VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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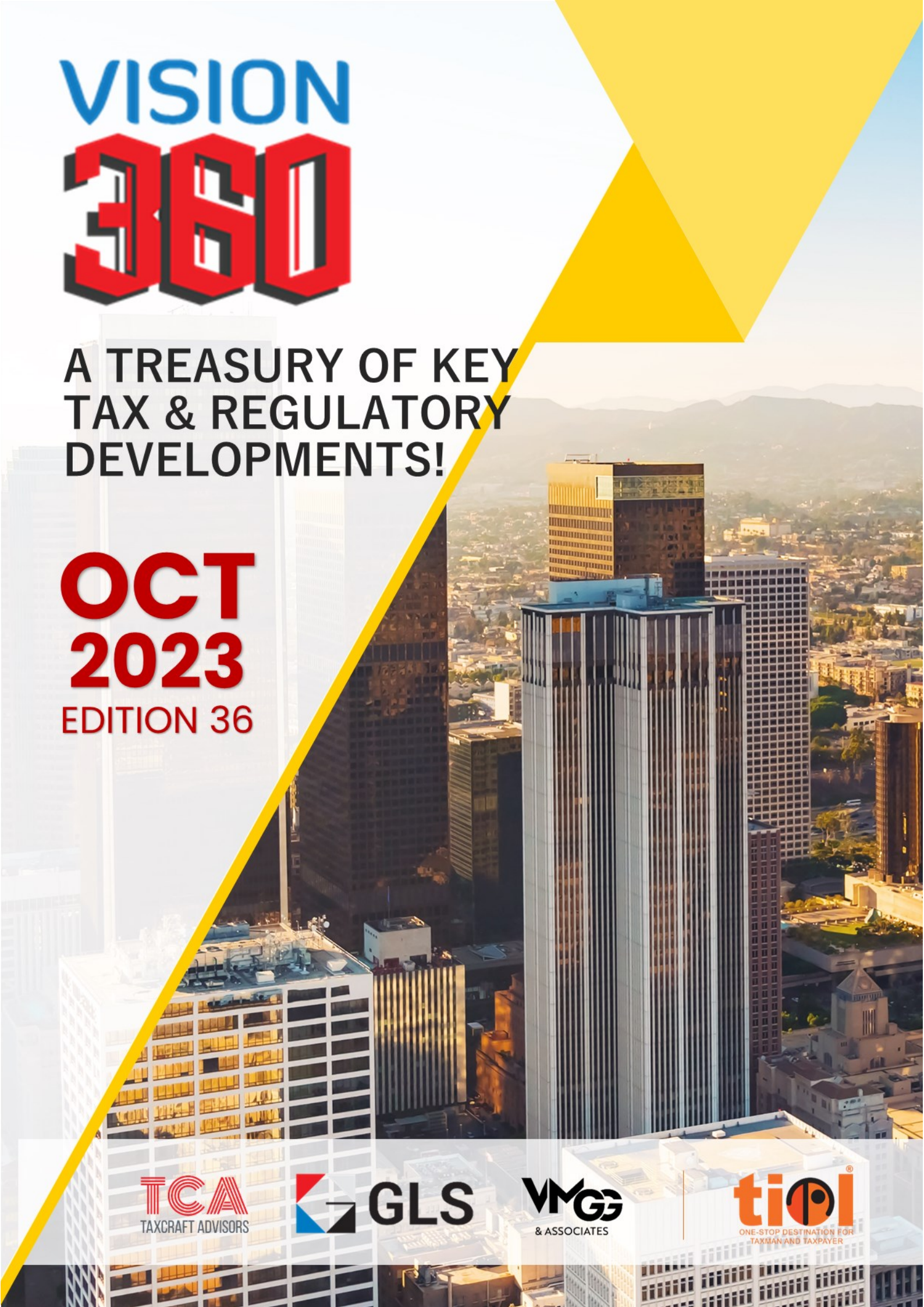

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EDITORIAL

Vision 360: Change & Beyond...

Embracing change is the essence of progress, following the recommendations of the 50th and 51st GST Council meetings, the Government has officially notified that the amendments to the CGST Act through the CGST Amendment Act, 2023, which will come into effect from October 2023. The recent 52nd GST Council has also initiated a series of substantial changes that carry wide-ranging implications for taxpayers and the overall GST framework. These decisions are driven by the goals of simplifying processes, reducing legal disputes, and providing greater clarity.

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

Central and State governments have collected 10% YoY growth in the month of September 2023, marking the fourth highest monthly collection since the inception of the indirect tax regime and a 10% annual growth from the year-ago period. The finance ministry as well as tax experts expect the collections to get a boost during October and November as the festival season kicks in. Besides, tighter regulation and the inclusion of online gaming and casinos in the GST net are expected to help swell the kitty in the coming months.

In addition to economic growth, the Indian judiciary has delivered some remarkable judgments in the tax sphere, including rulings of the Patna HC which upheld the constitutional validity of time limit for claiming ITC under section 16(4) of the CGST Act . Thus, as per the leading judgement in the matter, conditions and restrictions for availment of ITC are legal and not unconstitutional.

Speaking of direct tax developments, the Directorate of Income-Tax (Systems) notifies e-procedure for grant of 'Nil'/lower TDS certificate under Section 197 of the IT Act. The CBDT has also extended the due date for furnishing of audit reports in Form 10B/ Form 10BB for FY 2022-23 to October 31, 2023 and filing of ITR-7 for AY 2023-24 to November 30, 2023.

We have also penned down articles on the controversy dealing with admissibility of cash refund of CENVAT credit in case of factory closure. The authors have inferred it best, highlighting conflicting judicial interpretations and a recent Bombay Tribunal decision that may have implications for both the excise and GST regimes in India.

International landscapes in the field of taxation across the globe witnessed numerous modifications and amendments. UAE has solidified its position as an attractive destination for Indian SMEs through progressive visa regulations aimed at facilitating business operations and fostering collaboration.

In all, we the entire team of TIOL, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMGG & Associates**, are glad to publish the **36th** 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

VALUATION DISPUTE CONTINUES FOR INDIAN AUTOMOBILE SECTOR

Supreme Court has recently issued notice to European car maker 'Skoda' in a dispute involving inclusion of 'liquidated damages' arising from non-fulfilment of contracted purchase with its sister concerns in the excisable value of motor vehicles sold by Skoda. 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 excisable value. These liquidated damages were contractually agreed and recovered by 'Skoda' for failure on part of its sister concerns to fulfil its purchase commitment.

Notably, the Tribunal has set aside the demand by noting deficiency in the show cause notice as well as adjudication order to cite the appropriate statutory provision, even though both revenue and Skoda argued meticulously on merits of the case. 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 Ltd [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.

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.

The jurisprudence so far on the taxability of 'liquidated damages' is certainly in favour of taxpayers, yet it would be complacent to think that revenue would not espouse an arsenal of arguments only to be endorsed by Hon'ble Apex court to everyone's surprise as was the case of FIAT. In fact, it becomes all the more necessary to be vigilant, given that Rule 11 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 allows determination of assessable value in 'best possible manner' leaving a wide spectrum of assessment methodology at the revenue's disposal, as was duly conjured by revenue in FIAT's case!

As parting thoughts of this article, we are tempted to quote Dylan Thomas "Do not go gentle into that good night... Rage, rage against the dying of the light...though wise men at their end know dark is right... Do not go gentle into that good night!"

INDUSTRY PERSPECTIVE

Ganpat Kapdi

Chief Financial Officer

Schiffer Menezes India Private Limited

01 The GST revenue collections has recorded a 10% Y-o-Y growth in the month of September 2023? Do you see this as a testament of the growing Indian economy?

Well, the introduction of GST certainly has revolutionized the tax structure in India. I believe one of the reasons for the record GST revenues is that consumption tends to substantially increased in the festive seasons, which has just begun. Apart from the consumers, I believe even the GST council has a lot to do with the rise in Revenue. Now that it has become mandatory for taxpayers having a turnover of more than INR 5 cr., to generate / issue e-invoices, the menace of fake invoices has substantially decreased. Thus, I can say this without a doubt that growth in GST revenues stands testament to the economic growth of India.

02 There have been various effective changes in the GST w.e.f October 01, 2023. Can you provide insights into the new insertion and how do you think it impacts businesses in the current tax landscape?

A lot of legislative changes with an eye on the ease of doing business and reducing difficulties in compliance obligations with reference to GST Laws were proposed as part of Finance Bill 2023. The GST landscape in India witnessed significant changes as of October 1, 2023, with a series of amendments introduced following the recommendations made in the 50th GST Council meeting.

While the inclusion of small taxpayers who sell goods through E-commerce operators in the Composition levy is a welcome move, other actions like penalizing E-commerce operators for violations and increasing the monetary threshold for prosecution have made the GST law more stringent. As businesses navigate these changes, it is vital to prioritize compliance and ensure that they align with the evolving GST regulations. Adhering to these amendments will not only prevent non-compliance penalties but also contribute to a more efficient and transparent GST ecosystem. This highlights the mixed impact of the recent GST changes, with certain aspects benefiting small taxpayers while others impose stricter regulations. It underscores the importance of compliance for businesses to thrive in the evolving GST landscape.

Ganpat Kapdi
CFO - Schiffer Menezes India Private Limited

03 What are your views on the Government's objective of faceless scheme of tax? Do you think it is achievable?

Despite certain hiccups in the implementation, the new Faceless Customs procedure seems to be fairly running, albeit with some obstacles. We have seen that instead of cutting down on the time it takes to clear goods from the port, the authorities are taking longer to clear the regular shipments. Most of the time, this is because assessments are sent to officials at ports which are relatively less accustomed to sophisticated sectors such as electrical equipment. Thus, the officials are riddled with rather avoidable queries in relation to valuation, classification, etc.

As regards the faceless assessments in Direct Tax and GST, a number of taxpayers from all the industries have been facing certain issues such as non-granting of personal hearing, issuance of ex-parte orders before the due date for making submissions, etc. This unnecessarily adds to litigation burden on the taxpayers and the Courts. I believe that the solution to this issues that the officers must be trained adequately to conduct faceless assessments.

04 Being a Company engaged in manufacture of toy products, what challenges are overall faced by the Company?

In the toy sector, our company encounters notable challenges concerning the tariff classification of import goods. The toy industry is characterized by a wide variety of products, often with subtle distinctions between them. These nuances may not always fit neatly into existing tariff classifications, which can be understandably complex and may not account for every possible product variation. This challenge arises because minor differences in toy specifications may not have dedicated tariff codes. Consequently, determining the precise tariff code for each toy product can be a complex and time-consuming endeavor.

05 Do you face any compliance issues in tax, and are any changes expected to be taken up by Government?

Companies in the toy manufacturing industry have indeed encountered compliance challenges, particularly in relation to GST classifications and tax rates for different toy categories. The industry has called for Government intervention to address these issues and create a more uniform and favorable tax structure. The industry has urged the Government to consider implementing the PLI scheme, which could significantly benefit the sector and promote its growth. These requests highlight the need for regulatory adjustments to facilitate compliance and foster the industry's development.

06 Toy manufacturers have urged the government to resolve a GST anomaly and immediate roll-out of the PLI scheme to boost the growth of the sector. Could you elaborate your stance?

Toy manufacturers are actively advocating for the Government's intervention to address a significant GST anomaly that has been affecting the industry. This anomaly has created challenges in terms of taxation

Ganpat Kapdi
CFO - Schiffer Menezes India Private Limited

and compliance, impacting the cost structure and competitiveness of toy manufacturers in India. The industry is grappling with a critical issue concerning the varying rates of taxation for different categories of toys, which is hindering the sector's progress up the value chain.

Currently, mechanical toys attract a 12% GST rate, while electronic toys are subject to an 18% GST rate. The classification of a toy can change simply by adding a bulb or a sound mechanism. This is an anomaly and we have urged for its removal. This itself is acting as a barrier to many more companies moving to manufacturing of more sophisticated toys.

Thus, we manufacturers are emphasizing the urgent need for the timely implementation of the PLI scheme. We believe that this scheme holds the potential to be a game-changer for the toy manufacturing sector by providing financial incentives to boost production and promote the growth of the industry. The Indian toy market currently stands at INR 16,000 crore which is 0.5% of the global market that is around USD 120 billion. There exists immense potential for growth. Addressing these taxation disparities and trade policies could pave the way for a more conducive environment for the sector to flourish, ultimately allowing India to expand its share in the global toy market and positively impacting the industry as a whole.

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ITAT holds services provided on year-to-year demonstrates 'make available' not satisfied, rejects FIS taxability

Bain & Company, Inc.

2023-TII-210-ITAT-DEL-INTL

The Assessee was a US-based company that had received INR.5.24 Crores towards provisions of consultancy services from its Indian affiliate. The Revenue noted that the Assessee did not offer the said receipt to tax, on the ground that the said receipt was not in the nature of FIS and therefore, not taxable in India and accordingly making an addition, dismissed the Assessee's submission and held that the aforesaid receipt was taxable in India as FIS under Article 12(4)(b) of India-USA DTAA since the Assessee made available technical know-how, knowledge, skill etc. to the service recipient.

Aggrieved, the Assessee approached the ITAT which analysing the consulting service agreement, observed that the nature of services provided by the Assessee was related to market research, strategic research and planning, data collection, client engagement etc. and the Revenue had failed to bring any material on record to demonstrate that the Assessee, while rendering the services, made available technical knowledge, expertise, skill, know-how etc. to the Indian affiliate, to enable them to apply such technology, know-how etc. independently without the aid and assistance of the Assessee. Further, the ITAT observed that had the Assessee made available the technical knowledge, know-how, skill etc. to the Indian affiliate, there would not have been any occasion for the Assessee to provide such services continuously on an year to year basis since 2010, as the making available or transfer of such technical knowledge, know-how, skill etc. would have enabled the Indian affiliate to apply them on its own without requiring the Assessee to

continue to provide them. Moreover, Example 7 in the MOU to India-US DTAA, expressly stated that a receipt could not be treated as FIS merely because the service provider used substantial technical skill and expertise, while providing consultancy services where it was not made available to the service recipient. Thus, holding that the Assessee's receipt towards provision of consultancy services was not in the nature of FIS under Article 12(4)(b) of India-USA DTAA and hence not taxable in India, the ITAT allowed the Assessee's appeal.

HC dismisses writ challenging rejection of application under Section 197 of the IT Act for presence of alternative statutory remedy

Coforge Solutions Pvt. Ltd

CWP/2453/2023

The Assessee was a company that was engaged in the business of providing IT and ITeS support services that had filed an application under Section 197 of the IT Act for issuance of certificate of lower deduction of tax on the amount receivable by it for the months of January to March 2023. The Assessee contended that since the total tax deducted/deposited was much higher than the total estimated tax liability, for the AY 2023-24, no further deduction of tax was required on the amounts receivable by it from its customers, however, the Revenue passed an order under Section 197 rejecting the Assessee's application on the ground that its financial statements for the last four years were not available and therefore, the estimated tax to turnover ratio could not be determined to arrive at the lower rate of tax, as specified by Rule 28AA of the IT Rules.

Aggrieved, the Assessee preferred a writ petition before the HC, which observed that the remedy of writ was an absolutely discretionary remedy and the HC had the discretion to refuse to grant any writ if it was satisfied that the aggrieved party could have an adequate or suitable relief elsewhere, however the HC, in extraordinary circumstances, could exercise the power if it came to the conclusion that there had been a breach of principles of natural justice or the procedure required for the decision had not been adopted. Since the Assessee failed to demonstrate that there was any violation of principle of natural justice on the part of the Revenue, while passing the order, or there was a lack of jurisdiction, or the procedure required for the decision had not been adopted or that the alternative efficacious remedy under the law had been exhausted, the HC holding the writ petition to be not maintainable, dismissed the same and directed the Assessee to approach the appropriate authority to avail the alternative remedy in accordance with the law.

SC disposes of SLP involving constitutionality of retrospective omission of Section 144B(9) of the IT Act as assessment remitted by HC

Sapna Flour Mills Ltd

Special Leave Petition (Civil) Diary No(s). 24418/2023

The Assessee had reapproached the HC challenging the constitutionality of the retrospective omission of Section 144B (9) of the IT Act and the issue of notice by the ACIT instead of the NFAC for the initiation of the reassessment proceedings despite the order of the HC which set aside the assessment order and remitted the matter back to the NFAC for passing fresh assessment order after providing due opportunity of personal hearing to the Assessee by fixing a date for video conferencing. However, the HC observed that

the procedure set in place for conducting reassessment proceeding was not followed and was in violation of the principles of natural justice as the Assessee was served with a SCN and draft assessment order to which it had submitted a response running into 20 pages and requested for personal hearing due to the complexity of the matter and although the request of the Assessee was acknowledged, the Revenue did not provide an opportunity of personal hearing and gave no response to the request of the Assessee for grant of opportunity of hearing through video conferencing and passed the assessment order without giving any reason for denial of the personal hearing.

The HC further observed that, as per the faceless assessment procedure set in place from April 1, 2022 by amendment in Section 144B (7) of the IT Act, personal hearing through video conferencing had been made mandatory in case of the request made by the Assessee. Moreover, on the constitutionality of retrospective omission of Section 144B (9) of the IT Act, the HC observed that it was settled that amendments relating to procedure operated retrospectively and the only exception was that whatever be the procedure which was correctly adopted, the proceedings concluded under the old law could not be reopened for the purpose of applying the new procedure. In addition to the above, regarding issuance of notice by the ACIT instead of NFAC, the HC observed that the reassessment proceedings were initiated by ACIT and therefore, the subsequent notice issued from the office of the ACIT, could not be said to suffer from any error of law as all the subsequent proceedings were conducted through the NFAC. Aggrieved, the Assessee preferred an SLP before the SC which held that since the matter had been remitted to the Assessing Authority to be considered on merits, liberty was granted to the Assessee to revive this petition in the event the Assessee was unsuccessful before the statutory authorities in raising the contentions raised in this SLP and disposed of the matter.

HC remits assessment as SCN sent to non-designated email, though uploaded on portal

Indian Bank

W.P. No.25593 of 2021

The Assessee was a bank that had preferred a writ petition before the HC challenging the assessment order of the Revenue on the ground that the Revenue had sent the SCN and draft assessment order to the non-designated email ID of the Assessee. The Assessee contended that it responded to notices under Section 142(1) of the IT Act since they were sent to the correct email ID, but, subsequently, the SCN as well as draft and final assessment were sent to different email IDs.

The HC observed that merely because the intimations were sent to one of the branch officers of the Assessee, it was not sufficient for completing the assessment, particularly when notice under Section 142(1) of the IT Act was earlier sent to the correct e-mail ID and was responded to by the Assessee. Moreover, although the notices had been sent to some of the e-mails of the Assessee and were hosted in the portal for the Assessee to access the same, the Assessee had no proper information at the Headquarters about where the office of the Assessee would have to be stated for the purpose of income tax compliances. Thus, setting aside the assessment order passed by the Revenue, the HC remitted the matter back to the Revenue to pass a fresh order on merits in accordance with law within 12 weeks from the date of receipt of the order and directed the Revenue to ensure that the web portal was open for the Assessee to upload the reply to notice.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT expands scope of exemption under Section 47 (viiab) of the IT Act by including units of IFSC based ETFs, Investment Trusts and Schemes

Notification No. 71/2023 dated September 12, 2023

CBDT vide Notification No. 89/2022 dated August 3, 2022, had notified 'Bullion Depository Receipt with underlying bullion' for the purpose of exemption under Section 47(viiab) of the IT Act by amending Notification No. 16/2020 dated March 5, 2020.

In this backdrop, CBDT notifies further amendments made by the Central Government to Notification No. 16/2020 dated March 5, 2020, for expanding the scope of the exemption under Section 47(viiab) of the IT Act.

The new Notification includes the following investment instruments regulated under IFSCA (Fund Management) Regulations, 2022, within the scope of Section 47(viiab) of the IT Act: -

- unit of an Investment Trust.
- unit of a Scheme.
- unit of an Exchange Traded Fund.

CBDT notifies Top, Upper & Middle Layer NBFCs under Section 43B & 43D of the IT Act

Notification No. 79/2023 & Notification No. 80/2023 dated September 22, 2023

The CBDT notifies all NBFCs classified in the Top Layer, Upper Layer and Middle Layer for the purpose of Section 43B(da) and Section 43D of the IT Act.

The classification of NBFCs in the Top Layer, Upper Layer and Middle Layer shall be as per the RBI Guidelines contained in **Circular No. DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021.**

CBDT amends Rule 11UA of the IT Rules effective September 25, 2023

Notification No. 81/2023 dated September 25, 2023

CBDT amends Rule 11UA of the IT Rules to inter-alia provide the following:

- **Benchmarking price for Venture Capital Undertakings (Sub-clause c)**: The amended rule now allows venture capital undertakings to consider the price of equity shares issued to venture capital funds, venture capital companies, or specified funds as the FMV, provided the consideration received does not exceed the aggregate consideration from these entities. This option can be exercised within 90 days

before or after the issuance of shares.

- **Additional Valuation Methods for Non-Resident Investors (Sub-clause d)**: Under the amended rule, taxpayers have the option to determine the FMV of unquoted equity shares using various methods. This includes the traditional method of (A-L) × (PV/PE) & DCF, similar to the previous rule. However, the non-resident taxpayers can now choose from several other methods like Comparable Company Multiple, Probability Weighted Expected Return, Option Pricing, Milestone Analysis, and Replacement Cost Methods.
- **Shares Issued to Notified Entities (Sub-clause e)**: A company can now use the price of equity shares issued to entities notified under clause (ii) of the first proviso to Section 56(viib) of the IT Act as the FMV, as long as the consideration received does not exceed the aggregate consideration from the notified entity. This option is also available within 90 days before or after the issuance of shares.
- **Compulsorily Convertible Preference Shares (Clause B)**: The amended rule now explicitly addresses the valuation of compulsorily convertible preference shares.
- **Valuation Date (Sub-rule 3)**: Where the date of valuation report by the merchant banker for the purposes of sub-rule (2) is not more than 90 days prior to the date of issue of shares which are the subject matter of valuation, such date may, at the option of the assessee, be deemed to be the valuation date.
- **Safe Harbor Norms (Sub-rule 4)**: The amended rule provides a tolerance level for cases where the issue price of shares exceeds the valuation price (for both residents and non-residents). If the excess amount does not exceed 10% of the valuation price, the issue price is deemed to be the FMV.

Directorate of Income-Tax (Systems) notifies e-procedure for grant of 'Nil'/lower TDS certificate under Section 197 of the IT Act

Notification No. 02/2023 dated September 27, 2023

Directorate of Income-Tax notifies the procedure and standards for filling an application in Form 13 with Annexure II under Section 197(1) of the IT Act seeking 'Nil' or lower TDS certificate through TRACES website.

The deductor after receiving the certificate from the Applicant shall report the same in the TDS statements. The consumption of the certificate shall be on the basis of processing of TDS statements as per FIFO principle. Therefore, the deductor is advised to verify/track consumption status of the certificate on the TRACES website before furnishing certificate details in TDS statement to avoid any defaults.

CBDT notifies Form 6D for Inventory Valuation Report under Section 142(2A) of the IT Act

Notification No. 82/2023 dated September 27, 2023

CBDT amends Rule 14A of the IT Rules to provide Form 6D as Report of Inventory Valuation required to be furnished under Section 142(2A) (ii) of the IT Act. Further, CBDT also amends Rule 14B of the IT Rules to provide guidelines for determining expenses for special audit to apply for inventory valuation, *inter-alia* requiring every Chief CIT to also maintain a panel of Cost Accountants.

CIRCULARS

CBDT extends due date for furnishing of audit reports in Form 10B/ Form 10BB for FY 2022-23 to October 31, 2023 and filing of ITR-7 for AY 2023-24 to November 30, 2023

Circular No. 16/2023 dated September 18, 2023

CBDT extends due date for furnishing audit reports in Form 10B/Form 10BB for FY 2022-23 to October 31, 2023 from September 30, 2023. Further, the CBDT also extends the due date of furnishing ITR-7 for AY 2023-24 to November 30, 2023 from October 31, 2023.

TRANSFER PRICING
From the Judiciary

ITAT holds transactions with separate AEs in different jurisdictions cannot be aggregated, remits TP-adjustment

Andritz Hydro Private Limited

ITA No. 75/Bang/2022

The Assessee was engaged in the design manufacture, servicing, erection and installation of hydro and thermal power generators that had entered into international transactions with around 14 AEs based in different tax jurisdictions and aggregated the same for the purpose of benchmarking. The TPO however treated each project as a separate international transaction and proposed a TP-adjustment. Aggrieved, the Asseesee approached the ITAT which placing reliance on the OECD Guidelines and IT Rules, observed that the concept of aggregation of closely linked transactions would be restricted only to the number of transactions which each AE executed in same geographical and economical environment. The transactions with separate AE's could not be aggregated under the rule of aggregation.

Moreover, when the AEs are based at different economic, market and geographical conditions then the transactions of project executed for different AE at different tax jurisdiction, economic, geographical and market conditions could not be grouped together for determination of ALP. Therefore, the Assessee's approach of aggregating all transactions with all AEs (based in different locations, different conditions, etc.) was beyond the scope of aggregation of the transaction which are closely linked and continuous depending upon each other. Similarly, the TPO erred in rejecting aggregation in-toto. Thus, holding that the TP analysis was required to be done afresh having regard to the scope of aggregation of closely linked transactions, the ITAT remitted the TP-adjustment to the TPO for fresh determination of ALP.

HC dismisses Revenue's review petition on grounds not challenged by Assessee earlier

Mphasis Limited

Review Petition No. 344 of 2022

The PCIT had filed a review petition before the Karnataka HC pleading the HC to restore the appeal filed by the PCIT to be heard afresh.

The HC noted that the Tribunal had dismissed the Assessee's plea regarding the applicability of 15% RPT filter as against 25% of sales applied by TPO and the Assessee did not challenge Tribunal's findings in this regard and accordingly observed that, since the Assessee did not challenge the findings, the said question did not arise for consideration. Moreover, the review petition had been filed on the ground that the said question had not been answered. Thus, finding no reason to interfere with the impugned order, the HC dismissed the review petition.

ITAT deletes TP addition qua IGS, remits adjustment qua technical know-how royalty

Contitech India Private Limited

ITA No. 2161/Del/2017

The Assessee had availed IGS (technical, marketing and administrative support services) from its AE for which payment of corporate charges were made to the AE. The Assessee had also entered into an international transaction of payment of royalty for technical know-how. The TPO rejected the entity wise benchmarking undertaken by the Assessee in its TP study using TNMM, applied the CUP method and determined the ALP of both the transactions as Nil and made TP adjustments.

Aggrieved, the Assessee approached the ITAT which with regards to IGS, admitted additional evidence and set aside the matter to the TPO for de novo consideration. Later, the TPO examined the evidence and found the TP study in order and held that after perusing the additional evidence, it was inferred that the Assessee had received tangible benefit from its AE and the TP addition made in respect of corporate charges was deleted and since, the issue had a historical record and legacy issue, the adjustment made could not be upheld. With regards to the adjustment made on account of technical know-how royalty, the ITAT placed reliance on the coordinate bench ruling in Assessee's case for previous years wherein similar adjustment had been remitted to the file of the TPO. Thus, deleting the adjustment made by the TPO qua IGS and remitting the adjustment made by the TPO qua technical know-how royalty, the ITAT disposed of the Assessee's appeal.

ITAT holds excise-duty non-deductible from export turnover, deletes royalty adjustment following earlier orders

Indian Explosives Private Ltd.

ITA No. 272/KOL/2021

The Assessee had entered into international transactions with its AEs in relation to sale of goods and payment of royalty. The Revenue not convinced with the Assessee's TP study made TP adjustments with regards to the sale of property by deducting the excise duty from the export turnover and with regards to the payment of royalty by the Assessee to its AE for determination of ALP of these international transactions. Aggrieved, the Assessee approached the ITAT which with regards to the TP adjustment made by the Revenue in respect of sale of goods, observed that excise duty was not to be deducted from the export turnover for determining ALP of the goods supplied by the Assessee to its foreign AEs, and accordingly, remitted the issue to the AO for re-adjudication.

With regards to the TP adjustment made by the Revenue in respect of royalty payment by the Assessee to its AE, the ITAT deleted the TP adjustment by placing reliance on the coordinate bench ruling in the Assessee's own case for previous years wherein similar adjustment was deleted. Thus, the ITAT ruled on TP adjustment made by the Revenue in respect of sale of goods and royalty payment by the Assessee and disposed of the matter.

ARTICLE

LIMITATION INTRODUCED BY CIRCULAR TO AMEND SHIPING BILL STRUCK DOWN

The Bombay High Court ('Bombay HC') delivered a notable judgment in the case of **COLOSSUSTEX PRIVATE LIMITED AND ANR. VERSUS UNION OF INDIA & Ors. [2023 (9) TMI 313 - BOMBAY HIGH COURT],** whereby it struck down limitation of three months imposed on amendment of shipping bill from the date of Let Export Order. The Limitation was introduced by way of Circular No. 36/2010-Custom dated September 23, 2010.

The Hon'ble Bombay HC held the limitation to be ultra vires of Section 149 of the Customs Act which provides for the provisions relating to amendment of Shipping Bill. It also analysed, amendment to Section 149 that empowered Central Government to 'provide for regulations' under Section 149. However, the Bombay HC differentiated 'issuance of circular' from 'providing for regulations' and continued to lay down its rationale invalidating the limitation.

This landmark decision can broadly be analysed based on amendment to Section 149 and the corresponding position of law prior and post such amendment, which has been analysed in ensuing paragraphs.

PRE-AMENDMENT OF FINANCE ACT

The Hon'ble Bombay HC observed that, prior to the amendment of Section 149 by the Finance Act 2019, No. 23 of 2019, i.e. prior to 1st August 2019, the Central Government was not vested with any authority and/or power to prescribe a time-frame and/or restrictions and conditions to be imposed for amendment of the documents as per Section 149.

Therefore, paragraph 3(a) of the Impugned Circular No. 36/2010-Customs, which was issued prior to amendment of Section 149, could not have prescribed any time limits when the substantive provision of Section 149 of the Customs Act itself did not confer such power on the Central Government.

The Hon'ble Bombay HC relied on the **Pinnacle Life Science Pvt. Ltd. vs. Union of India [2022 (7) TMI 725 (Bom.)]** wherein a co-ordinate bench of the Hon'ble Bombay HC had observed that the Impugned Circular prescribing the three months' time period to make a request for amending the bills as per Section 149 of the Act could not have been issued by the CBEC and was illegal and without jurisdiction.

POST-AMENDMENT

The Finance Act, 2019 amended Section 149 of the Customs Act and add "In such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed."

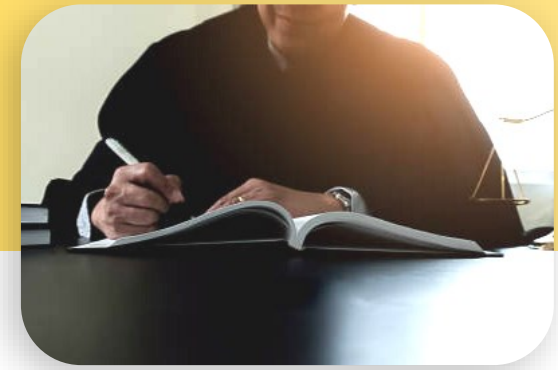
The Hon'ble Bombay HC observed that since the Impugned Circular, prior to amendment, could not be traced to any authority, power and jurisdiction which was vested with the Board, the Amendment could not in any manner be construed so as to have any retrospective application which conferred the Board with any such power. Further, as per the amendment, the Impugned Circular could only be issued in the manner as prescribed, which was, evidently, not done.

The Hon'ble Bombay HC, on a harmonious reading of Section 2(32) which describes the term 'prescribed' and Section 2(35) which describes the term 'regulation' and Section 157, which prescribes power to make regulations under the Customs Act, held that the Impugned Circular could in no manner be construed to mean to be a 'regulation' as made by the Board under the Customs Act.

The Hon'ble Bombay HC further relied on the Gujarat High Court's decision in **M/s. Mahalaxmi Rubitech Ltd. vs. Union of India [2021 (3) TMI 240 - GUJARAT HIGH COURT]** which considered the purport of Section 149, as it stood post 2019 amendment, and held the Impugned Circular to the extent it incorporated paragraph 3(a) was ultra vires of Article 14 of the Constitution of India as also ultra vires of Section 149 of the Customs Act.

Hence, the Hon'ble Bombay HC held that paragraph 3(a) of the Impugned Circular prescribing the time limit of 3 months from the date of LEO for amendment of shipping bills, was ultra vires Article 14 of the Constitution of India as also Section 149 of the Customs Act.

GOODS & SERVICES TAX
From the Judiciary



SC stays Karnataka HC's order in Gameskraft Case

Gameskraft Technologies Private Limited and Ors

2023-TIOL-130-SC-GST

The Supreme Court has issued a stay on the Karnataka HC judgement **[2023-TIOL-531-HC-KAR-GST],** quashing SCN claiming INR 21,000 crore in dues from online gaming company Gameskraft. The issue at hand revolves around whether online games like Rummy, which primarily rely on skill rather than chance and are played with or without stakes, can be considered as gambling or betting as per Entry 6 of Schedule III of the CGST Act.

The Single Judge of the Karnataka HC had quashed the SCN noting that the terms 'betting' and 'gambling' have become nomen juris and hence these words contained in Entry 6 of Schedule III to the CGST Act are not applicable to online rummy or any other online games that are substantially and preponderantly games of skill, whether played with stakes or without stakes. The DGSTI filed an appeal against this judgment. The Revenue's counsel argued that the way the judgment in **Skill Lotto Solutions Private Limited [2020-TIOL-176-SC-GST-LB]** has been distinguished in paragraph 7 of the impugned judgment raises significant concerns.

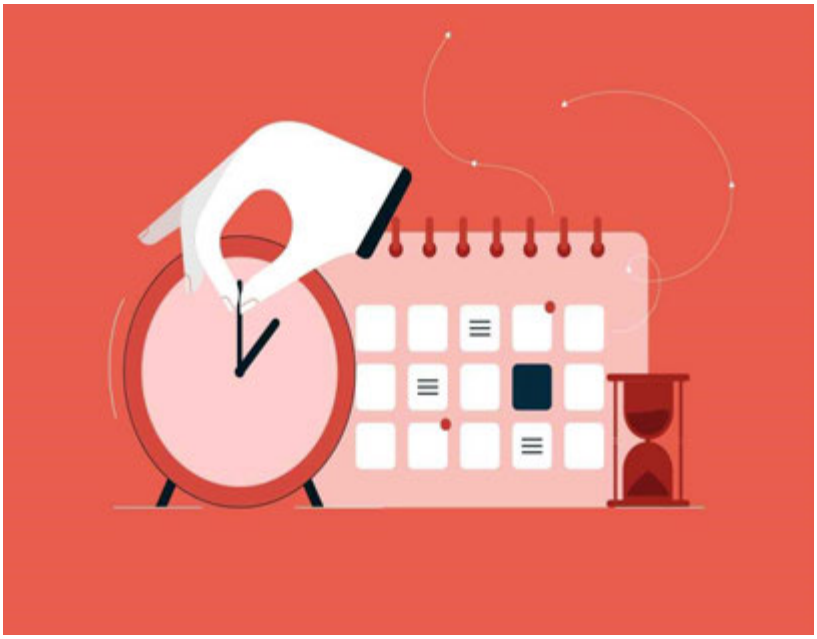
Author's Notes:

> *It would be pertinent to note that the Apex Court in **RE: Skill Lotto (supra)** had categorically held that when CGST Act defines the term 'goods' to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes.*

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

Gobinda Construction

2023-TIOL-1178-HC-PATNA-GST



In the instant case, a batch of writ petitions challenging the constitutional validity of Section 16(4) of the CGST Act, had been heard together by the Patna HC. The main question to be decided by the HC was whether the denial of ITC due to the delayed filing of the annual return infringes upon the constitutional right under Articles 14 and Article 300A of the Constitution of India. The Petitioners also sought a declaration that Section 16(4) should not override the substantive ITC conditions in Section 16(1)

and Section 16(2).

Upon reviewing the language of Section 16, the HC observed that the section 16, is clear and unambiguous in its language as it explicitly states that a registered person shall not be entitled to claim ITC in respect of any invoice or debit note for the supply of goods or services after a specified date. The Court also emphasized that ITC is not an unconditional right rather, it is subject to certain conditions and restrictions outlined in the CGST Act. Furthermore, the Court highlighted that the presumption of the constitutional validity of legislation, and the burden of proving otherwise lies with the party challenging its validity. Accordingly, Section 16(4) of the CGST Act was found to be constitutionally valid and not in violation of Articles 19(1)(g) and 300A of the Constitution.

Author's Notes:

> *The Apex Court in **RE: ALD Automotive Private Limited** had held that the input credit is in nature of concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute. Whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. Thus, as per the leading judgement in the matter, conditions and restrictions for availment of ITC are legal and not unconstitutional.*

HC: Notices must be strictly accompanied with the summary of demands

Shubham Gupta

W.P.(C) 12457/2023

The Petitioner had received the SCN proposing imposition of penalty, however the summary of the proposed demand has not been communicated electronically in FORM GST DRC-01 and FORM GST DRC-02 as required u/r. 142(1) of the CGST Rules. Aggrieved the Petitioner filed a Writ before the Delhi HC.

The HC observed that any notice issued under the relevant provisions of the CGST Act, must be accompanied by a summary of the notice and demands electronically in FORM GST DRC-01 and FORM GST DRC-02. The HC further noted that while it is ideally required to be furnished along with the SCN, providing the summary at a later stage would still be considered substantial compliance with the provisions. Accordingly, the court disposed of the petition with the direction to the proper officer to issue the required summary electronically.

HC: Cancellation of GST registration requires proper justification

Nirakar Ramchandra Pradhan

Writ Petition No.2534 of 2023

The Petitioner had been served with SCN alleging that the registration had been obtained through fraud, wilful misstatement, or suppression of facts. However, the SCN did not provide any material or reasons to support these allegations. Aggrieved, the Petitioner preferred a Writ before the Bombay HC, contending that the SCN was defective and lacked proper justification for the cancellation.

The HC noted that the cancellation of the Petitioner's GST registration was arbitrary in nature as the SCN was defective, not containing any material or reasons to support the allegations. The HC also noted that

cancellation of registration has civil consequences, and it cannot be done without proper justification. Therefore, the court ruled that the cancellation was not in accordance with the principles of natural justice and was devoid of any valid reasons.

HC: Department obligated to consider the Appeal in accordance with the law despite assessee's absence

Makhan Lal Sarkar and Anr.

WPA/2146/2023

The Petitioner's ITC was disallowed due to the inadvertent error by supplier in failing to mention the GSTIN number and incorrectly reporting the supply as B2C instead of B2B in FORM GSTR-1. Further, the Petitioner, despite being offered multiple opportunities, did not to attend the personal hearing. Accordingly, an ex parte order was issued by the Respondent. Aggrieved the Petitioner preferred a Writ before the Calcutta HC.

The HC observed that while the Petitioner did not appear before the authorities despite being given multiple opportunities, the Department was still obligated to consider the appeal on its merits and in accordance with the law. The court further emphasized that the Respondent had failed to properly reconcile the information and had not considered relevant circulars that clarified the approach in cases where suppliers had reported incorrect information. Subsequently, the HC deemed the impugned order unsustainable and set it aside.

HC: Penalty cannot be imposed solely based on a classification dispute

Atlantic Care Chemicals Private Limited

WP(C) NO. 28372 OF 2023

The Petitioner was engaged in the business of manufacturing of hand sanitizers, and they classified its products under HSN 3004 90 88 by discharging the tax liability at 12%. Subsequently, a SCN was issued alleging the product to be classified under HSN 3808 exigible to GST @ 18%. However, the Petitioner paid the assessed amount along with interest but contested the penalty proceedings, arguing that the issue involved was a classification dispute and therefore debatable. Aggrieved the Petitioner preferred the Writ before the Kerala HC.

The High Court referred to the case of **Chakkiath Brothers [2014 (3) KLT 222],** which held that penalty proceedings cannot be initiated solely based on a mere dispute in classification. Accordingly, as the said case is squarely applicable, the HC set aside the penalty order and instructed the authority to re-evaluate the case, considering the aforesaid judgment.

AAR clarifies ITC reversal rules for destroyed raw materials and finished goods

Geekay Wires Limited

TSAAR Order No.15/2023

The Applicant sought clarification on ITC reversal when finished goods were destroyed, raw materials were lost in the fire, and destroyed finished goods were sold as scrap in the open market.

The Telangana AAR clarified that the legislative intent behind allowing ITC u/s. 16 of the CGST Act, should be understood in conjunction with the conditions and restrictions outlined u/s. 17. Accordingly, the AAR ruled that ITC can only be claimed when taxable supplies are made. If taxable supplies are not made, ITC shall not be available u/s. 17(2) and 17(5)(h) of the CGST Act. In cases where manufactured goods or inputs are destroyed, ITC to the extent of the destroyed goods is admissible, and it should be paid back either through the available credit in the credit ledger or by cash. However, the sale of scrap resulting from the destruction of goods does not qualify for ITC.

GOODS & SERVICES TAX

From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 45/2023 – Central Tax dated September 06, 2023	**CBIC notified Rules 31B and 31C for determining the Value of Supply for Online Gaming and Actionable Claims in the Case of Casinos** The CBIC has introduced the CGST (Third Amendment) Rules, 2023, with two new rules, 31B and 31C w.e.f October 1st, 2023. • Rule 31B pertains to online gaming, including online money gaming. It states that the value of supply in such cases will be the total amount paid or payable to the supplier by the player, whether in money or other forms like virtual digital assets. However, any amount refunded by the supplier to the player, regardless of the reason, should not be deducted from the value of supply. • Rule 31C relates to casinos. It defines the value of supply of actionable claims in a casino as the total amount paid by the player for purchasing tokens, chips, coins, or tickets used in the casino or participating in various casino activities. Similar to Rule 31B, any refunds provided by the casino to the player, whether for tokens, coins, chips, or tickets, should not be subtracted from the value of the supply.
2.	F. No. A-50050/150/2018-CESTAT-DoR dated September 14, 2023,	**State Benches of GST Appellate Tribunal notified** The Central Govt. vide Notification dated September 14, 2023 has notified the constitution of the state benches of the GST Appellate Tribunal. Notably, the states of Maharashtra and Uttar Pradesh to have 3 benches each.
3.	Advisory No. 603 dated September 19, 2023	**Geocoding Functionality for the Additional Place of Business** The GSTN has issued Advisory on the geocoding functionality for the "Additional Place of Business" address is now active across all States and Union Territories. This feature complements the geocoding functionality for the principal place of business, which was implemented in February 2023.

Sr No	Notification/ Circular	Summary
4.	Notification No. 13/2023- Integrated Tax (Rate) dated September 26, 2023	**Govt exempts 5% IGST on ocean freight imports** The Finance Ministry has notified important amendment to the IGST Act, impacting payments related to 'ocean freight' for imported goods. The notification has exempted the 5% IGST payments made for goods imported through ocean freight with effect from October 1, 2023. These changes, come as a relief to importers who were previously obligated to pay a 5% IGST under the RCM. The amendments align with a significant Supreme Court ruling in the Mohit Minerals case [Civil Appeal No. 1390 of 2022], emphasizing that an additional levy on Indian importers for 'supply of services' by shipping lines would contradict the GST Act.
5.	Notification No. 49/2023 – Central Tax, dated September 29, 2023.	**CBIC notifies on supply of Online Gaming & Actionable Claims** The Finance Ministry has notified that supply of online money gaming, online gaming (excluding money gaming), and actionable claims in casinos under section 15(5) of the CGST Act w.e.f October 1st, 2023. The notification comprehensively covers three areas: • **Supply of Online Money Gaming**: This pertains to online platforms hosting games involving both chance and skill, where real-money transactions are a crucial component. The notification brings in much -needed clarity and regulatory oversight for this segment. • **Supply of Online Gaming (Excluding Money Gaming)**: In addition to online money gaming, this notification also extends its purview to encompass a wider category of online gaming. It covers a variety of games spanning different types and genres that do not involve monetary transactions. This inclusion ensures that the regulations are applicable to the broader online gaming industry. • **Supply of Actionable Claims in Casinos**: The notification introduces guidelines and regulations concerning the supply of actionable claims within casinos. This segment of the notification aims to bring about taxation compliance and regulatory oversight in the casino industry.

CUSTOMS & FTP
From the Judiciary

Limitation does not apply when duty is paid under protest

Shree Renuka Sugars Limited

Customs Appeal No. 76656 of 2016

The Respondent had imported coal and was entitled to simultaneous benefits of two customs notifications. However, due to technical glitches in the Customs EDI system, they were unable to claim these benefits during a specific period. Accordingly, the Respondent paid the BCD component under protest at the time of clearance and later sought a refund. However, the Customs Department filed an Appeal before the CESTAT tribunal, arguing that the refund application was time-barred and that the assessment order was not challenged.

The Tribunal noted that the refund claim arose due to the non-acceptance of exemption benefits caused by system dysfunction. Since the duty was paid under protest, the limitation clause did not apply. The Tribunal further emphasized that the issue of non-challenging the assessment order was irrelevant because the duty was paid under protest, implying a dispute with the assessment, therefore, there was no need for a fresh challenge. Accordingly, the Tribunal dismissed the Revenue's appeal.

CAAR classifies Linear Accelerator under CTH 9022 14 90

Siemens Healthcare Private Limited

CAAR/Mum/ARC/63/2023

The Applicant is involved in the business of importing Cancer Therapy Machines, specifically Linear Accelerators, commonly used in the treatment of cancer patients in both government and private hospitals. The Applicant had sought an advance ruling to ascertain the tariff classification of 'Linear Accelerator' commonly used for external beam radiation treatments.

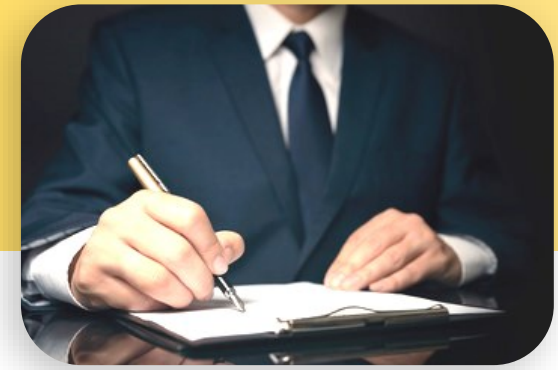
The applicant argued that the Linear Accelerator was not an X-Ray diagnostic machine but a sophisticated radiotherapy equipment. It operates by using electrons to produce high-energy X-rays, which are then precisely shaped to conform to the patient's tumor. The customized X-ray beam is directed at the patient's tumor for effective treatment.

The CAAR noted the Linear Accelerator is a medical device and is used as a radiotherapy apparatus. Further the X-rays, known for their penetrating power and their ability to target specific tissues, are employed in the treatment of diseases such as cancer. Subsequently, the AAR determined that apparatus utilizing X-Rays, regardless of their intended use for medical, surgical, dental, or veterinary purposes, including radiography or radiotherapy, were appropriately classified under heading 9022 of the Customs Tariff. However, the AAR noted that as Linear Accelerators were not explicitly mentioned in any sub-heading within CTH 9022, it should be correctly classified under the residual entry CTH 9022 14 90

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Trade Notice No. 26/2023-24 dated September 1 , 2023	**Monthly workshops on e-commerce exports** DGFT vide the Trade Notice addresses the monthly workshops on E-Commerce Exports in compliance with the Foreign Trade Policy 2023. These workshops aim to promote awareness on e-commerce regulations, cross-border logistics, postal and customs compliances, and payment mechanisms. Workshops will be conducted both via video conference and in-person, focusing on capacity building and skill development. Interested participants can register through a provided link, and experienced E-Commerce Exporters are invited as guest speakers to share their expertise with new entrepreneurs.
2.	Circular No. 21/2023-Customs dated September 14 , 2023	**Norms for posting of officers & benchmark performance for granting exemption of CRC at AFS** CBIC vide the instant circular has outlined norms for posting officers and benchmark performance criteria for granting exemption from payment of Cost Recovery Charges (CRC) at Air Freight Stations (AFS). This circular is intended to improve the efficiency and effectiveness of customs clearance at AFSs, and to reduce the cost of doing business for trade and industry.
3.	Circular No. 22/2023-Customs dated September 19 , 2023	**Implementation of Ex-Bond Shipping Bill in ICES 1.5** CBIC will allow exporters to export warehoused goods under one ex-bond shipping bill, even if the goods were imported under multiple into-bond bills of entry. This is a significant change, as it will simplify the export process and reduce the time and cost of compliance for exporters. The new Ex-Bond Shipping Bill format is now available in ICES 1.5, and exporters can start using it immediately.

REGULATORY
From the Judiciary



NCLAT releases Corporate Debtor from CIRP rigours, given "lackadaisical progress", no possibility of revival

Laxman Singh (Ex-Director) of Divineseair Logistics Private Limited vs. Kerry Indev Logistics Private Limited

Company Appeal (AT)(Insolvency) No. 1002 of 2022

The Appellant (Corporate Debtor) had engaged into a business relationship with the Respondent (Operational Creditor), providing freight forwarding services since June 2018. The Respondent had claimed that certain dues remained outstanding for services rendered following which the Respondent filed an application for initiation of CIRP against the Appellant before the NCLT. Aggrieved, the Appellant approached the NCLAT contending that there was no contractual agreement between the Appellant and the Respondent. The Appellant only provided clients to the Respondent for transporting their goods and in return received commission from the Respondent out of the freight charges collected. In the absence of any agreement between them, the Appellant could not be fastened with any liability to pay to the Respondent who was neither the consignee nor the beneficiary of any services.

Noting that 270 days of CIRP had already expired with no resolution plan, the NCLAT emphasized that this being the case, instead of allowing the CIRP proceedings to drag on mechanically with insolvency resolution not in near sight, prudence demanded that the ongoing stalemate should be put to an end. Moreover, the RP ought to have facilitated the withdrawal of the CIRP application as was desired by the sole CoC member without unduly prolonging the proceedings and could have exercised a modicum of restraint while projecting his fees/expenses as for the recovery of a claim of about INR 10 lakhs, incurring an expenditure of INR 19 lakhs by way of fees/expenses of the RP would be "outlandish", that too when there seems to be no

possibility of Corporate Debtor's revival.

Further, considering the yardstick of reasonability, the NCLAT observed that given the slow and lackadaisical progress of the present CIRP proceedings, it would like to refrain from showing any indulgence to the RP in claiming any additional amount of fees/expenses beyond the amount which has already been paid. However, stating that, prima-facie, the Corporate Debtor's contention that raising any demand against it was untenable, was specious and lacked substance since emails between the parties showed a clear admission of operational debt being due and payable. Thus, releasing the Corporate Debtor from CIRP rigors while exercising its inherent powers under Rule 11 of NCLAT Rules, the NCLAT disposed of the matter.

SC holds precedents cannot decide questions of fact, overturns National Consumer Commission's order

Experion Developers Private Limited vs. Himanshu Dewan and Sonali Dewan & Ors.

Civil Appeal No. 1434 of 2023

The Appellant had developed and constructed the apartments in a housing project, situated in Gurgaon, Haryana. The Respondents were the allottees or the subsequent purchasers/buyers of their apartments. The contractual terms inter-se were governed by the Apartment Buyer Agreement. There was an increase in the sale area, earlier provisionally allotted to the Respondents, and therefore the additional amount was demanded from Respondents which they duly paid. Subsequently, the Respondents placing reliance on **Pawan Gupta vs. Experion Pvt. Ltd. [Civil Appeal No. 1434 of 2023]** filed a complaint before the National Consumer Commission seeking a refund of the amounts paid by them towards the increased sale area alleging, inter-alia, that there was neither increase in the carpet area nor in the built-up area, and that the demand towards increase in the sale area made by the Appellant was illegal.

The case was resisted by the Appellant by filing a reply challenging the very maintainability of the consumer case contending that relying upon the certificates, reports and affidavits of the architects, there was an actual increase in the sale area of the apartments as mentioned therein and therefore, the charges demanded were valid and legal, in terms of Clause 8 of the Agreement. The Respondents in the rejoinder contended that in the communication/letter, intimating the purported increase in the sale area, the Appellant had not placed any material or evidence to justify the increase in the area and the reports and certificates of the architects were all post-dated records, which could not be taken as the basis for justifying the increase in the sale area. The National Consumer Commission directed the Appellant to refund the amount and execute supplementary/correction deeds.

Aggrieved, the Appellant preferred an appeal before the SC which noting that the Respondents filed a consumer complaint with the National Consumer Commission, invoking similarities with judgment of **Pawan Gupta vs. Experion Pvt. Ltd.[supra],** wherein the National Consumer Commission ruled in favour of the Respondents, observed that the previous dismissal in **Pawan Gupta vs. Experion Pvt. Ltd. [supra]** stemmed from inadequate evidence provided by the Appellant and focused on the circumstances of that particular case, this dismissal did not consider later additional evidence, hence, the National Consumer Commission was required to reconsider the Appellant's arguments without applying principles of res judicata or binding precedent. Moreover, despite the absence of conclusive evidence in **Pawan Gupta vs. Experion Pvt. Ltd. [supra],** the Appellant in the present case provided documents supporting the actual increase in sale area, justifying the extra payment demand and the Apartment Buyer Agreement allowed for an increase/ decrease in the sale area and corresponding sale price by up to 10% and the Appellant demonstrated that the variance i.e. a less than 5% increase in the project's built-up area, fell within permissible limits.

Further, examining whether the dismissal of an appeal should be treated as res judicata and whether the doctrine of merger universally applies to rulings of inferior courts, the SC observed that precedents could not decide questions of fact and the decision in Pawan Gupta vs. Experion Pvt. Ltd.[supra] was based on evidence adduced by the Appellant/Builder/Developer, which in the said case was not found to be sufficient and cogent to justify and substantiate the demand raised in view of the increased sale area. Thus, overturning the National Consumer Commission's decision and remitting the matter for revaluation, the SC allowed the appeal.

SC upholds HC order setting aside arbitral award basis patent flaws and illegalities

Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited & Anr.

Civil Appeal No. 1968 of 2012

HPCL (Respondent) had awarded to BEEL (Appellant) the turnkey contract for detailed engineering including civil and structural design, supply and erection, testing and commissioning of 23 sewage water reclamation plants. The contract period was 18 months from the date of letter of intent. There was delay in completion. On written requests/applications made by the Appellant, the time for completion was extended on two occasions. Three revisions were also issued by the Respondent. The last revision had extended the period for completion by 10 months. However, the Appellant abandoned the work after 80% completion. Thereafter, the Appellant made a formal claim to the Respondent for breach of contract on account of delay in execution, causing extra expenses and losses and sought an advance payment of INR 50 Lakhs to enable them to resume work, and simultaneously expressed its desire to resolve the dispute through conciliation. The Appellant also invoked the arbitration clause in the contract, if the proposal as given by the Appellant was unacceptable to the Respondent. The Respondent refused to make payment, and relying on the terms of the contract had impressed upon the Appellant to resume and complete the remaining work, even if the matter was to proceed for arbitration. The Appellant did not agree to resume work.

The Respondent appointed a sole arbitrator to adjudicate upon the disputes and differences in the execution of the contract. A claim was filed by the Appellant and reply/counter claim was filed by the Respondent, to which rejoinder with supporting documents and sur-rejoinders were filed. In all about 14 hearings were held before the arbitral tribunal and oral arguments were addressed. The learned arbitrator had also conducted a site inspection and an award was passed which dismissed the counter claim of the Respondent for liquidated damages of INR 57.40 Lakhs, on the ground that the delay was caused by omissions and commissions of the Respondent. The claims by the Respondent for rectification/ rehabilitation cost, costs of balance work and de-watering cost were also denied, on the ground that they related to future works and therefore, would not fall within the ambit of arbitration in question.

Aggrieved, the Respondent approached the HC which set aside the arbitral award on finding patent flaws and illegalities emanating from the said award which caused the Appellant to approach the SC which noting that the first egregious and obvious flaw in the award was, the omnibus finding and conclusion that the Respondent was fully responsible for the inordinate delay that had occurred by not taking proper and timely action in removal of various impediments and obstacles that stood in the way of completing the project within the stipulated period, observed that this finding was bereft of analysis and examination of facts and contentions and that the respective stances of the parties were neither decipherable nor evaluated and no reason had been given for arriving at the conclusion, and that such conclusion without any discussion and reasons, was non-compliant and violated the mandate of Section 31(3) of the Arbitration Act.

Further, noting that the Arbitral Tribunal had accepted that the principle of mitigation was applicable but observed that the only way the Appellant could have abased the loss, was to work on Sundays or holidays, the SC observed that this reasoning was again ex facie fallacious and wrong. The principle of mitigation with regard to overhead expenses did not mandate working on Sundays or holidays and the Arbitral Tribunal in the present case had given a complete go by to these principles well in place, overlooked care and caution required and taken a one-sided view grossly and abnormally inflating the damages.

Thus, having extensively analysed the award, the patent flaws and illegalities which emanated from it, like the manifest lack of reasoning in arriving at the conclusions and the calculation of amounts awarded, which, in fact, amounted to double or part-double payments (towards compensation and damages), besides being contradictory etc., the SC dismissed the appeal thereby setting aside the arbitral award.

HC holds SBI may pursue IBC relief before NCLT over GST Commissioner's attachment-order

State Bank of India vs. The Assistant Commissioner & Anr.

W.P.No.1816 of 2021

The State Bank of India (Petitioner) had preferred a writ petition before the HC seeking a writ of certiorarified mandamus, calling for the records of The Assistant Commissioner of GST & Central Excise (Respondent)'s order and quashing of the same and consequently, directing The Joint Sub Registrar to cancel the connected attachment order, by directing the Petitioner to approach NCLT for appropriate relief.

Noting that a matter under IBC was pending before the NCLT against the Corporate Debtor and taking note of the Respondent's submission that once an application under Section 95 of the IBC was filed, the adjudicating authority had to act on it and Section 60 of the IBC provided that the adjudicating authority, with reference to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors, was the NCLT, the HC observed that both the Petitioner and the Respondent were ad idem that the matter would have to be dealt with by the NCLT and therefore holding that the Petitioner may take steps before the NCLT, as may be permissible in law and in that event, all the contentions of the respective parties would be kept open, disposed of the writ petition.

SEBI slaps penalty of INR 1 Crore on Investment Adviser for promising "unrealistic returns", giving non-genuine advice

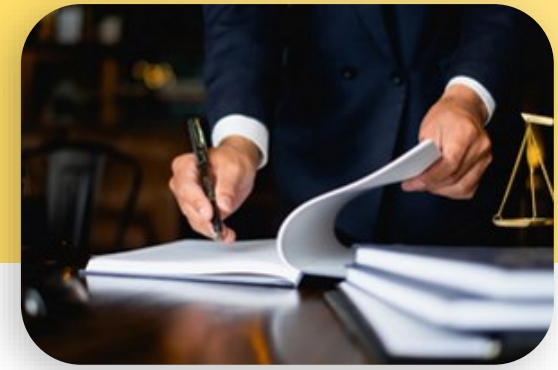
In the matter of Money Classic Investment Advisor

Adjudication Order: Order/VV/AS/2023-24/29271-29270

SEBI decided to conduct an inspection of Money Classic (Proprietor Mr. Deepak Mishra) (Noticee) in terms of Regulation 23 of IA Regulations. The Noticee was registered with SEBI as an Investment Adviser under the IA Regulations. However, the entity was not traceable. Accordingly, the inspection could not be conducted. Further, Noticee's website was not active and it was available only on archive. From the perusal of available records, it was deduced by SEBI that the advisory business of Money Classic was based on a 'subscription model'. The fees were charged based on the product/ package subscribed and the subscription period for the product was quarterly, half-yearly, etc. In the name of advice, Money Classic provided tips to its client through SMS in Equity (cash and derivatives), forex and commodity derivatives segment. Money Classic also provided telephonic and online assistance to its clients.

Basis the above and based on other available information, SEBI passed an interim ex-parte order against the Noticee stating that it had not acted in the best interests of the investors by non-redressal of investor grievances and non-submission of timely ATRs to SEBI. SEBI was also not able to verify the compliance of the Noticee with the applicable regulatory requirements due to its non-traceability.

SEBI observed that the Noticee being an investment adviser very well knew the fact that the investments in securities market were subject to market risk, and any returns in the securities market could not be assured with conviction, yet it was falsely promising unrealistic assured returns on investments and had communicated the same to clients through his website and other means. Moreover, the Noticee had failed in its responsibility to act in fiduciary capacity towards its clients, which was entrusted upon it under Regulation 15(1) of the IA Regulations and by acting in unfairly and dishonestly manner and keeping interest of its clients on stake, the Noticee had failed to abide by the Code of Conduct as provided in the IA Regulations. Thus, for giving improper, non-genuine, non-suitable advice to its clients, making misleading promises with reference to returns on investments and gross violation of multiple SEBI Regulations, SEBI imposed a penalty of INR 1 Crore on the Noticee and disposed of the matter.



SEBI announces mandatory online payment system for SEBI IPEF replacing payments through demand drafts

Circular No. SEBI/HO/GSD/TAD/P/CIR/2023/149 dated September 04, 2023

SEBI through Circular no. SEBI/HO/ISD/ISD/CIR/P/2020/135 dated July 23, 2020, had earlier prescribed that the amounts to be credited to SEBI IPEF can be credited through online mode or through a demand draft drawn in its favor. However, SEBI has now issued a clarification stating that it has opened a new bank account to facilitate market participants to make payment to SEBI IPEF, mandating all remittances to SEBI IPEF, to be made only through the link specified on the SEBI website under the head "*Click here to make payment to SEBI IPEF*". The link enables the remitter to make payment using Net banking, NEFT/RTGS, Debit cards and UPI.

Further, SEBI states that while making the remittances online, through the above link the contributors are required to provide necessary information such as, the payer's name, PAN, mobile number, Email ID, purpose of payment, and the amount etc. and instructs stock exchanges to inform all listed companies about this change in the payment method.

The IPEF serves the purpose of promoting investor education, awareness, and protection and is utilized for educational activities such as seminars, training, awareness programs, and supporting investor education initiatives. Additionally, it assists investor associations in legal proceedings related to securities listed or proposed to be listed. The purpose of this move is to streamline the payment process and improve accessibility for all contributors to the fund. Intermediaries can now conveniently make payments to IPEF using various online payment methods such as Net banking, NEFT/RTGS, Debit cards, and UPI.

SEBI notifies LODR (Fourth Amendment) Regulations, 2023

Notification No. SEBI/LAD-NRO/GN/2023/151 dated September 19, 2023

SEBI notifies LODR (Fourth Amendment) Regulations, 2023, through which it amends the LODR Regulations to insert Regulation 62A to the LODR Regulations. Regulation 62A provides for the listing of subsequent issuances of non-convertible debt securities as per following regulations:

- A listed entity, whose non-convertible debt securities are listed shall list all non-convertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchange(s).
- A listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023, are outstanding on the said date, may list such securities, on the stock exchange (s).
- A listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, shall list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within three months from the date of the listing of the non-convertible debt securities proposed to be listed.
- No listed entity shall be required to list bonds issued under Section 54EC of the IT Act, non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such

securities and multilateral institutions or non-convertible debt securities issued pursuant to an order of any court or Tribunal, or regulatory requirement as stipulated by SEBI, RBI, IRDAI or the PFRDA.

- However, the listed entity, shall be required to disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium (by any name called), period of maturity and such other details as may be required to be disclosed by the Board from time to time.
- Further, non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such securities and multilateral institutions or pursuant to an order of any court or Tribunal or regulatory requirement as stipulated by SEBI, RBI, IRDAI or the PFRDA shall be locked in and held till maturity by the investors and shall be unencumbered.

The LODR (Fourth Amendment) Regulations, 2023, shall come into effect from September 19, 2023.

SEBI issues clarification on redressal of investor grievances through linking of SCORES and ODR platforms

Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023

SEBI releases a clarification with regards to the redressal of investor grievances through the SCORES platform and linking it to the ODR platform. The objective behind the clarification is to bring SCORES in line with the SEBI (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023, and strengthen the existing investor grievances handling mechanism through SCORES by making the entire redressal process of grievances in the securities market comprehensive by offering a solution that makes the process more efficient by bringing the timelines down, and by introducing auto-routing and auto-escalation of complaint. According to the clarification, the submission and handling of the complaint by the entity shall inter-alia involve the following steps:

- The complaint lodged on SCORES against any entity will be automatically forwarded to the concerned entity through SCORES for resolution and simultaneously be forwarded through SCORES to the relevant designated body.
- All entities (e.g., a company) who receive an investor's complaint through SCORES will resolve the same and upload the action taken report (ATR) within 21 calendar days of the receipt of the complaint.
- If the complainant is not satisfied, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the ATR.
- The designated body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required and submit the revised ATR to the complainant.
- The complainant may seek a second review of the complaint within 15 calendar days from the date of the submission of the revised ATR by the designated body.
- SEBI may take up the review with stakeholders involved, including the concerned entity or/and designated body. The concerned entity or/and designated body shall take immediate action on receipt of second review complaint from SEBI and submit revised ATR to SEBI through SCORES, within the timeline specified by SEBI.
- SEBI may concurrently monitor grievance redressal process by entities and designated bodies and may also seek clarification on the ATR submitted by the concerned entity for SEBI review complaint. The

concerned entity shall provide clarification to the respective designated body and/or SEBI, wherever sought and within such timeline as specified.

- The second review complaint shall be treated as 'resolved' or 'disposed' or 'closed' only when SEBI 'disposes' or 'closes' the complaint in SCORES. Hence, mere filing of ATR with respect to SEBI review complaint will not mean that the SEBI review complaint is disposed.

This complete framework for processing of investor grievances by entities and also the monitoring and handling of investor complaints by the designated bodies shall come into force with effect from December 04, 2023.

RBI allows pre-sanctioned credit lines through UPI

Notification No. RBI/2023-24/58 dated September 04, 2023

The RBI announces that the UPI system will now include pre-sanctioned credit lines issued by banks for transactions. Previously, only deposited amounts could be transacted through UPI.

UPI is a robust payments platform supporting an array of features. Presently it handles 75% of the retail digital payments volume in India. The UPI system has been leveraged to develop products and features aligned to India's payments digitization goals. The RBI, in April in its Statement on Developmental and Regulatory Policies dated April 06, 2023, suggested the expansion of the scope of the UPI with inclusion of credit lines in addition to deposit accounts, which would further help in reduction of cost of such offerings and help in development of unique products for Indian markets.

Under the new facility, payments through a pre-sanctioned credit line issued by a Scheduled Commercial Bank to individuals, with prior consent of the individual customer, have been enabled for transactions using the UPI System. Banks may, as per their Board approved policy, stipulate terms and conditions of use of such credit lines. The terms may include, among other items, credit limit, period of credit, rate of interest, etc.

RBI directs eligible lending institutions to refer to scheme guidelines issued by MSME regarding the PM Vishwakarma scheme introduced by the Central Government

Notification No. RBI/2023-24/61 dated September 13, 2023

The Central Government has introduced the 'PM Vishwakarma Scheme' which aims to provide support to artisans and craftspeople to enable them to move up the value chain in their respective trades. The Scheme envisages, among other measures, credit support to the beneficiaries at concessional interest rate, with interest subvention support by the Central Government. In this regard, the RBI directs eligible lending institutions to refer to the scheme guidelines issued by the MSME, some of the key highlights of which are as follows:

- With a financial outlay of INR 13,000 Crores for a period of five years, the scheme will benefit about 30 lakh families of traditional artisans and craftsmen, including weavers, goldsmiths, blacksmiths, laundry workers, and barbers. The goal of the scheme is to enhance the accessibility and quality of products and services offered by traditional artisans and craftsmen.
- The scheme offers collateral-free enterprise development loans of INR 1 lakh (first tranche for 18 months repayment) and INR 2 lakh (second tranche for 30 months repayment).

- A concessional rate of interest of 5 percent will be charged from the beneficiary with interest subvention cap of 8 percent to be paid by the MSME. The credit guarantee fees will be borne by the Central Government.
- The scheme also entails benefits such as recognition as a Vishwakarma through a certificate and ID card and skill verification followed by 5-7 days (40 hours) of basic training.
- Interested candidates can also enroll for 15 days (120 hours) of advanced training and a stipend of INR 500 per day will be provided. Besides, a INR 15,000 grant will be provided as a toolkit incentive and an incentive for digital transaction of INR 1 per transaction for up to 100 transactions monthly.
- A National Committee for Marketing (NCM) will provide services such as Quality Certification, Branding & Promotion, E-commerce linkage, Trade Fairs advertising, publicity and other marketing activities.
- An artisan or craftsperson working with hands and tools and engaged in one of the 18 family-based traditional trades mentioned in the scheme, in the unorganized sector on a self-employment basis, shall be eligible for registration under PM Vishwakarma.
- The minimum age of the beneficiary should be 18 years on the date of registration.

MCA amends LLP Form 3 and Form 4 from September 1, 2023

Notification No. G.S.R. 644 (E) dated September 01, 2023

The MCA issues the LLP (Second Amendment) Rules, 2023 amending LLP Form No. 3 and LLP Form No. 4.

LLP Form No. 3 is mandatory for submitting information related to the limited liability partnership agreement and any modifications made to it. Conversely, LLP Form No. 4 is obligatory for reporting each instance of the appointment, resignation, or alteration in the name, address, or designation of a designated partner or partner.

In the new LLP Form No. 3, it is mandatory to mention the jurisdiction of the police station right after the address of the LLP. Further, new separate columns for state and district which were absent in the old Form 3 have also been added and the table encapsulating the contribution of each partner and the profit-sharing ratio has also been updated.

In addition to the above, the filers now have to mention the number of amendments/changes made in LLP agreement till date and SRN of LLP Form 4 or LLP Form 5 of last one year from the date of filing the form through which notice of change/amendment in the LLP agreement has been filed with the Registrar.

Subtle changes have also been made to LLP Form No. 4 in alignment with the requirements of the year 2023 making it much more elaborate and specific compared to the old form.

MCA extends the tenure of the Company Law Committee till September 16, 2024

Order No. F.No.2/1/2018-CL-V dated September 13, 2023

In continuation of the previous orders extending the tenure of the Company Law Committee by one year, the MCA in the same light, issues an order extending the tenure of the Company Law Committee for an additional year upto September 16, 2024.

MCA extends the timeline for the AGM and EGM through VC or OAVM until September 30, 2024

General Circular No. 09/2023 dated September 25, 2023

The MCA extends the timeline of the Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) through VC or OAVM for companies whose AGMs or EGMs are due in the Year 2023 or 2024,and passing of ordinary and special resolutions by the companies under the Companies Act read with Rules made thereunder till September 30, 2024.

However, the MCA clarifies that the extension granted shall not be construed as conferring any extension of statutory time for holding of AGMs by the companies under the Companies Act and the companies which have not adhered to the relevant statutory timelines shall be liable to legal action under the appropriate provisions of the Companies Act.

Finance Ministry notifies PMLA (Maintenance of Records) Second Amendment Rules, 2023.

Notification No. G.S.R. 652(E) dated September 04, 2023

The Finance Ministry notifies the PMLA (Maintenance of Records) Second Amendment Rules, 2023 proposing the following amendments to the PMLA (Maintenance of Records) Rules, 2005: -

- **The principal officer must be an officer at the management level**: The 'principal officer of a reporting entity' is required to be an 'officer at the management level'. This was done to ensure proper and effective compliance by reporting entities by placing the responsibility on an officer who is a part of the management and has more expertise. Prior to the amendment, entities could appoint any officer at their discretion.
- **Shareholding criterion of the beneficial owner of a company reduced to 10% of the total capital**: To be classified as a beneficial owner of a partnership firm, the shareholding percentage criterion has been reduced from 15 percent to 10 percent to prevent 'benami' activities and operations of a shell company. Moreover, a person "who exercises control through other means" shall also be considered a beneficial owner where "control" shall include the right to control the management or policy decision.
- **Strict compliance and monitoring of client identity and records**: To ensure tighter compliances and monitoring, the reporting entity would now also have to maintain records of analysis of transactions by a client and due diligence whereas, earlier, they were only required to maintain updated records of identification, account files and business correspondences.

INTERNATIONAL DESK

UAE Corporate Tax: Small Businesses can opt for tax relief and submit simplified tax returns

The FTA issued a comprehensive Corporate Tax Guide on the SBR, providing the clarity on the application of the UAE Corporate Tax Laws to small businesses. The SBR is only available to the resident persons that include-

- the juridical person incorporated in the UAE, including free zones businesses;
- the juridical person established out of the UAE but controlled and managed from the UAE;
- any natural person who conducts a business or business activity in the UAE and
- any other person determined in a decision issued by the Cabinet.

Article 21 of the law allows a resident taxable person with a gross income below Dh3 million which includes revenue from all the business and business activity also includes the revenue earned from the UAE or out of the UAE to be treated as not having taxable income and the said person shall be liable to register for corporate tax follow the transfer pricing rules to establish the arm's length price. This freedom is not available to the Qualified Free Zone Person and the person that is part of the Multinational Enterprise (MNE) group.

Even after opting for the SBR, the taxable person is required to register and submit a simplified tax return. The SBR is an optional relief available to eligible resident taxable persons at the time of submitting of returns. The person who opted for the SBR needs to maintain the record for seven years from the end of the relevant tax period to which the documents pertain.

UAE's visa reforms reshape business prospects for Indian SMEs

In recent years, the UAE has further solidified its position as an attractive destination for Small and Medium -sized Enterprises (SMEs) through progressive visa regulations aimed at facilitating business operations and fostering collaboration.

The advantage of the UAE's new visa regulations for SME's, exploring the investment friendly atmosphere and the facilitation of seamless business operations and collaborations through multi-entry and job exploring visas. This highlights why it is n opportune moment for Indian SMES's to consider the UAE for their expansion and growth plan.

This system allows business owners and their employees to enter and exit the country with ease, facilitating international business operations. It eliminates the need for frequent visa renewals and the associated bureaucratic hurdles, ensuring that entrepreneurs can focus on their core activities.

The UAE offers a tax-friendly environment, with no personal income tax and low corporate taxes in many free zones. This fiscal advantage can significantly enhance the profitability of Indian SMEs operating in the UAE. Additionally, the UAE has signed numerous DTAA with countries worldwide, including India, providing tax relief and protection for investors.

Indian SMEs seeking to internationalize their operations and tap into new markets, now is an opportune moment to consider the UAE as a strategic choice. As the UAE continues to evolve its business landscape, the benefits for SMEs are likely to grow, solidifying its position as a top destination for Indian entrepreneurs and businesses alike.

s estimated to be based on updated data and it incorporates most of the recently agreed design features included in the Amount A Progress Report and the GloBE Model Rules.

UAE, OECD host regional forum on global minimum tax

The Ministry of Finance in co-operation with OECD hosted Pillar Two Regional Forum, or Global Minimum Tax BEPS and GloBE, as a part of the UAE's commitment to international standards around taxation.

Mohammed bin Hadi Al Hussaini, Minister of State for Financial Affairs stated that the UAE has adopted financial and tax policies, legislation and a system that serves its ambitious national development goals, while ensuring the highest levels of transparency and preventing financial and tax malpractice. The commitment is in line with the international standards that are necessary to manage and implement the tax system, and to ensure the country's leadership in this field. Further the Minister stated that they continue to support international efforts to address the BEPS to contribute to the continuous improvement of the global economic environment.

The forum included a workshop on Pillar-Two of the OECD BEPS and GloBE Pillar 2 – a global minimum corporate tax rate of 15 percent – that establishes a floor on corporate tax competition. Specifically, the Global Anti-Base Erosion Rules provide the means for establishing an internationally coordinated system of taxation that applies a top-up tax on profits when the effective tax rate is below the minimum rate.

EUROPEAN commission proposes befit and transfer pricing directives

The European Commission ('the Commission') published two new legislative proposals a Directive BEFIT and a "Directive on Transfer Pricing" ('Directive').

The BEFIT proposal sets forth rules introducing a common framework for corporate income taxation in the EU, with the aim of replacing the current Member States' various ways for determining the taxable base for groups of companies that have annual combined revenues exceeding €750 million. The BEFIT proposal would also apply to non-EU-headquartered groups exceeding specific thresholds.

The Directive on TP aims to introduce a common framework in the EU for applying the arm's-length principle. The Directive codifies the arm's-length principle and the OECD Transfer Pricing Guidelines as a means of interpretation into EU law and introduces processes for relieving double taxation for multinational entities. In particular, the Directive affirms key elements of the analysis under the OECD Transfer Pricing Guidelines and clarifies how the mechanisms to perform adjustments should be performed within the EU to ensure that double taxation is prevented and relieved as effectively and efficiently as possible.

The Commission proposes that the Member States transpose the BEFIT Directive into their national laws by January 01, 2028, for the rules to come into effect as of July 01, 2028. The TP Directive, instead, shall be transposed by December 2025 for the rules to come into effect as of 1 of January 2026.

CENVAT CREDIT REFUND ON FACTORY CLOSURE: A BATTLE OF LEGAL INTERPRETATIONS

The CENVAT Credit is an indefeasible right of the assessee and this right can be exercised through Section 11B of the Excise Act, r/w Rule 5(1) of the CCR 2004 which inter alia provides for cash refund of the accumulated balance in CENVAT Credit register. The genesis of the controversy dealing with admissibility of cash refund of CENVAT credit can be traced back to the case of Slovak India. The Karnataka HC **[2006-TIOL-469-HC-KAR-CX]** had rejected an Appeal filed by the Revenue challenging the grant of cash refund of CENVAT balance on account of factory closure. Aggrieved, the Revenue filed an SLP before SC. The SC had dismissed the SLP on the ground that ld. ASG had conceded that the decisions of Tribunals, wherein cash refund on factory closure had been granted were not appealed against.

Post the SC judgement, the question was raised before the Bombay HC in RE: **Gauri Plasticulture [2018 (360) E.L.T. 967],** whether the doctrine of merger would apply to the judgement of the Hon'ble Supreme Court in Slovak India and whether the same could be read as a declaration of law under Art. 141 of the Constitution. The Bombay HC answered in the negative on the premise that the SLP had been dismissed without ascertaining any reasons by the Apex Court.

This divergence in judicial interpretation has left this critical matter in a state of ambiguity. When confronted with conflicting decisions from different High Courts, taxpayers and legal experts find themselves grappling with uncertainty over the fate of CENVAT credit in cases of factory closure. In the midst of this legal predicament, assesee are left with a pressing question: Does the closure of a factory indeed entitle them to claim a refund of their unutilized CENVAT credit?

But, by creating a major twist, the Hon'ble Bombay Tribunal, in the case of **ATV Projects Limited [E/87084/2019],** has held that refund of accumulated balance in CENVAT Credit register should be allowed to the taxpayer on closure of business even in absence of express provisions. In the instant case, Mumbai Tribunal has essentially negated the judgement of the jurisdictional Bombay HC, by holding that the doctrine of merger would apply in the case of Slovak India. It was observed that the findings of the Bombay HC cannot be said to be conclusive as another decision of the Hon'ble SC in **RE: Gangadhar Palo [2012 (25) S.T.R. 273 (S.C.)]** was not considered. In the said case, the Apex Court had held that even if the SLP is dismissed with reasons, however meagre (one sentence), there is a merger of orders. Accordingly, the SC judgement in Slovak India has to be read as a declaration of law and cash refund of CENVAT balance can be granted even in absence of express provision.

Inspite of favourable decision by the Hon'ble Supreme Court in the case like Slovak India, the lower Courts continued to deviate from the same, denying refund to the taxpayers for genuine credit balance on closure of factory or business. In the instant case, as there was difference of opinion on the matter, the

matter was referred to the Third member, who ruled that the decision given by Supreme Court in the case of Slovak Trading is the law of land and has binding effect on all Courts and Tribunal.

Despite the absence of express provisions, the Apex Court's judgment in the case of **Slovak India [supra]** allowed for such refunds, stating that there was no prohibition in Rule 5 of CCR, 2004. The analysis emphasized that CENVAT credit is an indefeasible right and cannot be time-barred. While Section 11B of the Excise Act governs refund timelines, it should logically commence from the date of surrender of the registration certificate upon factory closure. Denying a timely refund would defeat the purpose of the CENVAT scheme, which aims to grant benefits accrued through lawful means.

This judgment not only has implications in the realm of excise but also has a greater force in the GST regime. In the GST framework, the provision for refund u/s. 54 (much like the corresponding refund provision u/s. 11B of the Excise Act) enumerates a limited number of scenarios wherein cash refund can be granted. Notably, the GST refund provision also does not expressly provide refund on account of closure of business. However, if, for any reason, businesses under the GST regime are closed and refund of accumulated ITC is to be claimed, the instant decision has set the doors open for similar reliefs in the GST Regime as well.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMT	Alternate Minimum Tax
AMCs	Assets Management Companies
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
ASBA	Application Supported by Blocked Amount
AU	Assessment Unit
AY	Assessment Year
B2B	Business to Business
B2C	Business to Customer
BBT	Buy-Back Tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base Erosion and Profit Shift
BPSL	Bhushan Power Steel Limited
BOI	Body of Individuals
CAG	Comptroller and Auditor General of India
CASS	Computer Assisted Scrutiny Selection
CAVR 2023	Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023
CAT	Common Aptitude Test
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBLR	Custom Broker Licensing Regulations
CBIC	The Central Board of Indirect Taxes and Customs
CCIT	Chief Commissioner of Income tax
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIT	Commissioners of Income Tax
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
ED	Enforcement Directorate
EOI	Expression of Interest

Abbreviation	Meaning
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2023
FHTP	Forum on Harmful Tax Practices
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
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
ICDR	Issue of Capital and Disclosure Requirements Regulations, 2009
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IRP	Interim Resolution Professional
IT Act/ Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
MAT	Minimum Alternate Tax

GLOSSARY

Abbreviation	Meaning
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NFT	Non-Fungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
OBU	Offshore Banking Unit
OEC	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
PIV	Pooled Investment Vehicle
PMLA	Prevention of Money Laundering Act, 2002
PLR	Prime Lending Rate
PSU	Public Sector Undertaking
PY	Previous Year
QDMTTs	Qualifying Domestic Minimum Top-Up Taxes
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
RPT	Related Party Transactions
RP	Resolution Professional
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty

Abbreviation	Meaning
SGST	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SFIO	Serious Fraud Investigation Office
SIAC	Singapore International Arbitration Centre
SMF	Single Master Form
SLP	Special Leave Petition
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TPS	Tax performing system
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
UPSI	Unpublished Price Sensitive Information
UCB	Urban Co-operative Bank
UK	United Kingdom
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VDA	Virtual Digital Assets
VsV	Vivad se Vishwas
VU	Verification Unit
WTO	World trade Organization
HC	High Court
SC	Supreme Court
FY	Financial Year

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 relationships through cutting-edge ideas and solutions to its clients, across sectors.

Website: **www.taxcraftadvisors.com**

GLS Corporate 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 a unique tax and regulatory advisory firm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

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