPO observed that the Assessee had not maintained separate segmental account. Instead, the Assessee had benchmarked the transactions of trading and marketing activity together. The TPO further observed, that no expenses corresponding to the marketing and support activities had been considered for the purpose of working out the gross margin.

Accordingly, the TPO benchmarked the provision of marketing support services separately using TNMM, taking the view that mark up of 5% had been received by the Assessee as per the inter-company agreement between the Assessee and its AE dated January 1, 2004 and computed the TP adjustment by comparing comparable margin of 17.04% of operating cost vis-a-vis assumed 5% mark-up. Aggrieved, the Assessee approached the DRP which observed that the international transactions of the Assessee were correctly benchmarked by the TPO, however, directed the TPO to exclude certain segments of certain companies from the list of comparables and accordingly, modified the TP adjustment of the TPO and the final assessment order was passed. Aggrieved, the Assessee approached the ITAT contending that the Revenue had made an error in charging markup on external (pass through) cost incurred by the Assessee and also submitted additional evidence, according to which the Assessee's operating margin from marketing support services was 18.64% as per the certified segmental accounts and the AE had paid mark-up on 18.46% on internal cost and therefore, no mark-up was to be charged on external cost

Noting after perusal of the material on record, that the TPO had not considered the revised statement of work which was appended to the amended agreement dated January 1, 2009 between the Assessee and the AE, as per which the scope of services and the manner of compensation was revised, setting aside the remuneration methodology of markup of 5% prescribed earlier and also considering the additional evidence filed by the Assessee, the ITAT restored the TP adjustment on marketing support services, in light of the segmental accounts and the markup on external cost to the TPO for fresh examination, observing that the TPO had not discussed the specific issue in relation to external cost in his order, but had considered mark-up of external cost.

ITAT upholds royalty payment of 4% at ALP, follows precedents

Praxair India Private Limited

IT(TP)A No. 915/Bang/2022

The Assessee was a company engaged in the business of manufacturing and supply of industrial gases that had filed its return of income which was selected for scrutiny. During the course of assessment proceedings, the matter was referred to the TPO to determine the ALP of the international transactions undertaken by the Assessee with its AE. Rejecting the Assessee's method of benchmarking royalty by aggregating with other transactions, the TPO applied CUP as MAM and restricted ALP of royalty payment to 1% (as against 4% actually paid by the Assessee) and proposed a TP adjustment.

On receipt of TPO's order, the AO passed a draft assessment order in which the AO incorporated the TP adjustment proposed by the TPO. Aggrieved by the draft assessment order, the Assessee filed objections before the DRP which confirmed the TP adjustment made by the TPO pursuant to which the final assessment order was passed.

Aggrieved, the Assessee approached the ITAT which noting that on identical facts, the coordinate bench, in Assessee's own case for previous years, had adjudicated the issue in favour of the Assessee, followed the coordinate bench ruling in Assessee's own case for previous years and held that the payment of royalty at 4% was at arm's length. Thus, upholding the ALP computation qua royalty payment to AE at 4%, the ITAT allowed the Assessee's appeal.

ITAT restricts TP adjustment on guarantee commission @ 0.5%, upholds TP adjustment qua interest on inter-corporate deposits

Hindustan Construction Co Ltd

ITA No. 581/Mum/2022

The Assessee was an MNC engaged in the construction of technically complex and high-value projects across all business segments that had issued corporate guarantees in favour of its Mauritius AEs in respect of loans taken by them from EXIM bank in foreign currency and had also given inter-corporate deposits in FY 2010-11 @ 3 months LIBOR+300 bps and two more inter-corporate deposits in FY 2014-15 @ 6 months LIBOR+400 bps which were outstanding for AY 2017-18.

A reference was made to the TPO who rejecting the Assessee's argument that no TP adjustment was required for issue of corporate guarantee as the corporate guarantee so given was for the benefit of the Assessee and was therefore in the nature of a shareholder activity, observed that an independent enterprise would charge a commission on providing such types of guarantees in respect of

credit facilities obtained by other concerns and determining the ALP of the guarantee commission at 2% basis guarantee commission charged by banks, made a TP adjustment. Further, considering 6 months LIBOR+400 bps as internal CUP, the TPO also made a TP adjustment qua the interest on inter-corporate deposits given by the Assessee.

Aggrieved, the Assessee approached the DRP which confirmed the TP adjustments made by the TPO which caused the Assessee to approach the ITAT. With regards to the TP adjustment qua the guarantee commission, noting that the AEs had obtained loan from EXIM bank in foreign currency only, in respect of business carried on by them outside India and that it was unclear as to whether the quotes obtained by TPO from Indian banks were related to foreign currency loans, the ITAT rejecting the TPO's findings and following the coordinate bench ruling in Assessee's own case for AY 2011-12, directed the AO/TPO to restrict the rate of guarantee commission to 0.50% and compute TP adjustment accordingly.

With regards to the TP adjustment qua the interest on inter-corporate deposits, stating that since the Assessee itself charged interest @ 6 months average LIBOR+400 bps for the inter-corporate deposits given in FY 2014-15, the ITAT observed that the same constituted internal CUP, which should be adopted uniformly on all the inter-corporate deposits given by the Assessee to its AEs, since the transfer pricing adjustment was made for AY 2017-18. Accordingly, the ITAT upheld the TP adjustment made on the inter-corporate deposits given by the Assessee in FY 2010-11 which were outstanding for AY 2017-18. Thus, restricting the TP adjustment on corporate guarantee commission to 0.50% and upholding the internal CUP on interest on inter-corporate deposits given by the Assessee, the ITAT partly allowed the Assessee's appeal.

ITAT excludes Infosys Limited as comparable under SWD service segment, allows working capital adjustment

Atos IT Services Private Limited

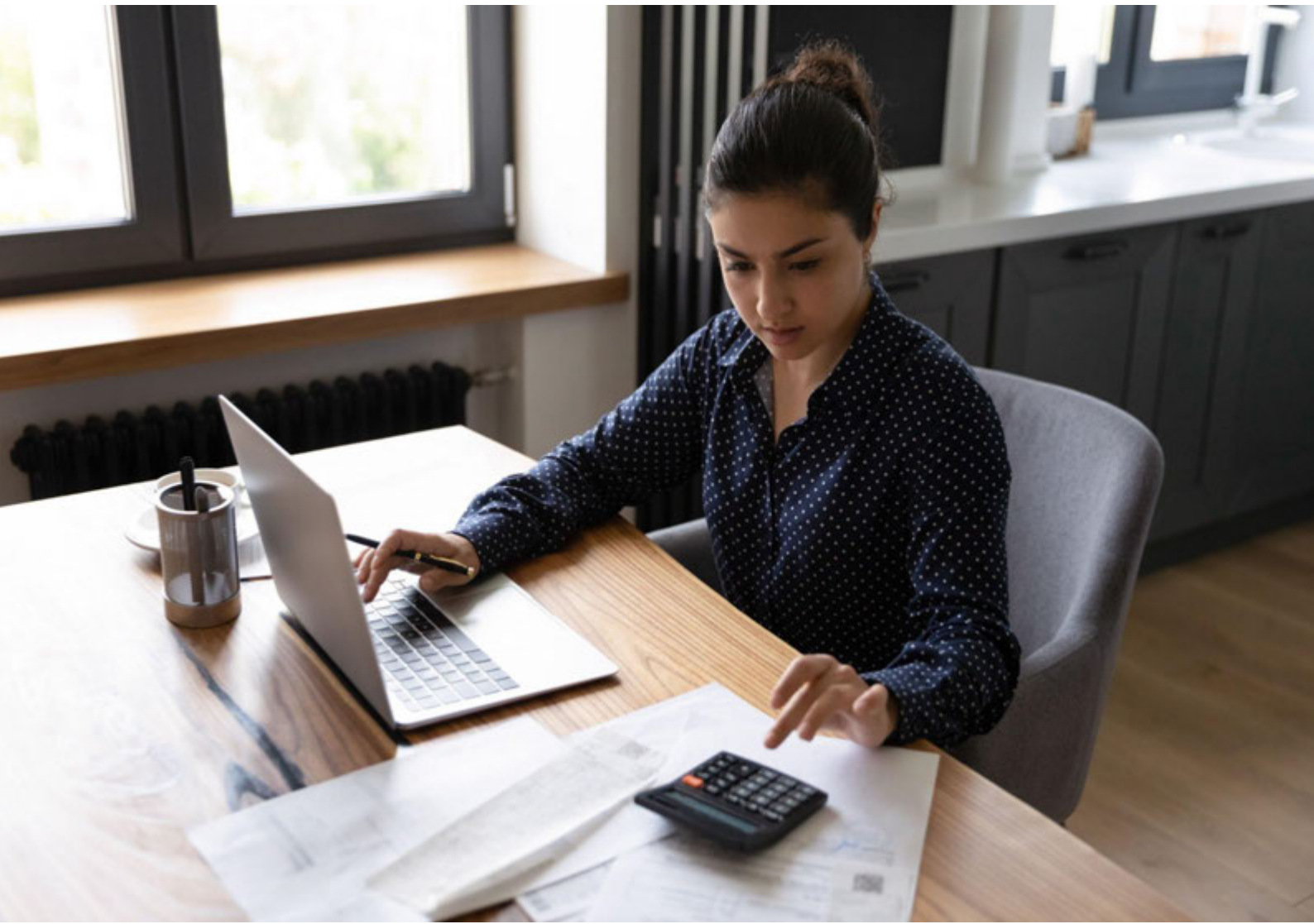
IT(TP)A No. 294/Bang/2022

The Assessee was a company engaged in the provision of software development services ('SWD segment') and sales support services to its AEs. The Assessee had filed its return of income which was processed under Section 143(1) of the IT Act, and the case was selected for scrutiny. It was noted by the AO that the Assessee had an international transaction with its AEs that exceeded INR 15 Crores and therefore reference was made to the TPO for determining the ALP of the international transaction.The TPO noted that the Assessee used TNMM as MAM and OP/OC as a PLI to determine its arms margin at 13.64% for the SWD segment. The TPO further

noted that for SWD segment, the Assessee had selected 16 comparables. As the mean median of the comparables selected by the Assessee was within 13.82%, the Assessee therefore treated the international transactions to be at arm's length. However, dissatisfied with the analysis carried out by the Assessee, the TPO shortlisted a new set of 20 comparables for the SWD segment and made a TP adjustment and passed an order.

On receipt of the TP order, the AO passed the draft assessment order by incorporating the proposed TP adjustment. Aggrieved, by the draft assessment order, the Assessee preferred objections before the DRP which passed directions by accepting the contentions of the Assessee in respect of some of the comparables. On receipt of the DRP direction, the AO passed the impugned order restricting the TP upward adjustment under SWD segment. Aggrieved by the order of the AO, the Assessee filed an appeal before the ITAT pleading the exclusion of Infosys Ltd. as a comparable *inter-alia* on account of owning intellectual properties, incurring R&D costs, being involved in software product development, exceeding upper turnover limit of INR 200 Crores and also contended that the Revenue erred in not providing an adjustment for the differences in its working capital and that of the comparable companies.

The ITAT accepted the Assessee's plea to exclude Infosys Ltd. as comparable on account of owning intellectual properties, incurring R&D costs, being involved in software product development, exceeding upper turnover limit of INR 200 Crores, etc. and allowed the working capital adjustment as per actuals, following the coordinate bench decision in **Huawei Technologies India P. Ltd. [(2019) 101 taxmann.com 313].**



ARTICLE

MSME SECTOR- BACKBONE OF INDIAN ECONOMY

Micro, small, and medium enterprises (MSMEs) play a crucial role in the production and manufacturing of a wide range of products for both domestic and international markets. They also help in promoting the growth and development of Khadi, Village, and Coir Industries in collaboration with concerned Ministries, State Governments, and different stakeholders. According to the Ministry of Statistics and Programme Implementation, the share of MSME GVA in All India GDP was 30.50% in both Financial Years 2018-19 and 2019-20. However, in 2020-21, the share of MSME GVA in All India GDP has decreased to 26.83%. This decline in the share of MSME GVA in All India GDP can be attributed to various factors such as the COVID-19 pandemic and the subsequent lockdowns, which have adversely affected the MSME sector.

It's worth noting that the Indian Government has launched various initiatives to support and promote the MSME sector, such as the "Atmanirbhar Bharat Abhiyan" and the "Startup India" program, among others, to enhance the growth and competitiveness of MSMEs in the country.

The Indian Government has removed the distinction between manufacturing and services enterprises by merging the investment amount and annual turnover criteria for both sectors. This means that the same investment and turnover limits will now apply to MSMEs in both manufacturing and services sectors.

This revised classification, which is applicable from July 1st, 2020, is based on two composite criteria: investment in plant and machinery/equipment, and annual turnover. The classification is as follows:

Micro Enterprises: Investment in plant and machinery or equipment not exceeding Rs. 1 crore and annual turnover not exceeding Rs. 5 crores,

Small Enterprises: Investment in plant and machinery or equipment not exceeding Rs. 10 crore and annual turnover not exceeding Rs. 50 crores,

Medium Enterprises: Investment in plant and machinery or equipment not exceeding Rs. 50 crore and annual turnover not exceeding Rs. 250 crores.

This move is aimed at promoting the growth of MSMEs in the services sector, which has traditionally received less attention compared to the manufacturing sector. In India, the definition and criteria for MSMEs were revised in May 2020 as a part of

the Atmanirbhar Bharat package to strengthen and encourage the growth of the sector. The new definition is based on the composite criteria of investment in plant and machinery and turnover, and the difference between manufacturing-based MSMEs and service-based MSMEs has been removed.

There are a number of benefits that are available in India to MSME sector. Some of them are listed below:

- According to Section 15 of the MSMED Act, buyers are required to make payment to MSMEs for the goods or services supplied within 45 days from the date of acceptance of the goods or services. In case of delayed payment, the buyer is liable to pay interest at a rate three times of the bank rate notified by the Reserve Bank of India;
- Secondly, as per the Finance Act 2023, payments made to MSMEs will be included in the ambit of Section 43B of the Income Tax Act. This implies that a deduction for such payments will only be allowed when the payment is actually paid within the time prescribed under the MSMED Act. This move is aimed at encouraging timely payments to MSMEs and providing them with more financial stability.

- Further, the turnover limit for micro units eligible for presumptive taxations specified under Sec 44AD of Income Tax Act,1961 has been increased from earlier INR 2 crore to INR 3 crore. This means that micro units with an annual turnover of up to INR 3 crore can now opt for presumptive taxation. This will be a relief for many small businesses who found compliance with accounting and auditing requirements to be a burden.
- Furthermore, wide FTP 2023, the Indian Government's plan to establish partnerships between Indian and foreign post offices is aimed at boosting trade at the local and MSME level. This move will enable

small businesses, such as artisans, weavers, and craftsmen in land-locked regions and hinterlands, to access global markets through cross-border e-commerce. The hub-and-spoke model that will be employed involves setting up *Dak Ghar Niryat Kendras* across the country, in conjunction with Foreign Post Offices. This model will allow for streamlined logistics and the efficient movement of goods, which will enable small businesses to compete on a global level.

- The reduction in user charges for MSMEs under the AA scheme and the EPCG scheme is a positive step towards supporting and promoting the growth of MSMEs in India. By reducing the user charges, MSMEs will be able to lower their production costs, which will make their products more competitive in the international market. This will ultimately lead to increased exports and revenue for MSMEs.
- As last but not the least, the Government has launched a new initiative in current FTP to encourage creating an enabling environment that supports the growth of businesses, particularly those engaged in export-oriented activities. This involves identifying districts with export potential and creating a conducive environment for exports to thrive in those areas. This will boost exports in MSME sector which are primarily based out of Districts level

Despite this, MSMEs in India are also suffering from various challenges like lack of financial assistance, lack of business expertise, and technological obsolescence. Indian MSMEs are also facing tough competition from their global counterparts due to liberalization, redundant manufacturing strategies and uncertain market scenarios. In developing economies, they contribute to around 35% of GDP whereas in developed countries, the contribution is around 50%.

The challenges faced by small traditional enterprises are indeed significant, and addressing them requires a multifaceted approach. Improving access to technology and enhancing competitiveness can be achieved by providing training and support programs to MSMEs, helping them upgrade their skills and adopt modern technologies. This can be done by partnering with industry associations, Government agencies, and other stakeholders to create initiatives that facilitate the transfer of knowledge and technology.

Finally, providing MSMEs with access to market intelligence and technology databases is also essential. Governments and industry associations can create online platforms and information portals that provide MSMEs with relevant information on markets, trends, and technologies. This information can help MSMEs make better-informed decisions and improve their competitiveness.

Overall, despite the challenges mentioned above, MSME sector has been proved as a boon to the economy. This has acted as an engine to the development of nation. There is need of the hour to further promote and incentivise this sector so that it can further contribute to the growth of economy.

GOODS & SERVICES TAX
From the Judiciary

Karnataka HC holds Rule 89(4)(C) of GST Rules as "Ultra Vires"

Tonbo Imaging India Pvt Ltd Vs UOI & Ors

TS-108-HC(KAR)-2023-GST

The Petitioner had exported customized and unique products and filed a refund application for the unutilized ITC in respect of zero-rated supplies made. Thereafter, the Department rejected the refund claim under the amended Rule 89(4)(C) for not providing proof of "like goods" domestically supplied. Aggrieved the Petitioner filed a Writ before the Karnataka HC.

The HC observed that the amended rule is arbitrary and ultra vires as it contradicts the section 16 of the IGST Act and section 54 of the CGST Act, as the intention of zero-rating is to make the entire supply chain of exports tax-free. The court also observed that the amended rule whittling down such refunds is ultra vires in view of settled principles of law that rules cannot override the parent legislation. The HC noted that the amended rule suffers from vagueness as the phrases 'like goods' and 'similarly placed supplier' were not defined, and in cases of unique and customized products, there cannot be the availability of like goods. The HC emphasized that the amendment also lacks clarity, as it creates uncertainties where there are no local supplies of like goods. Accordingly, the HC quashed the amended Rule 89(4)(C) which restricts the refund of unutilized ITC on zero-rated supplies.

Karnataka AAR: Transfer of business division as a going concern, eligible for 'NIL' rate of GST

M/s Pico2femto Semiconductor Services Private Limited

Advance Ruling No. KAR ADRG 12/2023

The Applicant had entered into a business transfer agreement to transfer its independent running business divisions as a whole, along with all its assets and liabilities. The Applicant sought advance ruling on whether the transfer of an independent running business division, including all its assets and liabilities, as a going concern, constituted a 'supply' u/s. 7 of the CGST Act. The Applicant contented that the agreement was considered as a slump sale and, therefore no GST was applicable.

The AAR observed that for any activity to qualify as a supply under the CGST Act, it should satisfy three limbs: (i) the activity must be a form of supply of goods or services or both, made or agreed to be made; (ii) for a consideration by a person; (iii) and in the course or furtherance of business. Accordingly, the AAR held that the transfer activity in the instant case satisfied all three limbs and hence, the business transfer agreement amounts to supply of services u/s. 7 CGST Act 2017. The AAR also held that the benefit of a notification prescribing a 'NIL' rate would be available to the Applicant subject to the fulfilment of the conditions of a going concern.

Bombay HC: State GST cannot be levied on intermediary services

Dharmendra M. Jani vs. Union of India

Writ Petition No.2031 Of 2018

In one of the most important judgements in GST, the Bombay HC has pronounced its judgement on the deeming fiction created by Section 13(8)(b) of IGST Act. The constitutional validity of section 13(8)(b) of the IGST Act was challenged by the Petitioner contending that the aforesaid provision is violative of Articles 14, 19, 245, 246, 246A, 248, 265, 269A, and 286 of the Constitution.

The matter was first listed before the division bench of the Bombay HC, wherein the One Judge observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of Constitution, and the other judge has expressed his disagreement and has rendered his separate opinion.

Therefore, in view of such difference in opinion, the matter was listed before the Hon'ble Chief Justice. The Chief Justice of the Bombay HC has held that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST and ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid, and constitutional. However, the court has also held that these provisions can only be applied to the IGST Act and can't be used to levy tax on intermediary services under the CGST and SGST Acts.

Authors' Notes

> *In a rather lengthy and elaborate decision which includes multiple views from the various courts, this landmark judgment is welcome by the trade with open arms as it will have a far-reaching impact on many taxpayers engaged in a similar business of export. In another matter concerning the intermediary service provision, it would be relevant to note that the Delhi HC in RE:* ***M/s Ernst and Young Limited [2023-VIL-190-DEL],*** *held that Professional services provided to foreign entities of the parent company does not amount to 'intermediary services'. This judgment on the scope of intermediary services is likely to provide much-needed certainty and clarifications for taxpayers. It would now be interesting to see whether the Revenue would challenge the instant judgement of the Bombay HC, before the SC.*

Punjab HC allows CENVAT credit on steel items used as inputs for capital goods

The Principal Commissioner, CGST Ludhiana vs. IOL Chemicals and Pharmaceuticals Limited

CEA No.10 of 2020 (O&M)

The Company had availed CENVAT credit on the structural steel items like M.S. Plates, MS Sheets/ Aluminium Coil, Joist//MS Channels, Angels etc. However, the Department had denied the credit on the ground that the items were not eligible to be capital goods in terms of Rule 2(a) of CENVAT Credit Rules, 2004 ('CCR 2004'). Aggrieved, the Company filed Appeal, wherein the Tribunal allowed the benefit of CENVAT credit on the steel items by relying upon the case of **Vandana Global Limited vs. CCE, Raipur [n 2011 (274) ELT A-78 (Chhattisgarh)]** Aggrieved, the Department filed an Appeal before the Punjab High

Court.

The HC examined the term 'capital goods' defined in the CCR 2004 and based on the consistent view taken by the judiciary in similar cases, observed that the Company has a right to claim CENVAT Credit for the impugned goods. Accordingly, the HC dismissed the Department's Appeal and allowed the benefit of CENVAT Credit for goods used as inputs for capital goods in the fabrication of structures embedded to earth.

Authors' Notes

It would be pertinent to note that the issue of CENVAT credit on capital goods has been a hotly debated topic in tax circle, with numerous litigations over the years. While the definition of capital goods has been the subject of much interpretations, several landmark judgments by the Supreme Court and various High Courts have unequivocally upheld the entitlement of assesses to claim CENVAT credit on capital goods. There are amply of judgments like the ***Bhushan Steel and Strips Limited [2008 (223) ELT 517], Jai Balaji Industries Limited [Excise Appeal No. 76313 of 2016]*** *etc. wherein the Tribunal has allowed input credit in respect of similar items used in the factory for construction work and fabrication of structures. The recent judgment by the Punjab High Court, serves as yet another affirmation of the judiciary's stance and provides much-needed clarity to such similar contentions of the Department.*

HC granted stay against recovery due to non-constitution of Tribunal

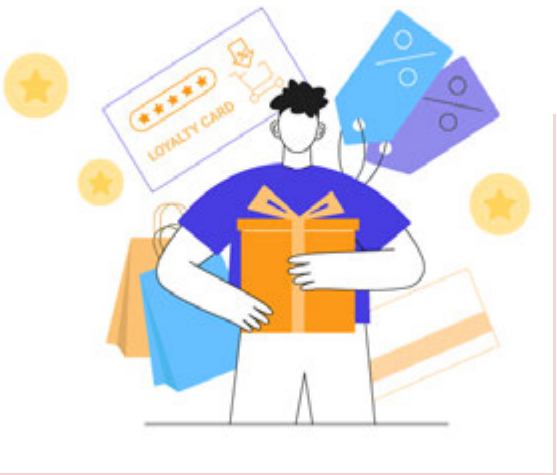
Flipkart India Private Limited

Civil Writ Jurisdiction Case No.5327 of 2023

The Petitioner wanted to file an Appeal against an aggrieved order before the Appellate Tribunal u/s. 112 of the BGST Act. However, due to the non-constitution of the Tribunal, the Petitioner is deprived of his statutory remedy. Aggrieved the Petitioner filed a writ before the Patna HC.

The HC observed that the State authorities have acknowledged the non-constitution of the Tribunal and issued a Notification No. 09/2019-State Tax, S. O. 399 dated December 11, 2019 for the removal of difficulties. The Notification provides that the period of limitation for filing an appeal before the Tribunal u/s. 112 shall start after the Tribunal's constitution u/s.109 of the BGST Act. Accordingly, the HC relying upon the case of **Saj Food Products [C.W.J.C. No. 15465of 2022]** granted a stay on the recovery against the Petitioner.

AAAR holds ITC to be ineligible on vouchers supplied to customers against loyalty points



Myntra Designs Private Limited

KAR/AAAR/03/2023 dated 24 February 2023

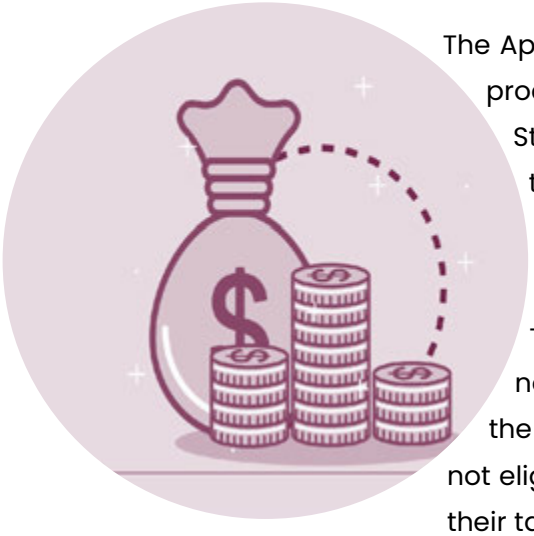
The Appellant, an e-commerce retailer had sought an advance ruling before the Karnataka AAR to ascertain whether ITC would be available on vouchers and subscription packages procured from third party vendors that are made available to the eligible customers, participating in the loyalty program against the loyalty points earned by such customers. The AAR had held that the Appellant was not eligible to avail the ITC on the vouchers in terms of section 17(5)(h) of the CGST Act, as the same are considered as 'gifts'. Aggrieved, the Appellant had preferred an Appeal before the AAAR.

Relying on the Karnataka HC judgment in **RE: Premier Sales Promotions Private Limited [WP Petition No. 5569 OF 2022 (T-RES)],** the AAAR held that vouchers are neither goods nor services and cannot be taxable. The AAAR further held that the primary condition for the claiming ITC is that there should be an inward supply of either goods or services or both on which 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.

AAR: ITC ineligible even if preceding seller not discharged its GST liability

M/s Vimal Alloys Private Limited

ORDER NO. AAR/GST/PB/31



The Applicant was running a furnace and for the purpose of the same, they procured ferrous alloys, scrap, gas, and other materials from within the State of Punjab. The Applicant had sought advance ruling as to whether the Applicant is entitled to claim ITC on the purchases made by it from the seller who had discharged its GST liability but preceding seller has not discharged its liability.

The AAR referring to Section 16(2)(c) of the CGST Act emphasised that no person shall be entitled to claim ITC unless the tax has been paid to the Revenue. Based on this provision, the AAR held that the Applicant was not eligible to claim ITC on the purchases made from a seller who had paid their tax liability but the preceding seller had not paid their liability under the Act.

Professional services provided to foreign entities of parent company does not amounts to 'intermediary services'

Ernst and Young Limited

W.P.(C) 8600/2022

The Petitioner, entered into an agreement with its parent company for providing various professional consultancy services like business advisory services, technical assistance etc. to its overseas entities. Thereafter, the Petitioner had applied for the ITC refund availed for providing its professional consultancy services. However, the refund was rejected on the ground that the Petitioner was an 'intermediary' and the place of services was the Petitioner's place of business in India and not where the recipient of services was located. The Adjudicating Authority and Appellate Authority both upheld this decision. Aggrieved the Petitioner filed a Writ before the Delhi HC.

The court observed that on a plain reading of the definition of the term 'intermediary' makes it clear that an intermediary merely "arranges or facilitates" the supply of goods or services or both between two or more persons, however in the instant case the Petitioner was the actual supplier of the professional services and not merely the facilitatory. Accordingly, the Appellate Authority's interpretation of 'intermediary' u/s. 2(13) of the IGST Act was deemed fundamentally flawed since the Petitioner did not arrange or facilitate services from any third parties. The HC also relied upon that Circular No. 159/15/2021-GST dated 20.09.2021 issued by the CBIC clarifies the requisites for qualifying as an intermediary. Hence as the Petitioner was not fulfilling any of the requisites as per the circular, the Petitioner's services did not fall within the definition of an 'intermediary'. The HC also determined that the circular reaffirms that the scope of intermediary services in the GST regime vis-à-vis the service tax regime is the same. Further as in the erstwhile regime the services rendered by the Petitioner were considered as 'export of services', the same interpretation should continue under the GST regime.

Subsequently, the HC held that since the services provided by the Petitioner were not as an intermediary, the place of supply should be determined based on the location of the recipient of services. And as the Department did not dispute that the recipient was outside India, the services correctly fall under the definition of 'export of service' under Section 2(6) of the IGST Act. Accordingly, the impugned orders were set aside, and the writ petition was allowed.

Authors' Notes

It would be pertinent to note that this Delhi HC ruling on the scope of intermediary services is likely to provide much-needed certainty for taxpayers engaged in similar businesses, amidst the divergent advance rulings on this issue. However, it is worth noting that the interpretation of the constitutional validity of the provisions relating to intermediary services under the IGST Act remains uncertain and dicey, with some dissenting judgments from the Bombay High Court ***Dharmendra M.Jani [2021-TIOL-1326-HC-MUM-GST]*** *to the unfavorable orders from the Gujarat High Court in* ***Material Recycling Association of India [R/Special Civil Application No. 13238 of 2018]*** *and other notable AAR's.*

Delhi HC to rule on ITC provisions pending in Bharti Telemedia along with similar petitions

The Delhi High Court recently heard a batch of petitions challenging the validity of Section 16(2)(c) and Section 16(4) of the CGST Act, 2017. During the hearing, the Court observed that the restrainment placed on the availment of ITC u/s. 16(2)(c) is similar to the condition placed under Section 9(2)(g) of the Delhi VAT Act, 2004 that was read down by the SC in the case of **Quest Merchandising India Private Limited [W.P. (C)--6093/2017].**

The Court determined that the outcome of this petition will have a bearing on other petitions challenging the provisions related to the availment of ITC, including Rule 36(4) of the CGST Rules (unamended). Therefore, the Court has decided to first hear related matters in the case of Bharti Telemedia and Bharti Airtel, before deciding on the remaining matters. The Court has listed the matter along with the other pending batch of petitions for hearing on April 19, 2023.

Authors' Notes

The Delhi High Court's forthcoming decision is highly anticipated and critical for taxpayers as far-reaching implications on the availment of ITC for the taxpayers. The Constitutional validity of Section 16 (2)(c) of the CGST Act has always been in questioned, primarily on the grounds of potential violations of Articles 14 of the Constitution of India. These challenges arise from the fact that the bonafide buyer is denied ITC for the supplier defaults. However, various High Courts have consistently upheld the proposition that ITC cannot be denied to recipients due to the defaults of their suppliers . This position of law also flows from the erstwhile indirect tax regime like in case of RE: ***Arise India Limited [2018-TIOL -11-SC-VAT],*** *wherein the Apex Court had affirmed the Hon'ble Delhi HC's view that ITC cannot be restricted to bonafide recipients.*

Tribunal rejects Department's denial of Input Service Credit based on incomplete invoice details

M/s Pricol Limited

2023-TIOL-182-CESTAT-MAD

The Appellant was issued three SCNs for denying the credit availed by them based on ISD invoices issued by their Head Office on the grounds that the ISD invoices did not contain the requisite details as required in terms of Rule 4A of Service Tax Rules and that the input services were received by the Appellant unit. It was also alleged that the credit transferred to the Appellant included a portion of credit that was transferred back by another plant to the ISD, which was then redistributed by the ISD to the Appellant. The Adjudicating Authority had confirmed the demand under the SCN. Aggrieved, the Appellant filed an Appeal before the CESTAT.

The Tribunal held that credit distributed by ISD cannot be held inadmissible based on incomplete invoices as the Department could have verified all input service invoices on the basis of credit which had been accumulated by ISD. The Tribunal also noted that all the issues raised in the Appeal are not res integra, as they have been previously addressed in the Final Orders dated 12.09.2012 and 16.03.2018. It was also noted

that the previous proceedings initiated against the other plant on the similar issue were also finalized in favor of the assessee. Accordingly, the Appeal was allowed.

Delhi HC rams department for blocking ITC under Rule 86A beyond one year without tangible material

M/s Parity Infotech Solutions Private Limited

W.P.(C) 7017/2022 & CM No. 21510/2022

The Petitioner challenged the validity of instructions dated 08.03.2023 issued by the Department of Trade & Taxes (Policy Branch), Government of NCT, New Delhi, regarding blocking of ECL under Rule 86A of the CGST Rules. The Petitioner's ITC was blocked for the period of more than 1 year and later an SCN was issued alleging wrongful availment of ITC. The Adjudicating Authority had confirmed the demand under the SCN and appropriated the blocked ITC against the tax demanded raised. Aggrieved the Petitioner filed a writ before the Delhi HC.

The HC held that the Petitioner's ITC was blocked solely on the basis of a communication received without any tangible material, which is impermissible under Rule 86A of the CGST Rules. The HC also noted that before taking the drastic measure of blocking the ECL, it was necessary for the officer to have some material to form a belief that the conditions under Rule 86A of the CGST Rules are satisfied. The HC observed that, in the instant matter it was apparent that the Respondent had no material to form any belief that the ITC lying in the petitioner's ECL had been availed wrongly. The court also emphasised that the impugned instruction for blocking of ITC beyond one year is not in conformity with Rule 86A (3) of CGST Rules and thus cannot direct the issuance of SCN or create demands in disregard of provisions of the CGST Act or Rules made thereunder. Accordingly, the impugned SCN and the impugned order are set aside.

HC allows amendment in GSTR-1 for rectification of mistake

Deepa Traders

W.P.No.12382 of 2020

On account of a clerical error, the Petitioner had erred in filing Form GSTR-1 for FY 2017 -18. However, this error was caused inadvertently caused during the nascent stage of the GST implementation. Aggrieved, the Petitioner preferred a writ petition before the Mardas High Court seeking relief by way of rectifying the GSTR-1.

The HC observed that the errors committed by the Petitioner were clearly inadvertent and rectifying them would enable proper reporting of the turnover and ITC. The HC also emphasized that the Petitioners must be permitted the benefit of rectification of errors where there are no *malafides* attributed to the assesses. Accordingly, the HC allowed the Petitioner to rectify its GSTR-1.

GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 07/2023 – Central Tax dated March 31st 2023	**Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers** Late fees u/s 47 of the CGST Act has been rationalised for Annual Returns u/s 44 of the CGST Act for the F.Y. 2022-23 onwards based on turnover of the registered persons as below: • Aggregate Annual T/O upto Rs. 5 Cr. – Late fee of Rs. 50 per day subject to maximum of 0.04% of T/O. • Aggregate Annual T/O above Rs. 5 Cr. And upto Rs. 20 Cr– Late fee of Rs. 100 per day subject to maximum of 0.04% of T/O. • Aggregate Annual T/O above Rs. 20 Cr. – Late fee of Rs. 200 per day subject to maximum of 0.5 % of T/O.
2.	Advisory dated March 21th 2023	**GSTN issues advisory for the taxpayer wishing to register as 'One Person Company' in GST** The GSTN has issued an advisory for taxpayers wishing to register as a OPC under the GST regime. Earlier, the taxpayers registering as an OPC raised concerns about the GST registration process as the option to select OPC was not available on the GST portal. To address this issue, the Applicants are now advised to select "Others" under the "Constitution of Business" dropdown list in Part B of the GST Registration Form "REG-01" if they wish to register as an OPC. After selecting "Others," Applicants should mention OPC in the text field and complete the registration application process as usual. In case of any further issues, it is advised to raise a ticket at the self-help portal

Sr No	Notification/ Circular	Summary
3.	Advisory dated March 10th 2023	**E-Invoice Portal Mandates Reporting 6-Digit HSN Codes for Outward Supplies** In order to comply with Notification No. 78/2020 dated October 15, 2020, the GST e-Invoice Portal requires taxpayers with an Aggregate Annual Turnover of more than Rs. 5 crores to report 6-digit HSN codes for their outward supplies. The portal will soon block the 4-digit HSN codes, and therefore, taxpayers will be required to make the necessary changes in their systems to ensure compliance. Further, to verify that all HSN codes are 6 digit codes, taxpayers have been advised to access the HSN Codes section on the e-Invoice Portal and raise a ticket at the Helpdesk if the 6-digit code is not available.
4.	Notification No. 03/2023 -CT dated March, 31 March	**One-Time Opportunity for Filing Revocation Application against the cancellation of Registration** The GST Council vide 49th GST Council meeting, had proposed one-time Amnesty Scheme for the taxpayers, whose registration has been cancelled due to non-filing of returns and application for revocation of cancellation of registration was not filed within 30 days from the date of order of cancellation u/s. 29 of the CGST Act. In adherence to the said recommendation, the CBIC vide Notification has notified the time limit to file revocation application under one-time amnesty scheme for the taxpayer whose registration has been cancelled up to 31 December, 2022. The Time limit to file aforesaid revocation application against such cancellation is until 30 June, 2023 only if the pre -condition of filing the pending returns along with payment of tax, interest and penalty has been fulfilled.
5.	Advisory dated April 12, 2023	**GSTN issues advisory on time limit for reporting invoices on the IRP portal** The Government has proposed to impose a time limit on reporting old invoices on the e-invoice IRP portals. In order to ensure timely compliance, taxpayers with AATO greater than or equal to 100 crores, will not be allowed to report invoices older than 7 days on the date of reporting. The restriction will also apply to debit/credit notes.

Sr No	Notification/ Circular	Summary
		For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit. It has been further clarified that there will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now. In order to provide sufficient time for taxpayers to comply with this requirement, the Government has proposed to implement the time-limit restriction w.e.f. May 1, 2023 onwards.
6.	Notification No. 02/2023 –Central Tax dated March 31, 2023	**Late fees of FORM GSTR-4 waived for return of July 2017 to March 2022** CBIC has waived late fees for FORM GSTR-4 for the periods July 2017 to FY 2021-22 completely in case of 'NIL' returns, and reduced to Rs. 500 in other cases, provided that the return has been filed between 1st April 2023 to 30th June 2023.
7.	Advisory dated April 24, 2023	**GSTN issued advisory on bank account validation** Vide the advisory it has been informed that GST System has been integrated with bank account validation functionality to ensure the accuracy of the taxpayer's bank accounts. The bank account validation status can be seen under the Dashboard - My Profile - Bank Account Status tab in the FO portal. Tax Payers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for his declared bank account.

CUSTOMS & FTP
From the Judiciary

HC allowed provisional release of goods since the goods were perishable in nature

Alphabet International vs. Union of India

R/Special Civil Application No. 2094 of 2023

The Petitioner had imported fresh kiwi fruits and thereafter filed the necessary documents for clearance of the goods. However, upon scrutiny the authorities seized the goods u/s. 110 of the Customs Act. Consequently, the Petitioner filed a petition before Hon'ble Gujarat HC seeking the provisional release of the goods, as they were perishable in nature and on the verge of perishing, which would result in a serious financial loss and prejudice to the Petitioner. The petitioner had also obtained provisional NOC from various departments stating that the goods were fit for human consumption.

The Court observed that when goods are perishable, the authorities should act quickly and take a final decision. Relying on the case, A and A Shipping Services vs. UOI [R/SPECIAL CIVIL APPLICATION NO. 23784 of 2022], the Court directed that the goods be released upon payment of the entire due tax amount. However, if the payment was not made, the Respondents shall determine the conditions to be imposed on the Petitioner

CESTAT rules CA certificate satisfies requirement of unjust enrichment to allow CVD refund

Commissioner of Customs (Exports) Vs LG Electronics India Pvt. Ltd. (CESTAT Chennai)

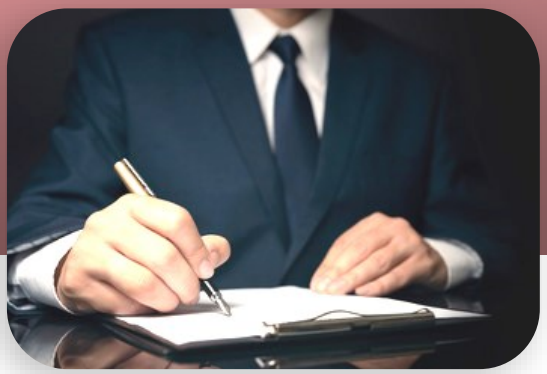
Customs Appeal No.40717 of 2013

The Company had filed a refund claim for additional duty paid during import of electronic goods, which were later sold in the domestic market. However, discrepancies were found between the declared goods and the BOE and Sales Invoice, moreover the CA certificate submitted by the Company did not follow the Board's Circular regarding unjust enrichment. Despite the discrepancies, the proper officer approved the refund, however, the Department filed an Appeal against the said refund. The Commissioner (Appeals) upheld the lower authority's order. Aggrieved the Department filed an Appeal before the Chennai CESTAT.

The CESTAT noted that the impugned board's only requires the statutory auditor or CA to explain how the burden of the duty has not been passed on and fulfill the unjust enrichment requirement. Therefore the CA certificate submitted by the Company is sufficient to fulfill the requirement of unjust enrichment and allow for the refund of the additional duty paid on imported goods. Accordingly, the Appeal was dismissed and the refund was allowed.

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Circular No. 10/2023-Customs dated 11th April, 2023	**Online filing of AEO-LO applications** CBIC vide the instant circular has notified the launch of the new version of the web-application to ensure continuous, real-time and digital monitoring of the physically filed AEO-LO applications for timely intervention and expedience. A step-wise guide for filing of AEO -LO application is available on the CBIC website under the "Indian AEO Programme". The online application has been mandated from 01.05.2023.
2.	Notification No. 21/2023 – Customs dated 1st April, 2023	**Exemption of duty for materials imported into India against a valid Advance Authorisation** Vide the instant notification, it has been notified that specific materials in terms of FTP 2023 (Para 4.03), have been fully exempted of the whole of additional duty, CVD, ADD subject to the condition fulfillment.
3.	Notification No. 30/2023 – Customs dated 10th April, 2023	**Export duty exemption from 20% to 'Nil' for Rice in the Husk** CBIC vide the instant notification has exempted the export duty for Rice in the Husk (paddy or rough), of seed quality from 20% to Nil.



SC holds bundle of rights in property created in Corporate-Debtor's favour, qualifies as "asset" under IBC

Victory Iron Works Ltd. vs. Jitendra Lohia & Anr.

Civil Appeal No.1743 of 2021

In the instant case, the subject matter of controversy was a property of which one Energy Properties Private Limited. ('EP') was the ostensible owner that had entered into a Development Agreement with Avani Towers Limited. ('Corporate Debtor') and also the Corporate Debtor provided finance to EP for the purchase of the said property. Victory Iron Works Limited ('Appellant') claimed to be in possession of the property in entirety under a Leave and License arrangement.

Subsequently, a financial creditor of the Corporate Debtor filed an application under Section 7 of the IBC against the Corporate Debtor for the initiation of CIRP. The RP filed an application before the NCLT for a direction to EP and the Appellant to not obstruct the sole and exclusive possession of the property by the Corporate Debtor and also for the issuance of direction to the local district administration to give proper assistance to the RP in taking possession of the property so as to discharge his duties under the IBC. The NCLT issued a direction to the local district administration to give proper assistance to the RP in taking possession of the property, however, at the same time the NCLT also held that its order would not prevent the Appellant from carrying on its activities in the portion of the land given to it under the Leave and License Agreement. Aggrieved, the Appellant approached the NCLAT which confirmed the order of the NCLT causing the Appellant to prefer an appeal before the SC claiming to be in possession of the property in its entirety.

The SC observed that it was clearer than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. Moreover, since such creation of bundle of rights and interests was actually for a valid consideration, the development rights created in favour of the Corporate Debtor constituted "property" within the meaning of the IBC, accordingly, since the expression "asset" in common parlance denoted "property of any kind", the bundle of rights that the Corporate Debtor had over the property in question constituted "asset" within the meaning of the IBC. Thus the SC dismissed the appeal filed by the Appellant against the NCLAT order.

NCLT holds Electricity Supplier not entitled to pre-CIRP dues, reiterates overriding effect of IBC provisions

S.K. Construction Co. vs. State of UP & Ors

IA No.223/2022 IN CP (IB) No. 23/ALD/2017

In the instant case, the Applicant was a successful auction purchaser of liquidated property of erstwhile Corporate Debtor, M/S Raman Ispat Private Limited that had approached the NCLT against the contention

of the Electricity Supplier that a new connection of electricity on the premises on which outstanding dues were pending, could not be provided unless and until such outstanding dues were paid as per the provisions of the Electricity Supply Code and the Electricity Act.

Placing reliance on the NCLAT decision in **Paschimanchal Vidyut Vitran Nigam Limited [CA(AT) Insolvency No.639 of 2018]** which made it clear that the IBC shall have overriding effect on the Electricity Act if any of the provisions of the Electricity Act were inconsistent with the provisions of IBC and perusing the provisions, the NCLT observed that the provisions of the Electricity Code were clearly inconsistent with the provisions of the IBC and the Electricity Supplier's plea that it should realize the said amount from the Applicant before providing the electricity connection could not be accepted because the said claim to realize pre-CIRP dues was clearly in conflict with the statutory scheme as laid down in the IBC.

Moreover, due to CIRP process getting completed and liquidation of Corporate Debtor being complete, the right of the Electricity Supplier to recover outstanding dues of pre-CIRP period was now extinguished and hence, no pre-CIRP electricity dues could be collected from the Applicant being successful auction purchaser.

Thus, directing the Applicant to complete all requirements in terms of the Electricity Act for getting a new electricity connection and also directing the Electricity Supplier to grant a new connection and supply of electric energy without insisting on payment of pre-CIRP dues to the liquidated property of the erstwhile Corporate Debtor, taken over by the Applicant, the NCLT disposed of the matter.

HC holds ED cannot request banks to furnish account-details for PMLA probe, without authorized officer's order

C. Gopal Reddy & Co. vs. Directorate of Enforcement

Writ Petition No.36939 of 2022

The Petitioners were a partnership firm and the partners of the firm engaged in the business of works contracts that were being investigated under PMLA and were before the HC through a writ petition, challenging the emails sent by ED to Axis Bank Ltd. and Union Bank of India which requested the banks to furnish the balance held in the accounts maintained in those banks, contended that no order under Section 17 (1A) of the PMLA to freeze the bank accounts, had been passed, which was a pre-condition to issue directions to the banks. Therefore, sending the emails to the banks for stopping the debit transaction from the Petitioners' account, without complying with Section 17 (1A) of the PMLA was unsustainable in law.

The Petitioners further contended that the even if the emails sent were to be taken as an order, they were sent by the Assistant Director of ED who was below the rank of the Deputy Director and therefore was not competent to pass order, vide emails, having the effect of freezing the debit amount as the power to pass such order to freeze the account under Section 17 (1A) of the PMLA, was only with the Director or an officer not below the rank of Deputy Director authorized by the Director for such purposes. The HC observed that, if the officer not below the rank of the Deputy Director authorized any officer subordinate to him, such subordinate officer would also be "an officer authorized under sub-section (1)" for making an order under sub-section (1A) of Section 17 of PMLA, therefore, in case of further authorization as permitted by Section 17 (1) (iv) of PMLA, such authorized officer, if in the course of search and seizure, found that it was not

practicable to seize record or property, he may make an order to freeze such property with due compliance of Section 17(1A) of the PMLA. However placing reliance on the SC ruling in **OPTO Circuit India Ltd.[2021 6 SCC 771],** Court observed that the power to "stop operation", in need to freeze the account, to stop the further layering/diversion of proceeds of crime as also to safeguard the proceeds of crime, was a power available under the PMLA, but the exercise of power by the competent authority was also required to be shown in the manner provided under the PMLA.

Thus, holding that the ED could not request the banks to furnish account-details for PMLA probe, without the order of the authorized officer, the HC allowed the writ petition.

SEBI issues Informal Guidance relating to exemption from open-offer obligations during merger

In the matter of Karun Carpets Pvt. Ltd.

SEBI/HO/CFD/PoD-2/OW/P/2022/49411/1

In the instant case, Karun Carpets Private Limited ('KCPL') had sought a no-action letter on confirmation that the transfer and vesting of shares of the Greaves Cotton Limited ('Target Company') into DBH Holdings (India) Private Limited ('DHPL'), pursuant to the scheme of amalgamation of KCPL into DHPL, would be exempt from open offer obligations by virtue of Regulation 10(1)(d)(iii) of the Takeover Regulations and whether the Target Company would need to comply with the procedural compliances in terms of Regulations 29 of Takeover Regulations. In the light of the above, SEBI issued an Informal Guidance by way of a no-action letter in relation to Scheme of Amalgamation of KPCL observing that the proposed scheme of amalgamation did not directly involve the Target Company as a transferor or a transferee company, and that KCPL had confirmed that entire consolidation to be paid for amalgamation would be discharged by issue of shares and, therefore, there would be no involvement of cash and cash equivalents.

Further, noting that the shareholders who were currently holding entire 100% shares and voting rights in DHPL, directly or indirectly, would continue to hold entire 100% shares and voting rights in DHPL, directly or indirectly, and recording the submission that the conditions of Regulation 10(1)(d)(iii) of Takeover Regulations would be complied with, SEBI observed that the transfer and vesting of shares of the Target Company into DHPL, would be exempted from open offer obligations subject to the approval of the scheme of amalgamation by NCLT, however, the exemption under the Takeover Regulations was provided only from making an open offer but not from the necessary disclosure requirements, hence, the compliances provided inter alia under Regulation 29 of the Takeover Regulations would be required to be complied with.

HC holds game of chance without reward, not 'gambling', directs RBI to reconsider FEMA compounding-application

Play Games 24x7 Pvt. Ltd. vs. Reserve Bank of India & Anr.

Writ Petition No. 3047 of 2022

The Petitioner (Play Games 24x7 Pvt. Ltd.) was a corporate entity that inter-alia designed and developed

software related to games of skill using its software products online on a website - www.rummycircle.com. Although the Petitioner issued equity instruments i.e., shares, to certain non-resident investors, the Petitioner had committed certain 'procedural' or 'technical' contraventions under FEMA. These were specified to mean delays in the filings of the prescribed forms and reporting of the inward remittances and also delays in the allotment of shares. The Petitioner filed an application with RBI and it took on record the forms on a without prejudice basis, i.e., without prejudice to the compounding procedure.

However, later on the RBI returned the compounding application and directed the Petitioner to approach its Foreign Exchange Department. The Foreign Exchange Department of the RBI directed the Petitioner to approach the then Department of Industrial Policy and Promotion, now the DPIIT, ostensibly to seek a clarification for eligibility to receive FDI. Aggrieved, the Petitioner preferred a writ petition before the HC. Considering the RBI's contention that the difficulty with the petition was that it proceeded on the basis that the RBI should assume the legitimacy of the activity and allow the compounding application and therefore, the RBI was justified in directing the Petitioner to obtain the necessary clarifications, the HC observed that it was undoubtedly necessary that the Petitioner remained clear of any illicit or prohibited gambling activity, whatever the platform, and if this was illegal in India, it did not become legitimate merely because it was online or because foreign investors had put money into it. Thus, the HC directed the RBI to decide the fresh application as expeditiously as possible, only reason being that the compounding pertained to 2006 to 2012 and the petition had been pending before the HC for far too long.

SC holds lack of jurisdiction of Court no ground to transfer money-laundering case

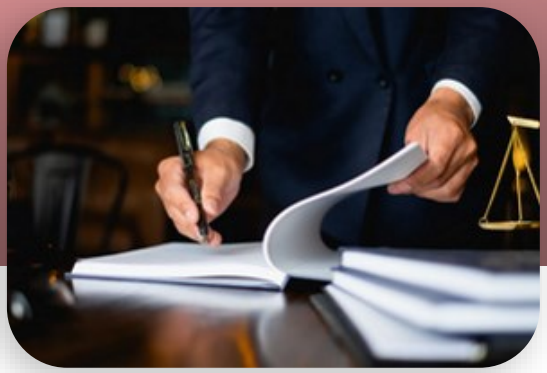
KA Rauf Sherif vs. Directorate of Enforcement & Ors.

Transfer Petition (Criminal) No.89 of 2023

In the given matter, the petitioner filed a petition before the Supreme Court seeking the transfer of a money-laundering case against him from the Court of the PMLA Special Judge in Lucknow to the Court of the PMLA Special Judge in Ernakulam. The petitioner argued that the proceedings in Lucknow were without jurisdiction, as all criminal activities alleged by the prosecution had taken place in Kerala. However, the Supreme Court observed that the question of territorial jurisdiction of a Special Court to take cognizance of a complaint under PMLA is required to be decided with reference to the place where any one of the activities/processes which constituted the offence under Section 3 of the PMLA took place. Therefore, the Special Court in Lucknow could not be said to be lacking territorial jurisdiction to entertain the complaint.

The Supreme Court also noted that the ground that the petitioner was remanded to custody by the Special Judge at Ernakulam under Section 167(2) of the CrPC and that, therefore, the filing of the complaint at Lucknow was impermissible, was not legally well-founded. The Supreme Court held that an order under Section 167(2) had to be passed necessarily by the Magistrate to whom an accused person was forwarded, whether he had or had not the jurisdiction to try the case. Therefore, the Supreme Court dismissed the transfer petition, finding no legally valid and justifiable grounds to order transfer.

REGULATORY
From the Legislature



SEBI issued operational guidance regarding the (Buy-back of Securities) amendment Regulations, 2018

SEBI has issued Operational Guidance regarding the Buy-back of Securities vide Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/35 dated March 8, 2023. SEBI has notified the Buy-back of Securities Amendment Regulation, 2023 on February 7, 2023, which shall come into force on the 30th day of the date of notification i.e. March 9, 2023. The following restrictions have been set out for the companies undertaking buy-back through stock exchange route:-

- The company shall not purchase more than 25% of the average daily trading volume of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.
- The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.
- The company's purchase order price should be within the range of ±1% from the last traded price.
- Margin Requirement for deposits in Escrow Account the escrow account shall consist of cash and/or other than the cash.

Authors' Note

> *This signifies that all buy-back offers where the Board of Directors of the company approve resolution with respect to Buy-back on or after 9th March, 2023, the above mentioned Regulations shall be applicable*

BSE clarification regarding the Manner of filing financial results as required under SEBI (LODR) Regulations, 2015

BSE, vide circular No. NSE/CML/2023/20 dated March 15, 2023, has issued a clarification regarding the manner in which financial results are filed as required under Regulation 33 of SEBI (LODR) Regulations, 2015.

- The Exchange observed that a few companies include investor presentations and shareholders letters in the minutes of board meetings conducted to consider and approve the financial results, whereas the financial statements, auditor reports, etc.
- The listed entities are requested to note that the PDF of the outcome of board meetings held to consider and approve financial results must only include financial results, auditor's reports, and other statements as prescribed under Regulation 33, Part (a) of Schedule IV of the regulation, and related circulars.

- If the company wishes to disclose any other information such as shareholder letters or investor presentations, it must be done as a separate announcement.

SEBI issued a clarification with respect to Qualified Share Transfer Agents (QRTAs)

SEBI has issued a clarification regarding Qualified RTAs (QRTAs) through Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/36 on March 10, 2023. The circular specifies that an RTA (Registrar and Transfer Agent) will be considered a QRTA if, at any point during a financial year, the total number of physical and demat folios serviced by the RTA for listed companies exceeds INR 2 Crores.

If a RTA is categorized as a QRTA, they must inform SEBI of the same within 5 working days. Furthermore, the circular states that once an RTA has been recognized as a QRTA, they will be considered as such for the next 3 financial years, regardless of any subsequent fall in the number of folios. Such QRTAs will be required to comply with all requirements specified by SEBI from time to time.

Authors' Note

> *The new centralized system for corporate exits and the establishment of C-PACE are part of the Indian Government's ongoing efforts to improve the ease of doing business in the country. The streamlined process is expected to provide greater efficiency and transparency, and to reduce the burden on businesses seeking to voluntarily wind-up their operations.*

RBI directs all banks to keep branches open for the annual closing of Government accounts

RBI vide Notification No. RBI/2022-23/186 dated March 21, 2023, issued special measures for the current Financial Year 2022-23 for the annual closing of Government accounts, specifically pertaining to transactions of the Central/State Governments. Accordingly, RBI has directed all agency banks to keep their designated branches open for over-the-counter transactions related to Government transactions until the normal working hours of March 31, 2023. All Government transactions done by agency banks for the Financial Year 2022-23 must be accounted for within the same financial year.

Also, special clearing will be conducted for the collection of Government cheque on March 31, 2023, for which the Department of Payment and Settlement Systems (DPSS) of the RBI will issue the necessary instructions.

Authors' Note

> *RBI has asked agency banks dealing with transactions of Central and State Governments to ensure special measures for the annual closing of their respective accounts for the current Financial Year 2022-23.*

SEBI bans brokers from creating bank guarantees on clients' funds

SEBI has prohibited Stock Broker (SBs) and Clearing Members (CMs) from using clients' funds for bank guarantees (BGs), effective May 1, 2023 vide Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/061 dated April 25, 2023. This is part of SEBI's effort to curb the possible misuse of investors' money by SBs. Currently, SBs and CMs pledge client's funds with banks which in turn issue BGs to clearing corporations for higher amounts. This implicit leverage exposes the market and especially the client's funds to risks. SBs and CMs have to wound down all existing BGs created out of clients' funds till September 30, 2023. Provided that the provisions of this framework shall not be applicable for proprietary funds of SBs/CMs in any segment and SB's proprietary funds deposited with CM in the capacity of a client. SBs/CMs shall be required to provide a certificate, by its statutory auditor confirming the implementation of this circular. Such a certificate shall be submitted to stock exchanges/clearing corporations by October 16, 2023.

Author Note

SEBI's initiative to regulate the use of client funds by brokers and prevent excessive leverage is a positive step towards protecting the interests of investors and ensuring the stability of the financial system. Using client funds to take excessive leverage can expose clients to a higher level of risk than they may be comfortable with, and can result in significant losses if the broker's trades do not perform as expected. Furthermore, if a broker takes excessive leverage and defaults on their obligations, it can lead to a systemic risk to the financial system, causing widespread panic and instability.

INTERNATIONAL DESK

UAE notifies 'Small Business Relief' to support start-ups, effective from June 01, 2023

UAE notifies Small Business Relief for residents to support the start-ups and other small micro business by reducing the corporate Tax Burden and compliance costs. Accordingly, only the resident taxable person can claim the Small Business Relief if their annual revenue for the relevant and previous tax periods is below AED 3 million. Revenue can be determined based on the applicable accounting standards accepted by the UAE. no longer be available. AED3 million revenue threshold is applicable for tax periods starting on or after Jun 1, 2023 and but ending on or before Dec 31, 2026

Small Business Relief will not be available to the Qualifying Free Zone Persons or members of Multinational Enterprise Group as defined in Cabinet Decision No. 44 of 2020 on Organising Reports Submitted by Multinational Companies. Businesses may carry forward any incurred Tax Losses and any disallowed Net Interest Expenditure from such tax periods for use in subsequent tax periods in which the Small Business Relief is not elected if they choose not to apply for Small Business Relief.

Artificial separation of business for seeking Small Business Relief would amount to obtaining a Corporate Tax advantage under Article 50(1) that pertains to General Anti-abuse Rules of the UAE Corporate Tax Law.

It is believed that ECTA will further cement the relations between the two countries while significantly enhancing bilateral trade in goods and services. It is also expected to secure alternative supply chains and counter an assertive China.

Egypt Tax Authority to Open USD Account to Facilitate Tax Collection from Foreign Firms

The Egyptian Tax Authority (ETA) is currently opening an account in the US dollar to facilitate the process of receiving taxes from foreign companies that prepare their budgets in USD as announced by the Head of ETA Mokhtar Tawfik during a meeting with experts of Egypt Tax Society (ETS). The need for tax policy document for upcoming five years was asserted to support current and future investments.

Furthermore, Mr. Tawfik reiterated that the deadline for the taxpayers to register in e-invoice system is up to April 30th which is mandatory for companies to deal with government agencies and sectors.

The head of ETA also disclosed that a memorandum is being prepared to be given to Finance Minister Mohamed Maait to issue a ministerial decision regarding setting an indicative price for the currency, accounting for the disparity between the dollar's officially announced price and its circulating prices in exchange offices.

Finance Bill: The UK legislates for Pillar Two minimum Taxation for Multinational Enterprises (MNEs)

The legislation governing the UK's application of "top-up" taxes—the OECD/G20 agreed "Pillar Two" imposing minimum taxation for major multinational groups—is included in the Spring Finance Bill. Those who have worldwide consolidated revenues of at least €750 million in two of the previous four years are generally considered to be affected groups. There are two main components:

- The domestic top-up tax (DTT), which places 15% effective tax rate floor under UK members of large groups wherever headquartered and
- Multinational top-up tax which is primarily charged on UK-parented multinational and certain UK intermediate holding companies in the respect of worldwide operations.

Despite being complicated, the rules seem to be in line with expectations and the OECD's Pillar Two Model Rules. Groups need to keep putting up plans for the first affected Accounting Period, which will start on or after December 31, 2023.

When necessary, the DTT will assess UK chargeable persons, including partnerships, a top-up to a 15 percent jurisdictional effective tax rate. Liability to the DTT shall be joint and several where the group includes multiple UK businesses. In regard to UK firms, any additional DTT obligations will take precedence over the multinational top-up tax, other nations' Pillar Two taxes, head office taxation of PE earnings, and other nations' CFC taxes (including the US GILTI regime).

The Finance Bill incorporates the transitional safe harbours that were previously announced by the OECD. The safe harbours are also dependent on the preparation of a 'qualifying country-by-country' report for the period, so groups should ensure they can compile the data required for this. Preparation of the said report will be critical but OECD has published a template for the 'GloBE Information Return' for groups to demonstrate compliance with the new rules.

MOOWR Scheme: The Past, The Present. The Future...

Background

In October 2019, the WTO recommended India to withdraw its import subsidies provided through export promotion schemes such as EOU, AA, EPCG, and SEZ based on its export performance . In response to this, the Government of India re-introduced the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR Scheme) to encourage the local manufacturing and align with the 'Atma Nirbhar Bharat' initiative. This scheme allows manufacturers to import raw materials and capital goods without paying customs and IGST duties. This helps reduce the impact of import duties and other taxes on manufacturers and provides a level playing field to domestic manufacturers, thereby boosting the 'Make in India' initiative. The article seeks to provide a comprehensive overview of the MOOWR Scheme, including the recent fundamental changes made to it.

Section 65 of the Customs Act permits the owner of warehoused goods to conduct manufacturing processes or other operations on such goods with the Commissioner's approval. The MOOWR Scheme was introduced to facilitate this provision, laying down the eligibility criteria, operations, procedures, and compliance requirements necessary for manufacturing and other operations in a private bonded warehouse.

It is indeed noteworthy that the MOOWR scheme allows for manufacturing and other operations to be conducted on warehoused goods without any obligation to export. This is in contrast to many other schemes which require an export obligation as a condition for availing benefits. Furthermore, the fact that the scheme is also extended to importers who import goods for sale or removal in the domestic market is a unique feature that can potentially encourage more businesses to take advantage of the scheme.

Benefits under the Scheme

- The scheme provides faster clearance of goods and lower transaction costs, which can help manufacturers save time and money. In addition, the scheme offers incentives such as duty drawback, refund of taxes and levies, and other benefits that are designed to promote domestic manufacturing and exports.
- The scheme allows manufacturers to carry out various operations, such as manufacturing, processing, repairing, or any other operation, within the warehouse. This can help manufacturers save costs, as they do not need to invest in setting up a manufacturing unit or a processing unit outside the warehouse.
- The scheme also allows manufacturers to import raw materials and inputs without payment of duty, subject to certain conditions. The manufacturer can store the imported goods in the warehouse and carry out manufacturing or processing operations on them. The finished goods can then be cleared

for export or for domestic consumption, as per the manufacturer's requirement.

Drawbacks of the Scheme

Although the MOOWR scheme offers potential benefits for boosting manufacturing in India, there are certain areas that require clarification and may pose challenges. These include uncertainties around the fate of existing licenses of Advance Authorization and EPCG, the treatment of goods movement for repairs/ testing/job work, coverage of activities under the term 'Other Operations', Duty Drawback on exports under AIR, and de-bonding from present EOU/EHTP/ETB schemes and transitional issues.

Recent Changes

The Customs Bonded Warehousing Scheme has undergone some significant amendments recently, as proposed by the Finance Minister through a last-minute addition to the Finance Bill, 2023. The proposed amendment in the Finance Bill includes Section 65A which makes IGST and Compensation Cess payable on imported goods stored in a customs warehouse for manufacturing and other operations, while other customs duties such as BCD will continue to be exempted. This change affects customs bonded warehouses that undertake manufacturing and other operations and have obtained permission u/s 65 of the Customs Act, including those registered under the MOOWRs Scheme.

As a negative impact of the new inclusion the importers need to file a bill of entry for home consumption instead of existing mechanism of filing a warehousing bill of entry. However, the new provision will not be applicable to goods that have already been imported before the notification of this provision. The Government shall also prescribe the manner and conditions for the payment of other duties of customs upon the removal of goods from the warehouse.

Implications of Proposed Amendment

The proposed amendment to the Customs Act is expected to cause significant operational and legal issues for the industry. The MOOWR scheme was introduced with the provision of duty deferment for all customs duties, including IGST and GST Compensation Cess. However, the new amendment may take away the benefits of the MOOWR scheme if it is implemented as proposed.

The importers might face significant working capital impact, as they would no longer be able to avail complete exemption from customs duties. This may also lead to operational issues for the industry, creating a hybrid situation for the treatment of imported goods . Additionally, the benefit of duty deferment under the MOOWR scheme may be substantially curtailed, and taxpayers may need to re-evaluate the feasibility of continuing under the scheme.

MOOWR units might also face an additional compliance burden as they will have to file for a refund of the IGST paid on imported goods post the export of the goods, which will increase their administrative workload. The upfront payment of IGST and cess by importers while depositing goods in the warehouse will reduce the attractiveness of the MOOWR scheme. Exporters operating under this scheme will also need to reassess the benefits of Advance Authorization and EPCG schemes compared to MOOWR for claiming exemption elements. This would require a thorough analysis of the cost-benefit of each scheme and a careful consideration of the compliance burden associated with each option .

GLOSSARY

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

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

GLOSSARY

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

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

FIRM INTRODUCTION

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

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

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

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

Website: **www.taxcraftadvisors.com**

GLS Coporate Advisors 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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