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EDITION 34

VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

VISION 360: Good times ahead!

As we step into the month of August, it is important to take stock of the significant developments that have taken place in the GST landscape. One of the most important council meeting i.e., 50th GST Council meeting brought forth several crucial decisions that are set to impact businesses and taxpayers alike. The recommendations put forth during the meeting cover a wide range of areas, including taxation, compliance, trade facilitation, and industry-specific concerns. Further, the Council recommended notifying the rules governing the appointment and conditions of the President and members of the proposed GSTATs, would be notified w.e.f. 01 August 2023 and accordingly the state benches of GSTAT to be established in a phased manner.

Nonetheless, the month of July witnessed some key moments in taxation, such as the CBIC issuing slew of Circulars, which provide much-needed clarifications on some burning GST issues such as the credit reconciliation with GSTR-2A/2B interest calculation under section 50(3) by considering balances of CGST and SGST for IGST liabilities, Cross Charge vs. ISD., etc

Further, in an impressive decision, the Andhra Pradesh Court has upheld the constitutionality validity of time limit for claiming ITC under section 16(4) of the CGST Act. Thus, in a way, re-affirming the principle that tax incentives are subject to compliance with stipulated conditions, and businesses must carefully adhere to the time limit specified in Section 16(4) to avail themselves of this benefit. The judgment holds significant implications as it addresses the long-standing debate over the interpretation of Section 16(2) and Section 16(4) of the CGST Act.

We have analysed the HC's judgement in a detailed article in this Newsletter, with the judicial interpretation on the Section 16(4). We have also penned down an article on the concepts of Input Service Distributor and Cross Charge with the help of relevant examples and further offer expert insight on the latest developments in ISD and Cross Charge vis-à-vis the CBIC Circular No. 199/11/2023 dated July 11, 2023.

Speaking of direct tax developments, CBDT introduces the Income-tax (Twelfth Amendment) Rules, 2023. The CBDT has also notified the ITR-filing exemption for non-residents earning income from investment funds to also include investment funds regulated by IFSCA.

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 **34th 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

Lost in Time: Untangling the ITC Enigma under the CGST Act

Amidst the dynamic landscape of taxation, the sands of time have brought us to a critical juncture where the validity of Section 16(4) of the CGST Act stands under scrutiny. Even after six years of the implementation of the GST in India, certain challenges persist, and one such issue revolves around Section 16(4) of the CGST Act. This provision sets a time limit for availing ITC, which has been a subject of contention and concern for taxpayers. Despite the government's efforts to streamline the GST regime, businesses continue to grapple with the complexities of Section 16(4), leading to demand notices and potential denial of ITC benefits.

The Controversy Surrounding ITC Claiming Time Limit

Section 16(4) of the CGST Act stipulates that a registered taxpayer must claim ITC before the due date of filing their September (at the time of the instant case) monthly return or the annual return, whichever comes earlier, relating to the financial year in which the relevant invoice or debit note is received. The statutory time limit sparked debates and legal challenges, with some arguing that it restricted taxpayers' ability to claim legitimate ITC, leading to potential losses for businesses.

In this article, we shall analyze a recent and significant judgment by the Andhra Pradesh High Court in the case of **M/s. Thirumalakonda Plywoods [W.P.No.24235 of 2022]** that addresses the interpretation and constitutional validity of Section 16(4) of the CGST Act. The ruling provides clarity on the interaction of Section 16(2) and Section 16(4), and its implications on taxpayers' ability to claim ITC within the prescribed time limit.

Factual Background

The Petitioner was engaged in hardware and plywood business. In the wake of Covid-19 pandemic the Petitioner could not file Form GSTR-3B of March 2020 in time and so filed it, belatedly, on November 27, 2020, along with late fees. In response to the belated filing, the Tax Authorities issued a SCN against the Petitioner u/s. 74 of the CGST Act followed by an order disallowing the claimed ITC. The disallowance was based on the ground that Section 16(4) of the CGST Act was not complied with. Aggrieved by the said order, the Petitioner preferred a Writ before the Hon'ble Andhra Pradesh High Court inter alia challenging the constitutional validity of Section 16(4) of the CGST Act.

High Court Ruling

The HC has addressed three key questions in its ruling:

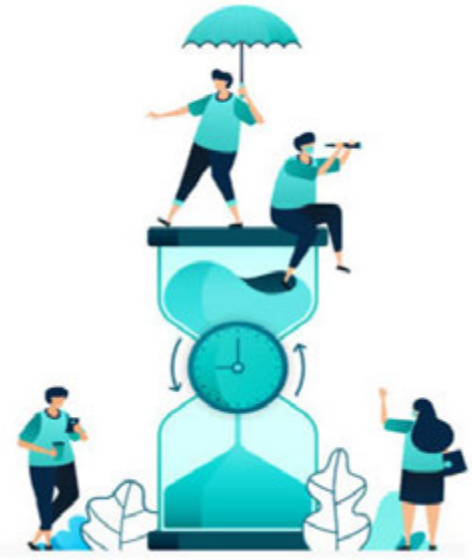
- **Constitutional Validity**: The court has clarified that Section 16(4) of the CGST Act does not violate Article 14 (equality before the law), Article 19(1)(g) (right to practice any profession), and Article 300-A

(right to property) of the Constitution. The court further emphasized that ITC is a concession and not a statutory or constitutional right. Therefore, imposing conditions, including time limitation, for availing ITC does not violate the Constitution.

Precedence of Sections: The court clarified that Section 16(2) of the CGST Act does not override Section 16(4). Both sections operate independently and are not contradictory. Therefore, the time limit u/s. 16(4) remains significant even if the conditions of Section 16(2) are met. The interpretation of the non obstante clause in Section 16(2) was also discussed. The court explained that a non obstante clause gives overriding effect to certain provisions over others. However, when the non obstante clause is a restricting provision, it does not negate or restrict other restricting provisions. There is no contradiction between the restricting clause followed by non obstante and other restricting provisions. The non obstante clause in Section 16(2) is merely a restricting provision and does not nullify the significance of Section 16(4). Therefore, the court dismissed the challenge to the constitutional validity of Section 16(4) and emphasized that both sections will operate independently.

Acceptance of Form GSTR-3B with Late Fee: The court opined that late acceptance of Form GSTR-3B returns with a fee does not justify claiming Input Tax Credit (ITC) beyond the time limit specified in Section 16(4) of the CGST Act. The statutory limitation for availing ITC remains in effect, and filing returns with a late fee does not exonerate taxpayers from adhering to the prescribed time frame.

Analysis of the High Court Judgment



The HC ruling on the constitutional validity of time limit for availing ITC u/s. 16(4) of the CGST Act has significant implications for businesses operating under the GST regime. The ruling addresses several key issues and sheds light on the interpretation of crucial provisions, providing much-needed clarity and guidance to taxpayers.

Firstly, the HC's affirmation of the constitutional validity of Section 16(4) marks a crucial milestone in the ongoing debate surrounding the restriction on claiming ITC beyond the prescribed time frame. By emphasizing that ITC is a concession and not an inherent right, the court justifies the government's authority to impose reasonable conditions to safeguard revenue and prevent potential misuse of the ITC mechanism. This reaffirms the principle that tax incentives are subject to compliance with stipulated conditions, and businesses must carefully adhere to the time limit specified in Section 16(4) to avail themselves of this benefit.

Secondly, the court's clarification on the relationship between Section 16(2) and Section 16(4) provides valuable insights into the coexistence of these provisions. While taxpayers must meet the conditions of Section 16(2) to be eligible for ITC, the court emphasizes that compliance with Section 16(2) does not override or nullify the time limit prescribed under Section 16(4). This interpretation highlights the independent applicability of both sections and underscores the importance of recognizing the separate purposes they serve in the context of availing ITC.

Furthermore, the HC's stance on the acceptance of Form GSTR-3B with a late fee reinforces the statutory limitation on claiming ITC. The court's rejection of the argument that late filing with a fee entitles taxpayers to avail ITC beyond the prescribed time frame underscores the significance of timely compliance. This aspect of the ruling emphasizes the importance of adhering to the specified time limit to prevent potential disputes and demand notices.

Overall, the HC's judgment provides a balanced and well-reasoned analysis of the contentious issues related to Section 16(4) of the CGST Act. The ruling not only upholds the constitutional validity of the provision but also elucidates the interplay between Section 16(2) and Section 16(4) and the relevance of timely compliance with the prescribed time frame.

Parting Thoughts

The judgment holds significant implications as it addresses the long-standing debate over the interpretation of Section 16(2) and Section 16(4) of the CGST Act. The Court's observation regarding the non-obstante clause in Section 16(2) is particularly noteworthy. The Court clarified that the non-obstante clause in Section 16(2) starts with a negative sentence, making it evident that ITC will not be eligible unless the conditions mentioned in Section 16(2) are fulfilled. This interpretation establishes that Section 16(2) acts as a restrictive provision, limiting the eligibility otherwise provided under Section 16(1) for claiming ITC. Taxpayers must be aware of this ruling and ensure timely compliance with the specified conditions to avail themselves of the benefit of ITC under the GST law. It shall be noted that the Apex Court in its landmark judgement in **RE: TVS Motors Co. Limited vs. State of Tamil Nadu [2018 (18) GSTL 769 (SC)]**, has held that Credit is not a right, but a concession given to the taxpayers and therefore, the Government may restrict the same.

It is interesting to note that the judiciary has consistently taken the stand that the non-obstante clause gives overriding effect to a provision over conflicting ones, but it does not render all other provisions ineffective. Various High Court judgments have opined that the application of the non-obstante clause must be examined in the context of specific provisions and their relevant legislative intent. The insertion of a non-obstante clause in any legal provision serves a crucial purpose – to establish an overriding effect of that provision over others in the same law or any prevailing legislation. This measure helps avoid conflicting interpretations and ensures smooth implementation of the law. However, the practical application of a non-obstante clause often raises questions about its overall impact and scope. Does it truly render all other provisions in the law redundant? Does it automatically supersede every other provision? The answer is not as straightforward as one might think.

Over the years, various High Courts and the Supreme Court have examined this significant legal question and delivered noteworthy principles on its interpretation. A recent landmark judgment by the Hon'ble Gujarat High Court in the case of RE: **Amar Jewellers Limited [(2022) Tax Corp (DT) 86956 (HC-Gujarat]** shed light on this matter. In this ruling, the court not only analyzed past judicial decisions but also laid down fundamental principles on how to interpret the non-obstante clause and its implications on other provisions of the Act. The court ultimately concluded that the presence of a non-obstante clause in a provision does not nullify the applicability of other provisions. It emphasized that each provision must be construed independently, with due consideration to the legislative intent behind the use of the non-obstante clause. This ruling provides valuable insights and guidance on understanding the true impact of non-obstante clauses in legal enactments.

In a similar vein, a provision of restricting credit existed in the erstwhile regime as well, wherein the CENVAT credit had to be taken within six months from the date of the tax invoice specified under Rule 9(1) of the CCR, 2004. This had raised questions about whether imposing such restrictions on the vested rights of the assessee was unreasonable and arbitrary. In this context, it is pertinent to mention that in **RE: Indsur Global Limited [2014-TIOL-2115-HC-AHM-CX],** the Gujarat HC held that the restriction imposed was unreasonable and arbitrary.

While the Andhra Pradesh HC affirms the constitutional validity of Section 16(4) and provides clarity on the precedence of provisions, its vires is limited to the state of Andhra Pradesh. As regards, the other states, the instant judgement will have persuasive impact. Moreover, since the validity of Section 16(4) has been challenged before various other HCs as well, it would be interesting to see their interpretations.

INDUSTRY PERSPECTIVE

PRABHAT RANJAN

Chartered Accountant

01 GST has recently completed six years and has seen sea changes in the framework and methodology of implementation. How do you think GST has panned out for industries?

GST has been one of the biggest tax reform in India and six years after the rollout of GST, it has been able to double tax base from 2017 and tax collection has been around INR 1.5 Lakh Crores consistently in past few months. The one-nation, one-tax system has emerged as a shining example of cooperative federalism. Multiple taxes and cesses have been consolidated into a single system, catalysing the formalisation of the informal economy.

The introduction of GST law was, to say the least, a very gutsy move by the Government helped to pave way for significant tax reforms such as e-way bills, e-invoicing, quick processing of refunds and digitalization of processes while reducing the cascading effect due to multiplicity of taxes and allowing seamless flow of ITC. While there have been roadblocks, however, it can be said that government has been addressing them on timely basis. However, petroleum and liquor industry happen to stay outside the purview of GST and GST on inputs is ineligible and happens to become a cost.

02 Recently, GST Council concluded its 50th meeting and quite a few important recommendations were made. What is your point of view on the same?

The 50th meeting of the GST council did make recommendations on various long-standing issues and hopefully it will lead to a reduction in frivolous litigation. Further, the decision with reference to creation of GST Appellate Tribunal was much awaited and is definitely welcomed. A special mention regarding Clarification on ISD not being mandatory which is a big relief for most businesses. This proactive clarification on ISD with provisions for it being mandatory only upon adequate amendments being issued, is a very welcome move

for various industry players.

The number of clarifications as per the press release on recommendations made by the GST Council and the progress on important issues such as setting up of GSTAT and recommendation of tax structure on the online gaming sector has made the 50th meeting of the GST Council a landmark meeting. The numerous decisions taken in the meeting will hopefully bring in much more fair and transparent tax regime which promotes compliance and contributes to the growth of India.

03 There have been amendments in Angle Taxation under Income Tax Act – What impact will it have on the influx of foreign investment in India?

The applicability of 'Angel Tax' to non-resident investors was one of the most significant amendments introduced in recent times. Previously, the provision was restricted to consideration received by an unlisted company from Indian resident investors. However, in one of the most impactful changes in the tax laws affecting foreign investments, it is now extended to non-resident investors as well, in an attempt to bring non-resident investors to parity with resident investors.

This is likely to attract foreign investors to invest in start-ups and unlisted companies in India. This also shows Government's commitment to make India investor friendly and a start-up hub.

04 European Union is set to implement carbon border tax. How do you think this shall impact Indian exports and is Indian Industry ready to face such a whammy?

The Carbon Border Tax is a duty levied on imports based on the amount of carbon emissions resulting from the production of the product. Although, the carbon border tax is levied with a view to discourage emissions harmful to the environment, it is also being seen as a device to shield local EU industries from foreign goods under the veil of 'environment protection'.

EU importers will have to now furnish carbon certificates corresponding to the carbon price that would have been paid in the EU if the goods had been produced locally. Therefore, this carbon border tax is bound to increase the prices of the Indian-made goods which have been exported to EU. The Indian Companies exporting iron, steel and aluminum to the EU may be the ones most affected by this Carbon Border Tax.

While we await clarity on further developments, the industry should gear up to thrive in the new regulatory environment by analysing the possible exposure, determining the carbon footprint of products and exploring the greener technology available for production of goods.

Prabhat Ranjan
Chartered Accountant

05 India is in process of finalizing or has signed Free Trade Agreements with couple of significant trade partner nations. Will this coupled with G-20 Presidency with India help in enhancing India image globally while attracting investment and increase in trade?

G20 has an important role in shaping and strengthening global architecture and governance on all major international economic issues as the premier forum for international economic cooperation. The G20 Presidency allows India to depict its infrastructure and attract international attention towards Indian markets. Further, it will also help in highlighting vital issues of international importance such as energy, agriculture, trade, digital economy, health and environment, terrorism, employment, tourism, anti-corruption and women empowerment, including in focus areas that impact the most vulnerable and disadvantaged.

Brand 'India' rested its bets on 4Ts Technology, Tradition, Trade and Talent. India is strongly strengthening its economy and the G20 Presidency gives India an opportunity to showcase that it is a force to be reckoned with on a global stage.

06 Is it likely that liquor industry will get covered under the ambit of GST in foreseeable future?

Currently, the tax on liquor is controlled by the State Government. If alcohol is brought under the ambit of GST it will definitely lead to sharing-of in revenue collection with the Central Government which the State Governments might not be willing to do.

Exempting liquor from the purview of GST has led to increased overall costs due to the increased taxes on the inputs. Further, the output being a tax-exempt product for the manufacturers, GST on inputs become cost. While the liquor industry would definitely want it to be covered under GST, it is highly unlikely that the same would happen in foreseeable future.

07 Whether appointing an Indian subsidiary as sole distributor increases the chances of foreign entity having Permanent Establishment in India in the nature of Dependant Agent?

Dependant Agent Permanent Establishment revolves around various fact pattern and particularly whether Indian Agent is independent or not and more specifically whether Indian entity has right to conclude contracts on behalf of parent group. In a general scenario, ultimate right of refusal or acceptance to enter into contract is with the parent group and hence, DAPE risk generally does not exist.

In a case where the inter-company service agreement / distribution agreement showcases powers & authorities to Indian entity to conclude or materially conclude contracts on behalf of parent entity, such parent entity runs a risk of forming DAPE in India.

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DIRECT TAX
From the Judiciary

HC holds settlement of lawsuit by Tata Consultancy Services with US-deputed employees allowable under Section 37(1) of the IT Act, quashes reassessment notice issued under Section 148 of the IT Act

Tata Consultancy Services Ltd.

2023-TII-17-HC-MUM-INTL

The Assessee had deputed employees to its US branch whereby it was agreed that the Assessee would bear the employee's tax payable in the US and would also receive the tax refund arising therefrom. A class action suit instituted by the employees' alleging violations of the California Labour Code which was settled by the parties on payment by the Assessee of a sum of INR 162 Crores. The settlement amount was claimed as deduction for AY 2013-14 and was allowed in the course of regular assessment after a specific query was raised on its allowability under Section 37(1) of the IT Act. However, basis the report of the investigation wing, a notice under Section 148 of the IT Act was issued for reassessment on the same with a reason that the same could not be shown as operational expenditure and that the Assessee failed to submit copy of the class action suit.

The Hon'ble HC held that the re-opening of the assessment was beyond the period of four years from the end of the relevant assessment years and therefore the Revenue had to prove that the assessee had failed to fully and truly disclose all the material facts necessary for assessment during such assessment proceedings. The HC observed the Revenue had failed to prove that there had been a failure by the Assessee to disclose facts since the fact about settlement of class action suit was clearly adjudicated upon by the ld. AO during the scrutiny assessment proceedings. Further, the settlement of class action suit could not be held to be a penalty which was outside the purview of Explanation 1 to Section 37 of the IT Act.

Therefore, the Hon'ble Bombay High Court set aside the notice issued under Section 148 as well as the order disposing of the objections to the re-assessment since there was no basis for the ld. AO to form believe that income liable to tax had escaped assessment.

HC holds Alibaba Singapore eligible for DTAA benefits, rejects Revenue's plea on TRC & Infomedia as DAPE

Alibaba.Com Singapore E-Commerce Private Ltd

2023-TII-18-HC-MUM-INTL

The Assessee was a non-resident company incorporated Singapore who filed its return of income for A.Y. 2011-12 showing nil income. The same was selected for scrutiny and assessed under Section 143(3) and

Section 144C (13) of the IT Act. The benefit of the India-Singapore DTAA was denied on the ground that the Assessee was merely an intermediary between the Indian subscribers and Alibaba.com Hong Kong Limited. The same was confirmed by the DRP. Accordingly, the appeal was filed before the ITAT, Mumbai for A.Y. 2009-10, 2010-11 and 2011-12.

The Hon'ble ITAT's after persuing the documents and the factual aspects surrounding the Assessee's case held as follows:

- Infomedia 18 Pvt. Ltd. did not constitute a 'business connection' of the assessee in India under the provisions of section 9(1)(i) of the IT Act;
- Infomedia did not constitute a 'permanent establishment' of the assessee in India under the provisions of Article 5 of the DTA between India and Singapore and therefore the income of the Assessee was not taxable in India as business profit under the provisions of Article 7 thereof;
- The payment made by the Indian Suppliers to the assessee is not taxable in India as FTS under the provisions of Section 9(1)(vii) of the Act;
- DTAA between India and Singapore would be applicable and therefore the payments made by the Indian Supplier to the Assessee is not taxable in India as FTS under the provisions of Article 12 of the DTAA .

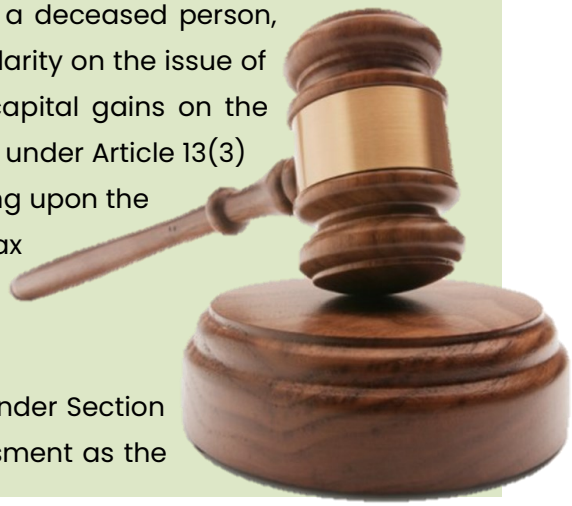
The Hon'ble Bombay HC dismissed the appeal of the revenue and held that the entire subject matter of the Appeal was fact based and the same being dealt with by the Hon'ble ITAT no substantial question of law arose which warranted any interference by the HC.

HC holds subsequent & contradictory AAR ruling not binding on Assessee, quashes reassessment notices

Usha Eswar

2023-TII-32-HC-MUM-INTL

The Bombay High Court allowed the Assesse's Writ Petition challenging the reassessment notices issued to the Assessee under Section 148 of the IT Act whilst observing that a subsequent AAR ruling in the case of another Assessee cannot be sufficient basis on which the Revenue could have a reason to believe that income chargeable to tax had escaped assessment. The Assessee, a deceased person, resident of the UAE, had filed an application before the AAR seeking clarity on the issue of taxability of his income earned in India, wherein it was held that capital gains on the realisation of the Indian movable assets would not be taxable in India under Article 13(3) of the India-UAE DTAA. The Assessee filed its return of income by relying upon the said AAR ruling and did not offer the capital gains accrued to him to tax but offered the dividend and interest income to tax at 15% and 12.5 %, respectively, as per the rates specified under DTAA.



Subsequently, the Assessee was served with reassessment notices under Section 148 by the Revenue, on the ground that income had escaped assessment as the

benefits of the DTAA were wrongly given to the Assessee which was challenged by way of a Writ Petition.

The HC while placing reliance on various judicial precedents observed that a subsequent AAR ruling, as relied upon by the Revenue to issue re-assessment notice, taking a contradictory view could not bind the Assessee nor could it displace the binding effect of the AAR ruling in the Assessee's case under Section 245S of the IT Act. Further, the HC held, the reopening was invalid, as the Revenue, besides the subsequent AAR ruling did not have any tangible material to conclude that there was an escapement of income.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT expands ITR-filing exemption for non-residents earning income from investment funds to also include investment funds regulated by IFSCA

Notification No. 49/2023 dated July 14, 2023

CBDT had earlier issued Notification No. 55/2019 dated July 26, 2019 ('2019 Notification') to exempt non-residents and foreign companies that were earning income from investment funds from filing of ITR.

Given this backdrop, the CBDT amends the definition of "investment fund" in the 2019 Notification which was earlier restricted to SEBI registered Category I or Category II Alternative Investment Fund, to include any fund established or incorporated in India which is regulated under the IFSCA Act, 2019.

CBDT introduces the Income-tax (Twelfth Amendment) Rules, 2023 to amend Rules 21AK, 114AAB and Form 10CCF

Notification No. 50/2023 dated July 17, 2023

CBDT amends Form 10CCF and Rules 21AK, 114AAB of the IT Rules.

Rule 21AK of the IT Rules which provides for the conditions for exemption under Section 10(4E) of the IT Act, now also includes income accrued or arisen to, or received by, a non-resident as a result of distribution of income on offshore derivative instruments, subject to conditions.

The definition of "specified fund" in Explanation to Rule 114AAB of the IT Rules which provides for the exceptions to the applicability of Section 139A of the IT Act (Requirement of PAN) has expanded to include any fund regulated under the IFSCA Act, 2019.

CBDT excludes relocation of funds to International Financial Services Centre from the ambit of Section 56(2)(x) of the IT Act

Notification No. 51/2023 dated July 18, 2023

CBDT amends Rule 11UAC of the IT Rules, to widen the scope of non-applicability of Section 56(2)(x) of the IT Act.

Section 56(2)(x) of the IT Act was inserted by the Finance Act, 2017 to prevent the practice of receiving money or property without consideration or for insufficient consideration. According to the Section, any person who receives money or property on or after January 1, 2017, without proper consideration or for a small sum of money, will be subject to tax under the heading 'Income from Other Sources'.

Through the Notification, CBDT inserts sub-rule (5) to Rule 11UAC of the IT Rules, as per which Section 56(2)

(x) of the IT Act shall not apply to any movable property, being shares or units or interest in the resultant fund received by the fund management entity of the resultant fund, instead of shares or units or interest held by the investment manager entity in the original fund, pursuant to the relocation subject to prescribed conditions.

CBDT exempts dividends paid inter se by aircraft leasing IFSC unit from TDS under Section 194 of the IT Act

Notification No. 52/2023 dated July 20, 2023

CBDT notifies that dividend paid by any IFSC unit that is primarily engaged in the business of aircraft leasing to another IFSC unit primarily engaged in the aircraft leasing business shall not be subject to TDS under Section 194 of the IT Act subject to specified conditions.

CIRCULARS/PRESS RELEASES

CBDT expands the scope of Section 115UB of the IT Act to include investment funds regulated by the IFSCA

Circular No. 12/2023 dated July 12, 2023

CBDT amends Circular No. 14/2019 dated July 3, 2019 that clarified taxability of non-resident investor's income from offshore investments routed through Category I or Category II Alternative Investment Fund regulated under the SEBI regulations.

In pursuance to the amendments made by the Finance Act, 2023, in the definition of 'investment fund', CBDT amends the 2019 Circular to include 'any fund established or incorporated in India regulated, under the IFSCA Act, 2019'.

Thus, the provisions of Section 115UB of the IT Act, which deals with tax on income of investment fund and its unit holders to apply to not only Category I or Category II Alternative Investment Funds regulated by SEBI but also investment funds regulated by the IFSCA.

TRANSFER PRICING
From the Judiciary

ITAT partially allows capital utilization adjustments, restricts TP-adjustments to international transactions only

Huntsman International (India) Private Limited

IT(TP)A No. 850/Ahd/2015

The ITAT partly allowed the Assessee's appeal by directing the TPO that the toll manufacturing charges were to be excluded from operating costs for the purpose of benchmarking, as per the categorical directions of the Hon'ble DRP. Further, in view of the law settled by multiple judicial precedents it also allowed the assessee's appeal on the ground that transfer pricing addition should be restricted qua international transaction and not entity level transaction.

The Hon'ble ITAT dismissed the ground of the Assessee that the DRP had erred in not allowing extra-ordinary costs incurred by the Assessee due to shut down of the plant while computing the operating NCP mark up earned by the assessee on the basis that the Assessee had not provided a bifurcation of power expenses into fixed and variable costs for the earlier years as well as the year under consideration.

Further, the Hon'ble ITAT remanded the matter back to the file of the ld. TPO to re-adjudicate on the grounds pertaining to the ld. AO failing to not follow direction of DRP while classifying various expenses as fixed or variable in allowing the capacity utilisation adjustment calculation of the comparable companies and also on the ground that the ld. AO made erroneous computation of NCP plus markup of comparable companies by AO/TPO.

HC dismisses Revenue's appeal, upholds deletion of adjustment qua export sales & commission

ThyssenKrupp Electrical Steel India Private Limited

Income Tax Appeal No. 324 of 2018

The Hon'ble Bombay High Court dismissed the revenue's appeal on the ground that no substantial question of law arose and no case for interference was made out by the Revenue.

The Assessee was engaged in manufacture of 'low carbon cold rolled electrical'& 'mild' steel and had made export sales of 'cold rolled electrical' steel in coils to its AE and benchmarked the transaction by adopting CPM method. The Assessee had also received commission on sales at 1.5% when the customer was other than OEM and at 0.75% in case of OEM and benchmarked the same using CUP method.

The TPO, however, with regards to the export sales, made an adjustment by adopting CUP as MAM and with regards to the commission received on sales by the Assessee, applied internal rate of return and made TP adjustment. Aggrieved, the Assessee approached the CIT(A) who deleted the adjustments

made by the TPO and the same was also upheld by the ITAT.

The Hon'ble Bombay HC with reference to the export sales, observed, that since the transaction picked up for comparison by TPO was very negligible i.e. on the basis of small sales made of similar components, the CIT(A) observed that there was no merit in applying the CUP method. CIT(A) also observed that the methodology adopted by the Assessee in applying CPM method had been accepted in the succeeding years by the TPO himself and no adjustment had been made in the hands of the Assessee. Therefore, CIT (A) came to the conclusion, which was correctly upheld by the ITAT, that there was no merit in the order of the TPO in applying the CUP method to benchmark the international transaction of export sales to AE.

Further, with reference to the receipt of commission on sales, the HC observed, that, the TPO, for the year under consideration applied internal rate of return as the MAM but, in the succeeding years, the TPO had applied CUP method. The CIT(A), therefore, had rightly rejected the methodology adopted by the TPO and the ITAT had correctly upheld the findings of CIT(A).

ITAT upholds levy of interest on 'outstanding interest receivable' considering delay improved AE's liquidity position

Parle Biscuits Private Limited

ITA No. 2484/Mum/2022

The Assessee was a 100% subsidiary of Parle Products Pvt Ltd. and was engaged in the manufacture of wide range of biscuits, confectionary, snacks and bakery products. During the year under consideration, the Assessee had entered into various international transactions with its AEs and thus, a reference was made to the TPO to compute the ALP. The TPO made a TP adjustment on account of interest on outstanding interest receivable and the AO passed a draft assessment order incorporating the said TP adjustment. Aggrieved, the Assessee filed its objections before the DRP that confirmed the addition made by the TPO which caused the Assessee to approach the ITAT.

The ITAT noted that the Assessee had advanced loans to its AEs with interest @ 5.5%, but the interest receivable was outstanding for a long time (more than 14 years in some cases) and the AO/TPO treated outstanding interest receivable as separate international transaction and charged interest thereon. Moreover, the loss incurred by an AE was cited as the main reason for delay in payment of interest, but the Assessee did not provide any details before lower authorities to substantiate submissions regarding the AE's financial position and also did not provide any evidence to show efforts made towards recovery of interest amount which had resulted in improving the liquidity position of the AE. Accordingly, rejecting the Assessee's submission that as per loan agreement there were only interest terms agreed with the AEs and there was no provision to charge interest on interest, the ITAT observed that the interest on a loan was a compensation received towards the utilization of funds given by the Assessee to its AEs and the interest element on the said loan, if not paid, improved the liquidity position of the AEs and became part and parcel of the said loan transaction. Thus, finding no infirmity in the action of the TPO in treating the interest receivable as a loan outstanding and charging interest on the same, the ITAT confirmed the TP adjustment on this account.

ARTICLE

New Tax Regime- Does it really offers some benefits in longer run

As each financial year commences, individuals eagerly anticipate updates in tax structures, deductions, and the emergence of new tax regimes, all with the goal of enhancing their financial outlook. The Income Tax Act of 1961 encompasses the existing old tax regime, stipulating tax slab rates for individual taxpayers and Hindu Undivided Families (HUFs). Conversely, the year 2020 brought forth a new tax regime, Section 115BAC, through the Finance Act, redefining tax slab rates for the same categories. Further amendments were introduced under the Finance Act of 2023, reshaping the tax landscape. In this article, we delve into these developments and their implications, considering deductions and strategic recommendations.

As per Income Tax Act, 1961, there is an old tax regime which prescribes the tax slab rates for individual taxpayers or Hindu undivided family (HUF) which are follow as:

Income Range (in INR)	Below 60 years of age	Between 60 and 80 years (Senior Citizens)	Above 80 years (Super Senior Citizens)
Up to 2,50,000	Nil	Nil	Nil
2,50,001 - 5,00,000	5%	5%	Nil
5,00,001 - 10,00,000	20%	20%	20%
Above 10,00,000	30%	30%	30%

In the year 2020, the government introduced Section 115BAC through the Finance Act, 2020, establishing a new tax regime, this section provides a new tax slab rates for individual taxpayers or Hindu undivided family **(HUF)** which are:

Income Range (in INR)	Tax Rate
Up to 2,50,000	Nil
2,50,000 - 5,00,000	5%
5,00,000 - 7,50,000	10%
7,50,000 - 10,00,000	15%
10,00,000 - 12,50,000	20%
12,50,000 - 15,00,000	25%
Above 15,00,000	30%

However, in accordance with the Finance Act of 2023, the government has introduced amendments to the tax slab rates within the new tax regime, aiming to offer enhanced benefits to individual taxpayers and Hindu Undivided Families (HUFs). The revised slab rates are as follows:

However, in accordance with the Finance Act of 2023, the government has introduced amendments to the tax slab rates within the new tax regime, aiming to offer enhanced benefits to individual taxpayers and Hindu Undivided Families (HUFs). The revised slab rates are as follows:

Income Range (in INR)	Tax Rate
Up to 3,00,000	Nil
3,00,000 - 6,00,000	5%
6,00,000 - 9,00,000	10%
9,00,000 - 12,00,000	15%
12,00,000 - 15,00,000	20%
Above 15,00,000	30%

Deductions: A Strategic Consideration

Beyond the tax slab rates, the ability to optimize deductions is a pivotal factor in selecting the right tax regime. The old tax regime offers deductions under sections such as 80C, 80D, 80TTA, 80TTB, 80E, 80G, 80U, 10(13a) and 24(b) providing significant opportunities to reduce taxable income. However, the new tax regime does not encompass these deductions, making the old regime the preferred choice for those who seek to maximize their deductions and lower their tax liability.

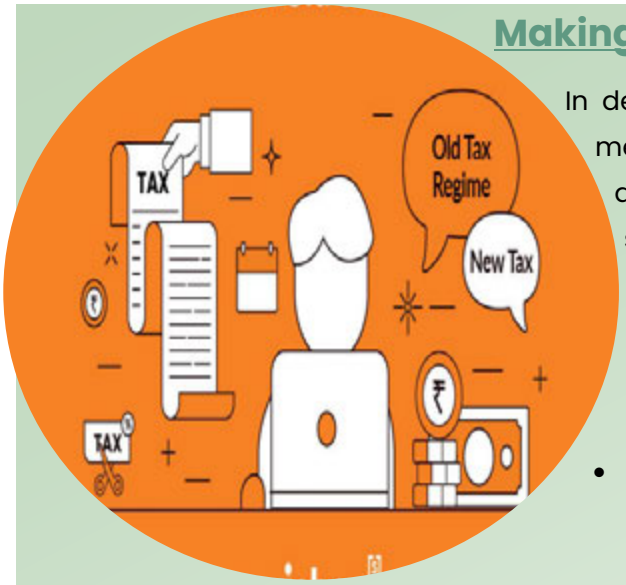
In the Budget of 2023, the government has introduced several amendments within the new tax regimes, strategically designed to incentivize individuals to consider adopting the new tax regimes over the old ones. These amendments include:

- **Higher Tax Rebate Limit :** Full tax rebate on an income up to ₹7 lakhs has been introduced. Whereas, this threshold is ₹5 lakhs under the old tax regime. This means that taxpayers with an income of up to ₹7 lakhs will not have to pay any tax at all under the new tax regime
- **Salary income** : The standard deduction of ₹50,000, which was only available under the old regime, has now been extended to the new tax regime as well. This, along with the rebate, makes ₹7.5 lakhs as your tax-free income under the new regime.
- **Reduced Surcharge for High Net worth Individuals** : The surcharge rate on income over ₹5 Crores has been reduced from 37% to 25%. This move will bring down their effective tax rate 42.74% to 39%.
- **Family Pension** : Deduction from family pension u/s 57 is proposed to be extended to employees who opt for New Tax Regime
- Applicability: The alternate tax regime of Section 115BAC is proposed to be applicable to Association of Persons [other than a co-operative society], Body of Individuals, and Artificial Juridical Persons.

Starting from FY 2023-24, the new income tax regime will be set as the default option. If you want to continue using the old regime, you must submit a Form 10-IE at the time of return filing u/s 139(1). By submitting this form, taxpayers can inform the income tax department of their choice. Taxpayers shall have the option to switch between the two regimes annually, but this option was not available before introduction of these amendments.

New Tax Regime- Does it really offers some benefits in longer run

The central aim behind the government's introduction of the new tax regime in the income tax landscape is to curtail the potential for individuals to exploit fabricated deductions through manipulative practices involving documents and bills. By ushering in this new regime, the government seeks to create a shield against artificial claims that undermine the integrity of the tax system. The flip side of that is generally people have already firmed up their investment plans such as provident fund contribution, life insurance plans, housing loans and other fund investments so it may not be practical to discontinue them easily, as a result of which the data shows that still a very small proportion of tax return filing population has opted for new tax regime. Another important aspect is that for a long term macro-economic growth it is essential that retail investments keep flowing into infrastructure and other long-term projects a good part of which essentially originates small savings/investment infused by people to take benefit of Section 80 C investments.



Making an Informed Choice

In determining the optimal regime, individuals are advised to meticulously assess their financial circumstances, considering all facets. While no one-size-fits-all answer exists, certain scenarios favor the new regime:

- Those with an income up to ₹7 lakhs benefit from a full rebate under section 87A, rendering the new regime tax-free.
- High Net Worth individuals, owing to reduced surcharge rates, may find the new regime more appealing.

Calculating tax liability under both regimes, factoring in deductions and recent amendments, is crucial and taxpayers have to identify the best option for them as per the best option available under both the tax regimes.

Conclusion

The introduction of the new tax regime and subsequent amendments highlight the government's commitment to providing individuals with advantageous options for tax optimization. While the decision between the old and new tax regimes remains complex and depends on individual circumstances, careful planning and analysis are crucial. Thoroughly evaluating deductions, income, and the specific amendments introduced can aid individuals in making an informed decision that aligns with their financial goals and maximizes their disposable income. While each regime has its merits, the amendments introduced in the Budget of 2023 demonstrate the government's concerted effort to make the new tax regime a compelling choice for a wider spectrum of taxpayers. In this dynamic landscape, strategic planning remains paramount to fiscal optimization.

GOODS & SERVICES TAX
From the Judiciary

HC rams Appellate Authority for *suo moto* framing new question in Appeal proceedings

M/s. Radiant Enterprises Private Limited

M.A.T. No.9 of 2023 with I.A. No. CAN 1 of 2023 [Calcutta HC]

The Petitioner filed a refund application, which the Adjudicating Authority rejected, citing non-payment of tax by the Petitioner. Subsequently, the Petitioner filed an Appeal against the said rejection order. However, the Appellate Authority, acting suo moto, formulated a new question regarding the taxability of the transaction and subsequently refused the refund. Aggrieved, the Petitioner preferred to initiate a writ before the Calcutta High Court.

Upon examination, the High Court ruled that the Appellate Authority had exceeded its jurisdiction by introducing an issue that was not mentioned in the original order and by independently formulating a new question. Moreover, even if the Appellate Authority purported to exercise its powers under Section 107(2) of the CGST Act, it failed to adhere to the statutory provisions, thereby violating the principles of natural justice. As a consequence, the High Court nullified the Appellate Authority's order and granted the refund to the Petitioner.

HC upholds the constitutionality validity of time limit for claiming ITC under section 16(4) of the CGST Act

M/s. Thirumalakonda Plywoods

W.P.No.24235 of 2022 [Andhra Pradesh HC]

The High Court has upheld the Constitutional validity of Section 16(4) of APGST Act. It further held that Section 16(2) has no overriding effect on Section 16(4) of the said Act as both are not contradictory with each other. The non obstante clause in Section 16(2) is merely a restricting provision and does not nullify the significance of Section 16(4). Therefore, the court dismissed the challenge to the constitutional validity of Section 16(4) and emphasized that both sections will operate independently.

Authors' Notes

> *The Hon'ble High Court has also reiterated that the ITC is concession/rebate/benefit and not a statutory right as has been upheld by the Hon'ble Supreme Court in umpteen decisions under the erstwhile tax regime as well as under the GST regime. While the Andhra Pradesh HC affirms the constitutional validity of Section 16(4) and provides clarity on the precedence of provisions, its vires are limited to the state of Andhra Pradesh. As regards, the other states, the instant judgement will have persuasive impact. Moreover, since the validity of Section 16(4) has been challenged before various other HCs as well, it would be interesting to see their interpretations.*

HC: Assesee responsibility to respond to the notices and provide the reconciliation to the Officers

M/s. Seoyon E-HWA Summit Automotive India Private Limited

W.P.Nos.16535 & 16538 of 2023 [Madras HC]

Certain discrepancies were observed in the ITC claimed in the GSTR-3B returns and those reflecting in GSTR-2A. Further GSTR-9 returns were found to correspond to only a few categories. Consequently, the Assessing Officer issued notices to the Petitioner, seeking particulars and reconciliation of the ITC claimed in GSTR-3B with the ITC shown in GSTR-2A and GSTR-9. Despite multiple follow-ups, the Petitioner did not cooperate with the assessment proceedings and failed to respond to the notices, thereby denying the requested information. Consequently, the revenue authorities sought to reverse the ITC from the Petitioner, attributing it to the discrepancies between GSTR-3B and GSTR-2A/GSTR-9. In response, the Petitioner filed a writ before the Madras High Court.

Upon examination of the matter, the High Court observed that the onus was on the Petitioner to respond to the notices and provide the requisite information for reconciliation. As the Petitioner did not cooperate with the assessment proceedings and neglected to furnish the necessary details, the actions taken by the Assessing Officer were deemed to be justified. Consequently, the High Court upheld the decision to dismiss the petition.

Authors' Notes

> *It is imperative that the taxpayers take the notices issued by the lower authorities seriously and respond with correct data / reconciliation as may be required in connection to the initiated inquiry. As rightly held by the Hon'ble HC, relief cannot be expected in writ petitions where the Petitioner has not made any efforts to explain the discrepancies at the time of issuance of notices.*

HC denies ITC as GST registration of the supplier was cancelled before supplies were made

M/s Jai Balaji Paper Cones

W.P.No.6780 of 2020 and W.M.P.No.8073 of 2020 [Madras HC]

The Petitioner claimed ITC on invoices where the supplier's registration was cancelled before raising invoices for supplies. The Department denied the Petitioner's ITC claim based on the provisions of Section 16(2)(c) of the CGST Act. Discontent with this denial, the Petitioner sought recourse by filing a writ before the Madras High Court, arguing that they had paid the applicable GST to the supplier, and hence their ITC entitlement cannot be denied.

The High Court noted that the law explicitly prohibits a registered person from claiming ITC if the supplier has not remitted the tax to the government. In this specific case, as the supplier's registration was already cancelled before issuing the invoices, it was evident that the tax could not have been paid to the government. Therefore, there exists no basis for allowing ITC contrary to the statutory provisions. Nevertheless, the Court clarified that the Petitioner retains the right to pursue legal remedies to recover the

amount from the suppliers. Consequently, the writ petition was dismissed.

Authors' Notes

While the ruling in this case denied the Petitioner's claim for Input Tax Credit (ITC) due to the non-registration of the supplier at the time of making supplies, it is essential to consider the broader perspective of ITC eligibility. Under GST laws, the availability of ITC does not necessarily hinge on the supplier's registration status. The Court has overlooked the fact that currently there is no facility available to check whether the tax is paid by supplier (only the return filing status / dates are available). Further, for a taxpayer to recheck the compliances of the vendors on offline basis for every transaction / vendor does not seem to be practically feasible.

It is true that the supplier's registration status does not directly impact the recipient's ability to claim ITC if all other conditions are met but it flows that once GST registration is cancelled, taxes would not be paid by the supplier and therefore Section 16(2)(c) of the CGST Act is violated. It is interesting to note that the purchases were available on the respective GST portal in form GSTR-2A, so it would be discriminatory to presume that the Petitioner was at fault. It shall be noted that the Calcutta HC in its landmark judgement in ***RE: Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax [W.P.A. 7231 of 2022 With W.P.A. 7232 of 2022],*** *has held that Credit is not a right, but a concession given to the taxpayers and therefore, the Government may restrict the same.*

Moreover, in the erstwhile regime, there has been a favorable judicial precedents that allows bona-fide buyers to claim ITC even in cases where the supplier's registration was not in order Or in cases involving any other defaults are made by the supplier. While the ruling in the instant may have different interpretations, the broader principles of ITC eligibility warrant careful consideration of all relevant factors and provisions under the GST law to ensure fair treatment for Petitioner especially in situations where they bear no fault.

ERSTWHILE REGIME

CESTAT: Due diligence process of loan documents cannot be classified as Legal Consultancy Services

M/s. Infinity Credit Consultants

Service Tax Appeal No. 51417 Of 2016[Delhi CESTAT]

The Appellant received income under the head "Legal and Professional Charges" from banks/financial institutions for providing services of verification of documents for sanctioning of loans to banks. The department alleged that the service provided by the Appellant falls under 'Business Support Service' and thus is liable for service tax liability. Aggrieved the Appellant filed an Appeal before the Tribunal.

The CESTAT observed that for the services to be qualified as 'Legal Consultancy Services' it must involve the provision of expert advice or opinion in any branch of law. However, in the instant case, the Appellant's service was to provide assistance to banks/financial institutions in verifying loan documents for the

purpose of credit facility approval. This activity was more of a due diligence process for financial records rather than legal consultancy. Accordingly, the CESTAT held that the service provided by the Appellant was rightly classifiable as 'Business Support Service' which is subject to service tax.

Authors' Notes

> *Indeed, the ruling by CESTAT is in line with the principles of the GST law. The instant ruling highlights the significance of ensuring that services are appropriately categorized based on their nature and purpose. It clarifies that Legal Consultancy services rendered by advocates or firms of advocates can come under the RCM only if they genuinely pertain to a branch of law. If the services provided do not fall within the scope of any legal field, they would not be taxed under RCM.*

GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1.	**Advisory dated June 29, 2023**	**GSTN issued advisory on new functionality for online compliance in addressing discrepancies in GSTR-1 AND GSTR-3B returns** The GSTN has implemented a novel feature on the GST portal to address disparities between GSTR-1 and GSTR-3B returns. The purpose of this implementation is to ensure online adherence to regulations concerning liabilities or variances observed in R1 - R3B (DRC-01B). The following are the characteristics of the recently introduced feature by the GSTN: • The fresh functionality facilitates a comparison between the stated liability in GSTR-1/IFF and the actual liability paid in GSTR-3B/3BQ for each return period. In the event of a significant discrepancy or surpassing a predetermined threshold, taxpayers will receive a notice in the form of DRC-01B. • To respond, taxpayers are required to submit a reply in Form DRC-01B Part B, offering clarifications through a dropdown menu and providing additional information if necessary. • To assist taxpayers in effectively utilizing this feature, a comprehensive manual containing detailed, step-by-step instructions and various scenarios has been made available on the GST portal
2.	**Circular No. 192/04/2023- GST dated July 17, 2023**	**Clarification on Charging of Interest for Wrong Availment of IGST Credit** The aforesaid Circular clarified the charging of interest u/s. 50(3) of the CGST Act, in cases of wrongly availed IGST credit and its reversal in below two issues:

Sr No	Notification/ Circular	Summary
		• In the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability u/s. 50(3) of CGST Act if, during the time period, the balance of ITC in the ECrL, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC under IGST Head, even if available balance of IGST credit in ECrL individually falls below the amount of such wrongly availed IGST credit. • The credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Therefore, credit of compensation cess in ECrL cannot be taken into account while considering the balance of ECrL for the purpose of calculation of interest u/r 88B of CGST Rules.
3.	**Circular No. 193/05/2023-GST dated July 17, 2023**	**Clarification on ITC Availment in GSTR-3B and GSTR-2A** The aforesaid Circular has clarified the process to be followed for verification of differences in ITC availed in FORM GSTR-3B vis-à-vis that detailed in FORM GSTR-2A for the financial years 2019-20 and 2020-21 in the below manner: • **From 01.04.2019 to 08.10.2019**: Differenced ITC will be available based on CA certificate in lines with the Circular No. 183/15/2022 dated December 27, 2022 without any upper limit as Rule 36(4) was not there. • **From 09.10.2019 to 31.12.2019**: Excess ITC claimed upto 20% of eligible ITC available in respect of invoices / debit notes reported by suppliers in their GSTR-1 and consequently appearing in GSTR 2A shall be allowed along with vendor / CA certificate, as per the case. • **From 01.01.2020 to 31.12.2020**: Excess ITC claimed upto 10% of eligible ITC available in respect of invoices / debit notes reported by suppliers in their GSTR-1 and consequently appearing in GSTR 2A shall be allowed along with vendor / CA certificate, as per the case.

Sr No	Notification/ Circular	Summary
		• **From 01.01.2022 onwards**: No ITC shall be allowed in respect of supply unless the same is reported by his supplier in their Form GSTR 1 as per Section 16(2)(aa) of the CGST Act and consequently communicated to the registered person in Form GSTR-2B.
4.	**Circular No. 194/06/2023-GST dated July 17, 2023**	**Clarification on TCS Liability for Multiple E-commerce Operators** The aforesaid Circular provides clarification on Tax Collected at Source ('TCS') liability u/s. 52 of the CGST Act for transactions involving multiple E-commerce Operators ('ECOs') in below manner: • In cases where the supplier-side ECO himself is not the supplier of the said goods or services, the compliance u/s. 52, including collection of tax at source, is to be done by the supplier-side ECO. • In cases where the supplier-side ECO himself is the supplier of the said goods or services, the compliance u/s. 52 is to be done by the buyer-side ECO.
5.	**Circular No. 195/07/2023-GST dated July 17, 2023**	**Clarification on ITC Availability for Warranty Replacement** The CBIC clarified the availability of Input Tax Credit (ITC) in the context of warranty replacement of parts and repair services. If no additional consideration is charged for these services, no additional GST is applicable. However, if any additional consideration is charged, GST becomes applicable.
6.	**Circular No. 196/08/2023-GST dated July 17, 2023**	**Taxability of Shares in Subsidiary Company** The aforesaid Circular clarified that shares held by a holding company in a subsidiary company are not be treated as supply of services under the definition of the CGST Act and therefore are not subject to GST.

Sr No	Notification/ Circular	Summary
7.	**Circular No. 197/09/2023- GST dated July 17, 2023**	**Clarification on GST Refund Issues** The aforesaid Circular provides detailed clarification on various refund-related issues under the GST regime, including the refund of accumulated input tax credit, the requirement of undertaking in FORM RFD 01, the calculation of adjusted total turnover u/r. 89 of the CGST Rule, and the admissibility of refunds for exporters complying with sub-rule (1) of rule 96A of the CGST Rule.
8.	**Circular No. 198/10/2023- GST dated July 17, 2023**	**Clarification on Applicability of E-Invoice for Supplies to Government Departments** The aforesaid Circular clarifies that the Government Departments and PSUs registered for tax deduction at source u/s. 51 of the CGST Act are considered as registered persons under the GST law and e-invoicing is required for transactions under rule 48(4) of the CGST Rules, 2017.
9.	**Circular No. 199/11/2023 - GST dated July 17, 2023**	**Clarification on Taxability of Services between Distinct Offices under GST** The aforesaid Circular clarifies on the most debatable topic i.e. Cross Charge vs. ISD. It provides clarification on taxability of services provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons. The issues are clarified as under: • Head office ('HO') has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act. Further, HO can also opt to issue tax invoices u/s. 31 of CGST Act to the concerned Branch offices ('BO') in respect of common input services procured from a third party by HO but attributable to the said BO, and the BOs can then avail ITC on the same. However, if the HO wishes to distribute credit as per Section 20 of CGST Act r/w Rule 39 of the CGST rules, then it shall be to mandatorily register as an ISD and follow the applicable process for distribution of credit;

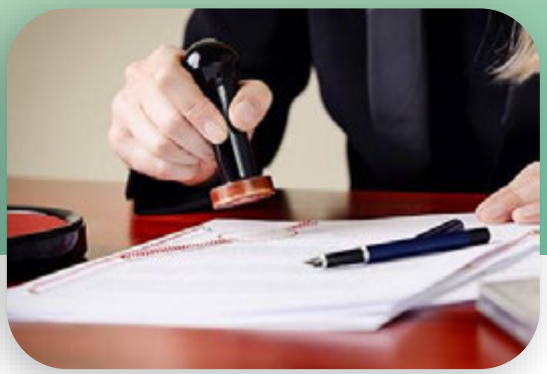
Sr No	Notification/ Circular	Summary
		• In respect of supply of services by HO to BO where full ITC is available to concerned to the BO, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, irrespective of the fact whether cost of any particular component of service like employee cost etc is included or not. Where no tax invoice issued by HO to BO, the value of such services may be deemed to be declared as Nil and also deemed as open market value as per Rule 28 of the CGST Act; • In cases of internally generated services from HO to BO, where full credit is not available to the BOs, cost of employee salary is not required to be mandatorily included while computing the taxable value of the supply of such services.

Authors' Notes

During the 50th Council meeting, decisions were taken to address significant taxpayer challenges. The meeting clarified the process of credit reconciliation with GSTR-2A/2B and provided guidance based on a previous Circular. It also addressed interest calculation under section 50(3) by considering balances of CGST and SGST for IGST liabilities. However, further clarification is needed on whether the balance of IGST can be used for CGST/SGST liabilities and if it affects interest calculation under CGST/SGST.

The GST Council has provided detailed clarification on different scenarios involved in provision of warranty services, which should bring a lot of clarity on the tax treatment of goods / services provided under warranty. Similarly, the controversial issue regarding the need to mandatorily obtain ISD registration as now been put to rest with the taxpayer given an option to obtain the said registration or continue to charge its other units (commonly known as cross-charge mechanism), and the value of invoice shall be treated as OMV in line with provisions of Rule 28 of the CGST Act.

CUSTOMS & FTP
From the Judiciary



CESTAT: 'Tomato dry flavour' classifiable under CTH 3302 10 10

M/s. Symrise Private Limited

Customs Appeal No. 41809 of 2013

The Appellant had imported 'tomato dry flavour' by classifying the same under CTH 3302 10 and availed the benefit of exemption of concessional rate of BCD of 10%. However, the Department classified the imported product under CTH 2106 90 60. Accordingly, the Department demanded the payment of differential duty with interest as applicable under Section 28AA. Aggrieved the Appellants filed an Appeal before the CESTAT.

The CESTAT bench held that the imported good is a synthetic odoriferous substance used as an industrial raw material for making food flavours, which cannot be directly used in human food preparations. The court found that CTH 3302 covers both natural and synthetic mixtures of odoriferous substances, while Chapter Heading 2106 excludes preparations based on odoriferous substances. Accordingly, as the CTH 3302 covers both natural and synthetic mixtures of odoriferous substances, the court determined that the imported good are correctly classified under CTH 3302 10 10. Therefore, the impugned order was set aside, and the appeal was allowed.

CESTAT: Anti-Dumping Duty Not Applicable on Imported Used Machinery

First Engineering Plastics India Private Limited

Customs Appeal No. 40478 of 2014

The Respondent had imported used and second-hand machinery from China. The Customs Department imposed ADD on these goods. However, the Respondent argued that ADD should not apply to used machinery. Aggrieved the Respondent had previously filed an Appeal against such assessment contending that such goods are used and second hand and anti-dumping duty cannot be levied, wherein Commissioner (Appeals) ruled in favor of the Respondent, setting aside the original order. Aggrieved, by the said decision the Revenue Department filed an Appeal before the Tribunal.

The Tribunal observed that the purpose of ADD is to protect domestic industries from dumped new products, and it is not applicable to used machinery. Accordingly, it was held that ADD cannot be imposed on used and second-hand machinery imported from China. Therefore, the Tribunal upheld the decision of the Commissioner (Appeals).

CESTAT: End Use of Goods Not Sole Criterion for Classification

Umbar Marketing Private Limited

Customs Appeal No. 77797 of 2018

The Assesee had imported Non-Texturised Polyester Lining Fabric under CTH 5903 as 'Coated Textile Fabric', while the Revenue contended that it should be re-classified under CTH 5407 as 'Umbrella Cloth Panel Fabric' based on its end use. Aggrieved the Petitioner had previously filed an Appeal, wherein Commissioner (Appeals) ruled in favor of the Assesee, setting aside the original order. Aggrieved, by the said decision the Revenue Department filed an Appeal before the Tribunal.

The Revenue argued that the fabrics were mainly used for manufacturing 'Umbrella Cloth Panel'. However, the CESTAT clarified that end use alone cannot determine the classification, and other factors such as the nature of the cloth and the visible coating should also be considered. Since the coated fabrics are visible to the naked eye, they are correctly classifiable under Chapter 59, specifically CTH 5907 10 94.

Imported item should classified based on its own characteristics and cannot be combined with other goods

M/s. Baba Baidyanath Trading Company

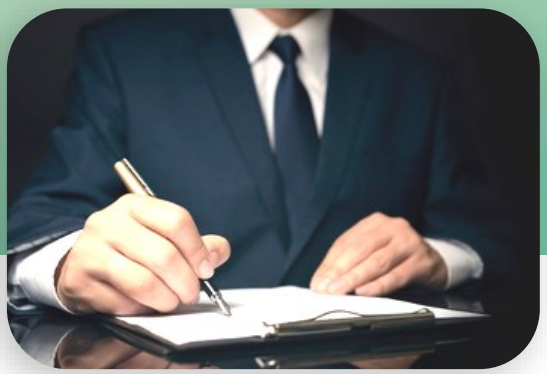
Customs Appeal No. 75416 of 2021

The case involved two parties, one a tricycle manufacturer and the other a trading company selling tricycle parts. The Department issued a SCN alleging that the imported goods were correctly classified as fully finished tricycles instead of parts, as claimed by the Appellants. The adjudicating authority classified the goods as tricycles and confirmed the demand for differential duty. Aggrieved the Appellants filed an Appeal before the CESTAT.

The CESTAT bench determined that the imported goods could only be classified as tricycles (e-rickshaws) when assembled to create a T-shaped vehicle mounted on a chassis with specific features. The CESTAT observed that the imported goods by the Appellants were not complete and required further manufacturing to become a fully finished tricycle. Further according to the definition of the vehicle, the imported components could not be considered fully functional unless they possessed the basic characteristics of the tricycle. The court held that goods imported separately cannot be clubbed for classification purposes. Each imported item must be classified based on its own characteristics and cannot be combined with other goods. Since the Appellants did not import all the necessary components for a fully finished tricycle falling under CTH 8703, the imported spare parts cannot be classified under that category. Accordingly, the impugned order was set aside.

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	**Public Notice No. 22/2023 dated July 13, 2023,**	**Extension of condonation of delay in submission of installation certificate under EPCG Scheme** The DGFT has issued Public Notice No. 22/2023 dated July 13, 2023, providing relaxation in the procedure for accepting installation certificates under the EPCG Scheme. Authorization holders can now submit the certificates until December 31, 2023, for regularization by paying a late fee of Rs. 10,000/- per authorization (plus composition fee, if applicable). The relaxation applies to authorizations issued under FTP, 2009-14 and FTP, 2015-20, and requires genuine reasons for the delay in submission. The aim is to enhance Ease of Doing Business by offering relief for delays in submitting installation certificates.
2.	**Trade Notice No. 14/2023-24 dated July 12, 2023**	**Skilling and Mentorship Obligation for Status Holders** DGFT issued notice regarding Skilling and Mentorship Obligations for Status Holders as per Para 1.30 of the FTP 2023. It specifies a model training program of minimum 6 weeks duration, made public for guidance. The Trade Notice notifies the curriculum for industry-led Skilling and Mentorship, providing detailed guidelines and objectives for Status Holders to fulfill their obligations. This initiative aims to promote skill development and mentorship opportunities to enhance the competitiveness of Status Holders in the Indian economy.



HC holds DRT, not Civil Court, has exclusive jurisdiction over challenge to SARFAESI notice

Regional Manager & Anr. vs. Punya Coal Road lines & Ors.

Civil Revision Application No. 04 & 05/2021

The Applicant was a regional manager of Union Bank that had issued a demand notice under Section 13(2) of the SARFAESI Act, calling upon the Respondents to make outstanding payment within 60 days, as there was no compliance of the said notice, the Applicant moved an application before the District Magistrate for grant of assistance for taking the physical possession of the mortgaged properties. Apart from this application, the Applicant had filed a recovery suit before the DRT for recovery of certain sum against the Respondents.

After the initiation of recovery proceedings, the Respondents filed a suit for declaration, permanent injunction, and damages against the Applicant before the Joint Civil Judge alleging that Union Bank had committed illegalities in classifying their loan account as NPA as well as not sanctioning their proposal for restructuring of loan account and not granting them the permission of holding on operation in the loan account. It was also alleged by the Respondents that Union Bank had committed a string of illegalities in their dealings and operations with the Respondents and contravened various RBI Circulars and the guidelines on Fair Lending Practices Code for lenders and had obtained signatures on numerous blank documents and had caused acute prejudice, loss and harassment to the Respondents, which caused the Respondents to seek damages to the tune of INR 10 Lakhs from Union Bank. The Joint Civil Judge ruled in favour of the Respondents, granting them the damages, aggrieved by which the Applicant preferred a revision application before the HC contending that the Civil Judge had erred in not considering whether there was any pleading of fraud in the whole plaint and also the effect of notice under Section 13(2) of the SARFAESI Act after the loan account had been classified as NPA.

The HC observed that in all cases, where the title to the property, in respect of which a "security interest" had been created in favour of a bank or a financial institution, stood in the name of the borrower / guarantor, and the borrower had availed the financial assistance, it would be only DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court, which would have jurisdiction, only where civil rights of persons other than the borrowers or guarantors were involved, that too, when it was prima-facie apparent from the face of record that the relief claimed was incapable of being decided by the DRT under the DRT Act or the SARFAESI Act. Moreover, the Respondents' claim of damages was ancillary relief which could not be considered unless there was any decision by the DRT on these reliefs. Thus, holding that once a secured creditor issued a demand notice under Section 13(2) of the SARFAESI Act, the Civil Court's jurisdiction was barred and any challenge to the notice came within the domain of DRT, the HC set aside the order passed by the Joint Civil Judge and allowed the Applicant's revision application.

HC holds courts cannot proceed on basis of 'assumption' in PMLA-case, grants bail to accused

Vijay Agrawal vs. Directorate of Enforcement

Bail Application No. 1762/2022

The Petitioner was an Indore-based real estate developer who had filed an application seeking bail before the HC in a money-laundering case relating to rotation of funds to the tune of INR 96,000 Crores for providing accommodation entries of approximately INR 18,679 Crores to 973 beneficiaries. Before the HC, the ED submitted that the process of money laundering and the routing of money had been in-fact continuing even during the course of investigation. Shell entities managed and controlled by one Mr. Naresh Jain (co-accused) had been used to transfer / route proceeds of crime to entities of the Petitioner in the form of loans. Since the Petitioner had received loans / advances without knowing any of the partners/ directors / promoters of the said companies and without executing any agreement, it was clear that he has been an active participant in the entire scheme of laundering of proceeds of crime.

Moreover, in order to grant bail in a case under the PMLA, it was necessary to meet the twin conditions as prescribed under Section 45 of the PMLA that there were reasonable grounds for believing that he was not guilty of the offence of money laundering, and that he was unlikely to commit any offence while on bail. However, in view of the vast material against the Petitioner, such a satisfaction could not be recorded in the facts of this case as the investigation in the instant case had already revealed the role of the Petitioner in the commission of the offence of money laundering and on the basis of the evidence and material in possession with the department against the said Petitioner, it could be safely concluded that the Petitioner was involved in the offence of money laundering and he was likely to commit the offence again if released on bail.

Before the HC, the Petitioner submitted that the case of the ED had no substance as he had no prior association with the co-accused in any manner and there was no material on record to show that he had knowledge of the source of money and in absence of any such material, it could not be said that he was aware about the alleged tainted nature of money. Moreover, his health had been continuously deteriorating whilst in custody and he required urgent care on account of numbness of limbs which was a precursor to possible paralysis and therefore, required urgent medical attention.

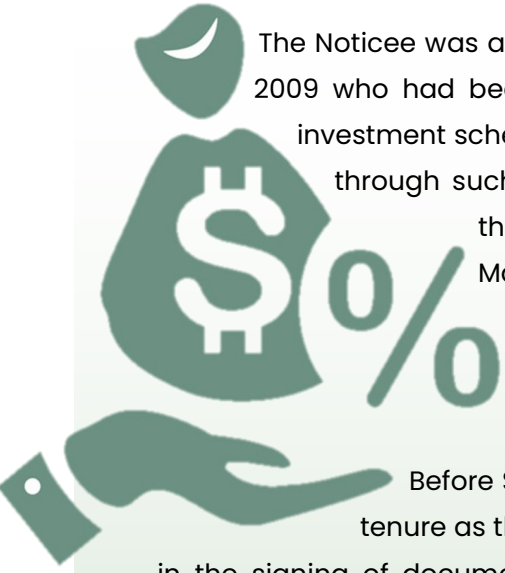
The HC noted that it was necessary that the person dealing with the "proceed of crime" must have some knowledge that it was tainted money as the core question was whether the person whose role had been found later knew that the money which he had been dealing with was a proceed of crime and observed that it was very difficult for the department to find direct evidence regarding this but at the same time, despite the twin conditions, the court could not return any finding merely on the basis of inferences and presumptions. The HC further observed that it was a settled proposition that at the stage of bail, the court was only required to see a prima-facie case and was not required to look-into the test of guilt so as to maintain a delicate balance between the judgment of acquittal/conviction and an order granting bail before commencement of trial. Moreover, the serious medical condition of the Petitioner had not improved and required urgent medical attention. Therefore, granting bail to the Petitioner on furnishing of personal bond of INR 25 Lakhs while inter- alia directing that he shall ordinarily reside in his place of residence and

keep his phone operational at all times, the HC allowed the Petitioner's application.

SEBI penalises Company's ex-director for running collective investment schemes without registration

In the matter of Alchemist Infra Realty Ltd.

Adjudication Order No. Order/SM/DD/2023-24/26801



The Noticee was an erstwhile director of Alchemist Infra Realty Ltd. ('the Company') in 2008-2009 who had been restrained from accessing the securities market till all the collective investment schemes ('CIS') were wound up by the Company and all the monies mobilised through such schemes were refunded to its investor with returns which were due to them. The Company had mobilised funds to the tune of INR 54.1 crores as of March 31, 2009, and SEBI had previously imposed a penalty of INR 1 Crores on the Company and its directors, including the Noticee, in the same matter, however, the SAT had set aside the adjudication order against the Noticee and restored the matter for passing fresh order on merits.

Before SEBI, the Noticee contended that he was not an officer in default during his tenure as the director of the Company as it was the other directors who were involved in the signing of documents on behalf of the Company even in relation to CIS. Noting that the Company had mobilised funds to the tune of INR 54.1 crores as of March 31, 2009 when the Noticee was a director of the Company through investment contracts by floating, sponsoring and launching of CIS without obtaining registration from SEBI as mandated under Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations and that the Company did not have an MD, Whole Time Director, Secretary, or Manager during the period between April 2008 to February 2009, when the Noticee served as a director of the Company, SEBI placed reliance on a plethora of SAT decisions and observed that a director who was closely connected and associated with the management of the Company would be deemed liable for the fraud in the conduct of the business of the Company and in the facts and circumstances of the present matter, all directors of the Company would be considered as officers in default as per Section 5 of the Companies Act, 1956.

Thus, finding the Noticee guilty of violating Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations during his tenure as director of the Company in 2008-09, SEBI imposed a penalty of INR 15 Lakhs on the Noticee under Section 15D(a) of the SEBI Act. However, SEBI clarified that the Noticee could not be held liable for the fund mobilization that took place in the years after his cessation as a director of the Company.

SC holds interim-compensation can be ordered only after accused pleads "not guilty" in cheque-dishonour case

Pawan Bhasin vs. State of UP & Anr.

Criminal Appeal No. 1807/2023

In the instant case, the Trial Court had passed an order directing the accused ('Appellant') to deposit 10% of the amount of a dishonored cheque under Section 143A of the NI Act. Aggrieved by this order of the Trial Court, the Appellant approached the HC which did not find any illegality in the Trial Court order, causing the Appellant to approach the SC.

Before the SC, the Appellant contented that the stage for making such an order would arise only when the accused was not guilty to the accusation in the complaint and the Respondent contended that the trial had proceeded to its final stage, as the evidence submitted by it as well as the Appellant's statements had been recorded, therefore, there would be no prejudice caused to the Appellant by affirming the impugned order of the Trial Court/HC.

Noting that in the present case, the Trial Court issued the impugned order before the Appellant answered the summons under Section 251 of CrPC, and considering that the parties' counsels were present at an intermediate stage of proceedings, but before the plea of "not guilty" was entered, the SC observed that it was evident from the plain reading of Section 143A (1)(a) of the NI Act that it was only where the accused plead "not guilty" of the accusation made in the complaint that the interim compensation under Section 143A (1) of the NI Act could be granted and therefore, in the present circumstances there was clearly an infraction of Section 143(A) (1) of the NI Act.

However, since the trial had already proceeded to an advanced stage, holding that it was open at this stage too for the complainant to seek appropriate relief, including under Section 143A of the NI Act, since it could be claimed at "any stage", the SC quashed the order of the Trial Court and allowed the Appellant's appeal to that extent.

SEBI affirms interim order restraining certain entities for misleading investors via YouTube videos

In the matter of Stock Recommendations using You Tube in the scrip of Sadhna Broadcast Ltd.

WTM/AN/ISD/ISD-SEC-1/28226/2023-24

SEBI conducted a preliminary examination in the scrip of one Sadhna Broadcast Limited ('Sadhna') based on certain complaints, to look into possible violations of the SEBI Act and PFUTP Regulations. Pursuant to the

preliminary examination, it was noticed that false and misleading videos about Sadhna were uploaded on two YouTube channels to recommend investors to buy Sadhna stock for extraordinary profits, subsequent to which there was an increase in the price and trading volume of the Sadhna scrip. During this period, certain promoter shareholders, key management personnel of Sadhna and non-promoter shareholders who held more than 1% of shareholding in Sadhna, offloaded a significant part of their holdings at inflated prices and booked profits.

Accordingly, SEBI passed an ex-parte interim order against 31 Noticees prima-facie concluding that the Noticees through their coordinated involvement made illegal gains amounting to INR 42 Crores by way of the alleged fraudulent and manipulative scheme and therefore, had violated various provisions of the PFUTP Regulations and the SEBI Act. SEBI, further, restrained the Noticees from accessing the securities market, impounded their bank accounts to the extent of their liability for illegal gain made from the fraudulent scheme in the scrip of Sadhna and directed the Noticees to open an escrow account and deposit the impounded amount therein within 15 days from the interim order and provide the details of their assets to SEBI. Aggrieved, the Noticees approached the SAT which directed SEBI to pass an appropriate order in relation to the Noticees after giving them an opportunity of being heard. Therefore, SEBI provided the Noticees, 21 days from the date of service of the interim order to submit their replies, so as to indicate whether they desired to avail an opportunity of personal hearing.

The Noticees submitted their replies, however, did not deposit the impounded amount in an escrow account or provide SEBI with the details of their assets pleading that they had borrowed loan from private parties and that they should be allowed to use their bank accounts and also to liquidate their portfolio to repay the loans. Noting that the crux of the interim order relied on the overall evidence pointing to a set of connected persons concocting a nefarious pump and dump scheme to defraud small investors and finding that the Noticees' submissions were insufficient to refute the prima-facie conclusions drawn in the interim order, SEBI affirmed the interim order, restraining the Noticees from accessing the securities market, however, expressed concern over that the possibility that the Noticees would be able to continue facilitating such schemes, as such schemes could not be perpetrated by one or two persons alone and were likely to involve several persons in various aspects of the fraud, individually playing separate parts such as volume creation, price escalation etc. all leading up to illegal profit booking, the activities of each of whom when individually seen in isolation may appear genuine or mundane.

Following split verdict of the Division Bench of HC, Third Judge of HC upholds TN Minister's ED-custody in 'jobs for cash scam'

Megala vs. The State & Anr.

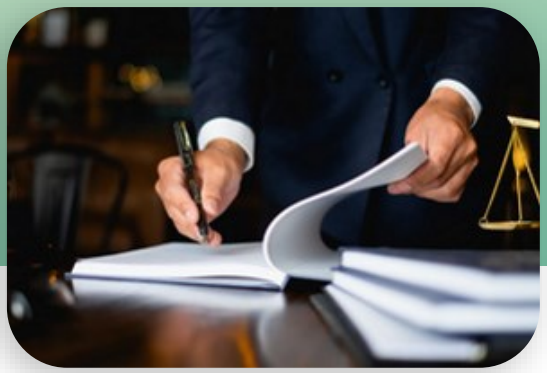
H.C.P.No. 1021 of 2023

The Metropolitan Transport Corporation in the State of Tamil Nadu issued an advertisement for jobs in 2014, when the accused was the Minister of Transport. Complaints were made, indicating bribes for jobs, and subsequently, a criminal complaint was registered against 10 individuals, excluding the accused. Pursuant to investigation, a final report was filed, and thereafter, the ED ('Respondent') registered an ECIR against the accused and the accused was arrested by the ED. Aggrieved, the accused's wife ('Petitioner') preferred a writ petition before the Division Bench of the HC *inter-alia* claiming that the accused was illegally

detained and that he was suffering from a medical ailment. Simultaneously, after the accused had been admitted to the hospital, a petition seeking remand of the accused to judicial custody was filed before the Principal Sessions Judge, which came to be allowed. The Division bench of the HC pronounced a split verdict to the writ petition following which the writ petition was required to be adjudicated by a third judge of the HC.

Before the Third Judge of the HC, the Petitioner contended that that the grounds of arrest had not been informed to the accused, the Third Judge of the HC observed that an offence under the PMLA, though a specific offence, was a fall out or continuation of an earlier predicate offence, and hence it was not a standalone offence with no background at all that had surfaced in which the accused was caught unaware as to why he was being arrested. Further, as the accused himself had applied for bail and raised objections, he had submitted to the concept of arrest as there could not be a bail without there being an arrest or a remand without there being an arrest. Moreover, once he had participated in those judicial proceedings, then it was to be taken that he had submitted himself to the judicial process and if a judicial order had been passed consequent to such judicial process and was said to be unlawful or without following the procedure, naturally, the remedy was to file a revision or appeal against it, however, once arrest was legal, remand was legal and though the petition was maintainable, it could not be entertained after remand. Further, the Third Judge of the HC observed, that the factum of arrest was only a step in investigation and there could not be a foreclosure of investigation or further enquiry, merely because a person had been arrested, as the ED had the undeniable right to conduct investigation/enquiry even after arrest, as, if such enquiry/investigation was to be done only by taking the person arrested into custody, then the HC could not sit as an appellate authority to examine the reasons.

Thus, upholding the arrest of the accused minister, the Third Judge of the HC disposed of the writ petition.



SEBI amends the NCS Regulations, 2021 introducing additional disclosures for issuers making private placements of Non-Convertible Securities

Notification No. SEBI/LAD-NRO/GN/2023/135 dated July 03, 2023

SEBI notifies the SEBI (Issue & Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 ('amendment regulations') to further amend the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations, 2021'). The key changes brought about by the amendment regulations are as follows: -

- Newly inserted definitions of "key managerial personnel" and "senior management":

SEBI has inserted definitions of "key managerial personnel" and "senior management" under Regulation 2 of the NCS Regulations, 2021. The term "key managerial personnel" means key managerial personnel as defined under Section 2(51) of the Companies Act and the term "senior management" shall mean the officers and personnel of the issuer who are members of its core management team, excluding the board of directors and includes members one level below the chief executive officer or the managing director.

- Introduction of additional disclosures for issuers making issuance & listing of Non-Convertible Securities on a Private Placement basis

SEBI has introduced a new Chapter VA for the issuance and listing of non-convertible securities issued on a private placement basis. Under this new chapter, an issuer making a private placement of non-convertible securities and seeking listing on stock exchanges must file a general information document with the stock exchanges containing disclosures specified in Schedule I. Further, the provisions of this regulation shall be applicable on a 'comply or explain' basis until March 31, 2024 and on a mandatory basis.

- Mandatory information for key information document

The key information document shall include the following information:

  ◊ Details of the offer of non-convertible securities in respect of which the key information document is being issued.

  ◊ Financial information, if such information provided in the general information document is more than six months old.

  ◊ Material changes, if any, in the information provided in the general information document.

  ◊ Any material developments not disclosed in the general information document, since the issue of the general information document relevant to the offer of non-convertible securities in respect of which the key information document is being issued.

◊ Disclosures applicable in case of private placement of non-convertible securities as specified in Schedule I, in case the second or subsequent offer is made during the validity of the shelf prospectus for which no general information document has been filed.

- Requirements for "Large Corporates"

◊ SEBI has introduced Chapter VB specifying the requirements for "Large Corporates". A listed entity, fulfilling the criteria as may be specified by the Board, shall be considered as a "Large Corporate". Currently, listed entities which specify the following criteria are considered "Large Corporates":

◊ Listed entities that have their specified securities or debt securities or non-convertible redeemable preference shares, listed on a recognised stock exchange in terms of the LODR Regulations.

◊ Listed entities that have outstanding long-term borrowings of INR 100 Crores or above, where outstanding long-term borrowings mean any outstanding borrowing with an original maturity of more than one year and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary.

◊ Have a credit rating of "AA and above", where credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/support built-in and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered.

SEBI Introduces (Alternate Dispute Resolution) Amendment Regulations, 2023

Notification No. SEBI/LAD–NRO/GN/2023/137 dated July 03, 2023

SEBI notifies the SEBI (Alternate Dispute Resolution) Amendment Regulations, 2023, through which it has amended various regulations to mandate the submission of all claims, differences, or disputes to a dispute resolution mechanism. The mechanism includes mediation, conciliation, and/or arbitration. The following regulations have been amended as tabulated below:

Regulations	Provision inserted/	Parties whose disputes to be submitted to the mechanism
SEBI (Merchant Bankers) Regulations, 1992	28B	Merchant Banker and Client
SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993	15B	Registrar and Client/Investor
SEBI (Debenture Trustees) Regulations, 1993	14A	Debenture Trustee and Body Corporate
SEBI (Mutual Funds) Regulations,	59B	AMC and Investors
SEBI (Custodian) Regulations, 1996	17A	Custodian and Client

Regulations	Provision inserted/ substituted	Parties whose disputes to be submitted to the mechanism
SEBI (Credit Rating Agencies) Regulations, 1999	14A	Credit Rating Agency and Client
SEBI (Collective Investment Schemes) Regulations, 1999	14A	Collective Investment Management Company and Investors
SEBI (KYC Registration Agency) Regulations, 2011	16B	KYC Registration Agency and an Intermediary
SEBI (Alternative Investment Funds) Regulations, 2012	25	Alternative Investment Fund/Manager and Investors
SEBI (Investment Advisers) Regulations, 2013	21	Investment Adviser and Client
SEBI (Research Analysts) Regulations, 2014	26A	Research Analyst/Research Entity and Client
SEBI (Infrastructure Investment Trusts) Regulations, 2014	22A	Investment Manager of the Trust and Investors
SEBI (Real Estate Investment Trusts) Regulations, 2014	22A	Investment Manager of the Trust and Investors
*SEBI (LODR) Regulations, 2015	67(5)	Listed Entity and Investors
SEBI (Foreign Portfolio Investors) Regulations, 2019	24A	Foreign Portfolio Investor and Designated Depository Participant
SEBI (Portfolio Managers) Regulations, 2020	22A	Portfolio Manager and Investor
SEBI (Vault Managers) Regulations, 2021	16A	Vault Manager and Beneficial Owner

The requirement for arbitration in case of claims, differences, or disputes under Regulation 40 has been omitted.

SEBI repeals Ombudsman Regulations, 2003

Notification No. SEBI/LAD–NRO/GN/2023/138 dated July 03, 2023

SEBI had earlier introduced the SEBI (Ombudsman) Regulations, 2003 ('2003 Regulations'), to provide for the establishment of the Ombudsman's office for addressing investor grievances in securities and related matters. The Ombudsman appointed under the 2003 Regulations performed the following functions:

- To receive complaints against any intermediary or a listed company or both.
- To consider such complaints and facilitate resolution thereof by amicable settlement.

- To approve a friendly or amicable settlement of the dispute between the parties.
- To adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

SEBI, now through the SEBI (Ombudsman) (Repeal) Regulations, 2023 repeals the 2003 Regulations, however stating that the said repeal shall not affect: -

- the previous operation of the said regulations or anything done or omitted to be done or suffered therein.
- any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations.
- any penalty or punishment incurred in respect of any contravention or offence committed under the said regulations.
- any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid.

Further, SEBI states that any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the 2003 Regulations had not been repealed.

SEBI lays down a regulatory framework for sponsors of mutual fund

Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/118 dated July 07, 2023

With a view to enhance the penetration of the mutual fund industry and facilitate new types of sponsors, encouraging capital flow, innovation, competition, consolidation, and easier exits for the existing sponsors, SEBI lays down a new framework for private equity funds sponsoring mutual fund houses and self-sponsored asset management companies. Currently, any entity that owns 40% or more stake in a mutual fund is considered a sponsor. Under the new framework, applicants for sponsorship must have at least five years of experience as a fund manager, with experience in investing and managing at least INR 5,000 Crores in the financial sector.

In addition, the mutual fund sponsored by a private equity fund cannot participate as an anchor investor in public issues of investee companies where the sponsor has a 10% or more investment or a board representation.

SEBI also mandates a lock-in period of five years for the initial shareholding of the sponsor in an AMC, which can be extended if sponsorship is transferred to another entity within the private equity group. The eligibility of a private equity fund as a sponsor will be based on its conduct in

its home jurisdiction.

Further, SEBI allows AMCs to become self-sponsored, provided they have been in the financial services business for at least five years, have a positive net worth, and meet specific profit criteria. A self-sponsored AMC will have to maintain the minimum net worth requirement continuously. Sponsors proposing to disassociate must have been sponsors of the mutual fund for at least five years before the proposed disassociation. A disassociated sponsor or any new entity can become a sponsor of a mutual fund if the AMC fails to meet the criteria of a self-sponsored AMC. However, a cure period of one year will be provided within which, the AMC would be required to meet the criteria for self-sponsored AMCs.

In case of a change in control of an existing AMC due to the acquisition of shares, the sponsor will have to ensure that the positive liquid net worth of the sponsor is to the extent of the aggregate par value or market value of the shares proposed to be acquired, whichever is higher.

On the deployment of liquid net worth by AMCs, SEBI states that the minimum net worth required must be deployed in fixed assets such as cash, money market instruments, government securities, and listed AAA-rated debt securities without bespoke structures, credit enhancements, or embedded options or any other structure/ feature which could increase the liquidity risk of the instrument on a continuous basis and such investments are required to be unencumbered.

The new regulatory framework shall come into force from August 1, 2023, while those related to the deployment of liquid net worth by AMC will be applicable from January 1, 2024.

SEBI issues clarification regarding disclosure of material events/ information by listed entities under Regulation 30 and 30A of the LODR Regulations

Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023

In order to enhance transparency and ensure timely disclosure of crucial events or information by listed entities, SEBI issues a detailed clarification addressing the disclosure of material events and information by listed entities under Regulations 30 and 30A of LODR Regulations. The clarification comprises of four annexures, each providing specific details and guidance on disclosure requirements under Regulations 30 and 30A of LODR Regulations, which were inserted by the recent amendment to the LODR Regulations:

Annexure I specifies the details to be provided while disclosing events mentioned in Part A of Schedule III.
Annexure II specifies the timeline for disclosing events mentioned in Part A of Schedule III.
Annexure III provides guidance on determining when an event or information can be said to have occurred.
Annexure IV provides guidance on the criteria for determining the materiality of events or information.

This circular shall come into force from July 15, 2023.

BSE & NSE issue guidance on filing announcements pursuant to the SEBI (Listing Obligation and Disclosure Requirement) (Second Amendment) Regulations, 2023

Notice No. 20230714-34, Circular Ref No: NSE/CML/2023/57 dated July 14, 2023

Pursuant to the SEBI (Listing Obligation and Disclosure Requirement) (Second Amendment) Regulations, 2023, the BSE and NSE issue guidance on filing announcements through the BSE listing center and NSE Electronic Application Processing System ('NEAPS') platform emphasizing the importance of transparent and timely disclosure of material events by listed entities. The key points covered in the guidance include filing of PDF disclosures, mentioning the date and time of occurrence, and specifying the subject of the event. Delayed submissions are required to now ensure a clear reason for the delay.

The guidance stresses on the need for listed entities to adhere to these disclosure requirements to maintain compliance and transparency.

MCA Directs ICSI, ICAI & ICWAI to Consolidate Multiple User IDs in MCA21 V2 Portal with New User ID in V3 Portal

General Circular No. 07/2023 dated July 12, 2023

Taking cognizance of the fact that many members of the ICSI, ICAI & ICMAI have created multiple user IDs while transacting on the existing MCA21 V2 portal and also that many members are unable to create a user ID in the new MCA21 V3 portal due to an existing ID about which they do not have any knowledge, or remembrance that such an ID has been or was created in the existing V2 portal, the MCA directs all such members to approach the respective institutes with their credentials which shall then make recommendations for, the merging of multiple existing user IDs with the ID created in the V3 portal or the deactivation of the old user IDs in the V2 portal, to enable desirous members to create a new ID in V3 portal. The necessary changes in the user IDs in the V3 portal will be made by the MCA based on the recommendations forwarded by the President or Vice-President of the institute to ddegov@mca.gov.in.

INTERNATIONAL DESK

Turkey To Raise Corporate Tax To Fund Earthquake Rebuilding the Draft Law

According to a draft law presented to the Parliament by President Tayyip Erdogan's ruling AK Party, Turkish will raise the corporate taxes to fund the recovery from major earthquakes that struck the country in February.

Among the series of proposed tax rise, the draft law hikes the corporate tax to 25% from the current tax rate of 20% while the corporate tax for banks and financial institutions will to the rate of 30% from the current rate of 25%. Further, to encourage foreign trade, the bill foresees introducing a 5% corporate tax discount for companies' export income, as per the draft sent to the parliament.

The bill would transfer the treasury-run part of the forex-protected lira deposit accounts scheme to central Bank. Under the Scheme, the Government and the Central Bank compensate lira depositors for loss due to depreciation.

The Government paid 92.54 billion lira ($3.6 billion) from the budget to the depositors with lira savings under the Scheme last year.

Brazil: Consulting On New Transfer Pricing Tax Regulations

Brazil's new transfer pricing regime was introduced by Provisional Measure no. 1.152 of December 28, 2022, which was recently converted into law through Law No. 14.596 of June 14, 2023. The new law expressly incorporates the arm's length principle into the Brazilian legal system in accordance with OECD standards. The new regime is mandatory from 2024, although the taxpayers may elect to apply the new regime for 2023.

Brazil's Federal Revenue Department has announced the launch of public consultations on the draft Normative Instruction that will regulate the country's new transfer pricing regime.

The Draft Normative instruction includes-

- Documentation requirements, including the master and local files requirements;
- General provisions, including the arm's length price principle, controlled transactions, related parties, etc.;
- Application of the arm's length price principle, including the design of controlled transactions, comparability analysis; transfer pricing method;

- Simplification measures, including for low value-added intragroup services and
- The option to apply the transfer pricing regime for 2023.

Japan, Azerbaijan Tax Treaty To Enter Into Force Next Month

Convention between Japan and Republic of Azerbaijan for the Elimination of the Double Taxation with respect to Taxes on the Income and the Prevention of Tax Evasion and Avoidance were completed between the Government of Japan and the Government of Republic of Azerbaijan were signed on December 27, 2022. The said Convention will come into force on August 24 ,2023.

The Convention will have the effect –

- In Japan-
  - ◊ with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after January 01, 2024;
  - ◊ with respect to taxes levied not on the basis of a taxable year, for taxes levied on or after January 01, 2024.
- In the Republic of Azerbaijan-
  - ◊ With respect to taxes withheld at source, for the income derived on or after January 01,2023
  - ◊ With respect to other taxes, for taxes chargeable for any fiscal year beginning on or after January 01, 2024.

The provisions concerning the exchange of information and assistance in the collection of taxes will have effect from August 04, 2023, without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.

OECD: 15% Global Minimum Tax To Come Into Effect Next Year

Global minimum tax of 15% will come into effect from the next year and by year 2025 almost 90% of the MNCs having revenue of more than 750 million Euros will be subject to levy in every country of operation, as mentioned by OECD in its report to G20.

"The implementation of the global minimum tax is now well underway and will come into effect from the beginning of next year" OECD said in the report to G-20 Finance Minister and Central Bank Governors.

The OECD said that till date, around 50 jurisdictions have taken steps to implement the global minimum tax. This figure includes a half the members of the G-20 and all the other member state of the European Union.

G-20-Finance Ministers Discusses Ways To Improve Anti-Evasion And Tax Transparency

G-20 Finance Ministers discussed the strategies to implement the same for overhauling the global tax reforms to ensure that the multinational companies pay taxes wherever they operate. Also, discussed the ways to help the low- and middle-income countries reeling under huge debt burden.

The meeting was chaired by the finance minister Nirmala Sitharaman who invited the views on the way forward in international taxation with regard to implementation of measures to check tax evasion. Further ministers and governors also invited to discuss strategies for capacity building to support implementation of 'Two-Pillars Solution' and enhancing global.

The proposed two-pillar solution consists of two components, including re-allocation of multinational companies' additional share of profit to the market jurisdiction where they operate. And the second component is about having a global minimum tax of 15% for the multinational companies.

SPARKLE ZONE

INPUT SERVICE DISTRIBUTOR AND CROSS-CHARGE

The GST was introduced with the purpose of replacing multiple Indirect Taxes with a single tax to reduce the complications that arose with compliances under multiple taxes. While the GST has served this purpose by large – the concept of ISD and Cross Charge had continued to cause confusion. Both these concepts by their very nature deal with the apportionment of input taxes across distinct registered persons and as such have unclear distinctions amongst them. This naturally became the root cause of confusion to follow.

In this article, we attempt to break down the concepts with the help of relevant examples and further offer our insight on the latest developments in ISD and Cross Charge vis-à-vis the CBIC Circular No. 199/11/2023 dated July 11, 2023.

The concept of ISD has always existed under the erstwhile tax regime and it now finds a place in the GST regime as well. Section 2 (61) of the CGST ACT provides for essential ingredients of it. To understand the dilemma of ISD versus cross charge, it would be prudent to reflect upon the mechanism of the Input Service Distributor Mechanism. It requires an ISD to distribute the available ITC to its distinct entities on a monthly basis and proportionate to turnover.

Having said the above, availment of common input services by head office on behalf of all the distinct persons, is also in the nature of an activity of facilitating such availment to distinct persons. At this juncture, attention is invited to the provisions of Section 7 of the CGST Act, 2017 which provides the scope of 'supply' and specifies activities which qualify as supply if undertaken for consideration. It further refers to the activities enlisted in Schedule – I of the CGST Act, 2017 which are to be treated as supply even if made without consideration. Said schedule – I at its entry no. 2 refers to the supply of goods or services between distinct persons.

Consequently, in spite of availing the ISD facility, availing of common input service suffers levy of GST on two occasions; (i) at the time of availment by head office (ii) at the time of proportionately attributing the costs to each distinct person. Levy of dual GST on the same transaction of procuring input services thus leads to dual levy on same procurement and defeats the purpose of introduction of GST on following counts:

- **Distorted levy**

  The introduction of GST legislation was aimed at creating a seamless tax regime and reducing

distortion in the levy of tax. However, the duality of the levy as explained above interrupts the seamless taxation.

- **ISD mechanism rendered infructuous**

  If an assesse is compelled to levy and charge GST on facilitating availment of common input and input services notwithstanding availment of ISD facility, which is aimed at the proportionate distribution of ITC, the provisions relating to ISD are rendered infructuous

Where the literal interpretation of a provision defeats the true intention of the legislature; jurisprudence provides that the said statutory provision is required to be interpreted by keeping in mind the purpose of statutory provisions. This principle of law is known as "Heydon's Rule of Interpretation" or "the purposive construction" or "mischief rule". As per the said rule, the following factors are required to be considered while construing a law:- (a) What was the law before making the Act, (b) What was the mischief or defect for which the law did not provide, (c) What is the remedy that the Act has provided, and (d) What is the reason for the remedy! The rule then directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy"

Taking cues from this legal proposition, the CBIC has now issued its clarification to do away with the incumbent anomaly once and for all. The clarification now emphasizes that either of the aforesaid option i.e. ISD or Cross charge can be exercised only in respect of those services that are attributable to the Branch Office. It also clarifies the valuation of internally generated services by Head Office (HO) to Branch Office (BO) and the inclusion of the cost of salary of employees is as follows:

- **Where Full ITC is available to BO**

  The value of such supplies as may be declared by the HO shall be deemed to be open market value and will be accepted as is, in terms of the Second proviso to Section 28. Such an assumption is to be applied irrespective of whether the cost of any particular component, such as the salary of the employee is included or not. In a contingency, where HO has not raised any such invoice, the value of such supply shall be deemed to be Nil and may be deemed as open market value in terms of Second proviso to Section 28

- **Where full ITC is not available to BO**

  The Cost of the salary of the employee is not required to be included in the assessable value.

They say, all is well that ends well! Yet, more often than not, CBIC's clarifications have been caught in varied interpretations by the field formations which take away the very intent of the government to resolve the issue. On a preliminary reading, the circular appears to be clearly worded to clear the air around ISD and Cross Charge and it remains to be seen if the jurisdictional authorities have a different take on these or otherwise.

GLOSSARY

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

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

GLOSSARY

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

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

FIRM INTRODUCTION

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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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