VISION 360

JULY 2024

EDITION 45

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

Vision 360: Judicial Supremacy !

The GST Council's 53rd meeting led by Union Finance Minister Ms. Nirmala Sitharaman on 22.06.2024 in New Delhi convened for a first of the significant meetings after the NDA government resumed power at the Centre for third consecutive term.

The meeting proposed some significant changes aimed at trade facilitation and rate rationalisation. Most significant of them are retrospective amendment to Section 16(4) for years FY 17-18 to FY 20-21, waiver of interest and penalty in respect of demand u/s 73 of the CGST Act, reduction in pre-deposit amounts for filing appeals. The recommendations also facilitate ease of compliance burden such as allowing amendment in GSTR-1, extending limitation for preferring of appeal before Tribunal, common limitation for Section 73 and 74, etc.

The meeting was followed by a series of Circulars issued by CBIC that effectuated some of the GST council's recommendations immediately such as clarification on recent changes to valuation of corporate guarantee, import of services, limitation for ITC availment on RCM, warranty/extended warranty related issues etc. In all the, focus of all these recommendations seemed to minimise the litigation and to peddle the chugging buggy of GST to speed up as it enters its eighth year.

In addition to all these crucial recommendations, in this edition of our newsletter, we have also curated a diverse range of articles and insights focusing on the previous month, including recent tax reforms, emerging trends in the industry, and updates from the global tax arena.

Direct tax space witnessed a crucial development like CBDT exempts RBI from higher TDS deduction/ TCS collection under Section 206AB and Section 206CCA of the IT Act. CBDT notifies amendment to Form 27Q of the IT Rules effective July 1, 2024.

On the Indirect Tax front, The Calcutta HC stayed demand order for reversal of ITC due to cancellation of supplier's registration, the High Court will hear the matter on merit that contests indefeasibility of right to credit. In another important judgement, HC ruled that penalty cannot be levied merely for wrongful availment of ITC, without subsequent utilization.

Further, we have penned down an article that discusses the nuances of interest liability under Section 50 of the CGST Act, focusing on exemptions for payments made through the ECrL and their impact on GST compliance and judicial decisions.

As these developments make their way to headlines and boardrooms, we at TIOL, in association with Taxcraft Advisors LLP, GLS Corporate Advisors LLP and VMGG & Associates, are glad to publish the 45th 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

Interest not payable when tax is deposited in Electronic Cash Ledger before the due date

Introduction

Since the inception of the GST regime, the issue of interest liability under Section 50 of the CGST Act has been a subject of significant debate and litigation. In the initial phase of GST implementation, when taxpayers filed Form GSTR-3B after the due date, they were burdened with interest liabilities on tax payments made through both the ECRL and the Electronic Cash Ledger ECL. However, subsequent amendments, particularly the insertion of a proviso to Section 50(1) of the CGST Act, which retrospectively exempted interest on amounts paid via the ECRL shifted the focus of department to levy interest on liability paid predominantly from the ECL.

Relevant Sections and Provisions

- *Section 39(1) and 39(7)*

  Section 39(1) requires registered taxpayers to furnish a monthly return in Form GSTR-3B by the 20th of the subsequent month, detailing inward and outward supplies, input tax credit (ITC) availed, tax payable, and tax paid. Section 39(7) mandates that taxpayers pay the tax due as per the return no later than the last date for filing the return.

- *Section 50(1)*

  Section 50(1) of the CGST Act mandates that any person liable to pay tax under GST, who fails to pay the tax within the prescribed period, shall pay interest on the unpaid amount. The rate of interest, not exceeding 18%, is notified by the Government on the recommendations of the GST Council. This provision aims to ensure timely payment of taxes and discourage delays.

Key Considerations

Date of Liability Discharge: To determine when the tax liability is considered discharged, we must evaluate three potential dates:

- *The date of deposit into the ECL via PMT-06.*
- *The date of filing the GSTR-3B return.*
- *The date when the GST liability is debited from the ECL .*

Section 39(7) Interpretation

Section 39(7) clearly states that the tax must be paid to the Government before the last date for filing the monthly return. This means the tax payment must be completed by the 20th of each month, regardless of the GSTR-3B filing date.

Debiting of ECL

The proviso to Section 50(1) clarifies that interest is payable on the portion of the tax paid by debiting the ECL. This debit occurs when the liability is set-off on the common portal. However, the primary provision in Section 50(1) indicates that interest applies if the tax is not paid within the prescribed period, emphasizing the importance of timely tax payment over the return filing date.

Mechanism of Tax Payment and Its Implications

According to Section 49(1) of the CGST Act, all tax payments, including interest, penalty, and fees, must be deposited into the ECL through designated modes like internet banking, credit cards, or debit cards. Upon successful deposit, the Challan Identification Number is generated by the authorized bank and communicated to the GST Portal, reflecting as a credit balance in the taxpayer's ECL.

The deposit in the ECL signifies that the funds are held by the Government and are not accessible to the taxpayer for any other purpose unless a refund is sanctioned. However, controversies arose regarding the date for computation of interest on these deposited amounts, in case of delays in filing Form GSTR-3B and subsequent debiting of the ECL.

Judicial Precedents and Interpretations

The interpretation of when interest liability accrues varies among different judicial authorities. One viewpoint argues that once the tax amount is deposited in the ECL, there is no unpaid tax, thus no interest should be charged. It is a settled principle that interest is compensatory in nature i.e. interest payment is intended to compensate the revenue for loss of capital, there is no loss insofar when revenue is in possession of the cash amount deposited and part of the ECL on the due date and interest, therefore, is not to be levied wherever there is no loss to the Government. Therefore, where a taxpayer deposits cash before the liability, there is no question of loss of revenue to the Government, even if return is filed after the due date and thus interest should not apply in such cases. However, deviating from this principle, recently Madras High Court and Jharkhand High Court have given adverse judgments by upholding the levy of interest until the tax liability is debited from the ECL upon filing the return, resulting in chaos and confusion amongst the taxpayers .

In **M/s India Yamaha Motor Private Limited v. Assistant Commissioner [W.P. No.19044 of 2019],** the Madras High Court held that interest on the cash balance in the ECL is applicable until the tax liability is discharged by debiting the ECRL. Similarly, the Jharkhand High Court, in the case of **M/s RSB Transmissions India Limited v. Union of India & Ors. [W.P. No. 23 of 2022],** maintained the same stance.

In **Eicher Motors Limited v. the Superintendent of GST and Central Excise**, the Madras High Court quashed a demand notice issued for recovery of interest and held that interest is not payable if Form GSTR-3B is filed belatedly but the amount of tax is paid in the ECL within the time it was due. The Court also sustained the argument that depositing money into the ECL tantamount to payment of tax to the Government.

In **Vishnu Aroma Pouching P. Ltd. v. Union of India,** the Gujarat High Court set aside the liability of interest for a taxpayer who had deposited the tax amount in its ECL but could not file its GSTR-3B return due to technical glitches in the system. The decision was affirmed by the Hon'ble Apex Court, indicating that mere credit in the credit/cash ledger is sufficient to stop the interest meter on the taxpayer.

GST Council Recommendations and Legislative Developments

Taking a cue from the judicial precedents discussed above, the GST Council has recommended measures to alleviate interest burdens on taxpayers. Notably, it has proposed exempting interest under Section 50 of the CGST Act on the amount available in the ECL on the due date of filing the return, subject to certain conditions. However, despite these recommendations, the CBIC has not issued a clarifying circular, leaving some aspects of interest liability unresolved.

Conclusion

While the GST Council has made recommendations in the right spirit to ease the interest burden on taxpayers, the CBIC is yet to issue a Circular to this effect, leaving some ambiguity and scope for further unnecessary litigation until proper clarification is issued. Judicial interpretations have varied, but recent judgments have shown a trend towards recognizing deposits in the ECRL as sufficient for discharging tax liability, potentially protecting the taxpayers from additional interest. It is crucial for the legislature and judiciary to establish a coherent system where interest liability is locked once the amount is deposited in the ECRL irrespective of the date of filing of returns, safeguarding honest taxpayers from undue burdens.

INDUSTRY PERSPECTIVE

Ranju Maheshwari

Tax Head,

OYO Hotels And Homes Private Limited

01 What role does data analytics play in your tax strategy and decision-making processes?

Data analytics plays a crucial role in our tax strategy and decision-making processes by providing us with real-time insights into our financial operations. By leveraging advanced analytics tools, we can accurately track and analyze our tax liabilities across different jurisdictions, identify trends,uncover patterns, identify potential areas of tax risks and developing strategies to mitigate these risks, forecast future tax obligations. This allows us to optimize our tax planning and streamline the tax reporting process by automating data collection, analysis and reporting leading to more accurate and timely tax filings. It can also help us in restructuring, assessing the impact of mergers, acquisitions and other significant business decisions by analysing the financial data and applying the taxing structure. It significantly enhances the ability to develop and implement effective tax strategies For instance, data analytics helps us identify areas where we can claim additional tax credits or deductions, ultimately reducing our overall tax burden. Additionally, it enables us to conduct detailed scenario analyses, helping us to make informed decisions about potential investments and their tax implications.

02 How do you address the tax implications of different ownership models, such as leased versus owned hotel properties?

When addressing the tax implications of leased versus owned hotel properties, we analyze the tax benefits and liabilities of each model. For owned properties, we leverage depreciation benefits to reduce taxable income over time, maintaining accurate records of property values and improvements. For leased properties, deducting lease payments as business expenses provides immediate tax relief. Additionally, handling the tax impact of partnerships and joint ventures requires careful planning, comprehensive agreements, accurate financial records and compliance with tax laws. By understanding specific tax implications and engaging professional advisors, we optimize financial outcomes. Choosing the right structure, like partnerships or joint ventures, involves defining control over operations and ensuring regular sharing of MIS, financial statements, and tax returns to avoid last-minute surprises. Ensuring transparency in partnerships and joint ventures through detailed documentation and regular financial updates enhances visibility and compliance. Comparing ownership models and ensuring detailed planning helps us determine the most tax-efficient strategy for each property.

Ranju Maheshwari
Tax Head, OYO Hotels And Homes Private Limited

03 Can you discuss the impact of automation and AI on tax processes and reporting?

Automation and AI have significantly improved our tax processes and reporting by increasing efficiency and accuracy. Automated systems handle repetitive tasks such as data entry and calculations, reducing the risk of human error. This ensures that our tax filings are more accurate and compliant with regulations. AI tools help us analyze large volumes of financial data quickly, identifying patterns and discrepancies that might indicate potential tax issues. This allows us to address problems proactively and optimize our tax strategies. Overall, automation and AI save us time and resources, allowing our tax team to focus on more strategic tasks. Most importantly AI can be programmed to stay updated with latest tax laws and regulations ensuring that all compliance requirements are met. AI can help us in risk assessments and can also recommend mitigation strategies reducing the likelihood of audits, interest and penalties. AI-powered systems offer customizable dashboards that provide real-time insights into tax data, making it easier to track and manage tax obligations. AI can help us in fraud detection and becomes an indispensable tool for modern tax management

04 What are the unique tax challenges associated with offering all-inclusive packages or bundled services?

Offering all-inclusive packages or bundled services in hotels presents unique tax challenges, especially in properly handling components like lodging, meals, beverages, entertainment, and spa services, each with varying tax implications. The biggest hurdle is undervaluation, where services are deliberately priced below market rates to attract customers. This practice can attract scrutiny from tax authorities, emphasizing the need for detailed documentation to justify pricing decisions and comply with tax laws. Managing these complexities requires hotels to maintain clear records and continuously update tax systems to accurately report income and ensure regulatory adherence amidst the industry's dynamic pricing and promotional fluctuations.

05 How do you address discrepancies or disputes with tax authorities regarding GST assessments?

Addressing discrepancies or disputes with tax authorities regarding GST assessments in the hotel industry requires a systematic approach for compliance and resolution. We start by pinpointing issues, whether they involve factual discrepancies or challenges to GST law interpretations. Resolving data discrepancies involves gathering relevant documentation and evidence to rectify errors and ensure accuracy. Challenges to GST positions necessitate thorough analyses of relevant legal provisions and industry norms, often supported by legal counsel. We maintain detailed documentation such as invoices, contracts, and financial statements to support GST filings and resolve disputes effectively. Managing these challenges is crucial for cash flow, as delays in refunds or unexpected tax liabilities can impact financial stability. We assess the potential impact on cash flow by recognizing contingency liabilities, which ensures that we are prepared for financial adjustments. Conversely, non-recognition can lead to unanticipated cash flow strains, underscoring the importance of proactive financial planning.

06 How do you ensure that your tax strategies are aligned with the financial reporting requirements and standards?

Aligning tax strategies with financial reporting requirements involves closely integrating tax planning with financial report preparation. Regular collaboration between tax and financial teams ensures that

Ranju Maheshwari
Tax Head, OYO Hotels And Homes Private Limited

strategies meet company objectives. Understanding Ind AS and ICDS standards is crucial for accurate tax calculations and compliance with regulatory changes. Professional expertise helps navigate these complexities. For instance, Reconciling the effective tax rate with the statutory rate requires explaining significant differences and making adjustments for Ind AS and ICDS requirements. Harmonizing differences between accounting treatments and tax treatments is vital for transparency, minimizing errors, and easing audits. This approach ensures that tax strategies optimize financial outcomes while meeting reporting standards, promoting transparency and adherence within the organization.

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DIRECT TAX
From the Judiciary

HC holds search assessment based on incriminating material found for only one AY, invalid for rest of the block AYs

Sunny Jacob Jewellers Gold Hyper Market

ITA No. 60 of 2019

The Assessee was subjected to a search operation under Section 132 of the IT Act. During the course of search, the Revenue recovered incriminating material pertaining to transactions concerning AY 2008-09. However, based on the statement from an employee of the Assessee, the Revenue rejected Assessee's books for AYs 2002-03 to 2008-09 and proceeded to estimate the escaped income for all those AY based on the AY 2008-09 and passed the assessment order.

The CIT(A) partially allowed Assessee's appeal but confirmed the demand of differential tax for the AY 2008-09. The ITAT subsequently set aside the order and remanded the matter back to Revenue. The order was challenged before the co-ordinate bench of HC and then before the Hon'ble SC. The Hon'ble SC deeming it not necessary to interfere with the ITAT order, remanded the matter back to Revenue for fresh consideration. Accordingly, a fresh assessment order was passed, wherein, the Revenue reiterated its earlier stand. The ITAT allowed the Revenue's appeal and restored the addition made by the Revenue for all the relevant AYs. Aggrieved, the Assessee approached the Hon'ble HC.

The Hon'ble HC noted that Section 153A(b) of the IT Act clearly indicated that, based on the material obtained during the search, the Revenue could re-open the assessments in respect of the individual AYs comprised in the block period, only if the material obtained during the search under Section 132 of the IT Act, or any part thereof, related to the AY in question. On the basis of this interpretation, the Hon'ble HC set aside the order of ITAT that confirmed demands of the Revenue for all AYs observing that the incriminating material pertained only to the AY 2008-09, and no incriminating material was found against the Assessees for other AYs.

Tribunal holds Section 50C not invokable for leasehold rights, applies to capital assets, follows precedents

Shivdeep Tyagi

ITA No. 484/DEL/2024

The Revenue had reopened the assessment of the Assessee under Section 147 of the IT Act based on the information that the Assessee had sold leasehold property for INR 60 Lakhs, failed to pay capital gains tax and also did not substantiate the cost of acquisition under Section 50C of the IT Act. Aggrieved, the Assessee approached the Tribunal contending that Section 50C of the IT Act was applicable only to capital assets such as 'land, building or both' and not leasehold rights.

While examining Section 50C of the IT Act, the Tribunal placing reliance on a plethora of judgments noted that it could only be applied where the capital asset such as 'land, building or both' was transferred for a consideration received or accrued that was lesser than the value adopted or assessed by the stamp authority and since the leasehold rights were not capital assets such as 'land, building or both', therefore, the said provision was not applicable while computing capital gains on transfer of leasehold rights in land

and buildings. Thus, providing the liberty to the Revenue to compute capital gains without invoking Section 50C of IT Act, the Tribunal disposed of the matter.

Tribunal holds transfer valid under Section 2(47)(v) of the IT Act in the absence of stamp duty as deed registered, follows Sanjeev Lal

Umesh Sumanlal Shah

ITA No. 967/AHD/2023

The Assessee had sold an immoveable property for INR 45 Lakhs, paid full consideration of INR 25 Lakhs for a new residential property and paid municipal tax on the said property subsequently. While filing its ITR, it claimed the deduction under Section 54 of the IT Act. The Revenue reopened the case and issued notice under Section 148 of the IT Act and disallowed the Assessee's claim of deduction under Section 54 of the IT Act holding that the stamp duty was not paid on the sale of the property.

Aggrieved, the Assessee approached the Tribunal contending that the registered sale agreement and taking possession of the new property along with payment of municipal tax qualified as a transfer within the provisions of Section 2(47)(v) of the IT Act, making the Assessee eligible for deduction under Section 54 of the IT Act. The Tribunal placed reliance on the ruling of the Hon'ble SC in **Sanjeev Lal [2014-TIOL-63-SC-IT]** wherein the Hon'ble SC had categorically held that a transfer was valid under Section 2(47) of the IT Act on execution of a sale agreement, even in the absence of registration of the said agreement and noted that the Assessee, through a letter had already substantiated the particulars of sale and purchase agreements to be duly registered, along with the payment of municipal tax in the Assessee's name.

Hence, the Tribunal, rejected Revenue's submission that in the absence of payment of stamp duty on the sale of the immoveable property and presence of only an agreement to sell would not be a valid transfer within the provisions of Section 2(47)(v) of the IT Act and held the same to be unjustifiable, thereby, granting the deduction under Section 54 of the IT Act.

Tribunal holds assessments under Section 153A of the IT Act invalid sans incriminating evidence, loose sheets/sworn statements not reliable absent corroborative evidence

Ramachandra Setty & Sons

ITA Nos. 1163 to 1165/BANG/2023

The Assessee was engaged in the business of trading in gold jewellery and also silver articles, that was subject to a search operation under Section 132 of the IT Act. No incriminating evidence was recovered by the Revenue for AY 2013-14, 2014-15, 2015-16, except for a statement of the managing partner of the firm under Section 132(4) of the IT Act admitting to income of INR 2 Crores, 3.5 Crores and 4 Crores, respectively. Accordingly, the Revenue completed the assessments for the relevant AYs under Section 153A of the IT Act and made several additions based on the amounts admitted thereof.

Aggrieved, the Assessee approached the ITAT which noted that the Revenue's assumption of jurisdiction under Section 153A of the IT Act was valid since the assessment could not be said to be complete on the date of search and the Revenue was within limitation to issue notice under Section 143(2) of the IT Act at the time of search. However, as the addition made by the Revenue was solely based on loose sheets seized and statement of the managing partner recorded under Section 132(4) of the IT Act, during the

course of search operation and as there was no documentary evidence either to support the statements recorded under Section 132(4) of the IT Act and the seized material in the form of various loose sheets, had no signature or authorization and were unsubstantiated documents, the Tribunal placing reliance on a plethora of judgments, observed that an addition could not be made on the basis of statement recorded under Section 132(4) of the IT Act supported by the unsubstantiated loose slips.

Accordingly, observing that to make an addition in case of a completed AY, there should be a positive seized / incriminating material found during the course of search action. In the absence of such seized / incriminating material, the AO was precluded from making any additions and the ITAT quashed the assessment under Section 153A of the IT Act deleting the additions which were merely based on the admissions by the managing partner.

Tribunal holds denial of benefit of new tax regime unjustified, as filing Form 10IE directory & not mandatory

Akshay Devendra Birari

ITA No. 782/PUN/2024

The Assessee was deriving income from salary and from trading in futures and options and had filed the return of income for AY 2023-24 under Section 115BAC of the IT Act as per the new tax regime. The Assessee's return was processed through an intimation under Section 143(1)(a) of the IT Act, whereby benefit of the new tax regime was denied. The CIT(A) confirmed the same holding that the Assessee submitted Form No. 10IE only on January 10, 2024, and not before the prescribed due date, i.e. July 31, 2023.

Aggrieved, the Assessee approached the Tribunal which observed that although, the Assessee failed to submit the prescribed Form No. 10IE in order to claim the benefit of the new tax regime before the due-date for filing of the return of income, however the same was filed on the date on which the Assessee's return was processed under Section 143(1)(a) of the IT Act, denying the said benefit. Moreover, the requirement of the filing of Form No. 10IE was not mandatory but directory in nature and as Form No. 10IE was very much available with the CPC, they ought to have considered the same allowing the benefit of the new tax regime.

Thus, granting the benefit of the new tax regime by directing the Revenue to amend the intimation by taking into consideration the Form No. 10IE, as the same was available at the time of processing of the return of income, the Tribunal allowed the Assessee's appeal.

DIRECT TAX
From the Legislature

NOTIFICATIONS

Sr No	Notification	Summary
1	Notification No. 45/2024 & Notification No. 46/2024 dated May 27, 2024	**CBDT exempts RBI from higher TDS deduction/TCS collection under Section 206AB and Section 206CCA of the IT Act** The CBDT exempts RBI from the higher TDS and TCS rates stipulated under Section 206AB and Section 206CCA of the IT Act respectively. Section 206AB/206CCA of the IT Act, is a special provision aiming to ensure that TDS deductors/ TCS collectors undertake deduction/ collection of higher rates of taxes of persons who do not file their income tax returns. Specifically, it mandates a higher TDS/TCS rate for persons who have not filed their tax returns for the AY relevant to the previous FY, provided that the time limit for filing the return under Section 139(1) of the IT Act has expired and the aggregate TDS/ TCS in that year is INR 50,000 or more. Through these notifications, the CBDT has officially notified that the RBI is exempted from the higher TDS/TCS rate despite non-filing of an income tax return, ensuring that RBI is not subject to the stringent TDS/TCS provisions aimed at non-filers, thereby recognizing its unique status and operational nature. This also reduces compliance burden on the taxpayers at the same time in relation payments made to/ received from RBI.
2	Notification No. 48/2024 dated June 04, 2024	**CBDT notifies amendment to Form 27Q of the IT Rules effective July 1, 2024** The CBDT notifies amendment to Form 27Q which is used for furnishing information regarding TDS for payments made to non-residents. The amendment specifically involves addition of a new note- Note 7A under the "Verification" section of the Annexure in Form No. 27Q requiring Tax Deductors to indicate "P" if lower deduction or no deduction is applicable due to a notification issued under Section 197A(1F) of the IT Act which empowers the CG to notify specified payment to specified institutions, association or body or class of institutions, associations or bodies, in respect of which no deduction of tax shall be made. This amendment shall come into effect from July 1, 2024.

Sr No	Notification/ Circular	Summary
3	Notification No. 50/2024 dated June 06, 2024	**CBDT revises the jurisdiction of DIT (Intelligence & Criminal Investigation) in Lucknow and Kanpur** The CBDT revises the jurisdiction of the DIT (Intelligence & Criminal Investigation) in Lucknow and Kanpur by amending Schedule-II in the existing notification published in December 2014, removing the previous jurisdictional alignment with the Principal Chief CIT, UP (East), for areas in the state of Uttar Pradesh under Sl. No. 9 and substituting the existing entries for Sl. No. 10, thereby delineating the revenue districts within the jurisdiction of the DIT (Intelligence & Criminal Investigation) Lucknow and Kanpur, to now encompass several districts in Uttar Pradesh and the entire state of Uttarakhand.

TRANSFER PRICING
From the Judiciary

Tribunal holds deletions made by CIT (A)'s of AO's additions qua service-charges in assessment order despite TPO's order accepting ALP

Granada Services Pvt. Ltd

ITA No. 5375/DEL/2015

The Assessee had entered into a service agreement pursuant to which it received service charges from a Mauritian Company. The AO, doubting the ALP of the transaction and believing that the Assessee had diverted its profits, made a reference to the TPO who did not find anything adverse and recorded the transaction to be at arm's length. However, the AO still made an addition considering there are diversion of profits and passed the assessment order which, on appeal to CIT(A), was deleted.

Aggrieved, the AO approached the Hon'ble ITAT which noted that for the previous years, the very same agreement and the transactions were tested by the AO, but the AO had not casted any doubt regarding the genuineness of the transaction and the AO had also not invoked provisions of Section 263 of the IT Act against assessment orders for those years. Accordingly, the Hon'ble ITAT held that the AO could not have a different approach for the year under consideration as the principle of consistency ought to be followed.

Thus, finding no error in the conclusion of the CIT(A) in deleting the additions made by the AO, the Hon'ble ITAT, upheld the deletion of the addition. Aggrieved, the Assessee approached the ITAT which placing reliance on a plethora of HC rulings, remitted the matter to the AO, directing the AO to pass the final assessment order after incorporating the DRP's directions.

Hon'ble ITAT deletes interest additions on advance made to Tata's Dubai-AE for complying with regulatory requirement

Tata International Limited

ITA No. 1195/MUM/2015

The Assessee was the exporter of a variety of products including automobile spares, steel, engineering items, chemicals and leather products, etc., that had approached the Hon'ble ITAT against the TP adjustment made by the TPO imputing interest on loan advanced to its Dubai based AE, assessee's wholly owned subsidiary. Whereas, the assessee contended that the loan was advanced to the AE from interest free funds i.e. receipts from the maturity of mutual funds and therefore, there was no question of imputing interest on the same.

The ITAT noted that the AE was located in the Jabel Ali Free Zone (JAFZA) and as per the JAFZA rules, if the net assets of the entity in the free zone fell below 75% of its share capital, the owner was liable to restore the net assets to at least 75% of its share capital and since the AE incurred a bad debt, due to which its net assets fell below 75% of its share capital, the Assessee had advanced the loan as quasi equity to the AE to comply with the JAFZA rules.

Accordingly, finding that such an advance/ loan could not attract any interest and also finding merit in the Assessee's submission that the loan was granted from interest free funds, the Hon'ble ITAT quashed the addition of interest amount and deleted the TP adjustment made by the TPO.

Tribunal restricts TP-adjustments only to international transactions, rejects adjustments qua depreciation, custom duty

Daeseung Autoparts India Pvt. Ltd

ITA No. 752/CHNY/2017

The Assessee was a manufacturer of auto components. Since the Assessee had carried out certain international transactions with its AE, the same were referred to the TPO who made TP adjustments, on account of depreciation and custom duty that were subsequently upheld by the DRP pursuant to which the assessment order was passed. Aggrieved, the Assessee approached the Hon'ble ITAT contending that TP adjustments were to be restricted only to international transactions and not to entire revenues earned by the Assessee.

Finding merit in the Assessee's submission that TP adjustments were to be restricted only to international transactions and not to entire revenues earned by the Assessee, the Hon'ble ITAT observed that the same is in line with its decision in the case of **Doosan Power Systems India Pvt. Ltd. [2021-TII-159-ITAT-MAD-TP]** wherein the bench, on similar facts, had directed the TPO to restrict TP adjustment only in respect of international transactions of the Assessee with its AEs and accordingly, reiterated the same to the TPO.

Further, concurring with the stand of the lower authorities, the Hon'ble ITAT, rejected the claim of the Assessee for the adjustment qua depreciation as it was the fourth year of operations of the Assessee and no acceptable supporting data was presented by the Assessee to claim this adjustment, similarly, the Asssesee's claim for the adjustment qua custom duty was also rejected by the Hon'ble ITAT, as the Assessee could not demonstrate that the higher import content was necessitated by any extraordinary circumstances beyond its control.

ARTICLE

Trade Wars Beyond Tariffs: Non-Tariff Barriers in the Modern Economy

Historically, international trade has always been crucial to the growth of the global economy. Since the significant era of exploration and the expansion of trade routes, European powers, specially, Portugal, Spain, Netherlands and England established global trade networks, connecting Europe with other continents like Asia, Africa, and America. The Industrial Revolution transformed transportation and industry in the 18th and 19th centuries, leading to a surge in global trade. The establishment of the WTO in 1995 further promoted the liberalization of international trade.

Treading cautiously

International trade occurs when businesses from one country enter into the market of another country. In such scheme of things, countries with cheap labor and material costs often attract more foreign investments and hence gain advantage over their counterparts. However, this success may also negatively impact there local economy, inasmuch as the market share of local businesses is taken over by foreign businesses that can produce similar quality goods at cheap rates.

To protect the local economy, governments across the globe implement measures to create parity between local and foreign goods. These include tariff measures which involves levying taxes, duties and other levies directly on the foreign goods, hence taking them head on with their cheap pricing strategy. For instance, recent years have witnessed trade disputes involving tariffs on steel, aluminum, and other products between the United States, China, and the European Union. Tariff measures are among the oldest and most common trade barriers used to regulate trade flows and protect domestic industries along with generating government revenue.

Non-tariff: Barriers or Measures

Following the liberalization of tariff rates in the recent past, the focus has now shifted to NTBs. With increasing emphasis on issues such as sanitation, climate change, and deforestation, countries have begun to implement barriers that do not involve financial components.

An NTB can be any measure other than a tariff action that restricts international trade. Unlike tariffs, which are clear levies on imports or exports, NTBs encompass a range of policies that can affect trade flows, market access and competitiveness. For example, until recently China imposed a non-tariff barrier on import of avocados from Kenya, requiring them to be frozen to -30°C and peeled before shipping. Fruits imported from North Macedonia to Serbia undergo customs and sanitary checks at the borders, causing long wait times and eventually leading to the deterioration of the fresh fruits' quality due to exposure. Similarly, within the African Continental Free Trade Area, businesses must adhere to 55 separate national standards, obtain 55 test certificates, and follow 55 national inspection procedures, which naturally slows down the trade process.

The UNCTAD, a UN body promoting interests of developing economies in international trade, has an International Classification of Non-Tariff Measures (NTMs) which comprises 16 chapters covering different categories of measures, like Sanitary and Phytosanitary measures, technical barriers to trade, distribution restrictions, pre-shipment inspections, etc. Sanitary and Phytosanitary measures includes meeting

specific food safety standards , technical barriers involve government-imposed standards for designing, packaging, testing, etc., distribution restrictions refer to policies governing sale & distribution of products, pre-shipment inspection entails inspections before import/ exports.

Specifically in India's context, currently, key Indian exports that routinely face high NTBs include — Chillies, Tea, Basmati Rice, Poultry, Bovine Meat, Chemical Products to **EU**; Sesame Seed, Black Tiger Shrimps, Medicines, Apparels to **Japan**; Meat, Fish, Dairy, Industrial Products to **China**; and Bovine Meat to **South Korea**. These barriers take the shape of compliance to stringent quality and technical standards imposed by many countries. These standards often differ in regulations, testing requirements, and certification processes, making it difficult for Indian exporters to meet. Complex customs procedures & documentation also create hinderances to boot.

Another example could be the upcoming EUDR, set to take effect in December 2024, which requires any business selling within the EU to be EUDR-compliant. This means if final product is to be compliant, all inputs went into its making must also meet the regulation's requirements non-compliance at any stage would render the final product ineligible for sale in EU.

Uncalled ramifications

While NTMs are legitimate when implemented within the conformity of WTO, they become NTBs when used unfairly to discriminate and hamper legitimate trade. No doubt NTMs does protect domestic businesses from foreign domination & influence, the other side of it is equally silhouetted.

Just like ground wars have human causalities, trade wars also do not leave the businesses less bruised. NTBs are sometimes politically motivated, pandering to the local emotions & military rivalry. The case in point could be Press Note 3 issued in 2020 to deter Chinese investments in India or for that matter US & European sanctions on import of oil from Russia in the wake of Ukraine war. NTBs also sometimes keep the domestic industries bereft off the technological advancements & deter free flow of manpower and machines which today has become the fulcrum of global trade.

Another casualty is local workforce. NTBs/ NTMs often leads to restrictions in foreign investments, which ultimately leads to cost cutting, eventually ending up into lay-offs and firing of local workers, increasing their shift timings or cutting down their safety nets. Businesses which couldn't sustain such barriers often end up into bankruptcy.

Acting fairly

NTMs could prove beneficial for local communities when implemented fairly and legitimately within the framework of WTO. For exporters, compliance requirements can be simplified by promoting global standardization and regulation. It is essential that standards of quality, sanitary and phytosanitary measures, and technical regulations are consistent across countries. Implementing trade facilitation measures, such as simplifying customs procedures and reducing administrative burdens, can help increase the transportation of goods and lower the costs associated with NTBs.

International trade is crucial for the success of any nation, but NTBs can stifle economic growth by constraining export opportunities. Addressing NTBs is essential for ensuring that the global market remains accessible and beneficial for all participant.

GOODS & SERVICES TAX
From the Judiciary

HC stays demand order for reversal of ITC due to cancellation of supplier's registration

Asian Hotels (East) Ltd. & Anr.

WPA 13542 of 2024

The Petitioner availed ITC under Section 16(2)(a) of the CGST Act, but the supplier they had an agreement with had closed down its business. The Department raised a demand for the ITC, alleging a violation of Section 16(2)(a) of the CGST Act due to the supplier's closure. Aggrieved the Petitioners preferred a Writ petition before the Calcutta HC.

The Petitioner argued that the recovery method was contrary to the law established in the **Suncraft Energy Private Limited case [2023 SCC OnLine Cal 2226].** The Court found that the Petitioner had established a prima facie case. Consequently, the Court granted a stay on the demand raised by the proper officer, as reflected in the impugned order. This stay is subject to the condition that the Petitioner deposits 10% of the disputed tax amount with the GST authorities.

Authors' Notes

> *Various HC's prominently including the Calcutta HC has taken the consistent view that recipient cannot be punished for the actions of such vendors if it has taken all due diligence while entering into their transactions. This view was upheld in the case by Calcutta HC in the popular case in **LGW Industries Limited & Ors. [2021-TIOL-2308-HC-KOL-GST]** wherein the bench had directed that if it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions were made before the cancellation of registration of those suppliers than the benefit of input tax credit shall be given.*

HC allowed rectification of GSTR-3B owing to inadvertent error in filing

Bright Hardware

Writ Petition No.15948 of 2024 and W.M.P.Nos.17414 & 17416 of 2024

The Appellant had sought condonation of a delay exceeding four months in filing an appeal before the Appellate Authority under Section 107 of the CGST Act.

The Calcutta HC clarified that section 107 of the CGST Act, neither expressly nor impliedly excludes the applicability of the Limitation Act. It further observed that Section 108 of the CGST Act, which provides for the power of revision against an order of adjudication, does not imply exclusion either. The absence of a non-obstante clause in Section 107 makes Section 29(2) of the Limitation Act, applicable. The HC further emphasized that the prescribed 60-day period for filing an appeal is not final, and the Appellate Authority has the discretion to extend it based on the circumstances of the case. Accordingly, the HC set aside the order and held the Appellate Authority to consider the application for condonation of delay on its merits.

Authors' Notes

*It is a settled principle that substantive benefits cannot be denied on account of clerical or procedural lapses. In in **RE: Panduranga Stone Crushers vs. UOI [2019(30) GSTL 385 (AP)]** wherein, the HC had condoned the clerical error of the Petitioner in filing of Form GSTR-3B, mentioning IGST ITC relating to import of goods and services instead of placing it in all other ITC column. This clearly shows that the intent of the law is to never demand taxes due on clerical errors, especially when there is no loss of revenue involved.*

HC: Transportation of machinery from port to factory doesn't constitute supply

Fabricship Private Limited [2024:BHC-AS:25019-DB]

The Petitioner had arranged a transporter to transport the imported machinery from a Customs port to their own factory. During transportation, the goods were not accompanied by an e-way bill, but the Bill of Entry accompanying the vehicle contained all the necessary details. The Department intercepted the goods and levied a penalty under Section 129(1) of the CGST Act, equivalent to tax payable. Aggrieved the Petitioner preferred a Writ petition challenging the order passed levying penalty.

The Court held that the transportation of imported machinery by the Petitioner from a Customs port to their own factory did not constitute a "supply" under Section 7 of the CGST Act. This was because there was no transaction involving more than one entity, which is necessary to meet the definition of "supply" under the Act. Therefore, since there was no supply and no consideration as defined in the Act, Section 9, which imposes tax liabilities, was not applicable. The Court further held that the imposition of GST and penalty by the tax authorities without first establishing that the transportation qualified as a supply under Section 7 was erroneous. Consequently, the Court modified the impugned order, reducing the Petitioner's liability to a penalty, as the provisions relating to tax payable on supplies were found not applicable in this case. Thus, the Writ petition was disposed of accordingly.

HC: Interest cannot be levied on the amount already deposited in the electronic cash ledger

Arya Cotton Industries & Anr.

2024-VIL-634-GUJ

The Petitioner who filed a belated GSTR-3B return and paid the tax liability using the electronic cash ledger. The issue in contention was whether the deposit in the electronic cash ledger should be considered as payment of tax, thereby exempting the Petitioner from paying interest under Section 50 for the period from deposit to filing of the return.

The Court held that according to the Explanation to Section 49, the date of credit to the Government's account in the authorized bank is deemed to be the date of deposit in the electronic cash ledger. When the return is filed and there is a sufficient balance in the electronic cash ledger, the liability is offset by debiting the ledger. Thus, the tax deposited is effectively set off against the liability at the time of filing the return. The Court reasoned that the amount in the electronic cash ledger functions as advance tax, which cannot be withdrawn or utilized except for paying tax liability as per the return filed. Therefore, interest under Section 50(1) cannot be levied on the amount already deposited and adjusted against the liability at the time of filing the return.

The Court emphasized that interpreting Section 50(1) to levy interest in such cases would go against the compensatory nature of interest charges, potentially converting it into a penalty. The purpose of the proviso to Section 50(1) was clarified to remove ambiguities regarding the levy of interest on gross tax liability versus net tax liability paid. Consequently, the Court set aside the impugned order and allowed the Petitioner's pleas, ruling that no interest is payable from the date of deposit in the electronic cash ledger till the date of filing of the return.

Authors' Notes

> *The judgment provides much needed relief to taxpayers who could not file GSTR-3B on time but paid the tax in the Electronic Cash Ledger to prevent interest liability. Notably, to ease the interest burden of the taxpayers, the 53rd GST Council recommends to not levy interest u/s 50 of CGST Act in case of delayed filing of return, on the amount which is available in Electronic Cash Ledger (ECL) on the due date of filing of the said return.*

HC: Refund should be calculated basis the net realisation value instead of the FOB value stated in the invoice

Au Finja Jewels

Writ Petition No. 486 OF 2021

The Petitioner, had filed a refund application for accumulated unutilised ITC. The refund application was reduced by the Adjudicating Authority, citing guidelines from Circular No. 37/11/2018-GST. This circular mandated considering the lower value between the GST invoice and the corresponding Shipping Bill to determine the export turnover. Disagreeing with this decision, the Petitioner argued that the GST invoice clearly stated the FOB value of the goods, despite a deduction for free gold supplied. The Adjudicating Authority, however, calculated the FOB value based on net realisation, which the Petitioner contested. Aggrieved the Petitioner preferred a Writ petition before the Bombay HC.

The Court held that the value of goods for determining the refund of IGST should be based on the value declared in the GST invoice. The Court disagreed with the revenue's interpretation, stating that the GST invoice's declared FOB value should be accepted unless contradicted by the Shipping Bill. As a result, it quashed the earlier decision and instructed the authority to reassess the refund application in accordance with this principle.

HC: Adjudication orders must consider substantive merits and justifications of filed replies

Future Generali India Insurance Company Limited

W.P.(C)-7417/2024 & CM APPL. 30942-43/2024

The Petitioner challenged an order which disposed of a Show Cause Notice proposing a demand. The Petitioner contended that despite submitting detailed replies along with supporting documents, the impugned order did not consider their submissions and was cryptic in nature. The Show Cause Notice had raised various grounds related to output tax declaration, ITC claims, and other tax-related issues. The Petitioner responded comprehensively to each ground with supporting documents. However, the impugned order dismissed the Petitioner's reply, stating it was not properly filed, without justifying this conclusion or seeking further clarification from the Petitioner. Aggrieved the Petitioner preferred a Writ

challenging the order.

The Court found the impugned order unsustainable as it failed to consider the Petitioner's detailed responses and documents. The tax authorities had to at least consider the reply on merits and then form an opinion. Whereas in the present case, it was merely held that the reply was not properly filed or filed without any justification which clearly shows that the tax authority had not applied his mind while issuing the Impugned Order. Accordingly, the Court set aside the order and remitted the SCN back to the Proper Officer for re-adjudication.

Authors' Notes

> *It is observed that SCNs are often issued without adequately considering replies or are vague, forcing taxpayers to seek relief from the High Court. This leads to unnecessary wastage of time and resources. A more rational and informed approach from officers, along with proper training, is essential to handle such matters efficiently.*

HC: Penalty cannot be levied mere availing of ITC, without subsequent utilization

Greenstar Fertilizers Limited

2024-VIL-577-MAD

The Petitioner had claimed ITC through TRAN-1, which was later found to be ineligible. After issuance of a Show Cause Notice, the Petitioner voluntarily reversed the credit without utilizing it to discharge tax liability. However, penalty was imposed on such wrong availment. The Petitioner challenged the imposition of penalties under Section 74(1) and 74(5) of the CGST Act before the Madras HC.

The Court held that under the provisions of Sections 73(1) and 74(1) of the CGST Act, penalties can be imposed when wrongfully availed ITC is utilized to discharge tax liability. Mere availing of ITC, without subsequent utilization, does not automatically attract penalties unless it can be shown that there was an intention to reduce tax liability. In this case, since the petitioner had voluntarily reversed the ineligible ITC without utilizing it for tax payments after the issuance of the SCN, the Court found that the imposition of full penalties was not justified. However, considering the fact that the Taxpayer had availed ineligible ITC that could have resulted in the wrong utilisation of the ITC, a token penalty of INR 10,000 was imposed on the Petitioner.

GOODS & SERVICES TAX
From the Legislature

CIRCULAR

Sr No	Circulars	Summary
1	Circular No. 208/2/2024-GST dated June 26, 2024	**Clarifications on special procedure applicable for Pan Masala and Tobacco Products** Earlier the 50th GST Council meeting recommended special procedure for pan Masala and Tobacco products which was notified vide Notification No. 30/2013-Central Tax. The procedure underwent revision vide Notification No. 4/2024-Central Tax. The revised procedure required certain procedural clarification on following aspects: - • Non availability of make, model number and machine number to be declared in FORM GST SRM – I; • Declaring electricity consumption rating in FORM GST SRM – I; • Declaration of value in in FORM GST SRM – II where MRP is unavailable; • Qualification of Chartered Engineer certifications referred in the Notification; • Applicability of special procedure to SEZ units; • Applicability of procedure for manual packing operations; • Liability to follow special procedure in case of Job Work activity.
2	Circular No. 209/3/2024-GST dated June 26, 2024	**Determination of place of supply of goods supplied to unregistered person (through E-commerce)** CBIC has clarified that the place of supply in such cases shall be determined based on the actual delivery of the goods (and not the address of the recipient as per the invoice. Transactions through E-commerce platform frequently come across supply of goods to an unregistered person at a place other than the billing address mentioned on the invoice.
3	Circular No. 210/4/2024-GST dated June 26, 2024	**Valuation of import of services by a related person eligible to full ITC** CBIC has clarified that the second proviso to Rule 28(1) of CGST Rules and clarifies that Invoice value shall be deemed as open market value for the Imported services by a related party where such related party recipient is eligible for the full ITC. The clarification also provides that in absence of an invoice, such Open Market value shall be deemed as 'Nil'.

Sr No	Circular	Summary
4	Circular No. 211/5/2024-GST dated June 26, 2024	**Time limit for availment of ITC w.r.t. RCM supplies received from unregistered persons, where the invoice was issued with delay** CBIC has clarified the time limit for availment of ITC under the provisions of section 16(4) of CGST Act as the financial year in which the invoice has been issued by the recipient. It thus clarifies that even if the invoice is issued with delay, date of invoice shall continue to determine time limit for ITC availment. The clarification also refers to applicability if interest for delay caused in issuance of Invoice and re-iterates that it will not obstruct availability of ITC.
5	Circular No. 212/6/2024-GST dated June 26, 2024	**Mechanism to ascertain reversal of ITC by recipient in case of issuance of Credit note** Section 15 requires a recipient to reverse ITC relating to a Credit Note to allow the supplier the deduction in its output GST liability. Thus, CBIC has clarified that until a mechanism is devised to monitor such reversal the requires the supplier to obtain a certificate from the recipient to the effect that t has reversed the Credit with reference to the Credit Note, Invoice number and other relevant details. The Circular also provides that the certificate ought to be issued by a CA/CMS where the amount of reversal is INR 5,00,000/- or above. A self-declaration by the recipient for amounts lesser that the above are admissible.
6	Circular No. 213/7/2024-GST dated June 26, 2024	**Taxability of reimbursement by domestic subsidiary company to foreign holding company for ESOPS issued to employees of domestic subsidiary company** CBIC has clarified that since GST is not leviable on the compensation paid to the employee by the employer the ESOP/ESPP/RSU of the foreign holding company to the employee is not taxable. The Circular also clarifies that any premium re-imbursed by the domestic subsidiary company to foreign holding company for such ESOP/ESPP/RSU is neither supply of goods is not a supply of service and thus not subject to GST. It further clarifies that if any premium is being paid over and above the reimbursement on cost-to-cost basis then such premium is subject to GST under reverse charge at the hands of the domestic subsidiary company.

Sr	Circular	Summary
7	Circular No. 214/8/2024-GST dated June 26, 2024	**Non-applicability of ITC reversal on that part of 'Life Insurance Premium' which is not included in assessable value** CBIC has clarified that the premium not included in the assessable value in accordance with Rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and thus there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount .
8	Circular No. 215/9/2024 GST dated June 26, 2024	**Taxability on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle** CBIC has clarifies that in case of deduction of salvage value from the claim amount the ownership of salvage (i.e. damaged vehicle, scrap of the damaged vehicle) is retained by the claimant and there is no supply of salvage. It also clarifies that where such salvage amount is not deducted, the ownership of salvage transfers to the insurance company. Accordingly, GST is not applicable if the salvage amount is not paid to the claimant. Further, GST is applicable where salvage amount is paid by the insurance company to the claimant.
9	Circular No. 216/10/2024 GST dated June 26, 2024	**GST liability and ITC availability in cases involving Warranty/ Extended Warranty** CBIC has clarified that no GST is payable on replacement of entire goods under the warranty clause. Position expounded vide Circular 195/07/2023 dated July 17, 2023, for replacement of part applicable mutatis mutandis. In case of replenishment of goods to distributor/dealer when such distributor/ dealer have used their own stock to cater replacement under warranty, no GST is payable. Also, no ITC is required. Supply of extended warranty shall be treated as supply of services distinct from original supply and attract GST liability.
10	Circular No. 214/8/2024-GST dated June 26, 2024	**ITC for insurance companies on repair of motor vehicles in case of reimbursement mode of insurance claim settlement** CBIC has clarified that ITC is available to insurance companies for repair expenses incurred under reimbursement mode, as the insurance company is ultimately liable for the repair costs. Such ITC is available only to the extent of approved claim cost and subject to invoice being issued in the name of the insurance company.

Tribunal overturns enhanced valuation of imported Leather Sofas

Lifestyle International Private Limited

2024-VIL-657-CESTAT-CHE-CU

The primary issue in the instant case revolves around the rejection and subsequent enhancement of the transaction value declared by the appellant for the imported sofas. Initially, the adjudicating authority rejected the declared value and revalued the sofas at $924/- per set based on a departmental circular. Aggrieved by this decision, the Appellant appealed to the Commissioner of Customs (Appeals), who further increased the value to $2112/- per set without prior notice to the appellant, prompting the current appeal to the tribunal.

The appellant argued that, as per Section 14 of the Customs Act, 1962, the transaction value should be accepted unless there are valid reasons for its rejection. They contended that the enhancement of the value based on a departmental circular and market survey was against legal provisions. Furthermore, they cited the Hon'ble Supreme Court's ruling in Eicher Tractors Vs. Commissioner of Customs, which established that transaction value cannot be rejected unless specific exceptions apply. The appellant emphasized that the burden of proof to reject the declared transaction value lies with the department, which had failed to meet this obligation.

The tribunal found that the Commissioner (Appeals) had overstepped by enhancing the value without providing proper notice and going beyond the lower authority's record. It reaffirmed that transaction value should be accepted unless valid reasons for rejection are provided, and using extraneous evidence like departmental circulars is not permissible. The tribunal concluded that the department had not met its burden of proof to reject the declared transaction value. Consequently, the Tribunal set aside the impugned order, allowed the appeal, and granted consequential relief to the appellant as per the law.

Tribunal classifies "Apatite (Ground) Calcium Phosphate" under CTH 25102030

Artabroch Ceramics Private Limited

2024-VIL-655-CESTAT-AHM-CU

The issue at hand involves the classification of "Apatite (Ground) Calcium Phosphate". The appellant originally classified the product under CTH 25102030, but the Revenue reclassified it under CTH 28352690, leading to a demand for differential customs duty, along with interest and penalties.

The Tribunal concluded that the imported product, being a natural form of calcium phosphate (Apatite), should be classified under CTH 2510 rather than CTH 2835. This decision was based on previous rulings involving identical products from the same suppliers, where the Tribunal consistently classified such goods under CTH 2510. The Tribunal noted that the product in question had been consistently classified under CTH 2510 both before and after the disputed period, following proper testing and verification by Customs authorities. Additionally, the test report relied upon by the revenue department was deemed unreliable as it was based on samples drawn much later from the factory premises, not from the port of entry.

The Tribunal referenced a parallel case involving M/s. Mudrika Ceramics, where it was established that the product, being a natural mineral, should not be classified as a chemically precipitated or synthetic product under CTH 2835. The decision also emphasized the importance of consistency in classification, especially when identical products from the same supplier were involved.

Accordingly, the Tribunal set aside the impugned orders, allowing the appeals, and nullified the penalties imposed on the appellant and other associated parties, reaffirming that the correct classification of "Apatite (Ground) Calcium Phosphate" is under CTH 25102030.

CUSTOMS & FTP
From the Legislature

CUSTOMS

Sr No	Notification/ Circular	Summary
1	Notification No. 26/2024-Customs dated June 27, 2024	**CBIC extends validity of customs exemptions for defence sector imports from 2024 to 2029** Vide this amendment, the CBIC extends the validity of provisions initially set to expire in 2024 until 2029. The amendment replaces the reference to "2024" in paragraph 2 of the original notification with "2029". The exemptions were for specific goods imported into India by the Ministry of Defence, Defence forces, Defence Public Sector Units, or other specified entities. The earlier notification also specified various categories of goods, such as steam turbines, internal combustion engines, aircraft, missiles, and related equipment, eligible for these exemptions.
2	Notification No. 66/2023-Customs dated 22nd December, 2023	**Impact of ICEGATE implementation on RODTEP benefits and SEZ filing procedures** The Ministry of Commerce and Industry, SEZ Division, issued this notification concerning the implementation of ICEGATE at Non-IT/ITES SEZ Units. Effective from 1st July 2024, this notification highlights several key guidelines: • Only Non-IT/ITES SEZ Units filing documents on the ICEGATE Portal will qualify for benefits under the RODTEP scheme. Units using the SEZ Online portal will not be eligible for these benefits. • The filing of documents on the SEZ Online portal will be permissible until 15th July 2024. • Units that have migrated to the ICEGATE Portal are strictly prohibited from filing documents on the SEZ Online Portal. • Bills of Entry for goods imported before the ICEGATE Portal rollout for SEZs can continue to be filed on the SEZ Online Portal • Documents for clearance filed until 30th June 2024, including Bills of Entry, Import/DTA Sale, Shipping Bills, and Zone to Zone Transfers, will be processed on the SEZ Online Portal, as these goods have no presence in ICEGATE.

Hon'ble HC holds debt due to government stands extinguished if demand not included in resolution plan

Patna Highway Projects Ltd. vs. The State of Bihar & Ors.

Civil Writ Jurisdiction Case No.14376 of 2023

The Corporate Debtor (Petitioner) had preferred a Writ petition before the Hon'ble HC challenging the demand raised by the assessment orders under the Bihar GST Act for the AYs 2020-21 and 2022-23, as having been extinguished inasmuch as the State Tax Authorities did not move to the NCLT for inclusion of their demand in the resolution plan, as a debt payable by the Petitioner under the IBC. The Hon'ble HC noted that there was no challenge against the resolution plan as approved by the CoC followed up with the approval of the NCLT and the State did not have a case that they had approached the RP within the period provided and before the resolution plan was approved by the CoC and then by the NCLT, as also there was no recovery initiated or assessment order passed before the resolution plan was approved, neither was an appeal filed before the NCLAT.

Accordingly, placing reliance on a plethora of judgments, the Hon'ble HC observed that it had been established by various precedents that unless the resolution plan included the debt and the demand thereof was a part of the resolution plan, it would stand extinguished even if it was a debt due to the Central or the State Government, by virtue of a statutory charge, despite the statutory charge enabling the status of a secured creditor.

Moreover, the very object of the IBC was to foster entrepreneurship and ensure a creditor driven regime wherein the twin purposes of revival of a debt-ridden company was made possible, along with resolution of the various claims raised by the creditors, both secured and sundry, and it was with this object in mind that even the statutory dues were pushed to the back seat as was evident from Section 53 of the IBC which comes into play in the liquidation proceedings, on failure of the resolution process. Thus, holding the demand raised by the assessment orders, of tax due for the years 2020-21 and 2022-23 stood extinguished subject only to the contingency of a liquidation proceeding if the resolution plan failed, the Hon'ble HC, allowed the Writ petition.

Hon'ble HC holds Court cannot wear lens to find errors in award, rejects petition challenging international commercial arbitration award

Indian Strategic Petroleum Reserves Ltd. vs. SKEC-KCT JV.

O.M.P. (COMM) 217/2022 & O.M.P. (COMM) 238/2022

The Petitioner had approached the Hon'ble HC under Section 34 of the Arbitration Act challenging an arbitral award that was a subject of international commercial arbitration. Placing reliance on the various precedents set by the Hon'ble SC, the Hon'ble HC observed that it was well settled that while exercising the jurisdiction under Section 34 of the Arbitration Act, the Court could not sit in an appeal over the arbitral award, and that the award could be set aside only on the limited grounds as mentioned under Section 34

(2) of the Arbitration Act even though the reasoning given by the Arbitrator may be insufficient.

Moreover, the Court could not wear a lens to find out what were the errors and shortcomings in the award and if two views were possible which could have been taken by the Arbitrator, and one view which may be a possible view was taken, the Court could not substitute its own view with the view of the Arbitrator unless the view taken by the Arbitrator was an impossible view in which case the Court could interfere, however, there had to be minimal judicial intervention and a mere contravention of the substantive law of India was no longer a ground to set aside an arbitral award. Further, noting that as the award under challenge was that of international commercial arbitration, the Hon'ble HC observed that, while exercising its jurisdiction under Section 34 of the Arbitration and Conciliation Act, it could not look into whether the law had been applied correctly or not as the threshold required for setting aside an award was much higher, accordingly, rejecting the petition.

Hon'ble HC holds Arbitral Tribunal ultimate fact finding authority, rejects petition challenging arbitral award

TSMT Technology (India) Pvt. Ltd. vs. S & J Turn-Key Contractor (India) Pvt. Ltd.

Arb. O.P. (Com. Div.) No.125 of 2023

The Petitioner and the Respondent had entered into a contract wherein the Petitioner owed the Respondent a sum of INR 21.74 Crores out of which the Petitioner had already paid INR 6.94 Crores. Aggrieved, the Respondent approached the Arbitral Tribunal claiming the remaining INR 14.80 Crores. The Arbitral Tribunal allowed only a sum of INR 11.19 Crores to the Respondent, however, rejected the counterclaim of the Petitioner for a sum of INR 2.61 Crores and passed an award.

Aggrieved, the Petitioner approached the Hon'ble HC contending that the counterclaim was towards the amount paid by the Petitioner to Respondent's sub-contractors/vendors and towards alleged damage suffered by the Petitioner.

Noting that at a particular point of time, the Respondent had a liquidity crunch and was unable to make payment to the sub- contractor/vendors, therefore, the Petitioner agreed to pay certain sum to various sub-contractors of the Respondent-claimant, the Hon'ble HC observed that the Arbitral Tribunal was the ultimate fact finding body/authority, its conclusion on facts could not be set aside unless there was patent illegality and seeing that there was no error committed by the Arbitrator while awarding the amounts

claimed, the award passed by the Arbitrator could not be said to be perverse or amounting to any patent illegality to warrant interference.

Thus, holding that the impugned award did not warrant any interference as the Arbitral Tribunal was the best judge with regard to quality and quantity of evidence before it, the Hon'ble HC rejected the petition.

Hon'ble HC clarifies Courts' powers to award interim compensation under NI Act, highlights discretionary nature

Bajaj Constructions vs. State of Maharashtra & Ors.

Writ Petition (ST) No. 22150 of 2023

The Petitioner (Accused) had filed a Writ petition before the Hon'ble HC against the Respondent (Complainant) inter-alia challenging the judgment of the Additional Sessions Judge which revised the Metropolitan Magistrate's order by directing the Petitioner to deposit 20% of the cheque amount by way of interim compensation under Section 143A of the NI Act. Before the HC, the Petitioner submitted that the Sessions Judge had approached the matter as if the provisions under Section 143A of the NI Act were mandatory in nature and not directory and thereby, had lost sight of the fact that the Magistrate had declined to exercise his discretion for justifiable reasons, per contra, the Respondent argued that the Sessions Judge had correctly exercised revisional jurisdiction, lest the provisions under Section 143A of the NI Act be rendered futile.

Noting that the text of Section 143A of the NI Act which granted power to the Courts to award interim compensation was discretionary in nature and that 20% of the amount covered by the cheque, which was the upper threshold, could not be awarded as a matter of course, the Hon'ble HC observed that only when the Complainant made out a prima facie case, could a direction be issued to pay interim compensation and since the order passed by the Magistrate was discretionary in nature, it was not open to the revisional Court to lightly interfere with the exercise of discretion by the Magistrate, unless it appeared that the discretion was exercised in an arbitrary manner by either ignoring the relevant material or taking into account irrelevant material. The revisional jurisdiction could not have been exercised merely because a different view was possible on the same set of facts. Thus, finding that the impugned order deserved to be interfered with, the Hon'ble HC, accordingly, allowed the Writ petition, thereby, restoring the order passed by the Magistrate since it did not suffer from legal infirmity so as to warrant interference by revisional jurisdiction.

Hon'ble HC quashes ED's attachment of company's shares considering them as "amount equivalent to proceeds of crime"

Gagan Infraenergy Ltd. vs. Directorate of Enforcement & Anr.

W.P.(C) 11264/2021

The Petitioner was the promoter company of Jindal Steel & Power Ltd. (JSPL) that had filed a Writ petition before the Hon'ble HC inter-alia challenging the Provisional Attachment Order in a case under the PMLA, whereby the ED had attached the shares of JSPL subscribed by the Petitioner considering them to be "amount equivalent to proceeds of crime".

Before the Hon'ble HC, the Petitioner pleaded that due to the attachment, it was unable to trade these shares in the open market. Moreover, the attachment of these shares was causing grave prejudice to the Petitioner since it was engaged in the business of investment and finance operations by way of inter-

corporate deposits and since physical attachment was not required for completion of the trial, they could be restored to the Petitioner by substituting a bank guarantee/Fixed Deposit Receipt/Indemnity Bond or any other security. Noting that the share warrants were allotted even prior to the coming into force of PMLA and much prior to the alleged commission of scheduled offence or the alleged "proceeds of crime" gathered therefrom, the Hon'ble HC examined whether the attached shares of JSPL based on equivalence in "value of proceeds of crime" could be substituted by a Fixed Deposit Receipt/Indemnity Bond or any other security since direct proceeds of crime were not available due to rotation of funds through various transactions and observed that there was a difference between "proceeds of crime" and "amount equivalent to proceeds of crime" such that in case of attachment of "proceeds of crime", the Court could not agree to the request for substitution of the attached property, but in case of attachment being on account of "equivalent value of proceeds of crime", the Court could allow substitution of such attached property.

Further, since the claim of the Petitioner was legally justified and supported by a catena of PMLA rulings by the Hon'ble SC & HC, the JSPL shares lying with the Petitioner and attached not as "proceeds of crime" but being "equivalent value of proceeds of crime" could not remain under provisional attachment and deserved to be released in favor of the Petitioner on furnishing interest bearing Fixed Deposit Receipt. Accordingly, directing the Petitioner to submit an undertaking that it shall not create any interest in favor of any other person or entity in respect of the said issued Fixed Deposit Receipts and renew it in accordance with the law, the Hon'ble HC allowed the Writ petition.

Hon'ble HC denies bail to individual, cites prima facie complicity in laundering money for prime accused

Udhaw Singh vs. Enforcement Directorate Thru. Assistant Director, Lko..

Criminal Misc. Bail Application No. - 3206 of 2024

The Applicant was an individual whose firms were alleged to be involved in dealing with proceeds of crime generated by the prime accused company and its directors. Through certain firms of the Applicant, commercial properties had been purchased which generated rental income, but no other commercial work or business activity had been done from the said firms. The Applicant was said to have done work for the prime accused company for construction and supply of material.

The ED alleging that the extent of work and supply made by the Applicant in context with the money paid by the prime accused company to the Applicant in his firms were not as per prudent business practices, arrested the Applicant on the charges of money laundering which caused the Applicant to file an application for bail before the Hon'ble HC.

Noting that the offence of money laundering not only related to generation of such proceeds of crime but it also included any activity directly or indirectly relating to concealment or possession or acquisition or use amongst others, the Hon'ble HC observed that there was prima-facie material against the Applicant to link him with the movement and trail of funds from the prime accused company into his various accounts and his closely held business firm.

Moreover, even though the Applicant was called for recording his statements and gave his statements on eight dates, this only demonstrated that the Applicant on being called had appeared to give his statement but it in no way was an explanation for the movement of funds from the prime accused company into his various accounts and his firms. Further, the meteoric rise of the Applicant and his firms in business with the business aid, encouragement and boost from mainly the prime accused company indicated a prima-facie complicity of the Applicant.

Thus, taking an overall view including the gravity of offence as well as the fact that the witnesses of fact were yet to be examined, the Hon'ble HC was unable to persuade itself to form a prima facie satisfaction, that the Applicant was not guilty or that he may not commit an offence on bail, at this stage and accordingly, rejected his bail application.

SEBI levies penalty of INR 2 Crores on Company, CMD, CFO for misrepresenting financial statements

In the matter of TIL Ltd.

Adjudication Order No. Order/SS/LD/2024-25/30374-30377

SEBI had conducted an investigation in the matter of TIL Limited on the receipt of an email and SCORES complaint *inter-alia* alleging that the audited balance sheet for FY 2020-21 was fudged and fictitious trading in steel was recorded for padding up the top lines for the banks.

Based on the said complaint, a preliminary examination was carried out wherein TIL submitted that it had raised 12 invoices during FY 2019-20, however, it had reversed the said invoices in FY 2020-21 due to non-movement of goods and re-invoiced them again. Further, with respect to steel bought and sold with one entity, TIL submitted that it had engaged in trading of steel to ensure continuity of business operations & survival. Considering the aforesaid submission, further information/ documents were sought from TIL and after analyzing the information/ documents of TIL, the matter was thereafter, taken up for detailed investigation for a period ranging from FY 2017-18 to 2021-22 (Investigation Period/IP), to ascertain the possible violation of provisions of the SEBI Act, PFUTP Regulations and LODR Regulations.

During the course of the investigation, SEBI found that the CMD, CFO and CEO (collectively, Noticees) of TIL had violated various provisions of the PFUTP and LODR Regulations by having done fictitious purchases & sales, which led to misrepresentation/misstatement of the financial statements of TIL Ltd. during FY 2019-20 & FY 2020-21 which contained untrue figures of the listed company and by knowingly approving and authenticating its financial results filed during FY 2019-20 & FY 2020-21 and publishing financial statements which were not true.

Accordingly, holding that bringing about true and fair picture of the financials was essential whereas misrepresentation of financials in respect of the vital information of any company forfeited the purpose of dissemination of information to the investors and acted detrimental to the interest of the investors, thereby hampering their ability to take suitable informed investment decisions, SEBI imposed a total penalty of INR 2.5 Crores on TIL and the Noticees.

Hon'ble SAT overturns SEBI order in RPTs case, directs company to appear for document check

Linde India Ltd. vs. SEBI

Appeal No. 329 of 2024

The Appellant was an industrial gases company that had filed an appeal before the Hon'ble SAT against the *ex-parte* order of the SEBI which directed the Appellant to comply with listing norms with reference to determination of future RPTs and to obtain shareholder approvals if the aggregate value of the transactions exceeded materiality thresholds.

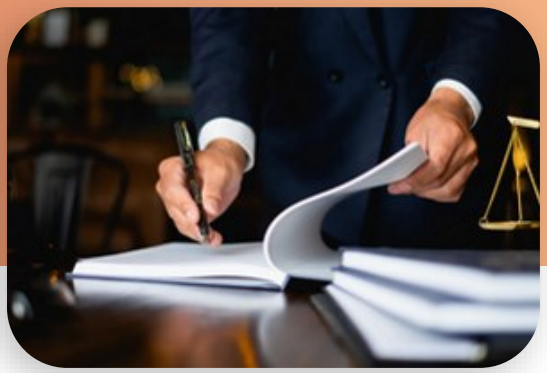
Before the Hon'ble SAT, the Appellant submitted that SEBI had passed the impugned *ex-parte* order on

the premise that the Appellant had executed RPTs without obtaining prior approval from the shareholders in terms of LODR Regulations. However, there was no imminent threat to securities market warranting issue of such directions against the Appellant and the same was in violation of the principles of natural justice, without providing an opportunity of hearing prior to issuance of directions and that the directions were in the nature of a final order and had caused severe prejudice to the Appellant.

Per contra, SEBI submitted that the Appellant had been flagrantly violating the statutory regulations and this was a case of clear violation of LODR Regulations, hence the impugned *ex-parte* order had been passed to protect the interest of public shareholders as continuance of RPTs without shareholders' approval would have negatively impacted them. Moreover, its directions were not punitive but only remedial directions and not prejudicial inasmuch as they did not require alteration of *status quo ante* but were confined to future transactions and in operation only till full-fledged hearing took place upon the Appellant filing its reply within 21 days as per the impugned *ex-parte* order.

Noting that it would not be just and appropriate to continue the impugned *ex-parte* order any further keeping in view that the Appellant had been directed to file reply within 21 days and SEBI had made a statement before the SAT that if the reply was filed by the Appellant, SEBI shall consider the same and pass orders within 30 days from the date of conclusion of hearing, and in the event of any adverse order, SEBI was enjoined with all powers to pass appropriate directions including an order of disgorgement. The Hon'ble SAT, setting aside the impugned order, allowed the appeal, directing the Appellant to appear before SEBI for inspection of documents, while directing SEBI to grant inspection and supply documents immediately.

REGULATORY
From the Legislature



SEBI makes process of securities payout directly to client's account mandatory through its new directive on direct payout of securities

Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024

To enhance operational efficiency and reduce the risk to clients' securities, SEBI through a circular makes the process of direct payout of such securities to the client's account mandatory effective October 14, 2024.

The circular mandates the direct pay-out of securities to clients' demat accounts, replacing the current system where securities are pooled by brokers before being credited to clients. Starting October 14, 2024, CCs will be required to credit securities directly to clients' demat accounts. The implementation standards will be formulated by the Broker's Industry Standards Forum, under the aegis of the stock exchanges and in consultation with SEBI, by August 5, 2024.This change aims to minimize the risk of misuse of clients' securities by brokers and enhance the overall transparency of transactions and enhance trust and confidence among investors, promoting a more secure investment environment.

Stock Exchanges, Depositories, and CCs are instructed to ensure compliance with the circular's provisions and to amend relevant Byelaws, Rules, and Regulations accordingly. These entities must also report the status of implementation in their Monthly Development Reports to SEBI.

Brokers and Clearing Members will need to adjust their operational processes to comply with the new requirements. This includes setting up new demat accounts for margin-funded stocks and ensuring adherence to the auction process for handling shortages. While this may introduce some initial administrative burdens, it ultimately streamlines operations and enhances transparency.

The mandatory direct pay-out of securities represents a significant step towards increasing the efficiency and security of securities transactions in the Indian market. By reducing the risk of misuse of clients' securities and ensuring timely crediting to demat accounts, SEBI aims to foster a more robust and trustworthy financial ecosystem. However, the new processes will not apply to clients who have arrangements with SEBI-registered custodians for the clearing and settlement of trades.

RBI allows AD Cat-I banks to open additional special current accounts for its constituents to settle export & import transactions

Notification No. RBI/2024-2025/43 dated June 11, 2024

In view of the increasing interest of the global trading community in the domestic currency, the RBI through a circular, had earlier decided to allow the settlement of India's international trade in INR and had asked banks, to put in place additional arrangements for export and import transactions in INR.

Accordingly, AD Category-I banks were required to open and maintain Special Rupee Vostro Accounts of the partner trading country's banks. These accounts kept the foreign bank's holdings in the Indian counterpart in INR and when an Indian trader wanted to make a payment to a foreign trader in INR, the

amount was to be credited to this Vostro Account.

The RBI, thereafter, permitted AD Category-I banks maintaining Special Rupee Vostro Account on International Trade Settlement in INR to open an additional special current account for its constituents, exclusively for settlement of export transactions to provide greater operational flexibility to exporters.

Given this backdrop, RBI through a notification, now extends the facility of opening of an additional special current account by AD Category-I banks, for the settlement of not only the export transactions but also the import transactions of its constituents.

SEBI issues updated Master Circular for 'Bankers to an Issue registered with SEBI'

Master Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/072 dated June 03, 2024

SEBI has been, from time to time, issuing various circulars/directions to 'Bankers to an Issue' under the relevant provisions of the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994 and extant security laws.

Given this backdrop, to enable the stakeholders to have access to all the relevant circulars in one place, SEBI has issued an updated master circular for 'Bankers to an Issue registered with SEBI' which compiles all existing circulars issued on the subject till date.

The master circular contains norms such as registration-related matters for 'Bankers to an Issue', obligations/responsibilities, reporting requirements and other guidelines.

With the issuance of this master circular, all directions/instructions contained in the circulars listed out in the Appendix to this Master Circular shall stand rescinded to the extent they relate to 'Bankers to an Issue'.

SEBI mandates KRA Integration With Central KYC Records Registry starting August 1, 2024

SEBI/HO/MIRSD/SECFATF/P/CIR/2024/79 dated June 06, 2024

To streamline the KYC process, SEBI through a circular directs KRAs to integrate their systems with the CKYCRR and begin uploading verified KYC information of clients starting August 1, 2024.

CKYCRR is a single KYC system that can be used across various financial transactions, including banks, mutual funds, stocks, insurance, and the NPS. Previously, the responsibility of uploading KYC details onto CKYCRR fell on market intermediaries such as stock brokers and alternative investment funds due to their account-opening relationships with clients. However, through this circular SEBI has modified the master circular on KYC norms, shifting this task to KRAs.

According to the new guidelines, KRAs will have to upload verified or validated KYC information onto CKYCRR within seven days of receiving it from intermediaries. Further, KRAs will have to ensure that existing KYC records of legal entities and of individual clients are uploaded on to CKYCRR within a period of 6 months from August 1, 2024. Accordingly, clients will no longer need to submit KYC documents multiple times to different financial institutions, as their verified records will be available in the centralised CKYCRR system.

The integration of KRAs with CKYCRR is expected to simplify customer onboarding by reducing the turnaround time to acquire new clients. If banks also start uploading KYC details of their customers onto CKYCRR, a single bank account could potentially be sufficient for investing across all financial products. Currently, insurance companies and pension fund companies are already using CKYCRR to verify KYC details, paving the way for mutual fund distributors to utilise KYC data from these sectors.

RBI revises priority sector lending norms to mitigate regional credit disparities

Notification No. RBI/2024-25/44 dated June 21, 2024

With an objective to ensure a more equitable distribution of credit across various districts, the RBI through a notification amends the master directions of priority sector lending, bringing notable changes that will impact the credit flow dynamics across districts in India. Some of the key changes brought about by RBI are as follows:

- The lists of districts with high and low PSL credit have been revised and will now be valid until FY 2026-27, subject to further review thereafter.
- Effective FY 2024-25, a higher weight (125%) will be assigned to incremental PSL credit in districts where the per capita PSL is less than INR 9,000 (previously INR 6,000). Conversely, a lower weight (90%) will apply to districts where per capita PSL exceeds INR 42,000 (previously INR 25,000) so as to address the regional disparities with reference to the credit flow.
- Further, the definition of MSMEs has been aligned with the Master Direction on Lending to MSME Sector for clarity so as to qualify all bank loans to MSMEs for classification under PSL.
- Additionally, the monitoring and reporting requirements for Urban Co-operative Banks have been updated, referencing the new directions on filing supervisory returns as of February 27, 2024.

These changes aim to promote a more balanced and inclusive credit growth across regions, supporting the MSME sector and enhancing financial inclusion efforts nationwide.

INTERNATIONAL DESK

Thailand: Progresses Towards Implementing The Global Minimum Tax Bill

The Thailand Finance Ministry is set to introduce a global minimum tax by 2025, in line with OECD guidelines, to boost tax revenue and ensure multinational corporations pay their fair share. This measure aims to prevent profit shifting to low-tax jurisdictions and is expected to generate 20 billion baht from multinational companies. The OECD's 15% minimum tax rate discourages countries from offering lower taxes to attract investments. By implementing this tax, Thailand aims to curb tax avoidance and support public services and infrastructure development.

Thailand has endorsed the OECD/G20 BEPS 2.0 measures to address harmful tax practices and tax treaty abuse. The Global Minimum Tax Measure under Pillar 2 targets multinational enterprises MNEs with a turnover exceeding 750 million euros, imposing a minimum tax rate of 15% for each jurisdiction and a top-up tax if the rate falls below 15%.

On March 7, 2023, the Thai Cabinet approved plans to implement the Global Minimum Tax by 2025, with the TRD and the BOI overseeing the process. The TRD will draft the necessary legislation, and the BOI will amend laws to enhance national competitiveness.

The OECD's global minimum tax, targeting a 15% rate for large MNEs, aims to reduce globally low-taxed profits and generate an estimated $150 billion in additional annual tax revenues. This initiative promotes equitable and effective taxation, aligning with international tax standards.

Australia: Legislation Introduced For Public Country-By-Country Reporting

On June 5, 2024, the Australian Government introduced legislation to enforce public country-by-country reporting for MNEs, effective for reporting periods starting on or after July 1, 2024. In alignment with GRI standards, such as GRI 207-1 and 207-4, the rules require MNEs to disclose entity names, tax strategies, and quantitative tax data for relevant jurisdictions. This information will be made publicly available on an Australian government website, and MNEs must submit this data within 12 months following each reporting period.

A significant provision of the legislation mandates disaggregated country-level reporting for specified jurisdictions, which will be determined through legislative instruments. However, the final list of jurisdictions was not released alongside the bill's introduction. This initiative aims to enhance transparency in corporate tax practices and aligns with global efforts to ensure fair taxation and accountability for multinational corporations operating in Australia.

Saudi Arabia and Qatar Sign A Pact To Prevent Double Taxation

The pact aims to enhance legislative alignment between Saudi Arabia and Qatar, fostering trade and attracting regional investments.

Saudi Arabia and Qatar have signed a DTAA in Doha to prevent double taxation and tax evasion. This agreement aims to enhance legislative coordination, boost trade, and attract regional investments.

Additionally, it supports international transparency standards by facilitating the exchange of financial information and strengthens cooperation in tax matters and economic relations between the two nations.

UAE'S FTA Issues Guidance On Corporate Tax Registration Deadlines

The UAE's FTA has issued a Public Clarification on Corporate Tax Registration Timelines, detailing specific deadlines for various categories of taxable persons. This clarification underscores the FTA's commitment to transparency and compliance, explaining the deadlines set forth in FTA Decision No. 3 of 2024 and their application to Federal Decree Law No. 47 of 2022. Effective from March 1, 2024, the clarification requires all taxable persons to submit their Tax Registration applications by specified deadlines to avoid a penalty of AED 10,000.

For resident juridical persons incorporated before March 1, 2024, the application deadline is based on their license issuance month, or by May 31, 2024, if they do not hold a license. For juridical persons established after March 1, 2024, the deadline is within three months from the date of incorporation. Non-resident juridical persons with a Permanent Establishment in the UAE before March 1, 2024, must register within nine months of the establishment's recognition. Additionally, non-resident persons with a UAE nexus before March 1, 2024, must apply by May 31, 2024. The FTA encourages all affected persons to review the Public Clarification to ensure timely compliance.

The FTA has also issued guidelines for Corporate Tax registration deadlines. Non-resident juridical persons with a Permanent Establishment in the UAE on or after March 1, 2024, must register within six months of the establishment's existence. If an international agreement allows a longer duration, it prevails. Those with a nexus in the UAE must register within three months of establishing it. For non-residents with both, the earliest deadline applies. Starting January 1, 2024, resident natural persons must register for Corporate Tax if their annual turnover exceeds AED 1 million, with a deadline of March 31 of the following year. Non-resident natural persons meeting the same threshold via a Permanent Establishment must register within three months of exceeding the turnover. The first tax period begins in 2024, and income before January 1, 2024, is exempt. The registration deadline is March 31, 2025.

Denmark Plans To Introduce A Tax On Carbon Emissions From Livestock

In February, experts commissioned by the Danish Government proposed a tax aimed at assisting Denmark in achieving its legally binding 2030 goal of reducing greenhouse gas emissions by 70% compared to 1990 levels. Denmark announced plans to implement the world's first carbon dioxide tax on livestock emissions starting from 2030, aiming to achieve its ambitious goal of cutting greenhouse gas emissions by 70% from 1990 levels by 2030. The tax proposal, initially suggested by government-appointed experts in February, received broad consensus from farmers, industry, labour unions, and environmental groups following extensive negotiations with the centrist government. Taxation Minister Jeppe Bruus highlighted Denmark's leadership role, expecting other countries to follow suit in adopting similar measures. Under the proposed legislation, farmers would face a tax starting at 300 Danish crowns per tonne of CO2 in 2030, rising to 750 crowns by 2035. To mitigate the impact, farmers will benefit from a 60% income tax deduction, effectively reducing the initial cost per tonne to 120 crowns, gradually increasing to 300 crowns. Subsidies will also support adjustments in farm practices to align with emission reduction goals. The tax is projected to increase meat prices, potentially adding 2 crowns per kilo of minced beef by 2030, impacting consumer costs while aiming to sustain agricultural viability amidst climate targets.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ACU	Asian Clearing Union
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
AFA	Additional Factor of Authentication
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
ALP	Arm's length price
AMCs	Assets Management Companies
AMP	Advertising, Marketing and Promotion
AMT	Alternate Minimum Tax
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
BOI	Board of Investment of Thailand
BPSL	Bhushan Power Steel Limited
CA	Chartered Accountant
CAG	Comptroller and Auditor General of India
CASS	Computer Assisted Scrutiny Selection
CAT	Common Aptitude Test
CAVR 2023	Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CKYCRR	Central KYC Records Registry
CCIT	Chief Commissioner of Income tax
CCs	Clearing Corporations
CGST Act	Central Goods and Services Act, 2017
CIMS	Centralized Information Management System
CIT	Commissioners of Income Tax
CIT(A)	Commissioner of Income-tax (Appeals)
CIT(J)	Commissioner of Income-tax (Judicial)
CJI	Chief Justice of India
CLB	Company Law Board
CoC	Committee of Creditors
CPC	Centralized Processing Centre
CrPC	The Code of Criminal Procedure, 1973
CRS	Common Reporting Standard
CS	Company Secretary

Abbreviation	Meaning
Cus	Customs Act, 1962
CVD	Countervailing Duty
DCIT	Deputy Commissioner of Income Tax
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DIT	Directorate of Income Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
DTCP	Director General, Department of Town and Country Planning
ED	Enforcement Directorate
EDC	External Development Charges
EOI	Expression of Interest
EP	Engagement Partner
EPSEPS	Employees' Pension Scheme
Evidence Act	Indian Evidence Act, 1872
FATCA	Foreign Account Tax Compliance Act, 2010
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FHTP	Forum on Harmful Tax Practices
Fin	Finance Bill Finance Bill, 2023
FTA	Federal Tax Authority
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
FY	Financial Year
G2B	Government to Business
GRI	Global Reporting Initiative
GST	Goods and Services Tax
H&EC	Health and Education Cess
HC	High Court
HFC	Housing Finance Company
HNI	High Net Worth Individual
HSVP	Haryana Shahari Vikas Pradhikaran
HUF	Hindu Undivided Family
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code
ICAI	Institute of Chartered Accountants of India
ICDR	Issue of Capital and Disclosure Requirements Regulations, 2009
ICFR	Internal Controls Over Financial Reporting
IFSC	International Financial Services Centres
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax

GLOSSARY

Abbreviation	Meaning
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
ITBA	Income Tax Business Application
JAO	Jurisdictional Assessing Officer
KYC	Know Your Customer
KRAs	KYC Registration Agencies
LLP	Limited Liability Partnership
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
LRS	Liberalized Remittance Scheme
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MII	Market Infrastructure Institution
MNE	Multinational Enterprise
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MSEFC	Micro, and Small Enterprises Facilitation Council
MSME	Micro Small and Medium Enterprises
MSMED Act	Micro, Small and Medium Enterprises Development Act, 2006
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCD	Non-Convertible Debentures
NCLT	National Company Law Tribunal
NCS	Non-Convertible Securities
NCS Regulations	SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
NDFC	Net Distributable Cash Flows
NELP	New Exploration Licensing Policy
NFRA	National Financial Reporting Authority
NFT	Non-Fungible Tokens
NHB	National Housing Bank
NI Act	Negotiable Instruments Act, 1881
NPA	Non-Performing Assets
NPS	National Pension System
NSWS	National Single Window System
OBU	Offshore Banking Unit
ODC	Online Dispute Resolution
OEC	Organization for Economic Co-operation and Development
OECD	Organization for Economic Co-operation and Development
OFS	Offer for Sale
OPC	One Person Company
PAN	Permanent Account Number
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCCI	Principal Chief Commissioner of Income-tax

Abbreviation	Meaning
PCCIT	Principal Chief Commissioner of Income-tax
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relat-
PIV	Pooled Investment Vehicle
PSL	Priority Sector Lending
REITs	Real Estate Investment Trusts
RoC	Registrar of Companies
ROMM	Risk of Material Misstatements
RP	Resolution Professional
RPT	Related Party Transactions
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SARFAESI Act	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Supreme Court
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFIO	Serious Fraud Investigation Office
SFIO	Serious Fraud Investigation Office
SFT	Statement of Financial Transaction
SGST	State Goods and Services Tax
SIAC	Singapore International Arbitration Centre
SLP	Special Leave Petition
SLP	Special Leave Petition
SMF	Single Master Form
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TNMM	Transactional Net Margin Method
TPO	Transfer Pricing Officer
TRD	Thai Revenue Department
TPS	Tax performing system
UAPA	Unlawful Activities (Prevention) Act, 1967
UCB	Urban Co-operative Bank
UK	United Kingdom
UPI	Unified Payments Interface
UPSI	Unpublished Price Sensitive Information
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VDA	Virtual Digital Assets
VsV	Vivad se Vishwas
VU	Verification Unit
WMD Act	Weapons of Mass Destruction and their Delivery Systems
WTO	World trade Organization
XBRL	eXtensible Business Reporting Langauge

FIRM INTRODUCTION

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

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

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

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

Website: **www.taxcraftadvisors.com**

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

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