VISION 360

SEPT 2023

ISSUE 35

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

Vision 360: Global Strides!!

In a first-of-its-kind mission, India has successfully soft landed the Chandrayaan-3 on the south pole of the Moon. This galactic stride has placed India among the Global superpowers joining the ranks of the USA, Russia and China. Add to this, the addition of new members in the BRICS, is expected to further India's global rankings.

With the G20 Summit just around the corner, foreign investment and NRI interest is also expected to increase during India's presidency. Such strides on a global level, have only been possible with a strong internal system. This also includes the tax sphere. In a landmark decision, the Calcutta HC has held that ITC cannot be denied to recipient without due investigation of supplier. However, the Patna HC seems to have taken a contrary view in another judgement, holding that the buyer cannot claim ITC if supplier has not paid his tax to the Government.

Further, the GSTN has issued an important advisory on reporting of ITC reversal opening balance. This important advisory comes at an important time when the due date for annual return is just around the corner. While the reporting of reclaimable ITC had been clarified vide Circular dated July 06, 2022, the alignment of time-limit of the functionality with Section 16(4) was not clear. The instant advisory addresses and clarifies the same.

On the Direct Tax front, the CBDT has amended the valuation criteria for the perquisite of residential accommodation from September 1, 2023. Further, the CBDT has issued Guidelines on 'life insurance policy' tax exemption pursuant to Finance Act, 2023 amendments. In an important ruling, the HC has held that revisionary jurisdiction not valid merely on PCIT's disagreement with AO's view.

As regards the Regulatory updates, SEBI has penalised a Company's MD and compliance officer for trading basis UPSI regarding insolvency-plea by foreign-creditor. The SEBI has also introduced a streamlined mechanism to remedy erroneous transfers in DEMAT accounts. Further, SEBI has also reduced IPO listing timeline from T+6 days to T+3 days to benefit issuers and investors. In another important judgement, the SC has held that no vicarious-liability on directors in cheque-bounce proceedings, merely because they managed Company's affairs.

In International news, the UAE has entered into tax treaties with Gabon, Rwanda, Zambia. The UAE has also passed a judgment on creditors claiming tax penalties from debtors. The UK tax leaders are also bracing for global minimum tax impact. This Newsletter also contains special pieces on the divergent views of HCs in relation to buyers' ability to claim ITC in case of suppliers' defaults. We have also penned down an insightful article on the transcending disputes of liquidated damages.

Compiling all such developments, we at TIOL, in association with **Taxcraft Advisors LLP**, **GLS Corporate Advisors LLP** and **VMGG & Associates**, are glad to publish the **35th** 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!

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ARTICLE

Balancing the Scales of ITC: Judicial Perspective

In the realm of indirect taxation, few topics have ignited as much debate and legal scrutiny as the concept of ITC, both before and after the advent of the GST era. Just as the income tax domain grapples with the age-old revenue vs. capital debate, the arena of indirect taxation wrestles with a perpetual subject of discussion: ITC. This concept has consistently divided taxpayers due to its inherent complexity. Consequently, the judiciary has consistently intervened to disentangle the intricacies surrounding the availability of ITC and the circumstances under which reversals are applicable. This article delves into two recent judgments from the Calcutta High Court and the Patna High Court, shedding light on the intricacies surrounding ITC and its implications for both suppliers and recipients.

Before delving into the specifics of this judgment, let's revisit the essence of ITC. At its core, ITC is a fundamental principle of the GST system aimed at preventing the cascading effect of taxes. It empowers businesses to claim credit for taxes paid on inputs—whether they be raw materials, goods, or services used in the production or supply of goods and services. This credit is then offset against the output tax liability. However, the application of ITC is far from straightforward, often leading to complex legal battles. One of the key debates revolves around whether the recipient of the credit can be denied its benefits without a comprehensive examination of the supplier's actions.

CALCUTTA HIGH COURT'S PERSPECTIVE: PROTECTING RECIPIENTS' INTERESTS

The Calcutta High Court in RE: **Suncraft Energy Private Limited and Another [2023-TIOL-917-HC-KOL-GST]** emphasized the importance of thorough investigation into supplier actions before reversing ITC claims from recipients. In the instant case, the Appellant had availed ITC for purchases made from a supplier. However, the Revenue authority demanded the reversal of the availed ITC due to the supplier's non-payment of taxes. The High Court ruled that the Revenue's action of denying ITC without addressing the role of the selling dealer was arbitrary. The court highlighted that tax authorities should only initiate proceedings against recipients in exceptional cases of collusion, supplier absence, or business closure. It would be pertinent to note. It's noteworthy that the court'sHigh Court's stance is consistent aligns with principles laid down by the Hon'ble Supreme Court in cases like **Bharti Airtel [W.P. (C) 6293/2019]** and **Arise India Limited [2018-TIOL-11-SC-VAT],** emphasizing that Form GSTR-2A is not conclusive evidence for the denial of ITC. It reiterates. This reaffirms that supplier non-compliance should not automatically lead to impose a burden on the recipient.

PATNA HIGH COURT'S PERSPECTIVE: BUYER'S RESPONSIBILITY IN ITC CLAIMS

On the contrary the Patna High Court in the case of **Aastha Enterprises [2023-TIOL-1021-HC-PATNA-GST],** the HC highlighted the buyer's responsibility to ascertain the supplier's tax compliance before claiming ITC. The court ruled that eligibility for ITC depends on both tax collection and payment by the supplier. It emphasized that the conditions for enabling the benefit of ITC outlined in Section 16(2) of the CGST Act must be satisfied together and not separately. This judgment places the onus on the buyer to verify tax payment by the supplier, potentially complicating the process of claiming ITC. Interestingly, the ruling finds alignment with decisions rendered by other High Courts. For instance, the Madras High Court's ruling in the case of **Pinstar Automotive India Private Limited [2023-TIOL-524-HC-MAD-GST]** and Jai **Balaji Paper Cones [TS-358-HC(MAD)-2023-GST]** which underscores the critical connection between ITC and the conditions prescribed in Section 16(2)(c) of the CGST Act.

DIVERGENCE IN INTERPRETATIONS AND ONGOING DEBATES

The recent judgments from the Calcutta High Court and the Patna High Court underscore the complexity and contentious nature of ITC. While the Calcutta High Court's decision aims to protect recipients from arbitrary ITC reversals, the Patna High Court's ruling places a greater burden on buyers to ensure supplier compliance. As these debates continue and legal challenges persist, the future of ITC in India remains a dynamic and evolving landscape, with implications for businesses and tax authorities alike.

The interpretations of Section 16(2)(c) of the CGST Act have been a subject of constant debate, with its constitutional validity questioned in various multiple High Courts. While some judgments have upheld the buyer's right to claim ITC, others have imposed stricter conditions, leading to uncertainty for genuine buyers. This divergence in interpretations has been a consistent thread in both the VAT regime and the GST landscape, indicating that the ITC saga is far from over. Further, as we await to see whether the either of the HC judgment is challenged before the Apex Court, the future remains ripe for more interpretations and resolutions.

INDUSTRY PERSPECTIVE

Gaurav Gupta

Head Finance
Devyani International Limited

01 What is the economic outlook for QSRs in India, do you believe that the sector's growth is in sync with India's Macro economic growth trajectory?

QSRs in India showcases a delectable trajectory of growth and opportunity. This thriving sector has adeptly aligned itself with India's macroeconomic journey, capitalizing on the nation's evolving demographics and changing consumer preferences. With a burgeoning middle class and increasing urbanization, the QSR industry finds itself well-positioned to cater to the appetites of a generation seeking convenience, quality, and diverse culinary experiences.

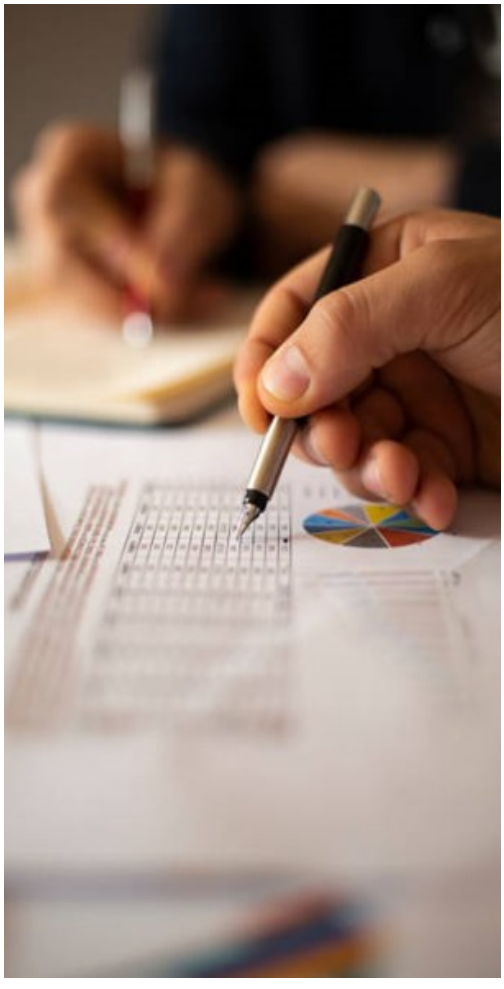
This alignment is further bolstered by the sector's embrace of digital innovation, tapping into the tech-savvy habits of modern consumers. While challenges like supply chain intricacies and health considerations add complexity to the mix, the QSR sector's growth appears harmoniously synchronized with India's macroeconomic expansion. As disposable incomes rise and taste buds become more adventurous, QSRs are poised to continue sizzling on the same path as India's economic ascent, enriching both palates and portfolios alike.

Gaurav Gupta
Head Finance - Devyani International Limited

02 In your opinion, what financial metrics are crucial for assessing the performance of a QSR business? How would you ensure accurate and timely reporting of these metrics to support strategic decision-making?

In the QSR landscape, financial metrics such as Comparable Store Sales, Average Transaction Value and Customer Traffic reveal customer trends drives the growth focus and strategy. Their accurate and swift reporting is ensured through cutting-edge Point of Sale systems and integrated software. QSR excellence hinges on key financial metrics – CSS, ATV, and Customer Traffic – shaping the business landscape. Timely and precise reporting, facilitated by advanced POS systems, empowers decision-makers to optimize resources, curate menus, and drive targeted marketing strategies. In this dynamic recipe, accurate metrics and agile reporting are the secret ingredients for a thriving QSR venture.

03 Government is inching towards Self sustainable eco system by withdrawing umpteen incentives offered to various industry segments. While on other hand, PLI schemes are being introduced, what is your view on this. Does your sector need some fiscal support from Government?



As a representative of the QSR sector, we stand at the crossroads of evolving governmental policies. The phased withdrawal of incentives from various industry segments signifies a paradigm shift towards fostering self-sustainability and streamlining economic strategies. Concurrently, the introduction of PLI schemes underscores the government's commitment to incentivize growth and innovation within specific sectors.

In the dynamic realm of QSRs, which thrives on innovation, adaptability, and consumer trends, fiscal support from the government could indeed provide a significant boost. Our sector is a vital contributor to both the economy and employment, and it is in alignment with the government's vision of self-sufficiency and local manufacturing. Fiscal support could aid us in adopting cutting-edge technologies, enhancing food quality and safety standards, and facilitating training programs to further skill development among our work force.

In conclusion, while the withdrawal of incentives signals a shift towards self-reliance, the introduction of PLI schemes presents new avenues for growth. In this context, judicious fiscal support could empower the QSR sector to navigate challenges, seize opportunities, and contribute more effectively to India's economic trajectory while fostering sustainability and innovation.

Gaurav Gupta
Head Finance - Devyani International Limited

04 The tax space is fast evolving over the last few years. What has been the impact of such changes on the economy and the service industry? Do you believe that such changes are aligned with overall long-term growth objectives?

The recent changes in the tax landscape have brought about significant shifts, impacting both the economy and the service industry. These changes have aimed to broaden the tax base, ensuring a more robust revenue stream for developmental initiatives while also influencing consumer spending through revised tax structures. Within the QSR sector, these changes have prompted operational adjustments and financial restructuring to align with stricter compliance requirements.

However, the alignment of these changes with long-term growth objectives is a nuanced matter. While they hold the potential to foster transparency and sustainable revenue, especially for infrastructure and social welfare, their implementation needs to strike a balance. Overly burdensome taxation could potentially hinder growth, particularly for emerging sectors like QSRs. The key lies in achieving a synergy where evolving tax policies incentivize investment, entrepreneurship, and innovation, allowing industries to contribute optimally to the nation's broader economic goals.

05 Is your company or Industry facing some continuing tax litigations, do you believe tax authorities need to change their outlook?

In the dynamic landscape of our industry, tax litigations may cast their shadow. While we navigate these challenges diligently, it prompts us to reflect on the broader perspective. Shaping a tax environment that fosters clarity and predictability can greatly benefit businesses and the economy alike. A shift in tax authorities' outlook towards more proactive communication, clear guidelines, and collaborative solutions could not only mitigate legal battles but also nurture an environment of mutual growth and compliance. Though there is a lot of transparency which has been brough in over the last few years with steps such as faceless assessment etc. but still more ground needs to be covered on this front. Overall it’s a positive environment which helps fueling the growth from both macro and micro economic perspective.

06 Innovation and technology advancements are transforming the QSR landscape. How do you envision integrating financial strategies with digital initiatives to enhance customer experience, streamline operations, and generate new revenue streams

The QSR realm is amidst a dynamic metamorphosis, fueled by innovation and technological leaps. Envisioning a future where financial strategies seamlessly entwine with digital initiatives; a holistic transformation emerges. By leveraging cutting-edge technologies like AI-driven ordering systems and personalized mobile apps, customer experiences are elevated to unprecedented heights. This not only garners brand loyalty but also unveils new avenues for revenue

generation through targeted promotions and upselling.

Simultaneously, the integration of financial strategies with real-time data analytics optimizes operations. With predictive insights into supply chain dynamics and demand patterns, wastage is curbed, and efficiency amplified. Digital payment platforms not only enhance transaction convenience but also provide data insights that refine pricing strategies and enhance profitability.

In this vision, innovation and financial acumen become symbiotic forces, redefining QSR success by crafting immersive customer journeys, refining operations, and unveiling novel revenue streams. The synthesis of these realms is the compass guiding us toward an exciting era of QSR excellence.

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

From a direct tax perspective, the landscape of convergence with accounting treatment, particularly under the ambit of IND-AS, reveals intriguing contours. While strides have been taken to harmonize tax regulations with evolving accounting practices, certain gaps cast a shadow. These gaps, nuanced in nature, call for a delicate balance between recognizing economic realities and tax frameworks. It is imperative for stakeholders to collaboratively address these disparities, fostering an environment where financial transparency and compliance converge seamlessly, ultimately contributing to a more equitable and robust taxation framework in the realm of Quick Service Restaurants.

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DIRECT TAX
From the Judiciary

HC holds bad debts allowable to the Bank, absent provisioning, as Sections 36(1)(vii) & 36(1)(viia) of the IT Act, distinct & independent

Standard Chartered Grindlays Bank Limited

2023-TIOL-995-HC-DEL-IT

The Assessee was a bank that had filed its return of income for AY 2003-04 and claimed deduction on account of bad debt under Section 36(1)(vii) of the IT Act. The same was disallowed by the AO and thereafter, the CIT(A) and ITAT upheld the same. Aggrieved, the Assessee approached the HC contending that since it had not created any provision for bad debts in the year under consideration, therefore, it could claim the entire irrecoverable bad debt crystallized in the relevant AY.

The HC noted that, undisputedly, there was clearly no provision made for bad debts and the Assessee could straightaway claim deduction towards irrecoverable bad debts under Section 36(1)(vii) of the IT Act, as there was no dispute as to the fulfilment of the conditions prescribed under Section 36(2) of the IT Act. Further, an Assessee being a scheduled bank was entitled to claim deduction of any bad debt or part thereof which was written off as irrecoverable in the relevant AY and the first proviso to Section 36(1)(vii) of the IT Act only applied to an Assessee to which clause (viia) applied where the deduction of bad debts was restricted to the amount by which such debt exceeded the credit balance of the provision made in the books of account.

Accordingly, the HC held that the first proviso to Section 36(1)(vii) had no applicability in the present case since there was no provision for bad debts available in the AY in issue and as Section 36(1)(vii) and Section 36(1)(viia) of the IT Act were distinct and independent provisions, the deduction of irrecoverable bad debts under Section 36(1)(vii) of the IT Act, which got crystallized during the year even where no provision for bad debts was made under Section 36(1)(viia) of the IT Act was allowable to the Assessee.

ITAT holds NSE's investor passing regulatory tests, holding Mauritius TRC & GBL, eligible for treaty benefits

Saif II-SE Investments Mauritius Limited

ITA No. 1812/Del/2022

The Assessee was a Mauritius-based investment holding company holding a valid TRC issued by Mauritius tax authorities and also possessed a Global Business Licence (GBL) issued by the Financial Service Commission in Mauritius. The Assessee received dividend income on equity shares of the NSE against which it claimed exemption under Section 10(34) of the IT Act and also earned long-term capital gains on part-disposal of equity shares of NSE and claimed exemption under Article 13(4) of India-Mauritius DTAA.

The Revenue denied the treaty benefit and made an addition on account of capital gain by holding that the Assessee was a tax resident of Mauritius but a conduit company with the real owners in the Cayman Islands, aggrieved by which the Assessee approached the ITAT which noted that the Assessee's holding company initially acquired 5% unlisted equity shares of NSE and various regulatory authorities such as FIPB, SEBI, RBI, NSE India undertook due diligence with regard to the shareholding pattern and structure of not only the Assessee, but also the Assessee's holding companies and as also the ultimate holding companies based in Cayman Island which was again analysed when the parent company transferred shares to the Assessee as well as at the time of the disposal of the equity shares.

Thus, holding that the facts on record clearly established that Assessee was a resident of Mauritius and also the beneficial owner of income from the sale of shares, therefore, entitled to the treaty benefits for capital gain as exempt income under Article 13(4) of DTAA, the ITAT directed the Revenue to delete the addition made on account of capital gains and allowed the Assessee's appeal.

HC holds revisionary jurisdiction not valid merely on PCIT's disagreement with AO's view

American Spring & Pressing Works Private Limited

Income Tax Appeal No. 682 of 2018

The Assessee was a company engaged in the business of manufacture and sale of agricultural equipment and development of real estate and hotel business that was subject to revision of assessment proceedings under Section 263 of the IT Act by the PCIT who sought to revise the assessment, holding that the assessment order was erroneous and prejudicial to the interest of revenue. Aggrieved, the Assessee approached the ITAT which held that the PCIT could not have invoked the jurisdiction of revision for proceedings under Section 263 of the IT Act.

Aggrieved, the PCIT approached the HC which placing reliance on a plethora of coordinate bench rulings

observed that where two views were possible and the AO had taken one view with which the PCIT did not agree, it could not be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the AO was unsustainable in law. Since the AO had taken a possible view in the matter and there was nothing to indicate that the AO had applied the provisions in an incorrect way, the PCIT assumed the revisionary jurisdiction without properly complying with the mandate of Section 263 of the IT Act, as the view taken by the AO was a possible view.

Thus, holding that the PCIT failed to show that the assessment order was erroneous and thereby causing prejudice to the Revenue, the HC upheld the ITAT's order denying the assumption of revisionary jurisdiction by PCIT and dismissed the PCIT's appeal finding no substantial question of law to have arisen.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT notifies Form 3AF and Rule 6ABBB of the IT Rules and amends Annexure to Form 3AE through the Income-tax (Fourteenth Amendment) Rules, 2023

Notification No. 54/2023

August 01, 2023

The CBDT notifies Rule 6ABBB of the IT Rules, introduces Form 3AF for furnishing particulars regarding preliminary expenses incurred under Section 35D of the IT Act, and suitably amends the Annexure to Form 3AE i.e. audit report under Section 35D(4)/35E(6) of the IT Act.

Rule 6ABBB provides that the statement to be furnished under proviso to Section 35D(2)(a) of the IT Act by the Assessee for each previous year shall be furnished in Form 3AF, electronically one month prior to the due date for furnishing the return of income as specified under Section 139(1) of the IT Act to the PDGIT (Systems) or DGIT (Systems), as the case may be, or any person authorized by them and they shall also specify the procedures for furnishing the Form apart from formulating and evolving appropriate security, archival and retrieval policies in relation to the Form so furnished.

This Notification shall come into force from April 1, 2024.

CBDT notifies exemption of TDS on payment of lease rent to ship leasing companies in IFSC unit for lease of ship subject to certain conditions

Notification No. 57/2023

August 01, 2023

The CBDT notifies the exemption of TDS by the Central Government under Section 194-I of the IT Act, on payment in the nature of lease rent or supplemental lease rent made by a person to an IFSC Unit for the lease of a ship subject to prescribed conditions.

Further, the Notification also provides that the relaxation shall be available to the lessor only during the said previous years relevant to the ten consecutive AYs as declared by the lessor in Form No. 1 for which deduction under Section 80LA is being opted and that the lessee shall be liable to deduct tax on payment of lease rent for any other year.

The CBDT also notifies Form No. 1 and casts responsibility for laying down procedures, formats, and standards for ensuring secure capture and transmission of data, uploading of documents, evolving and implementing appropriate security, archival, and retrieval policies on PDGIT (Systems) or DGIT (Systems).

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

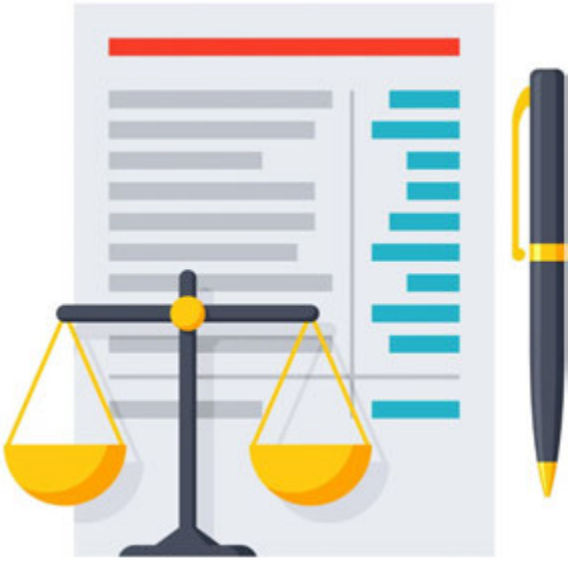
CBDT extends the applicability of Safe Harbour Rules to AY 2023-24

Notification No. 58/2023

August 09, 2023

The CBDT notifies the Income-tax (Fifteenth Amendment) Rules, 2023, to extend the applicability of Safe Harbour Rules under Rule 10TD of the IT Rules to AY 2023-24 by substituting "assessment years 2020-21, 2021-22 and 2022-23" in sub-rule (3B) of Rule 10TD of the IT Rules with "assessment years 2020-21, 2021-22, 2022-23 and 2023-24". Further, the CBDT clarifies that this amendment shall be effective from April 1, 2023, and shall apply to AY 2023-24 relevant to the previous year 2022-23, and accordingly, no person is being adversely affected by giving retrospective effect to these Rules.

The term "safe harbour" has been defined in the explanation to Section 92CB of the IT Act, to mean circumstances in which the income-tax authorities shall accept the transfer price or income, deemed to accrue or arise under clause (i) of sub-section (1) of Section 9 of the IT Act, as the case may be, declared by the Assessee. Rule 10TD of the IT Rules prescribes a list of eligible international transactions where income-tax authorities shall accept the transfer price declared by the taxpayer at arm's length.



CBDT introduces Rule 11UACA to the IT Rules for computing income taxable under Section 56(2)(xiii) of the IT Act

Notification No. 61/2023

August 16, 2023

CBDT introduces Rule 11UACA to the IT Rules for computing income taxable under Section 56(2)(xiii) of the IT Act. Section 56(2)(xiii) of the IT Act was inserted by the Finance Act, 2023 with effect from April 1, 2024, to tax the receipt of any sum including the amount allocated by way of bonus under a life insurance policy at any time during a previous year. The sum does not include:

- an amount received under a ULIP.
- income referred to in Section 56(2)(iv) of the IT Act, i.e., income referred to in Section 2(24)(xi) of the IT Act, which is a sum received under a Keyman insurance policy.

Section 56(2)(xiii) of the IT Act taxes the sum which is not to be excluded from the total income of the previous year due to Section 10(10D) of the IT Act and exceeds the aggregate of the premium paid which is not claimed as deduction under any other provision of this Act.

As per the newly inserted Rule 11UCA of the IT Rules, where the sum is received for the first time under the life insurance policy during the previous year (first previous year), the income chargeable to tax in the first previous year shall be the difference of 'A' and 'B', where 'A' is the sum or aggregate of the sum received

under the life insurance policy during the first previous year, and 'B' is the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the IT Act.

Further, where the sum is received under the life insurance policy during the previous year subsequent to the first previous year (subsequent previous year), the income chargeable to tax in the subsequent previous year shall be the difference between 'C' and 'D', where 'C' is the sum or aggregate of the sum received under the life insurance policy during the subsequent previous year and 'D' is the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the subsequent previous year. However, the amount under 'D' cannot be the premium claimed as a deduction under any other provision of the IT Act, nor the sum included in amount 'B' or amount 'D' of this Rule in any of the previous year or years.

CBDT notifies 'telegraphic transfer buying rate' as the foreign exchange rate applicable for TDS on any income payable in foreign currency

Notification No. 64/2023

August 17, 2023

The CBDT notifies Rule 26 of the IT Rules, whereby 'telegraphic transfer buying rate' is prescribed as the foreign exchange rate for TDS on any income payable in foreign currency to an Assessee outside India, a Unit located in IFSC and by a Unit located in IFSC to an Assessee in India. The telegraphic transfer buying rate relevant for calculating the INR equivalent of foreign currency income shall be the rate prevailing on the date on which the tax is required to be deducted at source under the applicable provisions by the person responsible for paying such income.

The 'telegraphic transfer buying rate' is defined as the exchange rate adopted by SBI for buying foreign currency, having regard to the guidelines specified from time to time by RBI for buying such currency, where such currency is made available to that bank through a telegraphic transfer.

CBDT amends the valuation criteria for the perquisite of residential accommodation from September 1, 2023

Notification No. 65/2023

August 18, 2023

The CBDT amends Rule 3(1) of the IT Rules that deals with the valuation of the perquisite of residential accommodation.

As per the amended rule, where unfurnished accommodation is provided to employees other than the Central or State Government employees and such accommodation is owned by the employer then the valuation in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee shall be:

- 10% of salary in cities having a population exceeding 40 Lakhs as per the 2011 census,

- 7.5% of salary in cities having a population exceeding 15 Lakhs but not exceeding 40 Lakhs as per 2011 census, and
- 5% of salary in other areas.

However, where the accommodation is taken on lease or rent by the employer then it shall be valued at the actual amount of lease rental paid or payable by the employer or 10% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee.

This Notification shall come into effect from September 1, 2023.

CIRCULARS

CBDT issues Guidelines on 'life insurance policy' tax exemption pursuant to Finance Act, 2023 amendments

Circular No. 15/2023

August 16, 2023

The CBDT issues Guidelines pursuant to the Finance Act, 2023 amendment to Section 10(10D) of the IT Act, which provides for income-tax exemption on any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to certain exclusions.

As per the Finance Act, 2023, with effect from AY 2024-25, the sum received under a life insurance policy, other than ULIP, issued on or after April 1, 2023, shall not be exempt under Section 10(10D) of the IT Act, if the amount of premium payable for any of the previous years during the term of such policy exceeds INR 5 Lakhs.

Further, if the premium is payable for more than one life insurance policy, other than a ULIP, issued on or after April 1, 2023, then the exemption shall be available only with respect to such policies where the aggregate premium does not exceed INR 5 Lakhs for any of the previous years during the term of any of those policies. These exceptions however do not apply to any sum received on the death of a person.

Through the Guidelines, the CBDT explains the implications of the amendments under various situations with examples and clarifies that the prescribed premium threshold shall be exclusive of the GST component.

TRANSFER PRICING
From the Judiciary

ITAT deletes TP-adjustment qua corporate guarantee/standby letter of credit sans international transaction or AE-existence

Phoenix Lamps Limited

2023-TII-234-ITAT-DEL-TP

The Assessee was engaged in the manufacturing and trading of 'Automative Halogen Lamps', 'Compact Fluorescent Lamps' and 'General Lighting Lamps' for AYs 2011-12 & 2012-13. Pursuant to a master agreement for sale and purchase of assets in Europe, corporate guarantee and standby letter of credit were intended to be issued by the Assessee on behalf of two entities, but the acquisition did not materialize then and hence the corporate guarantee and standby letter of credit were never issued. The Revenue, however, proceeded to treat corporate guarantee and standby letter of credit, being extended or 'intended to be extended' by the Assessee for benefit of AEs, as international transactions and made a TP adjustment.

Aggrieved, the Assessee approached the ITAT which noted that the entities were actually acquired only in AY 2013-14 and therefore, no benchmarking was required in the absence of any international transaction or existence of AE for the said AYs. Moreover, the inclusion of these 'transactions' by the Assessee in its TP study report was only out of abundant caution on the Assessee's part. Thus, deleting the TP-adjustment qua alleged corporate guarantee and standby letter of credit, the ITAT disposed of the matter.

ITAT holds final assessment order, based on invalid TPO/DRP orders, not valid

Emerson Process Management (India) Private Limited

2023-TII-236-ITAT-MUM-TP

The NCLT Ahmedabad had passed an order whereby Pentair Valves and Controls India Private Limited was amalgamated with M/s Emerson Process Management (India) Private Limited ('the Assessee') and the same was intimated to the TPO, AO and DRP by the Assessee. However, despite the intimation the draft assessment order, TPO's order and the DRP's directions were passed in the name of a non-existing entity i.e., Pentair Valves and Controls India Private Limited although the final assessment order passed subsequent to the DRP's directions was in the name of the Assessee. Aggrieved, the Assessee challenging the final assessment order approached the ITAT contending that it could not be sustained as it was based on invalid TPO's order, draft assessment order and DRP's directions.

Before the ITAT, the Revenue contended that it was only the final assessment order which was relevant and as the same was passed in the name of the correct entity, there was no infirmity in the final assessment order. The ITAT held that as the final assessment order was based on invalid TPO's order, draft assessment order and DRP directions, all passed in the name of non-existing entity, it could not be sustained and

accordingly, quashing the final assessment order for being invalid, allowed the Assessee's appeal.

HC dismisses Revenue's appeal owing to low tax effect, leaves questions of law open

Deepak Industries Limited

2023-TII-39-HC-KOL-INTL

The Revenue was in appeal before the HC against an ITAT order and had even raised substantial questions of law against the ITAT order. Before the HC, the Assessee submitted that the tax effect in the instant case was less than INR 1 Crore and therefore, the Revenue could not pursue this appeal on the ground of low tax effect.

The ITAT noted that as per the CIT(A)'s order, the tax amount was mentioned as INR 1.03 Crores, however on perusal of the IT computation form for the AY under consideration, the total tax amount was INR 80.05 Lakhs, which was less than the threshold limit fixed by CBDT of INR 1 Crore. Thus, dismissing the Revenue's appeal against the ITAT order on account of tax effect being less than INR 1 Crore, the HC disposed of the appeal leaving the substantial questions of law open.

ITAT excludes comparables basis functional dissimilarity, rejects working capital adjustment for captive unit

Dell International Services India Private Limited

IT(TP)A No.2846/Bang/2017

The Assessee was engaged in provision of routine software development services and resale of products that had approached the ITAT against the order of the Revenue contending that the Revenue in its comparability analysis had erred in including functionally dissimilar companies as comparables and had also erred in making a negative working capital adjustment without appreciating the fact that the Assessee was a captive service provider and did not bear any working capital risks.

With regards to the functionally dissimilar comparables included by the Revenue in its comparability analysis, the ITAT accepting the contention of the Assessee and placing reliance on coordinate bench ruling in **NXP India Private Limited [2020-TII-139-ITAT-BANG-TP]** excluded the functionally dissimilar companies as comparables.

Further, with regards to the negative working capital adjustment made by the Revenue, the ITAT placing reliance on the coordinate bench ruling in **LAM Research (India) Private Limited [2015-TII-238-ITAT-BANG-TP]** wherein it was held that there could be no negative working capital adjustment on the arithmetic mean of the comparables when the Assessee was a captive service provider, deleted the negative working capital adjustment made by the Revenue.

ARTICLE

TRANSCENDING DISPUTES OF LIQUIDATED DAMAGES

The Hon'ble Apex court recently issued notice to 'Skoda' over inclusion of 'liquidated damages' in the assessable value of motor vehicles sold by it. The Revenue in this case has challenged order of the Tribunal that set aside the adjudication order which confirmed demand for differential duty on account of inclusion of liquidated damages in assessable value. These liquidated damages were contractually agreed and recovered by 'Skoda' for failure on part of its sister concerns to fulfil its purchase commitment. This dispute may disguise itself as inconsequential, more so, as it pertains to erstwhile tax regime, however, its significance can only be recognised if we dig deeper into the merit of jurisprudence and its relevance with the incumbent Goods and Services Tax law.

Liquidated damages have had its chequered history under Excise law, Service tax law as well as GST, to say the least. In all these statutes, the revenue has seen it analogous with 'consideration' and sought to levy respective tax, duty as the case may be.

It is at this juncture becomes relevant and interesting to take a look at the relevant jurisprudence. Hon'ble Supreme Court in **Sales Tax Officer, Pilphit v. Budh Prakash Jai Prakash [(1955) 1 SCR 243]** had held that compensation/damages arising from breach of contract is a legal and statutory right under the India Contract Act, 1872 and not consideration. Another proposition emanating from **Union of India v. Raman Iron Foundry [(1974) 2 SCC 231]** as quoted in **Pollock & Mulla: The Indian Contract and Specific Relief Acts (14th edition)** accords Liquidated damages as settlement towards non-fulfilment of the contract and refutes to treat it as a consequence of sale. It also took note that agreement had not been entered into with intent for non-performance of contract but for supply.

Interestingly, the distinction between 'damages' and 'consideration' is not anew. It's history may be traced as back as in 1878 when Lord Bramwell in **The Hydraulic Engineering Company, Limited v. MoHaFFIE Goslett, & Co [1878 IV Vol 670],** made it abundantly clear that there is no distinct contract for payment of damages as to warrant it being treated as consideration.

It is also noteworthy that the term 'transaction value' as defined under the Excise law is analogous with that of GST law inasmuch as both refer to 'price actually paid or payable' in connection with the corresponding taxable event. It is for this reason it becomes relevant to also refer to jurisprudence laid by Tribunal in **Spring Fresh Drinks v. Collector of Central Excise [1991 (54) ELT 333 (Tribunal)], Commissioner of Central Excise, Belgam v. Praxair India Limited [2008 (223) ELT 596 (Tribunal)], Inox Air Products Ltd v. Commissioner of Central Excise, Nagpur & Mumbai-I [2001 (134) ELT 224 (Tri.-Mumbai)], Jindal Praxair Oxygen Co Ltd v. Commissioner of Central Excise, Belgaum [2007 (208) ELT 181 (Tri.-Bang.)], Caparo Engineering India v. Commissioner of Central Excise [2017 (5) TMI 448-CESTAT]** which time and again held that scope of 'transaction value' would not extend to liquidated damages.

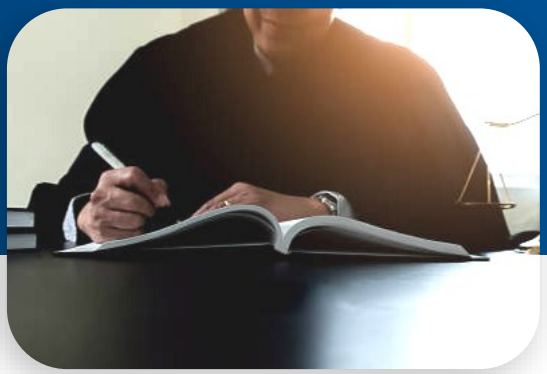
Article

Transcending Disputes of Liquidated Damages

Speaking of nexus between 'liquidated damages' as perceived in the erstwhile regime vis-a-vis GST, it is inevitable to refer to Tribunal's decision in **Linde Engineering India Private Limited Vs C.C.E. & S.T. (CESTAT Ahmedabad)** which placed its reliance on the clarification issued by CBIC vide ***Circular No. 178/10/2022-GST*** and held that Liquidated Damages do not constitute consideration and thus are not taxable under Service tax.

The clarification espoused the position of law around taxability of Liquidated Damages both under GST and Service tax and categorically clarified that liquidated damages are mere a flow of money from the party who causes a breach of the contract to the party who suffers loss or damage due to such breach, and such payments do not constitute consideration for a supply and are not taxable.

GOODS & SERVICES TAX
From the Judiciary



HC: ITC cannot be denied to recipient without due investigation of supplier

Suncraft Energy Private Limited and Another

2023-TIOL-917-HC-KOL-GST

The Appellant had availed ITC for its purchases from its supplier. The Revenue authority issued notices followed by order demanding reversal of the availed ITC due to non-payment of taxes by the supplier, as some of the invoices of the said supplier were not reflected in the GSTR 2A of the Appellant. Aggrieved, the Appellant preferred a Writ Petition before the Calcutta HC.

The HC noted the lack of substantial investigation into the supplier's details by the Revenue authority. The HC emphasized that furnishing outward details in GSTR 1 and Form GSTR 2A was primarily aimed at facilitating taxpayers and did not inherently impact a recipient's right to claim ITC. The court deemed the Revenue's action of denying ITC without addressing the selling dealer's role as arbitrary. It further emphasized that the Revenue should have taken action against the supplier before instructing the Appellant to reverse ITC. Accordingly, the HC, set aside the order stating that demand notices for ITC reversal couldn't be sustained without proper inquiry.

Authors' Notes:

> *The High Court's ruling indicates a shift towards a more balanced and thorough approach in dealing with ITC reversals, rather than a blanket denial based solely on the inconsistency between GSTR 2A and GSTR 3B. It would be pertinent to note that the HC's stance is consistent with principles laid down by the Hon'ble Supreme Court in cases like **Bharti Airtel [W.P. (C) 6293/2019] and Arise India Limited [2018-TIOL-11-SC-VAT],** emphasizing that Form GSTR-2A is not conclusive evidence for denial of ITC.*

HC: Buyer cannot claim ITC if supplier has not paid his tax to Government

Aastha Enterprises

2023-TIOL-1021-HC-PATNA-GST

The Petitioner had purchased goods from its supplier and paid the applicable taxes, however, the supplier failed to remit the tax amount to the Government. The Petitioner availed the ITC since they had paid the tax. Subsequently, the Revenue Department denied the ITC on the ground that the Petitioner did not meet the conditions outlined in Section 16(2) of the CGST Act. Aggrieved, the Petitioner preferred a Writ before the Patna HC.

The HC relied on the judgments like **M/s D.Y. Beathel Enterprises [2021-TIOL-890-HC-MAD-GST]** and M/s

Ecom Gill Coffee Trading Private Limited [**2023-TIOL-18-SC-VAT**] and noted that the burden of proving tax payment by the supplier lies with the buyer, and mere production of invoices is not enough. The Court emphasized that eligibility for ITC hinges on both tax collection and payment by the supplier. It further clarified that the conditions for enabling the benefit of ITC outlined in Section 16(2) of the CGST Act must be satisfied together and not separately. It was further held that the statutory levy and the benefit of ITC depend not only on the collection of tax by the seller but also the due payment of tax by the seller to the government. Accordingly, the HC held that when the supplier fails to comply with the statutory requirement, the Petitioner cannot claim ITC and the remedy available to the Petitioner is only to proceed for recovery against the seller.

Authors' Notes:

> *The recent judgment from the Patna High Court seems to clash with a recent ruling by the Calcutta High Court in **RE: Suncraft Energy Private Limited and Another [supra].** While the former ruling has complicated the process of claiming ITC, the latter seems to curb arbitrary denial of ITC of genuine buyer due to supplier non-compliance. What's intriguing is that the Patna HC observation places the onus on the buyer to verify tax payment by the supplier. However, it is interesting to note that the very case of **M/s. D.Y. Beathel Enterprises [supra],** which the Patna HC relied upon, distinctly held that recovery should not be made from the recipient for the supplier's fault. This disparity in interpretations underscores the predicament faced by genuine buyers, highlighting an element of uncertainty.*
>
> *It would be pertinent to note that the judiciary's differing viewpoints on this issue have existed right from the VAT regime but yet a definitive resolution is still lacking. Moreover, since the validity of Section 16(2)(c) has been itself challenged before contested in various other HCs it would will be interesting to see whether the instant Patna HC judgment is challenged before the Apex Court and it would be worth waiting for their interpretations in the future.*

HC: Credit ledger is a valid mode of payment for pre-deposit while filing appeal

Kiran Motors

W.P (C) No.22817 of 2023

The Petitioner had filed an appeal by paying the mandatory pre-deposit of 10% of the tax demand by debiting from the ECrL. However, the Appellate Authority rejected the appeal on the premise that the pre-deposit should have been made through the ECL instead of the ECrL. Aggrieved, the Petitioner preferred a Writ before the Orissa HC.

The HC noted that CBIC vide Circular dated July 06, 2022 had clarified that payment of pre-deposit can indeed be made using the ECrL. Accordingly, since the Petitioner had adhered to this clarification by making the pre-deposit through the ECrL, the HC held that the Department ought to accept this mode of payment.

Authors' Notes:

This instant ruling comes as a welcome relief for taxpayers and reduces the burden of making full cash payments. This not only streamlines the process but also eases financial strains on taxpayers. Such pragmatic measures not only align with the principle of taxpayer-friendly policies but also promote a more efficient and effective GST system.

Services cannot be considered as intermediary without facilitating Third-Party services

Boks Business Services Private Limited

W.P.(C) 1255/2023

The Petitioner had filed a refund application for the unutilized ITC in respect of the export of services. Subsequently, the Revenue issued a SCN rejecting the refund claim on the ground that the services rendered by the Petitioner to its foreign client appeared to fall in the category of 'intermediary services'. The Appellate Authority also confirmed the rejection. Aggrieved, the Petitioner had preferred a Writ before Delhi HC.

The court observed that the Petitioner, as per the terms of their agreement, was not functioning as such an intermediary rather, they were acting as the principal service provider. Further, the court relied upon the judgments of **Ernst and Young [2023-TIOL-369-HC-DEL-GST]** and **Cube Highways and Transportation Assets Advisor Private Limited [2023:DHC:5822-DB]** and held that the Petitioner does not fall under the category of intermediary. Accordingly, the refund was granted and the impugned order was set aside.

Authors' Notes:

*It shall be noted that the CBIC vide **Circular dated September 20, 2021** had clarified the primary requirements to qualify as an 'intermediary.' The Circular categorically provides that there shall be a minimum of three-parties involved and the intermediary must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.*

HC: Technical glitches does not restrict manual submission of appeal

K V Reddy Granites and Exports

Writ Petition No. 20308 of 2023

Due to the technical problem, the Petitioner was unable to upload the appeal papers electronically. Subsequently, the Petitioner raised a ticket regarding this issue and had also sent email complaints. Consequently, the Petitioner submitted the appeal papers manually. However, the appeal was rejected on the grounds that the Petitioner had not submitted it electronically and that there was no notification allowing manual submission of appeals. Aggrieved, the Petitioner preferred a Writ before the Andhra Pradesh HC.

The HC observed that the Petitioner had made a genuine effort to submit the appeal electronically but was hindered due to technical glitch on the portal. The HC further referred Rule 108 of the CGST Rules which permits appeals electronically or through other modes as notified by the Commissioner, but there was no such notification for manual submissions in the instant case, hence the Petitioner should not be penalized or denied the opportunity to file the appeal manually under such circumstances. Accordingly, emphasizing the principles of natural justice, the impugned order was set aside and the respondent was directed to admit the appeal.

AAR: ITC eligible on canteen services

KSH Automotive Private Limited

AAR No. 09/AP/GST/2023

The Applicant was engaged in the business of manufacture and supply of auto parts and components. The Applicant and provided canteen facilities to employees, through a registered person, who issued tax invoices and levies applicable GST. The Applicant sought advance ruling on the eligibility of ITC on the GST paid to a contractor providing canteen services.

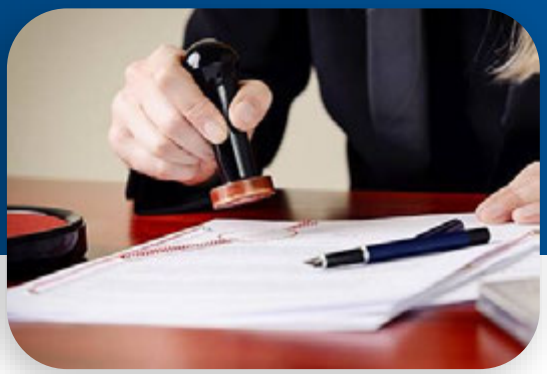
The Andhra Pradesh AAR noted that, due to the mandatory nature of maintaining a canteen facility as per the Factories Act and Factories Rules, the Applicant shall be eligible for proportionate ITC on the food supplied to permanent employees through the canteen service. However, this benefit did not extend to contractual workers.

GOODS & SERVICES TAX
From the Legislature

Sr. No	Notification/ Circular	Summary
1.	Notification No. 38/2023- Central Tax dated August 4, 2023	**CBIC issued Central Goods and Services Tax (Second Amendment) Rules, 2023** The CBIC has issued notification to issue CGST (Second Amendment) Rules, 2023 for implementation of recommendations of GST Council. The changes include: • **Rule 9**: The phrase "in the presence of the said person" has been removed from Rule 9. • **Rule 10A**: The assesee must provide the bank account details within 30 days of registration or before reporting your sales. • **Rule 21A**: The said Rule has been substantially modified to deal with violations of the Act or rules, potentially resulting in registration cancellation or suspension. • **Rule 23**: The amendment extends the application for revocation of cancellation of registration to be submitted within 90 days (previously 30 days) from the date of service of the order. • **Rule 25**: The new rule outlines the procedures and timelines for physical verification of business premises in specific scenarios. • **Rule 43**: The changes in the rule relates valuation and processing of transactions, impacting how businesses calculate tax liabilities and process transactions. • **Rule 59**: Rule 59 now contains clauses related to restrictions on providing details of outward supplies in certain situations. • **Rule 64**: Rule 64 includes the term "non-taxable online recipient" from the IGST Act. • **Rule 67**: Changes have been made to the method for operators to furnish TCS details.

Sr. No	Notification/ Circular	Summary
		• **Introduction of New Rule 88D**: Rule 88D addresses the difference in input tax credit between auto-generated statements and returns, streamlining the credit availing process and reducing discrepancies. • Rule 142B has been inserted to provide for intimation of notice for recovery of any amount of tax or interest that has become recoverable, including those due to differences in liabilities as per GSTR-1 & 3B. • An appeal/application to the adjudicating authority can be filed manually (offline) only if the Commissioner has been notified or the same cannot be filed electronically due to the non-availability of the decision or order to be appealed against on the common portal. • Additionally, new forms have been introduced, and existing forms have undergone changes to align with these amendments, promoting accurate reporting and tax compliance in India's GST system.
2.	Press Release No. 601 dated August 31, 2023	**GSTN issues Advisory on Reporting of ITC Reversal Opening Balance** The GSTN has issued an advisory regarding reporting ITC reversal opening balances. The Taxpayers have been advised to use this facility to report their eligible ITC reversal balances that have not been previously reclaimed. The taxpayers can report their opening balance until November 30, 2023, and amendments can be made until December 31, 2023. Thereafter, reported values will be considered final; The reported values will then be verified along with the ITC reclaimed amounts in the respective tax forms. Further, the taxpayers will be allowed only 3 amendments for reporting ITC reversal opening balances; The reported or amended balances will be credited to the 'Electronic Credit Reversal and Re-claimed Statement'; This statement will be used to validate the taxpayer's ITC re-claimed amount in Table 4A(5) and 4D(1) of form GSTR-3B; The Taxpayers have been advised to use this functionality if they have eligible ITC reversal balances that can be reclaimed but have not been reclaimed yet.

CUSTOMS & FTP
From the Judiciary



SC dismisses Revenue's Petition against HC judgement on non-levy of interest on additional duties

Mahindra and Mahindra Limited

Special Leave Petition (Civil) Diary No(s). 18824/2023

The Bombay HC in RE: Mahindra and Mahindra Limited [2022-TIOL-1319-HC-MUM-CUS] had held that in absence of an enabling provision under the Customs Tariff Act, interest and penalty cannot be levied on additional duties of customs viz. CVD, SAD, surcharge, etc. Aggrieved, the Revenue had preferred an SLP against the said judgement before the Apex Court.

Dismissing the SLP filed by the Revenue, the Apex Court noted that the same is without merits. Thus, upholding the rationale of the Bombay HC.

Authors' Notes:

> *The Bombay HC in its order had reasoned that the provision for levy of interest and penalty on duties are contained under the Customs Act. Accordingly, the same can be levied on short/ delayed payment of BCD, which is a customs duty, levied under the Customs Act. Additional duties (i.e., CVD, SAD, etc.) being governed by the provisions of the Customs Tariff Act (void of enabling provisions for levy of interest and penalty), cannot be subjected to such charges under the Customs Act. It would be interesting to see whether the Revenue would concede to the SC judgement or bring about an amendment under the Tariff Act for levy of interest and penalty on additional duties. IGST, being an additional duty, is also governed under the Tariff Act. Moreover, amendments in law to post an unfavourable SC judgement is not a new concept in the tax sphere.*

CESTAT: Anti-dumping duty not applicable on imported used machinery

First Engineering Plastics India Private Limited

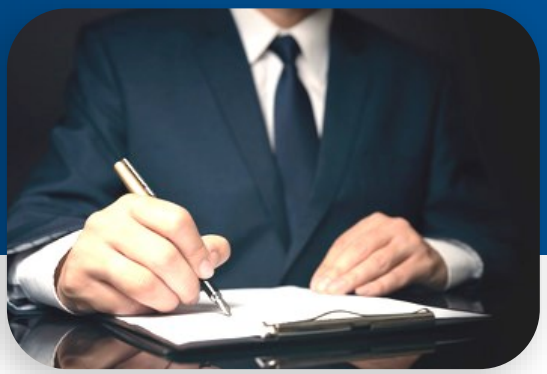
Customs Appeal No. 40478 of 2014

The Respondent had imported used and second-hand machinery from China, which had been subjected to ADD by the Customs Department. Aggrieved, the Respondent had preferred an Appeal before the Commissioner (A), contending that ADD is not leviable on used and second hand goods. The Commissioner (A) ruled in favour of the Respondent, setting aside the original order. Aggrieved, the Revenue 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 (A).

CUSTOMS & FTP
From the Legislature

Sr. No.	Notification/ Circular	Summary
1.	**Circular No. 19/2023- Customs dated August 2, 2023**	**Auto LEO facility in ECCS extended to CSBs marked for 'assessment only'** The instant circular clarifies that Auto LEO facility in ECCS extended to CSBs marked for 'assessment only', subject to X-ray clearance and no mandated examination. This will benefit exporters by reducing time and cost of exporting
2.	**Notification No. 47/2023 – Customs dated August 19, 2023**	**Imposation of Export Duty on Onions** In view of the rising prices of onions, CBIC vide the instant notification imposed export duty on export of onions given the current circumstances. The government hopes that the exemption will help to reduce the prices of onions and make them more affordable for consumers.
3.	**Notification No. 49/2023 – Customs dated August 25 , 2023**	**Imposation of Export Duty on Parboiled Rice** CBIC vide the instant notification imposed export duty on export of onions given the current circumstances.



SEBI penalises Company's MD and compliance officer for trading basis UPSI regarding insolvency-plea by foreign-creditor

In the matter of Shilpi Cable Technologies Limited

Adjudication Order No. Order/GR/HK/2023-24/28062-28064

Shilpi Cable Technologies Limited ('the Company') was a public limited company engaged in the manufacturing of radio frequency corrugated feeder cables. After witnessing significant volume aberration in the scrip of the Company, SEBI conducted an investigation into the trading activities in the scrip of the Company in order to ascertain whether the trading activities of certain entities were based on the developments concerning the announcements made regarding the filing of petition by a foreign creditor against the Company for the initiation of CIRP and the disclosure on the consideration of issue of bonus shares, resignation of KMPs and to examine the role played by the MD and the compliance officer ('Noticees') in the volume aberration in the scrip of the Company.

On a detailed investigation, SEBI found that the MD being an insider of the Company was in possession of UPSI that he had passed on to certain entities to trade in the scrip during the UPSI period. Further, the compliance officer failed to make timely disclosure regarding the material event to the exchange and also failed to close the trade window as per the applicable PIT Regulations. Therefore, SEBI initiated adjudication proceedings against the Noticees and it observed that the MD without directly dealing with the securities, managed to manipulate the volume in the scrip by engaging in fraudulent practice of making deceiving disclosure and the making of such misleading disclosure without any real intention to implement it was a violation of the PFUTP Regulations. Moreover, the Company started defaulting right from October 2016 and the connected persons were found to have purchased the shares of the Company on many instances

during the pre-UPSI period, hence, the timing of selling the shares of the Company, around the UPSI period, strongly indicated that the trading decision of connected persons was not based on the default committed by the Company rather was influenced by the UPSI. Moreover, the compliance officer's submission that he was not aware about the said UPSI could not be accepted.

Thus, remarking that if insider trading was not contained, prohibited and dealt with firmly, it would hamper and jeopardize the interest of gullible investors, SEBI imposed a total monetary penalty of INR 20 Lakhs on the MD and the compliance officer of the Company for trading in the Company's scrip on the basis of the UPSI concerning the announcements regarding filing of insolvency petition by the foreign creditor against the Company.

Authors' Note:

> *It would be interesting to note that in the instant case, SEBI also observed that it was duty bound to ensure that the investing public were not deprived of any statutory rights available to them and the disregard for the law depicted by the Noticees placed investors in a disadvantageous position, which could not be said to be in the interest of the securities market.*

HC holds Secured Creditor can proceed against Guarantor under SARFAESI Act, despite IBC moratorium on defaulter

Latif Yusuf Manikkoth vs. Board of Directors, Bank of Baroda & Ors.

Writ Petition (L) No. 9116 of 2023

The Petitioner was the owner of a secured asset and the Guarantor to a loan taken by a Borrower Company from the Respondent Bank ('Secured Creditor') on which the Borrower Company had defaulted, which had caused the Respondent Bank to recall the loan amount through a Demand Notice under the SARFAESI Act and subsequently, take symbolic possession of the secured asset. Pursuant to admission of CIRP proceedings by the NCLT against the Borrower Company, moratorium was imposed under Section 14

of the IBC. Aggrieved by which, the Petitioner had filed 5 proceedings challenging the action taken by Respondent Bank for recovering the loan amount, inter-alia including proceedings before the DRT and a writ petition before the HC.

The HC placing reliance on a plethora of SC judgments, observed that the Petitioner had already availed the benefits of Section 17 of the SARFAESI Act, by preferring an exhaustive application by way of Securitization Application before the DRT, and if statutory remedies under the DRT Act and the SARFAESI Act were available, the HC was not required to exercise its jurisdiction under Article 226 of the Constitution for passing orders. Moreover, Section 14 of the IBC did not bar initiation and continuation of the SARFAESI proceedings against the Guarantor and the Respondent Bank could proceed against the mortgaged property of the Guarantor as per Section 13(11) of the SARFAESI Act despite the moratorium ordered by the NCLT. Thus, finding no merits in the writ petition of the Petitioner, the HC dismissed the same.

SC holds no vicarious-liability on directors in cheque-bounce proceedings, merely because they managed Company's affairs

Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Anr.

Criminal Appeal No. 879 of 2023

The Appellants were the directors of a company accused in cheque bounce proceedings that had filed an appeal before the SC against the order of the HC which had dismissed the Appellants' petition under Section 482 of CrPC for quashing Respondent's complaint under the NI Act insofar as the Appellants were concerned. Before the SC, the Appellants contended that the cheques were signed by the Managing Director and not by any of the Appellants and the mandatory averments which were required to be made in terms of Section 141(1) of the NI Act, that the Appellants were, at the time of commission of offence, in charge of and were responsible to the company for the conduct of its business, had not been made out by the Respondent.

Perusing Section 141 of the NI Act, the SC noted that on a plain reading, it was apparent that every person who was sought to be roped in by virtue of sub-section 1 of Section 141 of the NI Act must be a person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, therefore, the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" could not be read disjunctively and the same ought to be read conjunctively in view of use of the word "and" in between the words.

Moreover, the most important averment required by Section 141(1) of the NI Act was that the directors were in charge of, and responsible for the conduct of the company, however, in the present case, since the Appellants were neither the signatories to the cheques nor were they whole-time directors, the SC holding that merely because somebody was managing the affairs of the company, per se, he did not become in charge of the conduct of the business of the company or the

person responsible to the company for the conduct of the business of the company, allowed the appeal of the Appellants.

HC holds no recourse for Customs Department in distribution of Corporate-Debtor's liquidated assets absent claim

Czarnikow Group Limited. vs. Commissioner of Customs (Preventive) & Ors.

WP. No. 29614 of 2022 and WMP. No. 28992 of 2022

The Petitioner was a company incorporated in England that had entered into an agreement with the Corporate Debtor for importing goods, meanwhile, an order of liquidation was passed against the Corporate Debtor after CIRP initiation, the Petitioner claimed title to the goods and sought re-export of the goods before the Customs Department and the HC, wherein, the HC permitted re-export. Subsequently, the Commissioner of Customs ('Respondent/creditor of Corporate Debtor') issued a SCN to the Corporate Debtor for violations of the Customs Act and passed an order confiscating the goods and imposing a penalty on the Petitioner.

Aggrieved, the Petitioner filed a writ petition, challenging the order passed by Respondent, before the HC, which, noting that the SCN was issued by the Respondent much after NCLT's order of moratorium, observed that the only avenue of redressal available to the Respondent was to approach NCLT by way of claim and as the Respondent had not made a claim before the Liquidator to stake its right in the distribution of assets, it's right to claim could not arise as the right of any creditor whether a financial creditor, operational creditor, secured or unsecured creditor would arise only in the event, and upon condition, that a claim was made by that creditor. Moreover, placing reliance on the decision of the SC in **Sundaresh Bhatt [(2023) 1 SCC 472],** which considered the harmonious construction of the IBC with the Customs Act, the HC observed that the IBC provisions were sacrosanct, and that the Department was duty bound to stake claim, only in terms of Section 53 of the IBC which laid down the waterfall mechanism and not beyond.

Further, noting that the Respondent was aware of the Corporate Debtor being before NCLT, and remarking that as a matter of prudence, the Department must consider appointing a Nodal officer who would monitor the proceedings before the NCLT on a regular basis which was not a cumbersome process, as the proceedings were available online for periodical reference and timely action, the HC, quashing the Respondent's order insofar as it raised a demand on duty and penalty as a pre-condition to re-export by the Petitioner, allowed the Petitioner's writ petition.

HC holds cheque-holder's failure to record loan-transaction in ITR, no ground to dismiss complaint under Section 138 of NI Act

Prakash Madhukar Rao Desai vs. Dattatraya Sheshrao Desai

Criminal Appeal No. 795/2018

The complainant (Appellant) had advanced a loan of INR 1.5 Lakhs to the accused (Respondent) in lieu of which the Respondent issued a cheque which was dishonoured, the Trial Court dismissed the complaint filed in this regard principally on the ground that the amount stated to be advanced to the accused had not been shown in the ITR of the complainant.

Aggrieved, the Appellant approached the HC which placing reliance on a plethora of rulings on the NI Act observed that once the execution of the cheque was admitted, Section 139 of the NI Act mandated a presumption that the cheque was for a discharge of any debt or other liability and this presumption which was in the nature of an initial statutory presumption in favour of the complainant was a rebuttable presumption, onus to raise a probable defence against which lied on the accused, who was open to rely upon the evidence led by him or on the material submitted by the complainant for raising said probable defence. Moreover, perusing the relevant provisions of the NI Act as well as the IT Act, the HC also observed that the complaint which was otherwise maintainable under Section 138 of the NI was not liable to be dismissed at the threshold only on the ground that the complainant had failed to disclose the amount mentioned in the cheque in his ITR.

Accordingly, the HC held that a transaction not reflected in the books of accounts and/or ITR of the holder of the cheque in due course could be permitted to be enforced by instituting proceedings under Section 138 of the NI Act, in view of the presumption under Section 139 of the NI Act that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted and the failure to record such transaction in the books of accounts or the ITR would not render the transaction unenforceable under Section 138 of the NI Act. Thus, cautioning the IP to be more careful and vigilant in handling the assignments, as also in interpreting the provisions of the IBC and the Liquidation Regulations made thereunder, the IBBI quipped that given the fact that the contraventions had not impacted the outcome in any way as realization so far had been above the liquidation value, therefore a lenient view was warranted.

SC holds rights of secured creditors remain unaffected by customs dues

Industrial Development Bank of India vs. Superintendent of Central Excise and Customs

Civil Appeal No. 2568 of 2013

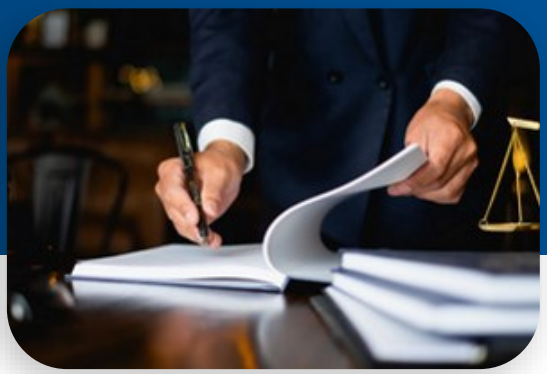
The Assessee was granted and availed financial assistance from Industrial Development Bank of India (IDBI/Appellant). As a security, the Assessee had hypothecated movable properties and created equitable mortgage of immovable properties by depositing title deeds. The hypothecated movable property was warehoused in a private bonded warehouse by executing bond in terms of the Customs Act. The goods

were initially warehoused for one year, which period was extended. However, as the goods were not cleared for home consumption, even after expiry of the extended period of warehousing, SCNs were issued and after considering the explanation given by the Assessee, orders were passed by the customs authorities levying customs duty. When the Assessee did not pay the duty, the customs authorities passed an order for sale of the warehoused goods for recovery of customs duty and steps were initiated for auctioning the goods and the Assessee was informed. Meanwhile, a winding up petition was filed before the Andhra Pradesh HC which directed the Asseesee to be wound up.

Thereafter, an application was filed by the official liquidator before a Single Judge of the Andhra Pradesh HC seeking directions to the customs authorities to handover possession of the warehoused goods, which had been put up for auction for payment of the customs duty to him in consonance with Section 468 of the Companies Act, 1956, the Single Judge of the Andhra Pradesh HC observed, that the customs authorities had not followed the procedure contemplated under the Customs Act before passing the order of detention of the goods, in the absence of which the detention orders were *void-ab-initio* and *non-est* in the eyes of law. Further, on an order of winding up being passed, the assets of the company in liquidation, by operation of law, vested in the official liquidator, who alone was entitled to deal with the effects and actionable claims. Accordingly, the submission regarding the custom authorities' entitlement and right under the Customs Act to sell the warehoused goods to realise their dues was rejected by the Single Judge of the Andhra Pradesh HC.

On the customs authorities preferring an intra-court appeal, the matter was referred to the full bench of the Andhra Pradesh HC on the question of whether the claim of a secured creditor had precedence over the right of the customs authorities to recover the customs duty. The full bench, held that Section 468 of the Companies Act had no application as it empowered the Company Court to require the 'contributory' to pay, deliver, surrender or transfer any money, property or books and papers in his custody or control. The word 'contributory', defined in Section 428 of the Companies Act, did not include the customs department/authorities. Aggrieved, IDBI filed an appeal, as a secured creditor, before the SC which holding that although the Customs Act created a first charge on dues 'payable', Section 142A of the Customs Act, protected and ensured that the dues under the Customs Act did not, in any way, affect the rights of third parties under the Companies Act, 1956 or rights of the parties as per provisions of the RDDBFI Act, SARFAESI, and the IBC, allowed the appeal of IDBI.

REGULATORY
From the Legislature



SEBI allows OFS for units of private listed InvIT through stock exchange mechanism

Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/134

August 03, 2023

SEBI had earlier specified the comprehensive framework on OFS of shares including units of REITs and InvITs through stock exchange mechanism. Basis the feedback received from market participant on the comprehensive framework, SEBI modifies the framework to allow OFS for units of private listed InvITs.

InvITs were introduced in India to provide investors with an opportunity to gain exposure to infrastructure projects with diversification of risks through pooling arrangements. Privately placed InvITs can invest in under-construction assets as well as completed and revenue-generating assets and public InvITs can invest majorly in completed and revenue-generating assets.

The OFS framework is expected to be on par with the framework outlined for equity shares of listed companies and the OFS for the sale of units of REITs and InvITs by sponsor or sponsor group entities, and other unit holders are permitted in units of listed REITs. In the case of OFS for listed InvITs, the trading lot will be the same as the trading lot prescribed for such InvITs in the secondary market as per the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

Since there is no participation of retail investors in private listed InvITs, the provisions related to retail investors shall not be applicable in case of OFS for such InvITs and the OFS shall remain open only for one day (i.e., T-day).

SEBI introduces a streamlined mechanism to remedy erroneous transfers in demat accounts

Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/139

August 08, 2023

SEBI through Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023, had earlier mandated the use of OTP for all off-market transfers of securities, to ensure enhanced security and transparency, however, taking cognizance of the challenges faced by depositories with regards to obtaining OTP in case of reversal of erroneous transfers in the demat accounts, SEBI introduces a streamlined mechanism for the exemption from OTP requirements for the reversal of mistaken transfers in which the depositories would constitute an internal and a joint committee for examining the intra-depository and in-depository erroneous transfers, respectively, which would be headed by a public interest director of the depository.

The committee would comprise of a minimum of three members and the depositories shall place before the committee all such instances of erroneous transfers pending reversal. The committee would examine the erroneous transfers and provide an opportunity of a hearing to both parties in the interest of the principles of natural justice and based on the documentary evidence and the hearing, take a decision which would be based on reasons recorded in writing. The depositories shall then send a note to the registered email ID of the transferee, informing them about the decision of the committee.

Further, to minimize erroneous transfers, the depositories would provide a facility for the investors and depository participants to add and verify the beneficiaries before the execution of off-market transfers, including inter-depository transfers and put in place appropriate systems and procedures to ensure compliance and disseminate the standard operating procedure on their website bringing notice of the same to its participants.

The framework would come into force with immediate effect, while those pertaining to verification of the beneficiaries before execution of off-market transfers would come into effect from January 1, 2024.

SEBI reduces IPO listing timeline from T+6 days to T+3 days to benefit issuers and investors

Circular No. SEBI/HO/CFD/TPD1/CIR/P/2023/140

August 09, 2023

SEBI notifies through a Circular that the timeline for listing of shares on stock exchanges after the closure of IPOs have been reduced from T+6 to T+3 days where T refers to the days of the closure of issue. This is being done by the SEBI to reduce the time-period from the date of issue closure to the date of listing of shares through public issues.

According to SEBI, the reduction in timelines for listing and trading of shares will benefit both issuers and investors. Issuers will have faster access to the capital raised thereby enhancing the ease of doing business and the investors will have the opportunity for having early credit and liquidity for their investment in a shorter time-period. Further, the move ensures that subscribers who were not allotted shares would receive their money back quickly and resources of all stakeholders like stock exchanges, banks, depositories, and brokers in the public issue process will be deployed for a shorter time-period.

The Registrar to an issue would undertake third-party verification of the applications by matching the PAN available in the demat account with the PAN available in the bank account of the applicant and in instances of mismatch, such applications would continue to be considered invalid applications for finalizing the basis of allotment.

As per the Circular, companies will have to finalize allotment before 6 pm on T+1 day and the transfer of funds will be made to unsuccessful applicants on T+2 day. The new listing timeframe will be voluntary for all IPOs opening on or after September 1, 2023, and mandatory for all the issues which come after December 1, 2023.

SEBI notifies SEBI (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023, inserts new Stewardship Code

Notification No. SEBI/LAD-NRO/GN/2023/144

August 16, 2023

SEBI notifies the SEBI (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023, to inter-alia bring the following changes to various aspects of REITs: -

- **Definition of Group Entities of the Manager**: The amendment introduces the concept of "group entities of the Manager," referring to entities controlled by the manager or entities that control the manager. This clarifies the relationship dynamics within the REIT structure.
- **Introduction of Self-Sponsored Manager:** The term Self-Sponsored Manager is introduced to describe a manager of a REIT who simultaneously fulfills the roles of both manager and sponsor.
- **Enhanced Unitholder Representation**: Unitholders owning at least 10% percent of the total outstanding units of the REIT are entitled to nominate one director on the board of directors of the manager. However, the nominated director must abstain from voting on transactions involving any related parties.
- **Stewardship Code**: Unitholders holding a minimum of 10% percent of the total outstanding units of the REIT are required to comply with a stewardship code. This code includes principles such as acting in the best interests of the REIT and its unitholders, formulating stewardship policies, and periodically monitoring the REIT.
- **Lock-in Period for Sponsors and Sponsor Groups:** Sponsors and sponsor groups are mandated to collectively hold a certain percentage of REIT units for specified periods. These periods range from three years to after the twentieth year from the date of listing of units.
- **Conversion to Self-Sponsored Manager**: Existing sponsors seeking to disassociate as sponsors and convert the Manager to a Self-Sponsored Manager must meet certain conditions. These conditions include criteria related to REIT performance, ratings, leverage thresholds, net worth, and compliance with the minimum unitholding requirement.
- **Lock-in of Units:** Units required to be held by sponsors as per regulations are to be locked in and not encumbered. Existing encumbrances on units held to comply with previous minimum unit holding requirements can continue under certain conditions.

These changes aim to refine the regulatory framework, enhance investor protection, and facilitate smoother functioning of real estate investment trusts.

RBI launches UDGAM, a centralized web portal for locating unclaimed deposits across multiple banks

Press Release dated August 17, 2023

The RBI launches a centralized web portal, UDGAM (Unclaimed Deposits- Gateway to Access Information), for members of the public to make it easier to search their unclaimed deposits across multiple banks at one place and also aid users in identifying their unclaimed deposits and accounts and enable them to either claim the deposit amount or make their deposit accounts operational at their respective banks.

Given the increasing trend in the amount of unclaimed deposits, the RBI had announced the development of a centralized web portal for searching unclaimed deposits as part of the Statement on Developmental and Regulatory Policies dated April 6, 2023, and has also been undertaking public awareness campaigns from time to time to sensitize the public on this matter.

To begin with, users would be able to access the details of their unclaimed deposits in respect of seven banks (State Bank of India, Punjab National Bank, Central Bank of India, Dhanlaxmi Bank, South Indian Bank, DBS Bank India, and Citibank N.A.) presently available on the portal.

The search facility for the remaining banks on the portal would be made available in a phased manner by October 15, 2023.

MCA introduces web version of Form RD-1 on V3 Portal through the Companies (Incorporation) Second Amendment Rules, 2023

Notification No. G.S.R. 584(E)

August 02, 2023

The MCA through the Companies (Incorporation) Second Amendment Rules, 2023 revises Form No. RD-1 to be used by companies for filing application to Central Government (Regional Director) for approval of compromises, arrangements, amalgamations, and conversions and introduces a web version of it on the V3 portal. The web form now includes a new purpose of application, namely the 'Notice of approval of the scheme of merger in CAA-11'. Further, the form has been updated to include details of the transferor company, specifying the CIN and the name of the company.

MCA introduces LLP Amnesty Scheme for Condonation of Delay in filing Form-3, Form-4, and Form-11

General Circular No. 08/2023

August 23, 2023

To address the difficulties faced by certain LLPs in filing Form-3 (LLP Agreement and changes therein),

Form-4 (Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner) and Form-11 (Annual Return of LLP), for various reasons including due to mismatch in the master data in electronic registry of the Ministry which is preventing the records/data in the electronic registry from being updated, the MCA, introduces a condonation scheme for delays in filing Form-3, Form-4, and Form-11,to grant one-time relaxation in additional fees to those LLPs who could not file the Form-3, Form-4 and Form-11 within due date and also provide an opportunity to update their filings and details in master-data for future compliances. Some of the key features of the scheme are as follows: -

- **STP Mode**: The STP mode means a streamlined processing method, reducing manual interventions. The scheme stipulates processing of Form-3 and Form-4 under the STP mode, barring changes in business activities. It advises stakeholders to file forms in sequential order, according to the date of events, to update the master-data systematically.

- **Onus of Correct Filing**: Although these forms will contain pre-filled data as per existing master-data of the LLP, stakeholders can edit the information. Responsibility for correctness of data lies entirely with stakeholders. In case of misrepresentation, the designated partner, and the professional certifying the form may face adverse action as per the provisions of the law.

- **Fee Waiver & Conditional Additional Fees:** Fees for Form-3 and Form-4 filings will be waived for events dated January 1, 2021, and onwards. Events prior to this date will attract additional fees, twice and four times the normal filing fees for small LLPs and other LLPs, respectively. Similar conditions apply to Form-11, FY 2021-22 onwards, with additional fees for filings pertaining to previous years.

- **Validity of the Scheme**: The window for filing these forms will commence from September 1, 2023, and will continue till November 30, 2023.

- **Exemption from Legal Consequences**: LLPs availing this scheme will not face any legal consequences for delayed filings of Form-3, Form-4, and Form-11.

The MCA's new scheme provides an effective mitigation strategy to LLPs to tackle filing lapses and delayed form submissions and ensures that their data stays updated on the MCA's registry. It also highlights the commitment of the MCA to ease processes and assist businesses in maintaining compliance.

INTERNATIONAL DESK

UAE Corporation Tax: A round up of relief measures for SMEs

The Federal Tax Authority introduced its new rules on corporation tax in late 2022 (UAE Corporation Tax) some wondered whether the move might slow down start-up growth in the Emirates; however, the government has introduced a range of relief measures in line with its commitment to support SMEs. There have been 24 pieces of legislation released since the announcement of Corporation tax in the UAE. Here are the key takeaways that affect entrepreneurs:

- Annual Income subject to Corporation Tax (as per cabinet decision No. 116 of 2022): Smaller companies may not have corporation tax to pay based on their profit threshold-
  - ◊ Taxable profits not exceeding AED 375K – 0% corporate tax
  - ◊ Taxable profits exceeding AED 375K – 9% corporate tax
- Business Restructuring Relief (Article 27 of Law No. 47):
  - ◊ Business restructuring such as mergers or demergers can result in taxable gain or loss (even if the ultimate ownership of the business does not change).
  - ◊ The article allows certain types of restructuring transactions to take place in tax neutral manner.
- Payments to connected persons (Article 36 of Law No. 47): Payment to connected persons (e.g. directors or owners) must be at market value and wholly and exclusively for the business purposes (i.e., business owners cannot pay themselves inflated salaries).
- Tax Loss Relief (Article 37 of La No. 47): Tax losses can be offset against the taxable income of the subsequent tax periods subject to conditions.
- Withholding Tax (Article 45 of Law No. 47): Withholding tax is currently 0% in the UAE in the most circumstances (other than GCC state impose WHT).
- Accounting Standards and Methods (Ministerial Decision No. 114 of 2023): Small business with less than AED 3M of revenue can apply cash basis accounting, benefiting those who have a high level of accounts receivables.

It is imperative to get professional advice before acting in accordance with any of the above. A trusted tax consultant can advise on how to prepare and proceed in more detail. The FTA website is also an excellent resource for educating yourself on corporation tax.

UK tax leaders bracing for global minimum tax impact

A majority of UK tax leaders expect their tax planning and business operations to experience moderate to significant change once the global minimum tax is implemented, according to a EY Tax and Finance Survey. The survey found that 89% of UK finance leaders expect a moderate significant impact from the tax changes.

The UK Legislation for global minimum tax (or Pillar Two) was included in the recently enacted Finance (No. 2) Act 2023, and amendments have already been proposed for next year's Finance Bill to keep the UK legislation in line with developments at an OECD level.

The reporting period for global 15 % global minimum tax rate will come into effect in the UK from December 31, 2023.

The survey revealed that only 42% of UK tax leaders have completed the Pillar Two impact assessment. However, UK finance leaders are more prepared than global counterparts with just 30% of finance leaders worldwide, and 33% across Europe sating that their organisation has completed Pillar Two impact assessment.

UAE tax treaties with Gabon, Rwanda, Zambia in effect

UAE tax treaties with Gabon, Rwanda and Zambia have entered into effect. According to an update published by UAE's Finance Ministry,

- The UAE tax treaty with Gabon entered into force on February 16, 2023, and applies from January 01, 2019, i.e. retrospectively.
- The UAE tax treaty with Zambia entered into force on January 13, 2023, and is applicable from the same date.
- The UAE tax treaty with Rwanda entered into force on December 4, 2019, and applies from January 01, 2019, i.e. retrospectively.

United Arab Emirates: UAE Judgment On Creditors Claiming Tax Penalties From Debtors

A Dubai judgement introduces the novel perspective to the tax consequences arising out of deficit payments by the debtors in the commercial transactions. The judgement potentially empowers the creditors to claim the tax penalties from their debtors, represents a significant shift in the commercial and tax law landscape. This development is particularly noteworthy given the evolving tax regime in the UAE, underscoring its potential for future commercial interactions.

- **Liquidity Shortfall and Tax Penalties: The Age-Old Dilemma**: When creditors issues invoices, they anticipate timely payments. Any delays in the payment leads to liquidity shortfall which results in penalties from FTA. These penalties often substantial, further strain the creditor's finances, essentially penalizing them for the debtor's delays.
- **The new teat established by the Judgement**: The judgement implies that if a creditor can provide evidence of having paid the respective tax penalty, they might be able to claim it from the debtor. This test, while seemingly straightforward, could have profound implications for commercial transactions, especially when considering the broader context of the UAE's evolving tax landscape.
- **Understanding the Scope of Dam**ages: Given legal framework, it is evident that creditors have a viable avenue to claim tax penalties from their debtors. If a debtor's delay in payment (the act) leads to a creditor facing tax penalties (the damage), and there is a clear causal relationship between the delay and the penalties, the debtor could be held responsible.
- **Pragmatic Implications and the Way Forward**: From a pragmatic standpoint, this judgment, could be transformative for creditors. It offers a potential remedy against the financial strain of delayed payments and the new tax obligations. Moreover, the potential flexibility of the courts in considering varying evidence further strengthens the creditor's position. However, this potential remedy is not without challenges. Debtors could contest the validity of claims, and the exact nature and type of evidence accepted will likely be refined over time through subsequent judgments.

Authors' Note:

> *This judgment represents a significant development in the commercial and tax law landscape of the UAE. As the country's tax regime evolves, this judgment offers a potential safety net for businesses, ensuring they are not unduly penalized due to the actions of their debtors. The road ahead will undoubtedly see further clarifications and refinements, but for now, creditors have a new avenue to explore when faced with tax penalty.*

GST Disputes and GSTAT: What Lies Ahead

The GST system in India was introduced with the promise of "One nation, one tax," aiming to simplify indirect taxation. However, six years down the road, the GST landscape still faces challenges, and the major among the challenges is the lack of an efficient dispute resolution mechanism. In the ever-evolving landscape of the GST regime, the constitution of the GSTAT has been a topic of intense debate and discussion. This article delves into the recent developments surrounding the formation of GSTAT and its implications for taxpayers navigating GST disputes.

The establishment of the GSTAT was a crucial step. GSTAT serves as the first independent appellate authority for resolving GST disputes, offering taxpayers a fair and impartial platform for addressing their concerns. It's not just another legal entity, rather it's the ultimate authority in fact-finding and a vital player in settling complex legal questions, bringing much-needed clarity to GST taxation.

The journey to establish GSTAT wasn't smooth. The original provisions for its formation in Sections 109 and 110 of the CGST Act faced a lot of hurdles. The composition proposed for constituting GSTAT initially sparked controversy. Concerns were raised about the possibility of Technical Members outnumbering Judicial Members in a bench, potentially leading to an imbalance in decision-making. In **RE: Revenue Bar Association [2020-TIOL-1391-HC-MAD-GST]** the Madras High Court's partially struck down these provisions and held that for the effective delivery of justice, the presence of judicial and technical members in GSTAT, with equal strength, is imperative. In response, the GST Council in its 47th meeting made substantial amendments to these sections through the Finance Act, 2023, effective from August 1, 2023.

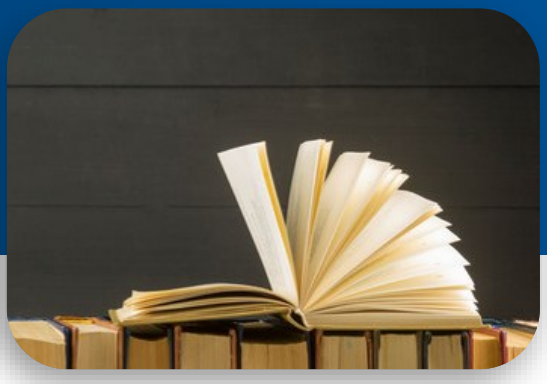
The amended provisions simplified the structure of GSTAT. The earlier concept of Regional Benches and Area Benches was removed. Instead, there's now a Principal Bench with four members, including a President (a Judge of the Supreme Court or Chief Justice of a High Court), a Judicial Member, and two Technical Members (one each from the Central and State governments). Similarly, the State Bench comprises two Judicial Members and two Technical Members. This realignment follows the Madras High Court's ruling in the Revenue Bar Association case [supra].

What Lies Ahead

With the imminent establishment of GSTAT, several significant developments are on the horizon. One of the most critical implications is the likely transfer of pending cases from various High Courts to GSTAT. Many of these cases were admitted because there was no alternative dispute resolution forum available, and transferring them to GSTAT will help ease the burden on higher courts.

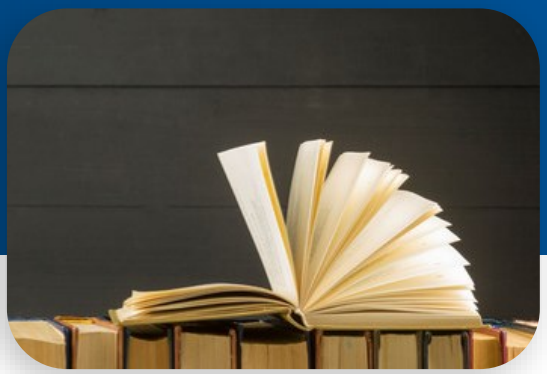
As GSTAT prepares to assume its role in the GST landscape, significant changes are anticipated. It will not only address pending cases but also play a crucial role in resolving a wide range of GST-related disputes. As taxpayers brace themselves for this new phase of GST litigation, adaptability and vigilance in response to evolving tax regulations will be paramount. The advent of GSTAT signifies a new era in the resolution of GST disputes, promising more efficient and specialized adjudication.

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
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
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
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IT Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NFT	Non-Fuungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
OBU	Offshore Banking Unit
OECD	Organization for Economic Co-operation and Development
OPC	One Person Company
OFS	Offer for Sale
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal 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
TNMM	Transactional Net Margin Method
TPO	Transfer Pricing Officer

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

FIRM INTRODUCTION

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

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

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

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

Website: **www.taxcraftadvisors.com**

GLS Coporate Advisors LLP ('GLS') is a consortium of professionals offering services with seamless cross practice areas and top of the line expertise to its clients/business partners. Instituted in 2011 by eminent professionals from diverse elds, GLS has constantly evolved and adapted itself to the changing dynamics of business and clients requirements to offer comprehensive services across the entire spectrum of advisory, litigation, compliance and government advocacy (representation) requirements in the field of Goods and Service Tax, Customs Act, Foreign Trade, Income Tax, Transfer Pricing and Assurance Services.

Of-late, GLS has expanded its reach with offerings in respect of Product Centric Regulatory Requirements (such as BIS, EPR, WPC), Environmental and Pollution Control laws, Banking and Financial Regulatory laws etc. to be a single point solution provider for any trade and business entity in India.

GLS has worked with a range of companies and have provided services in the field of business advisory such as corporate structuring, contract negotiation and setting up of special purpose vehicles to achieve business objectives. GLS is uniquely positioned to provide end to end solutions to start-ups companies where we offer a blend of services which includes compliances, planning as well as leadership support.

With a team of dedicated professionals and multiple offices across India, it aspires to develop and nurture long term professional relationship with its clients/business partners by providing the most optimal solutions in practical, qualitative and cost-efficient manner. With extensive client base of national and multinational corporates in diverse sectors, GLS has fortified its place as unique tax and regulatory advisory rm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

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