VISION 360

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A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

GLS Corporate Advisors LLP

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EDITORIAL

VISION 360: Navigating Complexity!

As we find ourselves in a world of constant change, one aspect remains a constant presence in our lives: Taxes. Taxation is a critical element that fuels the functioning of our societies and economies. However, the evolving tax landscape, marked by complex regulations, loopholes, and disparities, calls for a renewed focus on clarity and fairness. As we enter the midpoint of the year, we mark a crucial juncture in the world of taxation. With the impact of the ongoing global economic recovery and recent legislative changes, this month presents both opportunities and challenges for taxpayers and tax professionals alike.

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.

In the Direct Tax front, the CBDT has notified the *Mahila Samman Savings Certificate Scheme 2023* shall be outside Section 194A TDS ambit. In another such relief, the CBDT has propose changes to Rule 11UA in respect of Angel Tax. It would also be worth to note that the Mumbai ITAT has held proposes changes to Rule 11UA in respect of Angel Tax.

On the Indirect Tax front, the CBIC has reduced the E-invoicing limit to 5 crores. As for the judicial developments, Karnataka High Court has ruled game of skill played with or without stakes not gambling. In another important judgement, the SC holds credit note issued by manufacturer to dealer as valuable consideration for warranty replacement, liable for sales tax.

Further, we have penned down an article on an attempt to decode Section 135 of CGST Act which reveals a striking presumption of guilt, placing the burden of proof on the accused to establish their innocence. The author has also discussed about the Constitutional and judiciary standpoint on this topic.

The Customs law too witnessed improvements like the CBIC instruction regarding the acceptance of e-CoO issued under India- Sri Lanka FTA. As for the judicial developments, in one of its judgment the CESTAT reduces redemption fine and sets aside penalty due to lack of *mens rea.*

Further, in the international desk, the UAE has recently released an explanatory guide to corporate tax law, providing valuable insights for businesses navigating taxation in the country. Additionally, Saudi Arabia has made amendments to its Transfer Pricing bylaws, emphasizing the importance of adhering to international transfer pricing regulations for multinational corporations.

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 32nd 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

Presumption of *Mens Rea*: Exploring the Constitutional Validity of Section 135 of the CGST Act

Introduction

The principle of "*Ei incumbit probatio qui dicit, non qui negat*" may sound unfamiliar in its Latin form, but its essence emphasizes in the presumption of innocence until proven guilty. It is a fundamental concept in criminal law, asserting that individuals are to be considered innocent unless evidence is presented to establish their guilt. India, like many other countries, has adopted this principle, including it in the GST Act through Section 135 of the CGST Act.

In simpler terms, the provision acknowledges that in cases involving GST offenses, there is a presumption that the accused possesses the requisite mental state—such as knowledge or intention—unless proven otherwise. This presumption places the burden of proving the absence of a culpable mental state on the accused.

However, the constitutional validity of this provision, which places the burden of proof on the accused to establish their innocence, raises important concerns. This article aims to delve into the intricacies of Section 135, assess its implications, and examine its compatibility with constitutional principles.

Decoding Section 135 of the CGST Act

The Section 135 of the CGST Act reveals a striking presumption of guilt, placing the burden of proof on the accused to establish their innocence. Section 135 is reproduced below:

"Section 135. Presumption of culpable mental state.- In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.-For the purposes of this section,-

(i) the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;

(ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

According to Section 135, in any prosecution for an offense under the Act that necessitates a culpable mental state, the court automatically assumes the existence of such a mental state. However, the accused can mount a defense by proving that they lacked this mental state regarding the specific act charged as an offense. As per the provision, a 'culpable mental state' encompasses intentions, motives, knowledge of a fact, and beliefs or reasons to believe in a fact. It is essential to note that the court considers a fact proven only when its existence is believed beyond reasonable doubt, not merely on the basis of a preponderance of probability. Thus, it could be seen that the provision places the burden of disproving the existence of a culpable mental state on the accused, which diverges from the principle of presumption of innocence.

The Section 135 of the CGST Act is not an isolated provision, it finds its counterparts in a plethora of tax statutes enacted by both Parliament and State Legislatures have adopted similar provisions. However, the inclusion of such provisions in tax laws is not unprecedented, and they have often been perceived as stringent or draconian. The intention behind these provisions is to strengthen enforcement and deter potential offenders. However, it is essential to carefully consider the implications of such presumptions on the rights and fairness of taxpayers involved in cases where there is no intent to evade taxes.

Conflicting Jurisprudence

The presumption of innocence is a cardinal principle of Indian criminal jurisprudence. But it has not received consistent judicial treatment over the years. The Indian legal system grapples with conflicting jurisprudence, especially in the context of Section 135 of the CGST Act. This provision, which introduces a presumption of guilt and places the burden of proof on the accused, has sparked debates and raised questions about the consistency of India's jurisprudential approach.

On one hand, the principle of presumption of innocence is a fundamental tenet of Indian criminal jurisprudence. It dictates that an accused person should be presumed innocent until proven guilty. However, Section 135 of the CGST Act seems to deviate from this principle by presuming the existence of a culpable mental state on the part of the accused. This conflicting approach in the CGST Act raises concerns about the harmonization of legal principles. While the Act adopts a presumption of guilt, other areas of Indian law adhere to the traditional principle of *innocence until proven guilty*. This disparity in approaches creates confusion and inconsistency within the legal framework.

Furthermore, a thought-provoking inference can be drawn from Article 20(3) of the Constitution of India, which asserts the right against self-incrimination. This constitutional provision ensures that no person can be compelled to act as a witness against themselves. If this protection is not granted, the burden of proof would unjustly shift onto the accused, rather than remaining with the prosecution. When examining Section 135, which places the burden on the accused to prove their innocence, the absence of protection

against self-incrimination becomes apparent. The interplay between Section 135 and Article 20(3) underscores the need for a careful analysis of the constitutionality and fairness of such provisions. In **Data Ram v. State of U. P. [(2018) 3 SCC 22],** the Hon'ble Supreme Court held that a postulate of criminal jurisprudence is the principle of presumption of innocence.

However, Section 135 departs from this principle by presuming the existence of a culpable mental state on the part of the accused in prosecutions under the Act. The provision shifts the burden onto the accused to prove their innocence, which conflicts with the fundamental right. In notable cases such as **Gurbaksh Singh Sibbia v. State of Punjab [1980 AIR 1632],** the Hon'ble Apex Court has emphasized the significance of the presumption of innocence as being 'salutary and deeply ingrained' in Indian criminal jurisprudence. Subsequent rulings, including **Narendra Singh v. State of M.P. [(2004) 10 SCC 699]** and **Ranjit Singh Sharma v. State of Maharashtra [(2005) 5 SCC 294],** have reiterated the presumption of innocence as a human right and the burden of proof rests with the prosecution.

Given this legal backdrop, the constitutionality and fairness of Section 135 should be subject to scrutiny. Any provision that infringes upon the presumption of innocence and imposes a reverse burden of proof on the accused must be carefully evaluated to ensure the protection of individual rights and the preservation of a fair and just legal system.

Examining the Constitutionality Of Section 135

The Section 135 of the CGST Act imposes the burden on the accused to prove his innocence. For instance, if someone like A prints counterfeit invoices using B's name and circulates them without B's knowledge, the court will presume that B had knowledge of this fact during prosecution proceedings. This provision is perceived as draconian, and its constitutionality needs to be challenged, particularly considering the unfair nature of investigations in our country.

The Supreme Court, in the case of **Noor Aga vs. State of Punjab and Another [(2008) 16 SCC 417],** upheld the constitutionality of a similar provision in the context of the NDPS Act. The said judgment established an important principle regarding the burden of proof in cases where the mental element is reversed the prosecution was still obliged to prove the foundational facts beyond reasonable doubt. Further in **Haresh M. Jagtiani vs. State of Maharashtra [(2017) 2 AIR Bom R 140]**, the reversing the burden of proof of mental element on the accused has been held to be Constitutionally permissible by the Hon'ble Bombay High Court only when the foundational facts required to be proved by the State are such that, when proved, are capable of raising a high degree of probability of guilt of accused. It clarified that even when the burden of proof is shifted to the accused, the prosecution has the initial responsibility to prove, beyond reasonable doubt, that an offense has indeed been committed. For instance, in cases involving assault or theft, once the act of physical harm or unauthorized taking of someone's property is established, it is highly likely that the element of intention or *mens rea* is present. However, in offenses like willful non-filing of tax returns or failure to maintain proper records under the GST laws, the mere act of non-compliance does not necessarily indicate a deliberate intention to evade taxes. Therefore, presuming guilt based solely on these acts without considering the actual intention behind them can be seen as inherently unconstitutional. Without proper evidence of intent, every instance of non-compliance could be wrongly categorized as tax evasion, undermining the principles of fairness and presumption of innocence.

Revisiting the Stringency of Section 135

The constitutionality of Section 135 warrants scrutiny, especially considering the inclusion of Explanation Clause (ii). This clause places a significant burden on the accused, requiring them to disprove *mens rea* 'beyond reasonable doubt' instead of relying on a 'preponderance of probabilities.' This stringent evidentiary requirement poses a challenge for the accused, without serving any essential purpose of the statute. It is perplexing why the legislature would demand that taxpayer's absolute certainty from taxpayers in proving their lack of *mens rea*, even in cases involving unintentional and *bonafide* errors. The inclusion of Explanation Clause (ii) appears manifestly arbitrary and unreasonable.

Furthermore, it is worth noting that in the **Noor Aga case (supra)**, the Supreme Court upheld the constitutionality of similar provisions in the NDPS Act, which reversed the burden of proof onto the accused. However, the Court specifically emphasized that the standard of proof required was not 'beyond reasonable doubt' but rather a preponderance of probabilities. Thus, it could be inferred that unless Explanation Clause (ii) is removed from Section 135, there is a potential risk that the provision as a whole may be deemed unconstitutional.

Conclusion

The conflicting jurisprudence surrounding Section 135 emphasizes the need for clarity and uniformity in India's legal system. It calls for a comprehensive examination of the constitutional validity and implications of such provisions. Striking a balance between effective enforcement of tax laws and safeguarding the rights of the accused is crucial to ensure a fair and just legal environment. Section 135 of the CGST Act, raises significant concerns regarding the principles of a fair trial and presumption of innocence. The constitutionality of this provision, particularly in light of Explanation Clause (ii) and its requirement of disproving *mens rea* beyond reasonable doubt, is questionable and merits further examination. The Noor Aga judgment, highlights the need for a nuanced approach in determining the burden of proof and ensuring that it aligns with constitutional principles. It is crucial to strike a balance between enforcing tax laws and protecting the rights of individuals, ensuring that the accused are not unduly burdened in proving their innocence. A comprehensive review and potential revisions of Section 135 of the CGST Act are essential to uphold the fundamental principles of justice and fairness in the legal system.

INDUSTRY PERSPECTIVE

SUDEEP MANEK

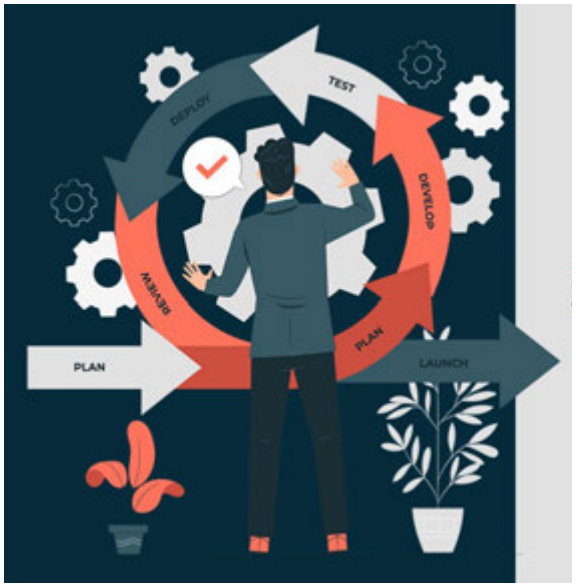
Head of Tax

Global MNC in Paint Industry

01 Given the recent implementation of the CBIC's SOPs for the scrutiny of GST returns from FY'20 onwards, can you share your views on how these SoPs would affect the compliance, efficiency and how the industry should cope up with the same.

These SOPs have been introduced with the intent to promote compliance, streamline processes, and improve transparency. However, at the same time they present additional challenges for taxpayers, such as increased compliance burden, reconciling data from multiple sources like e-waybill, e-invoice, GST returns, books of accounts etc and not all companies would have the bandwidth to keep so many reconciliations ready. This marks a unique and a very interesting time frame where Government is ahead of the Tax-payer on the technology front.

Having said that, one must recognize the significance of being prepared for audits and ensuring proper assessment of data in this new era of scrutiny. With increase in focus on digitization, the taxpayers are expected to maintain meticulous records, diligently organizing all relevant documents, invoices, receipts, and financial statements to support their GST returns and tax positions taken to avoid any surprises during the GST Audits by the authorities. By doing so, they lay the foundation for a successful audit and demonstrate their commitment to compliance. Furthermore, it is essential to implement robust internal controls, establishing checks and balances within the organization, such as segregation of duties, regular reconciliations, and periodic internal audits that can minimize the risk of errors or discrepancies in data. Also as a thumb rule – all the required data should be pulled out from the Accounting system and the reports from the system should be ready to file without much Excel manipulation. The amount of Excel manipulation done in the report indicates the un-preparedness of the tax payer on the IT front. This not only ensures single number being reported to all government agencies but also instills confidence in the accuracy and integrity of the financial information reported.



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 Can you give your thought on the rationale behind the Court's opinion regarding the 'pre-import condition' in the case of UOI and others vs. Cosmo Films Limited? How does the Court balance the hardship faced by exporters with the need to uphold the validity of the 'pre-import condition' in relation to ITC claims?

The Court's opinion in the said case reflects a careful consideration of the challenges faced by the exporters in fulfilling their contractual obligations while adhering to the condition. Although on one side, the Court acknowledges that introduction of the 'pre-import condition' may have caused hardships to exporters as it restricts their ability to import inputs after applying for Advance Authorizations,yet , on the other side, it does not deem the introduction of the condition as arbitrary. This decision invites us to consider the intricate interplay between regulatory measures and business practices in the global trade landscape.

The trade will need to carefully assess the implications of the court decision and determine the appropriate course of action. It is important for businesses to evaluate how the decision impacts their operations, especially in relation to the fulfillment of the 'pre-import condition' and the associated obligations. Additionally, the Revenue authorities have also issued the much-awaited guidelines in response to the court's decision. These guidelines provide the trade with a clear roadmap on how to proceed in terms of claiming credit or refund for the period prior to January 2019.

03 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?

Well, it is rightly said that everything comes with a pros and cons, just five years ago, who would have believed that we would be appearing before the Department/Court through virtual mode sitting at our home? But here we are the pandemic has molded us in such a way. Similarly, the faceless assessment scheme will undoubtedly provide greater transparency, efficiency and accountability in tax assessments.

Given the short-comings of the earlier tax regime, fraudulent transactions had been rampant. A number of such instances may also never have been caught by the radar of the tax authorities. However, the Government now appears to have raised in vigilance by introducing e-invoicing system. The system has helped tax authorities to monitor transactions where GST is applicable, ensuring the legitimacy of ITC claims. This system also monitors the possibility of Fake invoice. This has created much-needed transparency to curb tax evasion and fraud. However, this has substantially increased the compliance burden on the taxpayers by requiring reconciliation of each transaction reported in the return with the books of accounts.

In short – the idea of monitoring the flow of goods is right is exceptional – only the Tax Officers should show some maturity in certain cases where Tax is already paid but only E Way bill is not acompanying the consignment due to clerical error. Currently, we see a significant upsurge in appeal cases where goods consignment is forfeited and are released only after the Penalty equal to Tax amount is paid. Nonetheless, with the objective of 'Minimum Government, Maximum Governance', it is hoped that the compliance burden will also substantially reduce in the coming times.

04 The matching of ITC seems to be a major pain area for all. What are your views on its validity? Does it go against the objective of Seamless flow of credit?

As a person from Legal fraternity – after challenging the validity of S.16(2) I believe that we should now accept the matching of ITC as the required aspect in the GST system. Only one thing which can bring better justice is the principle laid down by High Court of Bombay in the case of Mahalaxmi Cotton Ginning Pressing and Oil Industries Vs. State of Maharashtra that the reveue authorities can come back to the Tax Payer only after exhausting all the legal remedies of recovering the Tax from the Vendor. Because it is being argued by almost all the tax payers that GST Administrative offices despite having all the powers are not able to collect taxes and that the burden is shifted to the toothless Tax payer.

Also, there should be a proper reporting system where the Tax Payer can report the defaulting vendor on the GST portal. This should act as an alert for the GST offices to go behind the persons who are issuing invoices but not remitting the Tax to the exchequer.

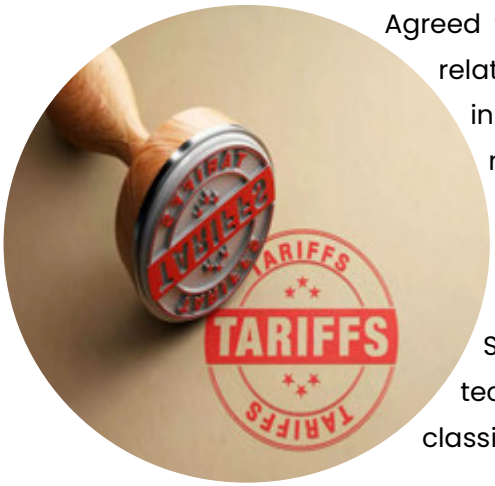
05 How about the Faceless Assessments in DT? Does it fare the same as IDT or otherwise?

In the DT sphere as well, a number of taxpayers from all the industries have been facing certain issues such as non-granting of personal hearing, issuance of ex-parte orders before the due date for making submissions, etc. This unnecessarily adds to the litigation burden on the taxpayers and the Courts.

Further, with the number of notices being issued, it seems that the assessments are being conducted by the Departments is with the mindset that every taxpayer has a prime modus operandi to evade Tax. This mindset runs contrary to the objective of the scheme, which is committed to treat every tax payer as honest, unless proven otherwise. I sincerely believe that good training and mindset coaching of the tax officers on one hand and transparency from the Tax Payer's side on the other hand can help to bridge the gap.

Sudeep Manek
Head of Tax - Global MNC in Paint Industry

06 While being involved in the imports - Do you face any challenges relating to tariff classification? The Tariff seems to be well detailed for the chemical chapters!



Agreed that the tariff is detailed and covers various goods, chemicals, etc. relating to the paints /chemical industry. However, as the goods involved in the paints /Chemical sector are highly technical and there is not much of distinguishing factors for the chemicals involved, the issue relating to tariff classification is ever-present. Moreover, the customs authorities, being professionals in tax are not very well versed about the technicalities and nuances involved in the paints sector. Sometimes, even the trade name of the Chemical is same but the technical application of the Chemical is completely different and so the classification could be different. Thus, the disputes ensue.

It is often seen that even for regular products and chemicals, if the Officials dispute the classification, the relief is only available at the higher judicial forums. This only adds to the costs and burdens of the Company. Clarifications by the Board in this regard, would go a long way in reducing unnecessary litigation.

07 Well said! Don't you think the delay in incorporation of GSTAT is now a burning issue in the Industry, as many of the taxpayer want to prefer an Appeal but are unable tso do so?

No doubt, a robust and efficient appellate process is one of the foundation pillars of any tax legislation. Soon it's going to be 6 years, since GST was Implemented, but we still do not have the GST Appellate Tribunal. Apart from the delay in the Appeal process, the absence of GSTAT has also led to lack of precedents related to interpretative issue which could have been resolved.

While the GST regulations have laid down the process of filing the appeals, constitution of benches and the members, the nitty gritty of such procedures are to be finalized by the GST council, which is likely to meet in the coming months. It is high time now that the GST council sets the ball rolling and to make the appellate process even more solution oriented, there should be a timeline fixed to dispose off the appeals. As a result, countless writs have been filed which have already clogged the High Courts and the Supreme Courts making the appeal process not only expensive and cumbersome but also not accessible for smaller tax payers.

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.

ITAT rules on Section 10AA exemption over reallocation of expenses between SEZ & DTA unit

Shakti Pumps (India) Limited

ITA No.1358/Ind/2016

The Assessee was engaged in the business of manufacturing of submersible pumps, mono block pumps, control panels and trading of accessories, etc. and had claimed exemption of INR 7 Crores under Section 10AA of the IT Act for its SEZ unit. During the assessment proceedings, the AO reduced the exemption amount to INR 2.82 Crores. Aggrieved, the Assessee approached the CIT(A) which allowed the Assessee's appeal by placing reliance on the ITAT order passed in the Assessee's own case in the context of challenge to revisionary proceedings. Aggrieved, the Revenue approached the ITAT. The ITAT noted that the sole controversy in the present appeal was the addition made by the Revenue by reducing Section 10AA exemption on account of re-allocation of expenses.

The ITAT further noted the key findings of CIT(A) which were that:

- The Assessee had a DTA unit independent from SEZ unit, located at distinct places and the DTA unit was manufacturing submersible pumps, mono block pumps, control panels and trading of their accessories whereas the SEZ unit was manufacturing stainless steel submersible pumps, therefore, the product mix and the activities of the two units were different;

- Both the units maintained a separate set of books of account and were managed by separate staff in functional areas of production, administration, marketing, accounts, finance, work force and both the units had separate inventories. Further, the books of account of the two units were separately audited, independent financial statements were prepared and separate profitability was ascertained (although prepared as a consolidated financial statement for reporting purpose);

- The Assessee had filed Form 56F, a certificate of Chartered Accountant, to certify the quantum of exemption and during the assessment proceedings, the Assessee had explained the expenses incurred in the DTA unit and SEZ unit which was not countered by the Revenue and the Revenue only speculated that the expenses of SEZ unit had been lowered without bringing any material on record and applied a single, uniform, ad hoc allocation ratio of 60:40 to various type of expenses;

- The Revenue took 'material consumption ratio' as a basis for allocation of all expenses without showing any rationale and did not reject the books of account by invoking Section 145 of the IT Act and nowhere had doubted the correctness or completeness of the books of account.

In light of the above findings, the ITAT observed that the CIT(A) was right in gaining support from the coordinate bench order passed in challenge to the revisionary proceedings as several factors on merit of the case were taken into consideration in the coordinate bench order.

Thus, finding no infirmity in the CIT(A) order, the ITAT upheld the exemption under Section 10AA of the IT Act and dismissed the Revenue's appeal.

ITAT holds subscription fees for providing access to online database, not royalty

IQVIA AG

2023-TII-122-ITAT-MUM-INTL

The Assessee was a Swiss company that was engaged in providing market research reports on pharmaceutical sector to its customers across the globe at a predetermined subscription price. In AY 2018-19, the Assessee had received the subscription fee of INR 42.17 Crores from its Indian customers. During the assessment proceedings, the AO placed reliance upon the DRP orders in Assessee's own case for AY 2013-14 and AY 2015-16 and observed that the said subscription fees was taxable as royalty and accordingly made an addition of INR 42.17 Crores which was confirmed by the DRP.

Aggrieved, the Asseessee approached the ITAT which held that the issue of taxability of subscription fee as royalty was recurring in nature and had already been decided in favour of the Assessee by the co-ordinate bench in the Assessee's own case for AY 2017-18, basis which, the subscription fees received by Assessee for providing access to its online database was not taxable as royalty both under Section 9(1)(vi) of the IT Act and under Article 12(3) of the India-Switzerland DTAA. Thus, finding no contrary facts on record, the ITAT deleted the addition of INR 42.17 Crores made by the AO and allowed the Assessee's appeal.

HC directs Revenue to consider manually filed ITR post-merger, follows SC's Dalmia Power ruling

TSI Business Parks (Hyderabad) Private Limited

W.P.No.6892 of 2023

The Assessee was a transferee or successor company which pursuant to the NCLT approved merger with effect from April 1, 2020, filed a letter with the Revenue stating that due to the merger, the entire books of

account had to be revised and since the due date for filing revised return for AY 2021-22 had long expired (March 31, 2022), a manual revised return was furnished along with the letter. The revised return was rejected by Revenue on the ground that no order of condonation of delay by the competent authority was obtained by the Assessee.

Aggrieved, the Assessee preferred a writ petition before the HC which rejected the Revenue's reliance on Section 170A of the IT Act and the CBDT notification dated September 19, 2022, dealing with filing of modified return and observed that for the subject AY 2021-22, neither the provisions of Section 170A nor the aforesaid CBDT notification, would be applicable to the facts of the present case as Section 170A had come into effect from April 1, 2022, whereas the Notification had come into effect from November 1, 2022.

Further, the HC noted that the SC in Dalmia Power [2019-TIOL-539-SC-IT] referred to provisions of Section 139(5) of the IT Act and observed that the said provision would not be applicable in a case where the revised return could not be filed on account of the time taken to grant sanction to the scheme of amalgamation by NCLT and also referred to Section 170 of the IT Act and observed that it was incumbent upon the IT Department to assess the total income of the successor company in respect of the previous assessment year after the date of succession.

Accordingly, the HC while noting that the SC ruling in **Dalmia Power [supra]** was squarely applicable to the facts of the present case as the revised return could not be filed due to circumstances beyond the control of the Assessee i.e. approval of scheme of amalgamation by NCLT beyond the due date, the HC observed that under Section 170 of the IT Act, the Revenue was obligated to assess the total income of the Assessee for the post-amalgamation period. Thus, directing the Revenue to accept the manually filed revised return by the Assessee and process the same in accordance with law, the HC set aside the Revenue's order and allowed the Assessee's writ petition.

DIRECT TAX
From the Legislature

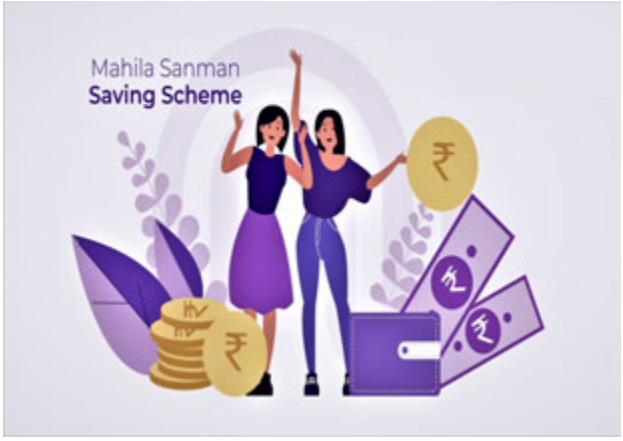
NOTIFICATIONS

CBDT notifies provisions of the DTAA between India and Chile as shall be given effect to in India.

Notification No. 24/2023 dated May 03, 2023

CBDT notifies all the provisions of the DTAA between India and Chile that was signed on March 9, 2020, and came into force on October 19, 2022.

CBDT notifies Mahila Samman Savings Certificate Scheme 2023 shall be outside Section 194A TDS ambit



Notification No. 27/2023 dated May 16, 2023

CBDT notifies that the Mahila Samman Savings Certificate Scheme, 2023 shall be excluded from TDS as per Section 194A (3)(i)(c) of the IT Act.

The said provision excludes interest income upto INR 40,000 from the purview of TDS arising from the instruments.

CBDT notifies Rule 133 of the IT Rules for computing 'net winnings' in online gaming

Notification No. 28/2023 dated May 22, 2023

CBDT notifies the Income-tax (Fifth Amendment) Rules, 2023 through which it notifies Rule 133 of the IT Rules, prescribing formulas for computation of net winnings in online gaming for the purposes of Sections 115BBJ and 194BA of the IT Act.

CBDT issues notifications restricting rigours of Angel Tax

Notification No. 29/2023 & Notification No. 30/2023 dated May 24, 2023

Pursuant to the Press Release dated May 19, 2023, proposing changes with respect to Angel Tax, CBDT issues two notifications through which it notifies the class or classes of persons for inapplicability of Section 56(2) (viib) of the IT Act which, among others, include: -

- Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more;

- Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident;
- Any of the following entities, which is a resident of any country listed in the Annexure (21 countries), and is subject to regulations in the country where it is established or incorporated or is a resident: (a) SEBI registered Category-I Foreign Portfolio Investors, (b) endowment funds associated with a university, hospitals or charities, (c) pension funds created or established under the law of the foreign country or specified territory, (d) Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

The countries notified in the Annexure are - Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, U.K. and U.S.A.

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 INR 25 Lakhs for leave encashment exemption under Section 10(10AA) of the IT Act

Notification No. 31/2023 dated May 24, 2023

CBDT notifies INR 25 Lakhs as exemption limit under Section 10(10AA) of the IT Act with regards to leave encashment received by non-government employees on retirement.

Prior to this notification, the exemption limit was INR 3 Lakhs and the finance minister in her Budget Speech this year had made an announcement to increase the limit to INR 25 Lakhs.

CBDT notifies e-Appeals Scheme, 2023 to operationalise appeals before JCIT(A)

Notification No. 32/2023 & Notification No. 33/2023 dated May 29, 2023

CBDT notifies e-Appeals Scheme, 2023 and amendments in Rules 45 and 46A of the IT Rules along with Form No. 35 pursuant to the amendments made by the Finance Act, 2023 in Section 246 of the IT Act whereby the Joint Commissioner of Income Tax (Appeals) ('JCIT(A)') had been created and empowered to dispose of the appeals in specified cases.

CBDT expands scope of Section 56(2)(x) inapplicability for strategic disinvestments

Notification No. 35/2023 dated May 31, 2023

CBDT notifies amendment in Rule 11UAC (4) of the IT Rules that deals with one of the exceptions to the applicability of Section 56(2)(x) of the IT Act with effect from April 1, 2023. As per the amendment, Section 56(2)(x) of the IT Act shall not apply to any movable property, being equity shares, of a public sector company or a company, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment.

Prior to the amendment, Rule 11UAC (4) of the IT Rules read as "*any movable property, being equity shares, of the public sector company, received by a person from the Central Government or any State Government under strategic disinvestment.*"

CIRCULARS/PRESS RELEASES

CBDT directs 100% e-filing before ITAT/HC by May 31, pursuant to SC Order

Instruction dated May 04, 2023

CBDT issues directions for all Principal CCIT(CCA) pursuant to SC order in Bilfinder Neo Structo Construction Ltd. [CA No. 674 of 2021] wherein Union of India was directed to ensure 100% e-filing of Revenue's appeals before ITAT and the HC.

The direction draws attention to Interim Action Plan 2023-24 and subsequent corrigendum dated May 1, 2023, wherein it was directed to ensure 100% filing of Revenue appeals/petitions before the HCs and ITAT in e-filing mode by May 31, 2023.

The CBDT Instruction also requires the concerned officers to ensure strict compliance with the directions of the SC order.

CBDT proposes changes to Rule 11UA in respect of Angel Tax

Press Release dated May 19, 2023

CBDT proposes the following changes to the Angel Tax Provisions under Rule 11UA of the IT Rules for the calculation of fair valuation of shares:

- Introduction of 5 more valuation methods (available for non-resident investors also), in addition to the present DCF and NAV methods of valuation.
- Availability of price matching for resident and non-resident investors with reference to investment by Venture Capital Funds or Specified Funds.
- Acceptability of Valuation report issued by the Merchant Banker, if not dated more than 90 days prior to issue of shares.

- A safe harbour of 10% variation in value in order to provide for the foreign exchange fluctuations, which may affect the valuation of the unquoted equity shares during multiple rounds of investment.

Further, CBDT notifies Government or Government related investors, Banks or entities involved in Insurance Business, and other specified entities which are resident of a certain countries or specified territories having robust regulatory framework as exempted persons from Angel Tax provisions.

It is also proposed that the provisions of Section 56 (2) (viib) of the IT Act shall not apply to consideration received from any person by specified start-ups.

These changes once confirmed shall address umpteen issues faced by start-up which were weathering funding winter and shall help boost investments in Indian start-ups. 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 extends deadline for registration under Section 10(23C), 12A & 80G of the IT Act to September 30, 2023

Circular No. 6/2023 dated May 24, 2023

CBDT extends the last date for making registration application in Form 10A (re-registration) for charitable trusts or institutions under Section 10(23C), Section 12A and Section 80G (5) of the IT Act from November 25, 2022, to September 30, 2023.

Further, CBDT also extends deadline for application in Form 10AB (regular registration) under Section 10 (23C) of the IT Act to September 30, 2023, and extends the due date for Section 80G registration by Form 10BD with respect to donations received during FY 2022-23 to June 30, 2023.

CBDT issues compulsory case selection guidelines for 'complete scrutiny'

Letter dated May 24, 2023

CBDT issues guidelines for compulsory selection of returns for complete scrutiny during FY 2023-24. The guidelines cover cases pertaining to:

- Survey;
- search & seizure or requisition;
- notices under Section 142(1) of the IT Act where no return is furnished;

- cases under Section 148 (arising from search or survey or otherwise);
- registration or approval under various sections such as 12A, 12AB, 35(1)(ii)/(iia)/(iii), 10(23C) of the IT Act;
- addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact;
- specific information regarding tax-evasion.

CBDT mandates that the cases shall be selected for compulsory scrutiny by the International taxation and Central Circle charges following prescribed parameters and procedure with prior administrative approval of the concerned Principal CIT/DIT or CIT and the information pertaining to compulsory scrutiny may not be transferred to NaFAC unless the case itself is transferred.

Further, CBDT clarifies that communication to NaFAC for access and/or further action after selection for compulsory scrutiny will not apply to the International taxation and Central charges and prescribes June 9, 2023 as the last date for selection and transfer of cases to NaFAC wherein assessments have to be completed in faceless manner and June 30, 2023 as the last date for service of notices under Section 143 (2) of the IT Act in cases selected for compulsory scrutiny. 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.

CBDT clarifies scope of INR 25 Lakhs leave encashment exemption limit

Press Release dated May 25, 2023

Earlier, CBDT had issued Notification No. 31/2023 dated May 24, 2023, for notifying INR 25 Lakhs as exemption limit under Section 10(10AA) (ii) of the IT Act for leave encashment received by non-government employees.

CBDT now had issued a Press Release clarifying that the aggregate amount exempt from income-tax under Section 10 (10AA) (ii) of the IT Act shall not exceed the limit of INR 25 Lakhs where such payments are received by a non-government employee from more than one employer in the same previous year.

Further, CBDT clarifies that the amount exempt from income-tax under section 10(10AA) (ii) of the IT Act shall not exceed the limit of INR 25 Lakhs as reduced by the tax exemption already allowed in the total income of the employee under the section for any previous year or years.

CBDT releases Draft of changes proposed in Rule 11UA providing for Angel Tax provisions, invites public comments till June 5, 2023

Press Release dated May 26, 2023

CBDT invites public comments till June 5, 2023, on the draft Rule 11UA of the IT Rules for implementing the

amendment made by the Finance Act, 2023. The draft is in continuation of the recent press release issued on May 19, 2023.

Accordingly, the following proposed changes have been drafted in Rule 11UA of the IT Rules for calculation of fair valuation of unquoted equity shares:

In respect to FMV Determination

Earlier, there were two options to assessee for determining FMV i.e., either by (A-L) X[PV/PE] method, i.e. (Assets-Liabilities) x Paid-up share capital/Paid-up value of equity, or as determined by a merchant banker as per the Discounted Free Cash Flow Method. Now, it has been proposed to provide following additional options to determine FMV:

- where any consideration is received by a venture capital undertaking for issue of shares, from a venture capital fund or a venture capital company or a specified fund, such consideration can be considered as it has been at FMV for the purpose of any further funding from either resident or non-resident within 90 days. However, such funding consideration shall be limited to consideration received from such venture capital fund.
- the FMV can be determined by merchant banker for consideration received from non-resident with any of these methods:
  - ◊ Comparable Company Multiple Method.
  - ◊ Probability Weighted Expected Return Method.
  - ◊ Option Pricing Method.
  - ◊ Milestone Analysis Method.
  - ◊ Replacement Cost Methods.
- where any consideration is received from any entity notified for this purpose, such consideration can be considered as it has been at FMV for the purpose of any further funding from either resident or non-resident within 90 days. However, such funding consideration shall be limited to consideration received from such notified entities.

In respect to Valuation Date

Where the date of valuation report of the merchant banker which has been used for FMV determination is not more than 90 days prior to issue of shares, at the option of the Assessee, it can be deemed to be the valuation date.

In respect to the Issue Price of Shares

Where the issue price of the shares exceeds the FMV of shares, as determined in accordance with the merchant banker's valuation report or (A-L) X[PV/PE] method, by an amount not exceeding 10% of the valuation price, the issue price can be deemed to be the FMV of such shares.

TRANSFER PRICING
From the Judiciary

ITAT upholds ALP interest on outbound loan basis currency of repayment, restricts guarantee commission at 0.53%

GKC Projects Limited

ITA TP No. 552/Hyd/21 & ITA TP No. 421/Hyd/21

The Assessee had advanced loans to overseas AEs, applied CUP and made a suo moto adjustment at 10.55% of interest income on such outstanding loans and advances. The Assessee had also determined ALP commission at 0.50%. However, the TPO applied SBI PLR at 14.05% and computed the ALP interest and also recomputed the ALP commission at 1.90%. These adjustments made by the TPO were also upheld by the DRP.

Aggrieved, the Assessee approached the ITAT which noted that the Assessee had already benchmarked the transaction and made a suo motto adjustment at 10.55% which was certainly higher than the LIBOR+400 basic points adopted by the Revenue and therefore placing reliance on the HC ruling in **Cotton Naturals (I) Private Limited [2015-TII-09-HC-DEL-TP]** wherein it was held by the HC that interest rate should be the market determined interest rate applicable to the currency in which the loan had to be repaid, upheld the ALP interest determination by the Assessee at interest rates applicable to the currency in which loan had to be repaid. Further, the ITAT placing reliance on the HC ruling in Glenmark Pharmaceuticals Ltd. [[2014] 43 taxmann.com 191] restricted the ALP commission at 0.53%. Thus, partly allowing the Assessee's appeal, the ITAT disposed of the matter.

SC directs HC to examine TP issues afresh in light of SAP Labs ruling

Subex Limited

2023-TII-02-SC-TP

The HC had dismissed Revenue's appeal with regards to TP issues of comparables selection and inclusion of foreign exchange fluctuation as loss or gain as part of the operating income/loss by placing reliance on its decision in **Softbrands India Private Limited [2018-TII-54-HC-KAR-TP]** and by holding that no substantial question of law arose for consideration. Aggrieved, the Revenue filed an SLP before the SC against the order of the HC.

The said decision in **Softbrands India Private Limited [supra]** fell for consideration before the SC in the case of **SAP Labs India Private Limited [2023-TII-01-SC-TP]** wherein cases were remitted back to the concerned HCs to decide and dispose of the respective appeals afresh in light of the observations made and to examine in each and every case whether ITAT had followed the guidelines laid down under the Act

and the Rules while determining the ALP.

Therefore in light of the above, the SC quashed the HC's order dismissing Revenue's appeal qua TP issues of comparables selection and foreign exchange loss in case of Subex Ltd. and remitted the issue back to the HC to consider afresh and on its own merits, in light of the SC decision in **SAP Labs India Private Limited [supra],** disposing of the SLP filed by the Revenue.

ITAT directs AO/TPO to adopt interest @LIBOR+200 bps on receivables, follows precedents

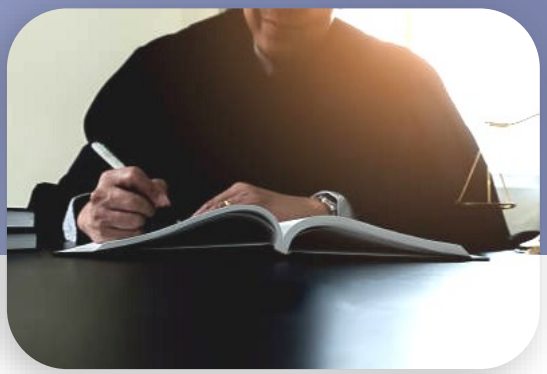
Kantar GDC India Private Limited

ITA No. 484/Hyd/2022

The Assessee was a company engaged in conducting quantitative and qualitative market research and related services primarily to third-party customers and providing back-office data processing services to group entities that had filed its return of income. Since the Assessee entered into international transactions with its AEs, determination of the ALP thereof was referred to the TPO who in respect of payment for global/regional management overhead allocation fee and in respect of interest on trade receivables made TP adjustments. The AO passed the draft assessment order incorporating these two adjustments. Aggrieved, the Assessee filed objections before the DRP which issued certain directions and confirmed these two TP adjustments. Consequently, the AO passed the assessment order, aggrieved by which the Assessee approached the ITAT.

With regards to the payment for global/regional management overhead allocation fee, the ITAT following its coordinate bench rulings in a plethora of cases remitted the issue to the AO for factual verification. With regards to the interest on trade receivables, the ITAT placing reliance on a catena of coordinate bench rulings as well as various HC rulings wherein the use of LIBOR for benchmarking was upheld and it was held that PLR rates were not applicable to loans to be re-paid in foreign currency and therefore the principle applicable to outbound loans would be equally applicable to inbound loans given to Indian subsidiaries of foreign AEs, accordingly directed the AO/TPO to adopt interest rate on similar foreign currency receivables/advances as LIBOR+200 points.

GOODS & SERVICES TAX
From the Judiciary



Supply of divisible goods and services under separate contracts not 'Composite Supply'

PES Engineers Private Limited

Civil Appeal No. 3481 OF 2022

The Applicant had entered into two work agreements, the first agreement covered the supply of goods including Flue Gas Desulphurization system, Limestone and gypsum handling system, chimney-related items, and spares. The second agreement encompassed services such as transportation, erection, safety compliances and testing of the supplied items. The Applicant sought an advance ruling on to ascertain whether they are required to pay GST on initial advance of 5% and interim advance of 7.5% for the goods supplied under the First Contract Agreement under Notification No. 66/2017 – C.T. dated 15 November, 2017 ('NN. 16/2017'), which exempts the tax on advances received in case of supply of goods.

The AAR observed that the supply under the second contract begins after the completion of all activities in the first contract. Accordingly, scope of work in each contract undertaken by the Applicant is independent and distinct, thus it cannot be clubbed together. The AAR further noted that the agreements does not exhibit the concept of a 'naturally bundled' supply, as these contracts can be executed independently. Consequently, the supply of goods and services under the two contracts with separate invoicing cannot be construed as composite supply. The AAR emphasised that when viewed as separate contracts, the Applicant is eligible for the benefit of NN. 66/2017 for the outward supply of goods.

Authors' Notes

> *The instant ruling is welcome by the Trade and Industry. Generally, in cases of works contract, the GST authorities are of the view that the bifurcation of contract for supply of goods and services is artificial and the supply is actually indivisible. It would be pertinent to note that in RE: Cable Corporation of India Limited [2019 (20) G.S.T.L. 631 (A.A.R. - GST)], the Maharashtra AAR had held that where two separate agreements are entered for the supply of works contract and transportation, such services are dependent on one another and therefore, classifiable as 'Composite Supply.' It would be interesting to see whether the Revenue would file an Appeal against the instant ruling, before the AAAR.*

Karnataka HC: Game of skill played with or without stakes not gambling

Gameskraft Technologies Private Limited

2023-TIOL-531-HC-KAR-GST

The Petitioner was an online intermediary company who runs technology platforms that allow users to play skill based online games against each other. The Petitioner was subjected to a notice for the demand of INR 21,000 crores, which was challenged before the Karnataka HC. The Petitioner contented that the

games of skill played with monetary stakes do not amount to betting and are still considered games of skill. The Department had put forth the argument that the sole issue requiring consideration is whether the act of placing stakes on the outcome of online rummy games constitutes betting and gambling.

The HC observed that games of chance involve chance as the predominant element, whereas games of skill require a certain amount of skill to control the chance involved. The HC further observed that the terms 'betting' and 'gambling' in GST do not include games of skill and it falls outside the purview of the term 'supply' u/s. 7(2) of the CGST Act r/w. Schedule III of the CGST Act, and hence cannot be subjected to GST.

The Court further held that the expressions 'betting' and 'gambling' have become nomen juris and hence the words 'betting' and 'gambling' contained under Entry 6 of Schedule III to the CGST Act are not applicable to online rummy or any other online games that are substantially and preponderantly games of skill, whether played with stakes or without stakes. Accordingly, the HC held that game of skill whether played with stakes or without stakes is not gambling. Accordingly, the HC court quashed the SCN and set aside the demand.

Madras HC: Unblocking Electronic Credit Ledger does not limit assessment proceedings under Section 73/74 of the CGST Act

D. Ranganathan and Company

W.P. No. 11002 of 2023 and WMP.Nos.10893 & 10894 of 2023

The Petitioner's bank account had been blocked under Rule 86A of the TNGST Rules. Pursuant thereto, an order was passed considering the request of the Petitioner for unblocking of credit under Rule 86A. The HC observed that that the power under Section 73/74 of the CGST Act is broad, and allows proceedings for assessment even if the claim of ITC by the assessee is deemed incorrect. The existence of an order passed under Rule 86A while unblocking electronic credit ledger does not restrict the assessing officer from exercising their powers or conducting an assessment under Section 73/74 of the CGST Act. Accordingly, the HC dismissed the Writ.

AAR: ITC eligible for works contract services of foundation and structural support for machineries

Colourband Dyestuff Private Limited

2023-TIOL-80-AAR-GST

The Applicant had sought an advance ruling to ascertain the eligibility of ITC on works contract services and material procured and utilised towards foundation for setting up of various machineries viz. Sand mill and spray dryer, HAG plant, ETP as well as having tank farm, fire tank and DG set.

The AAR noted as the foundation and structural support for the Sand mill and Spray dryer is covered by the explanation 2 to Section 17(5) and hence, the Applicant is eligible for the ITC provided that it is not capitalized. The AAR further observed that ITC in respect of the structure/shed and support structures of ETP and Transformer shall be ineligible as it clearly falls within the ambit of civil structure and stands excluded from the expression 'plant and machinery'. Hence, the ITC in respect of this structure/shed is blocked in terms of section 17 (5) of the CGST Act.

Authors' Notes

It would be pertinent to note that ETP is the process design for treating the industrial waste water for its reuse or safe disposal to the environment. Such plant would also qualify as 'plant and machinery' u/s. 17(5) of the CGST Act. The ruling authority seems to have denied the ITC on such plant, basis a single statement that it would qualify as civil structure, without assigning any reasons thereto.

Additional grounds for rejection of refund cannot be taken by appellate authority

McDonald's India Private Limited

W.P.(C) 11430/2022

The refund claim of the Appellant had been rejected by the Department on the premise that the Appellant was acting as a mediator between prospective joint ventures and franchisees, where the main supplies were made by holding company and ancillary supplies were provided by the Appellant and therefore, they do not qualify as export of services under Section 2(6). Aggrieved the Appellant preferred a Writ before the

Delhi HC.

The HC observed that the Appellate Authority overlooked the Master License Agreement, which allowed the Appellant to enter into sub-licenses with franchisees which is a separate agreement. It was further held that the scope of services as mentioned in the service agreement, read in isolation, do not entail procurement or facilitating services from third-party suppliers.

The HC further observed that the Appellate Authority exceeded the scope of the SCN by raising additional grounds to reject the Appellant's claim for refund. It further emphasized that the supply of services provided by the Appellant did not require the physical presence of McDonalds USA in India, therefore the that relevant provisions of Section 13(3)(b) of the IGST Act were not applicable to the Appellant's services. Accordingly, it was held that rendering service on behalf of another person does not render the service provider an intermediary. Accordingly, HC set aside the impugned order and the matter was remanded for fresh decision.

PRE-GST: EXCISE, SERVICE TAX, SALES TAX

SC holds credit note issued by manufacturer to dealer as valuable consideration for warranty replacement, liable for sales tax

Tata Motors Limited

2023-TIOL-66-SC-CT-LB

The issue in the instant case was whether a dealer is liable to pay sales tax on the credit note received from the manufacturer of automobile. The Division Bench of Supreme Court observed that, a credit note issued by a manufacturer to the dealer, is a valuable consideration within the meaning of the definition of 'sale' under the CST Act and the respective State enactments. The Apex Court further held that not all credit notes received by dealers indicate the value of spare parts supplied under warranty, some credit notes for spare parts sourced from the dealer's stock or purchased from the market are liable for sales tax. In these circumstances, the value of the credit note is considered as 'consideration' for the sale of spare parts and is subject to sales tax. However, the said ruling does not apply when the dealer receives spare parts from the manufacturer for replacement purposes.

HC: Rules cannot impose limitation period if it is not delegated through VAT Act

Kirloskar Brothers Limited

W.P.(T) No. 3944 of 2022

The Petitioner's refund application was rejected for being time-barred under the JVAT Rules. The court

observed that the legislature, when intending to provide a period of limitation, does so expressly in the main Act and not through delegated power. Since Section 52 of the JVAT Act did not provide for such delegation, the Government could not prescribe a limitation period through rules. It was further held that the Petitioner's right to refund cannot be denied on the rules' limitation period, as it contradicts the provisions of the Act. Accordingly, the refund rejection order was set aside.

CESTAT: Service Tax not liable on reimbursable expenses of seconded employees

Boeing India Defense Private Limited

Service Tax Appeal No. 50379 of 2021

The case involved the issue of whether reimbursable expenses should be included in the gross value for the levy of service tax on the seconded employees. The Delhi CESTAT ruled that reimbursable expenses cannot be included in the gross value for the levy of service tax. The court relied upon the SC judgment in the case of **Commissioner of Customs, C.Ex and Service Tax, Bangalore (Adj.) vs. Northern Operating Systems Private Limited [2022(61)GSTL129(SC)],** wherein it had settled the issue of payment of service tax on secondment. The bench further noted that the Supreme Court had also settled the issue of non-payment of service tax on reimbursable expenses in the matter of **Intercontinental Consultants and Technocrats Private Limited [2018 (3) TMI 357 (S.C.) 2018 (10) G.S.T.L. 401 (S.C.)],** wherein was held that only the gross amount charged for taxable services should be considered for valuation, therefore reimbursable expenses of seconded employees cannot be included in the value for service tax purposes, as per Section 67 of the Finance Act.

CESTAT: Delayed invoices cannot result in disallowance of CENVAT credit for service recipient

Usha Martin Limited

Excise Appeal No.80 of 2011

The Appellant's claim of CENVAT credit was disallowed on the ground that some invoices had been raised by the service provider much later than 14 days from the date of the completion of service/ receipt of amount violating the prescribed timeline under the CCR, 2004 and ST Rules. The Kolkata CESTAT ruled that the service recipient cannot be held responsible for the service provider's delay in issuing invoices. The bench further ruled that the prescribed period for issuing invoices u/r. 4A (1) of the ST Rules was deemed directory and not mandatory. Accordingly, the credit disallowance order was set aside.

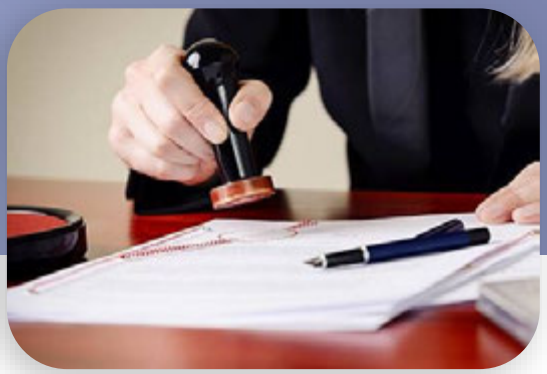
GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 10/2023 – Central Tax dated May 10, 2023	**CBIC reduces E-invoicing limit to INR 5 crores** CBIC has lowered the E-invoicing aggregate turnover limit from 10 crore to INR 5 crore, effective from August 01, 2023.
2.	Notification No.05/2023 - Central Tax (Rate) dated May 09, 2023	**CBIC extended time limit for exercising option to pay tax under Forward Charge for FY 2023-24 by GTA** CBIC had extended the deadline to opt for forward charge by GTAs for FY 2023-24 to May 31, 2023. Furthermore, the CBIC has provided additional guidance regarding GTA who commences a new business or exceeds the threshold for registration during a FY, it has the option to pay GST on the services it provides during that year. To exercise this option, the GTA must submit a declaration in Annexure V within 45 days from the date of applying for GST registration or one month from the date of obtaining registration, whichever is later.
3.	Registration Advisory no. 23/2023 dated May 15, 2023	**Advisory on new functionality to view Aadhaar authentication status** The Office of the Principal Additional Director General of Systems & Data Management has issued an advisory regarding the new functionality on its portal to facilitate the viewing of Aadhaar authentication status for proprietors and partners of registered firms. This feature also enables the downloading of e-KYC documents for new registration applications and allow the upload of e-KYC documents for registered individuals in the provisional verification report. These enhancements aim to expedite the GST registration reduce paperwork, streamline physical verification procedures, and aid in the identification of fraudulent GST registrations.

Sr No	Notification/ Circular	Summary
4.	Advisory dated May 30, 2023	**GSTN issued new advisory on filing of declaration in Annexure V by GTA opting to pay tax under forward** The GSTN has issued new advisory to inform that the GTAs, who commence business or cross registration threshold on or after April 01, 2023, and intent to opt for payment of tax under forward charge mechanism are required to file their declaration in Annexure V for the FY 2023-24 physically before the concerned jurisdictional authority.

CUSTOMS & FTP
From the Judiciary



CAAR: Cryptogenic Device/Token classifiable under CTH 84718000

Pagaria Infotech Ventures LLP

Ruling No. CAAR/Mum/ARC/33/2023

The Applicant had sought advance ruling on the tariff classification of a 'Cryptogenic Device/Token' which they intended to import. The Applicant contended that the token is a portable and user-friendly solution for secure authentication and online transactions. It was further contended that the token's functionality and usage distinguish it from USB Flash Drives or Pen drives, as it is primarily designed for generating and securely storing private keys for digital signatures, enabling the authentication of electronic records as per the IT Act. Therefore, it cannot be classified under CTH 8523.

The AAR observed that the product's functions, such as digital signature, signing, encryption, and authentication are distinct and not related to a typical flash drive. The presence of auto run and flash memory is for convenience and does not affect the products intended use. Further, the AAR agreed with the Applicant's contention that the goods should be classified based on their primary function. Accordingly, the AAR ruled that the Cryptogenic Device/Token' (ProxKey and ProxKey PRO) are classifiable under Tariff entry 8471 80.

CESTAT: Entire pipeline stretch can be considered as "premises" for availing customs duty exemption

Brahmani River Pellets Limited

Customs Appeal No. 77048 of 2019

The Appellant had imported pipes under the EPCG Scheme for its further use in manufacturing of Iron Ore Pellets. The pipes were connected from one factory to the other at the distance of 217 Kms. The Beneficiation plant processed the raw ores by removing the impurities and converted them into concentrates which was then transferred through the pipelines in a slurry form to the manufacturing factory of Iron Ore Pellets. Thereafter, the Department issued SCN u/s. 28 of the Customs Act by alleging that they are not eligible for the concessional rate of Customs as the imported pipelines were not installed at the premises

mentioned in the EPCG licenses. The Adjudicating Authority confirmed the demand. Aggrieved, the Appellant preferred an appeal before the Kolkata CESTAT.

The Tribunal observed that the Notification relating to the installation of pipelines for transportation of goods did not specify that the installation must be made within a Central Excise Registered factory. Therefore, the term 'premises' mentioned in the Notification was considered broad enough to cover the entire stretch wherein the pipelines were installed. The CESTAT observed that the Bombay HC in RE: **Reliance Industries Limited [2018 (360) ELT 244 (Bom.)]** had held that the area outside the factory to bring the raw materials can be considered as part and parcel of the factory itself. Accordingly, the CESTAT held that the Appellant were eligible for concessional rate of duty.

CESTAT reduces redemption fine and sets aside penalty due to lack of *mens rea*

Mgm Tradelink Private Limited

Customs Appeal No. 12900 of 2013-DB

The Appellant's refund claim was rejected due to the finality of the unchallenged assessment order. The Appeal filed against the rejection was also dismissed on the same grounds. The Additional Commissioner rejected the classification of goods and imposed a redemption fine, along with imposition of penalty. Aggrieved, the Appellant filed Appeal before the CESTAT.

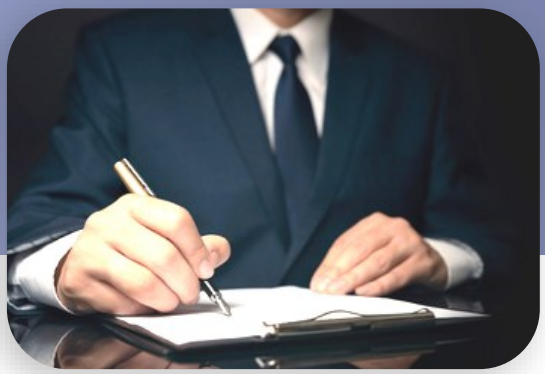
The Tribunal observed that the goods imported were mis-described in the Bill of Entry, hence it required legal scrutiny of the action in rem. However, it was emphasised that while imposing redemption fine, no market inquiry to arrive at the correct quantum was done. The determination of the higher side of the imposable redemption fine u/s. 125 of the Customs Act, is contingent upon conducting a market inquiry to ascertain the correct quantum. The Tribunal observed that the the Apex Court in RE: **Mansi Impex (2011 (270) ELT 631 (S.C))** it was held that quantum of redemption fine should be determined based on the facts and circumstances of each case, and cannot be done arbitrarily or on precedent-based approach. Accordingly, the Tribunal reduced the redemption fine and set aside the penalty.

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 38/2023-Customs dated May 23, 2023	**CBIC amends Australia FTA notification to change tariff preference of Coking Coal & Raw Cotton** The amendment aims to make changes in the tariff preference given to Coking Coal and Raw Cotton. The notification modifies Table II and Table IV of the previous notification, specifying revised rate of 1.5% on other Anthracite coal.
2.	Circular No. 11/2023-Customs dated May 17, 2023	**Clarification on Amnesty Scheme for Export Obligation Default by Advance and EPCG Holders** It has been clarified that the authorization holders must ensure completion of the payment process before September 30, 2023 to avail of this scheme. Notably, the scheme does not apply to cases involving fraud, misrepresentation or unauthorized diversion of materials or capital goods. Furthermore, Authorization holders are not eligible to claim CENVAT credit or seek refunds for duties paid under this scheme.
3.	Public Notice No. 40/2023-JNCH dated May 01, 2023	**Changes introduced vide Finance Act 2023 in Customs Tariff w.e.f. May 01, 2023** The Finance Act, 2023 has brought significant changes to the Customs Tariff Act, introducing 146 new tariff lines and replacing/omitting 54 existing ones. These changes came into effect on May 1, 2023. Importers, exporters and stakeholders are advised to ensure that their declarations including Bills of Entry and Shipping Bills comply with the new/valid Customs Tariff Headings.
5.	Instruction No. 15/2023-Customs dated May 03, 2023	**CBIC instructs regarding the acceptance of e-CoO issued under India- Sri Lanka FTA (ISFTA)** It has been clarified that an e-CoO, issued electronically by the Issuing Authority of the Japan shall be a valid document for claiming the preferential benefit under the IJCEPA, provided it meets the prescribed format and fulfills all other requirements mentioned in Notification No. 19/2000-Customs (N.T.) dated March 01, 2000.

Sr No	Notification/ Circular	Summary
		The specimen seals and signatures will continue to be used to verify the genuineness and authenticity of e-CoO. To receive preferential treatment, the importer/customs broker must upload the e-CoO to e-Sanchit, and the e-CoO particulars, such as unique reference number and date, originating criteria and so on, must be carefully entered while filing the bill of entry. A printed copy of the e-CoO shall be presented to the Customs officer for defacement purpose.

REGULATORY
From the Judiciary



NCLT, Delhi allows Go First's voluntary insolvency plea, directs IRP to take charge

In the matter of Go Airlines (India) Ltd.

Company Petition No. (IB)-264(PB)/2023

From the year 2022 onwards, Go Airlines (India) Ltd. ('Corporate Debtor') started defaulting towards payments to Creditors and resultantly, received notices from the Creditors seeking payment of INR 2,660 Crores, as on April 28, 2023. Subsequently, the Corporate Debtor filed an application under Section 10 of the IBC inter alia seeking to initiate CIRP against itself and prayed for a grant of interim moratorium, so as to preserve its assets and to keep the Company as a going concern in the larger public interest. Before the NCLT, the Creditors of the Corporate Debtor contended that issuing of notice to the Creditors was a mandatory requirement before admitting an application filed under Section 10 of the IBC, further, they were bound to be afforded an opportunity to be heard as per Section 424 of the Companies Act and that they intended to file an Application under Section 65 of IBC, which ought to be heard prior to adjudication of the present Section 10 Application as an application under Section 65 of the IBC could not be entertained after the commencement of the CIRP.

With regards to the contention regarding the issuance of notice to the Creditors, the NCLT observed that, in Section 10 proceedings, there was no mandatory requirement of issuing notice to the Creditors at the pre-admission stage, rather giving notice to the Creditor(s) was a matter of discretion to be exercised on a case-to-case basis on valid grounds and whenever there was a clear apprehension of deterioration of assets of the Corporate Applicant/Debtor and larger public interest was involved, issuance of notice at the pre-admission stage could not be claimed as a matter of right. Further, considering the Creditors' contention that this Adjudicating Authority was to be guided by the Principles of Natural Justice and therefore, was bound to afford an opportunity of being heard to the Creditors, the NCLT remarked that there was no straight-jacket formula for applying the Principles of Natural Justice and that the proceedings under Section 7 and 9 of the IBC could not be compared with the proceedings under Section 10 of the IBC, where the Corporate Debtor had multiple Creditors and each of the Creditors pled for a hearing, this was so because the timelines that were specified in the IBC had to be adhered

to. Accordingly, in view of the unpaid debt subsisting above INR 1 Crore and the default committed by the Corporate Debtor towards the same and the Corporate Debtor not being disqualified under Section 11 of the IBC, the NCLT admitted the Section 10 application and imposed moratorium in terms of Section 14(1)(a), (b), (c) and (d) of the IBC and appointed the IRP to take charge of the CIRP of the Corporate Debtor with immediate effect.

Authors' Notes

> *This is an important development in India's aviation sector, while Go First intended to run their operations until very recently, the voluntary insolvency has also been challenged by one of its Creditors, namely Delhivery, which claims that Go First has been accepting the business advances until as recent as May 2023.*

HC orders RBI to direct PayTM to compensate customer for money siphoned-off by fraudsters

Dr. R. Pavithra vs. The Commissioner of Police & Ors.

WP(Cri). No. 6789 of 2021 and WMP. Nos. 7343 & 7345 of 2021

The Petitioner's account in the City Union Bank ('the Bank') was hacked and therefore the Petitioner requested the Bank to block her account, however, with no avail, through multiple unauthorized debits, a total of INR 3 Lakhs were siphoned off from the Petitioner's bank account into a PayTM account, wherein, access was done through a payment bank named PayTM. The Petitioner sought compensation from the Bank, however, materials available on record fixed the liability on PayTM and not upon the Bank. Aggrieved, the Petitioner preferred a writ petition before the HC against PayTM and the Bank. Before the HC, PayTM contended that it was a mere facilitator and an online conduit provider for the payments, having no technical or other control over secured transactions, and the Bank contended that there was no deficiency of service on its part and hence it was not liable to compensate the loss suffered by the Petitioner. PayTM further contended that it was not a bank or other authority under Article 12 of the Constitution and hence it was not amenable to any writ jurisdiction.

The HC noted that what was surprising was that even when the RBI had issued detailed master directions for both banks and Prepaid Payment Instruments such as PayTM, every institution shifted the blame upon the other and no one had come up with a concrete idea as to who had to bear the loss suffered by the Petitioner, for none of her mistakes. Further, basis the materials available on record, the HC noted that though a straight away direction could not be given against PayTM, since it was a private body, the Court could mould the relief in such a way that directions were given to RBI to take action against PayTM for violating its guidelines as the RBI's guidelines were issued not as a formality, but the entities subjected to it were required to comply with the conditions of the master circular in its true letter and spirit.

Therefore, finding that PayTM had failed to resolve the Petitioner's dispute within 90 days, whereas, the RBI's guidelines mandated that the PPI issuers viz. PayTM, ensured that a complaint was resolved and the liability of the customer was established within the said time not exceeding 90 days, the HC observed that PayTM had not come out with any concrete structure as to how the loss suffered by the Petitioner was going to be compensated, and further as the complaint had already been made by the Petitioner to the

Bank and the Bank kept in touch with PayTM, PayTM could not disown its liability. Thus, allowing the writ petition filed by the Petitioner, seeking that her money siphoned off from her bank account by fraudsters, through multiple unauthorised debits using the PayTM app, be returned, the HC directed the RBI to issue directions to PayTM to make good the loss suffered by the Petitioner.

Authors' Notes

> *It would be interesting to note that the RBI vide Press Release dated March 11, 2022, had barred PayTM Payments Bank from onboarding new customers pursuant to certain material supervisory concerns observed in the bank and directed the bank to appoint an IT audit firm to conduct comprehensive System Audit on its IT system.*

SC holds mere negotiations won't postpone cause of action for calculating limitation for arbitrator's appointment

B and T AG vs. Ministry of Defence

Arbitration Petition (C) No. 13 of 2023

The Petitioner was a Swiss company that had filed a petition under Section 11(6) of the Arbitration Act before the SC seeking appointment of an arbitrator for adjudication of disputes and claims arising from the alleged wrongful encashment of bank guarantee and wrongful imposition of applicable Liquidated Damages into the Ministry of Defence's (Respondent) bank account in 2016. Before the SC, the Respondent submitted that the Section 11 petition as well as the claims raised by Petitioner were time barred. The SC noted that no time limit had been prescribed for filing of the application under Section 11(6) of the Arbitration Act for appointment of the arbitrator and further placing a reference to the Limitation Act, noted that since a petition under Section 11(6) of the Arbitration Act for seeking appointment of Arbitral Tribunal was required to be filed before the HC or the SC, as the case may be, Article 137 of the Schedule to the Limitation Act was required to be applied wherein the period of limitation was 3 years and the said period was considered to begin from when the right to apply accrued.

Further, placing reliance on its decision in **J.C. Budhraja [(2008) 2 SCC 444]** which dealt with whether the decision on issue of limitation should be decided at the stage of passing of an order referring the disputes to the arbitrator, the SC observed that there was a fine distinction between the plea that the claims raised were barred by limitation and the plea that the application for appointment of an arbitrator was barred by limitation. Furthermore, the SC noted that the breaking point, that is the point at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration was required to be determined as it was at this point that the cause of action arose for the purpose of limitation, which in the present case, was the point at which the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the Respondent's account, accordingly rejecting the Petitioner's argument that they were negotiating with the Respondent till 2019, the SC observed that the negotiations could continue even for a period of ten years or twenty years after the cause of action had arisen but mere negotiations would not postpone the cause of action for the purpose of limitation and therefore, as the Legislature had prescribed a limit of three years for the

enforcement of the claim, this statutory time period could not be defeated on the ground that the parties were negotiating.

Thus, remarking that the Petitioner by its conduct, slept over its right for more than 5 years, the SC rejected the Section 11(6) petition filed by the Petitioner holding it to be clearly and undoubtedly, one of a hopelessly barred claim.

HC rejects writ petition against Special SEBI Court's order admitting ROC record as evidence

Suresh G. Motwani and Ors. vs. Securities Exchange Board of India & Anr.

Writ Petition No. 4557 of 2022

The Petitioners were being tried for offences under Section 207 and Section 621 of the Companies Act, 1956 before the Special SEBI Court, the allegation against them being that they had not paid final dividend in FY ending on June 30, 2001. During the proceedings, the Complainant/Prosecution's witness was recalled and asked by the Defence Counsel as to whether such documents regarding payment of dividend were filed to which he showed ignorance, and therefore, the Prosecution filed an application before the Special SEBI Court for production of documents ('ROC record') and the Special SEBI Court passed an order allowing the same by holding that the ROC record was the best evidence available against the accused to arrive at just decision. Aggrieved, the Petitioner preferred a writ petition before the HC contending that the HC in an earlier order had restricted the right of the Prosecution to recall witness.

The HC observed that it was well settled that rules of procedure were handmaid of justice and to arrive at a just decision and to deliver justice, the Court had ample power to mould the relief so that just decision was arrived at during the trial. Moreover, the scope of judicial review under Article 227 of the Constitution of India was restricted to errors of jurisdiction and not errors within jurisdiction. Further, the HC observed that if the impugned order did not result in miscarriage of justice, it was not necessary for the writ court to invoke extraordinary constitutional jurisdiction to correct technical error if the court was satisfied that interest of justice was served, and such exercise of discretion was neither arbitrary nor capricious nor could be termed as perverse.

Therefore, calling for no interference under extraordinary constitutional jurisdiction, the HC dismissed the writ petition filed by the Petitioner against the order passed by the Special SEBI Court which admitted in evidence, public document of ROC record and held that considering the nature of issue involved, the Special SEBI Court had rightly recorded a finding that by allowing the prosecution to refer to the ROC record which were public documents, just decision in the trial would be arrived.

NCLAT, Delhi sets aside NCLT order directing NSE, BSE to review ZeeSony merger scheme approval

Zee Entertainment Enterprises Ltd. vs. BSE Ltd. & Anr.

Company Appeal (AT) No. 82 of 2023

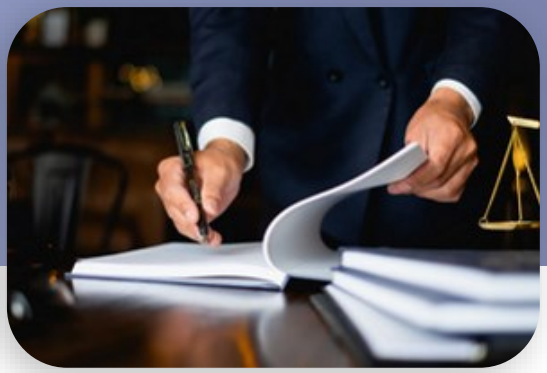
A merger scheme was in process between Zee Entertainment Enterprises Ltd. ('Zee/the Appellant') and Sony Pictures Networks India ('Sony') under Section 230 to Section 232 of the Companies Act. The merger scheme was given approval to by both the BSE and the NSE ('the Respondents'). During the course of hearing before the NCLT, an order issued by SEBI in respect of **Shirpur Gold Refinery [WTM/AB/CFID/CFID_4/25884/2023-24]** was placed by the Respondents before the NCLT wherein the names of the promoters of Zee appeared in the context of diversion of funds. The copy of the said order was not even supplied to the Appellant and the NCLT, basis the said order, passed an order directing the Respondents to review the approval granted by them earlier, for the Zee-Sony merger scheme.

Aggrieved, the Appellant approached the NCLAT contending that since the said order copy was directly produced before NCLT without providing the same to the Appellant, there was no occasion to place an appropriate response. The Appellant further submitted that it was not raising any issue on the merit of the case but, at least, before passing such order, it was required on the part of the NCLT to grant an opportunity to the Appellant to respond in such situation. Noting that the Respondents had not disputed the fact that the said SEBI order was produced before the NCLT in course of the proceeding, the NCLAT observed that the order of the NCLT was required to be set aside primarily on the ground of non-compliance of the principle of natural justice and accordingly, remitted the matter back to the NCLT to examine the same and pass an appropriate order after hearing both the parties without being influenced by the instant order.

Authors' Notes

> *It would be interesting to note that SEBI in **Shirpur Gold Refinery [supra]** barred Mr. Amit Goenka who is the son of Essel Group Chairman and one of the promoters of Shirpur Gold Refinery Ltd. (a part of Essel Group of Companies) along with 6 other entities from selling/ disposing of/ diluting their shareholding in Shirpur Gold Refinery Ltd., for misrepresenting Shirpur Gold Refinery Ltd.'s financial statements and diverting its funds.*

REGULATORY
From the Legislature



RBI's announcement to withdraw Rs. 2,000 currency notes

RBI vide Notification no. RBI/2023-24/32 dated May 19, 2023, and RBI/2023-24/33 dated May 22, 2023, in accordance with the "Clean Note Policy" of the RBI, has announced the withdrawal of INR 2000 denomination banknotes from circulation, while remaining legal tender. The facility to deposit and/or exchange INR 2000 banknotes will be available to the general public until September 30, 2023. The objective of introducing the INR 2000 banknotes was fulfilled once banknotes of other denominations became sufficiently available. A majority of the INR 2000 denomination notes were issued prior to March 2017 and are at the end of their estimated life-span of 4-5 years. It has also been observed that this denomination is not commonly used for transactions. Further, the stock of banknotes in other denominations continues to be adequate to meet the currency requirement of the public.

Authors' Note

> *This augurs well with the government strategy to promote digital payments and reduce print money usage. However, the smaller denomination notes are necessary to run the economy specifically rural and other lesser developed areas.*

MCA streamlines approvals for mergers vide Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

MCA, through Notification no. G.S.R. 367(E) dated May 15, 2023, has amended Rule 25 of the Companies (CAA) Rules, 2016. These amendments pertain to schemes of merger or amalgamation involving small companies and startups, or between a holding company and its wholly-owned subsidiary. The amendments will be applicable from June 15, 2023. The key aspects of the amendment are as follows:-

- When application filed under Sec 233(2) of the Companies Act to ROC and official liquidator for scheme approval, then the ROC / Official Liquidator can raise objection or suggestion within 30 days and forward them to CG;
- No Objection: If no objection and suggestion received by CG and the CG believes that the scheme is in the public interest or in the interest of creditors, a confirmation order for the scheme of merger or amalgamation will be issued by the CG within a period of 15 days after the expiry of the said 30 days. It should be noted that if the CG does not issue a confirmation order within 60 days, it will be considered as deemed approval;
- Objection Received: if the objections/suggestions are received within 30 days, the CG can take following actions:
    - ◊ Confirmation order will be issued within 30 days, if the objections/ suggestions are deemed unsustainable, and the CG thinks that the scheme is in the public interest or the interest of creditors.

- ◊ In case CG believes that the scheme is not in the public interest or the interest of creditors, CG can file an application stating the objections/ opinion to consider scheme under 233 of Companies Act, before the Tribunal within 60 days.

Provided that If the Central Government does not issue a confirmation order or file an application within 60 days from application under Section 233 of companies act,2013, the scheme will be deemed as approved

Filling of CSR-2 Form

MCA, through Notification No. G.S.R. 408(E) dated May 31, 2023, has provided an amendment to Rule 12 of the Companies (Accounts) Rules, 2014. According to the amendment, every company covered under the provisions of sub-section (1) to section 135 shall submit a report on CSR in Form CSR-2 separately to the Registrar. This report should be filed on or before March 31 , 2024, after filing either Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), or Form No. AOC-4 XBRL as specified in these Rules.

Introduction of Legal Entity Identifier (LEI) for issuers who have listed and/ or propose to list non-convertible securities, securitised debt instruments and security receipts

SEBI, through Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/64 dated May 3, 2023, has introduced the Legal Entity Identifier (LEI) system for issuers who have listed or are planning to list non-convertible securities, securitized debt instruments, and security receipts.

LEIs are unique global identifiers assigned to legal entities participating in financial transactions. Presently, as per RBI directions, non-individual borrowers with an aggregate exposure of over INR 25 crores are required to obtain an LEI code.

SEBI further mandates the following regarding LEIs:

- Issuers with outstanding listed non-convertible securities as of August 31, 2023, are required to report the LEI code in the Centralized Database of corporate bonds on or before September 1, 2023.
- Issuers with outstanding listed securitized debt instruments and security receipts as of August 31, 2023, must obtain and report the LEI code to the Depository(ies) on or before September 1, 2023.

It is important to note that on or after September 1, 2023 respective issuers have to do compliance as mentioned above.

LEI codes can be obtained from Legal Entity Identifier India Ltd (LEIIL), a subsidiary of the Clearing Corporation of India Limited (CCIL), which has been recognized by the RBI.

Authors' Note

> *LEI, a unique global identifier is designed is designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction, that is pertaining to a financial transaction. It is a unique 20-character code to identify legally distinct entities that engage in financial transactions*

Additional requirements for the issuers of transition bonds

SEBI, through Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/66 dated May 04, 2023, has introduced additional requirements for the issuance and listing of transition bonds. These requirements aim to promote transparency and informed decision making among investors and prevent the misallocation of funds raised through transition bonds.

Transition bonds have the potential to play a significant role in mobilizing capital for accelerated industrial decarburization. According to estimates by S&P Global, transition finance, including issuance, could contribute up to USD 1 Trillion to the annual investments of USD 3 Trillion needed to limit global warming to 2°C by 2050.

The additional requirements prescribed by SEBI include the following disclosures:

- Disclosure in the offer document for public issues/private placements of transition bonds.
- Disclosure in the Centralized Database for corporate bonds.
- Disclosure to Stock Exchanges in the event of a revision in the transition plan.
- Disclosure in the Annual Report.

These requirements aim to provide comprehensive information to investors and stakeholders regarding the nature and progress of transition bonds, ensuring transparency and accountability in the process.

INTERNATIONAL DESK

UAE: Issuance of Three Decisions on Corporate Tax

The UAE Ministry of Finance has announced three new Ministerial Decisions for the purpose of Federal Decree-Law No.47/2022 Tax on Corporations and Businesses. These include-

- Ministerial Decision No. 114 of 2023 on the Accounting Standards and Methods;
- Ministerial Decision No. 115 of 2023 on Pensions and Social Security Funds;
- Ministerial Decision No. 116 of 2023 on Participation Exemption.

The first ministerial decision clarifies the basis of preparing financial statements and mechanisms for consolidating them within a tax group. The second ministerial decision deals with conditions for the exemption of private regulated pension funds and social security funds from the corporate tax.

The three new decisions aim to enhance the flexibility of UAE's corporate tax regime and ensure a supportive business environment for all sectors.

"Designating International Financial Reporting Standards as the applicable accounting standards and further simplifying accounting processes for SMEs reflects the Ministry of Finance's commitment to imposing a minimal compliance burden for businesses in the scope of the corporate tax regime," Mr. Al Khouri said.

The decision clarifies that the tax relief will apply to different ownership interest types, including preferential shares ordinary shares, and redeemable shares. This ensures UAE-based companies with specific investments in foreign entities that meet the required conditions, do not suffer any UAE corporate tax on such investments.

UAE: Release of An Explanatory Guide to Corporate Tax Law

UAE Ministry of Finance has issued an Explanatory Guide for Federal Decree-Law No.47 of 2022 on the Taxation of Corporations and Businesses. The Guide is designed to provide a detailed explanation of each article and the intended purpose of the provisions of the Corporate Tax Law and executive decisions issued for its implementation.

The Guide comprises of 20 Chapters and 70 Articles, covering the scope of Corporate Tax, its application, and rules pertaining to compliance and administration of the Corporate Tax regime. The Guide must be read in conjunction with the Corporate Tax Law and the relevant decisions issued by the Cabinet, the Ministry, and the Federal Tax Authority for the purpose of applying some provisions of the Corporate Tax Law.

Further, the Guide also assists in understanding the legal provisions and improves the Corporate Tax Law's readability by Companies, businesses, and individuals undertaking a business or business activity. It should be noted that Ministry may update the Guide periodically. The latest version of the Guide will be

made available on the website of the Ministry as well as on the website of the Federal Tax Authority.

UAE: New Transfer Pricing Documentation Requirements

The UAE Ministry of Finance has published Ministerial Decision No.97/2023 dated May 11, 2023, on the requirements for maintaining transfer pricing documentation under the UAE Corporate tax law.

The taxable person needs to maintain both local and master files during the relevant tax period if-

- The taxable person's revenue exceeds AED 200 million and
- The taxable person is a constituent entity (i.e. they are part of the MNE group anytime during the relevant tax period which has consolidated group revenue ≥ AED 305 billion).

Following are transactions/arrangements with Related Parties and Connected persons to be included and excluded as mentioned in the local file:

Sr. No.	Inclusions in the Local File	Exclusions in the Local File
1	**A Non-Resident Person** E.g. Foreign Fellow Subsidiaries, PE of Foreign related parties in the UAE.	**UAE taxable person not considered in inclusions**
2	**An Exempt Person** E.g. Government Entities, Persons engaged in Extractive business who meet the prescribed condi-	**A Natural Person** provided that the parties to the transaction/ arrangement are acting independent
3	**A Resident Person that has elected for Article 21 of the CT law and meets the conditions as prescribed.** This refers to taxable persons opting for small business relief, who are treated as not having any tax-	**A Juridical person is a partner in an Unincorporated Partnership**, provided that the parties to the transaction/ arrangement are acting independently.
4	**A Resident Person who is taxed at a different Corporate Tax rate from that of the Taxable Person** Qualifying Free Zones which are charged with 0% on Qualifying income.	**A Permanent Establishment of a Non-Resident Person** in the state who is taxed at the same Corporate Tax rate applicable to the Taxable Person.

As per the Decree Law, TP requirements will apply for the financial year starting from June 01, 2023. With the date fast approaching, it is essential for the entities to align their policies as per the arm's length principle and be equipped to deal with the required compliance.

Saudi Arabia: Amendments to Transfer Pricing Bylaws

The Board of Directors of Zakat, Tax and Customs Authority (**'ZATCA'**) on March 20, 2023, approved the Amendments that will include the Zakat taxpayers within the scope of the Saudi Arabian TP bylaws. The new requirements will be implemented in two phases as amended TP bylaws are published which of them applies depending on the Zakat's payers' aggregate value of related-party transactions during the year. In addition to relevant amendments, it also includes the provisions for entering into advance pricing agreements (APAs) negotiated with the ZATCA if requested by income tax and Zakat payers.

Implementation of the proposed changes to the TP Bylaws is expected to occur in two phases, as shown below:

Implementation Phase	**Aggregate Value of Related-Party Transactions**		
	≤ SAR 48 Million	**> 48 Million**	**≥SAR 100 Million**
Phase 1* January 01, 2024	Not Applicable	Voluntary	Mandatory
Phase 2 January 01, 2027**	Not Applicable	Mandatory	Mandatory

Investments funds are exempted from compliance obligations in Phase.

**Investments funds are included as covered entities in Phase 2.

All Zakat payers will be required to disclose their related-party transactions in a transfer pricing disclosure form and submit an affidavit along with their Zakat Declarations.

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
CSR	Corporate Social Responsibility
[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
PPI	Prepaid Payments Instruments
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.

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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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