VISION 360

OCT 2024

EDITION 48

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

TCA TAXCRAFT ADVISORS

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EDITORIAL

Vision 360: Tax Bytes!

In this month of October we present to you a new edition of our magazine wherein we have covered noteworthy events in the Tax sphere, summarised the latest developments in tax and also penned down our thoughts on a landmark Judgment in GST law through an insightful article.

In direct tax developments, the CBDT has issued a Circular clarifying the revised monetary limits for filing of appeals in income-tax cases before various forums, Instructions on the Standard Operating Procedure for internal audit objections and revenue audit objections as well as a much welcome Public Notice which notifies the e-Dispute Resolution Scheme, 2022 that aims to reduce litigation and provide relief to eligible taxpayers.

On the indirect tax front, we saw a significant Notification was issued by the CBIC wherein the Government has notified effective date for amendments made in GST law, Circulars clarifying applicability of GST on advertising services for foreign clients and determination of Place of Supply for data hosting service provided to overseas service provider as well as advisories on reporting of supplies to unregistered dealers and Invoice Management System. In addition to all these crucial developments, we have also covered various developments in Judicial and Legislative developments in Transfer Pricing, Customs, FTP, Regulatory Sector.

Further, we have penned down an article on the challenge to the constitutionality of Section 17(5)(c)/(d) of the CGST Act as well as the dichotomy between 'plant OR machinery' & 'plant AND machinery' as dealt with by the Hon'ble Supreme Court in Safari Retreats Private Ltd.

The month has also witnessed pivotal moments across the globe such as the German Government's approval for tax breaks on electric vehicles, Saudi Arabia's decision to eliminate Export Customs Fees and reduce Import Fees, reintroduction of a 300-Baht Tourism Tax to boost revenue and enhance infrastructure by Thailand, etc.

In all, we the entire team of TIOL, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMGG & Associates**, are glad to publish the **48th** edition of its exclusive monthly magazine '**VISION 360'**. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

P.S.: This document is designed to begin with an article peeking into recent tax/regulatory issues allowed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, in Direct tax, Indirect tax and Regulatory space. Don't forget to check out our international desk and sparkle zone for some global and local trivia.

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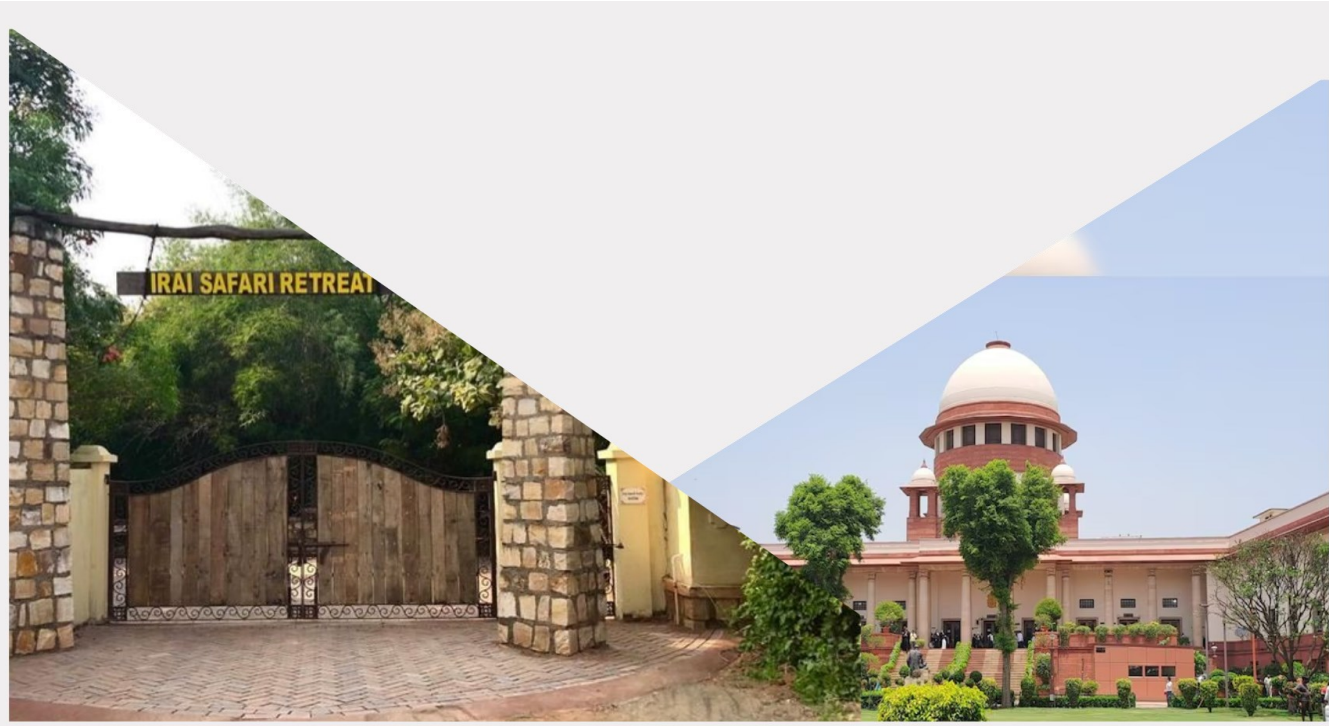
ARTICLE

The 'Safari' concludes – Supreme Court of India upholds the constitutionality of Section 17(5)(c)/(d) of the CGST Act

The Hon'ble Supreme Court in the Judgement of **Chief Commissioner of Central Goods and Service Tax & Ors. Vs. M/s Safari Retreats Private Ltd. & Ors. [Civil Appeal No. 2948 of 2023]** struck down the challenge to the constitutionality of Section 17(5)(c)/(d). It held that the ITC may be availed on construction of immoveable property subject to the application of 'Functionality Test' to the facts of each case. It also elaborated on the scope of 'plant' under Section 17(5)(d) and laid the distinction between 'plant and machinery' and 'plant or machinery'.

The Hon'ble Court observed that taxing statutes have to be interpreted strictly, and no addition or subtraction must be made to the language of a taxing provision on the grounds of legislative intendment or even otherwise. As such the term 'plant or machinery' in Section 17(5)(d) cannot to be read as 'plant and machinery' as defined in the Explanation to Section 17. Further, the Court observed that legislative intent between the use of distinct terms can be inferred from the fact that the Model GST Law which referred to 'plant and machinery' under Section 17(5)(d) that was specifically changed to 'plant or machinery' while enacting the law as well as the legislature's conspicuous refrain from any attempt to rectify or clarify that the term 'or' in Section 17(5)(d) was a mistake of legislature and that it ought to be read as 'and'.

Therefore, since the term 'plant or machinery' has not been defined in the statute, the Court further went on to state that a building can be treated as 'plant' only upon passing the test of functionality. The functionality test is essentially a method wherein a buildings nexus with taxpayer's business is considered to determine the function of the said building in the business. The Court also referred to the following precedents which may serve as guidance in the determining the functionality of such building:



- A building specifically designed and constructed with special features to attract customers could be treated as a plant - **Anand Theatres [(2000) 5 SCC 393]**
- Electricity power generating station would have to be treated as a plant as it satisfies functional test - **Karnataka Power Corporation [(2002) 9 SCC 571]**
- Ponds specially designed for aquaculture of prawns should be treated as plants - **Victory Aqua Farm Ltd. [(2016) 16 SCC 553]**

However, while the scope of 'plant' has been subjected to the 'Functionality Test' for 'mall' and 'warehouse', the Judgment has categorically excluded 'cinema theatre' and 'hotels' from such test and ITC thereon is still restricted.

The Court also dealt with the challenge to the constitutionality of Section 17(5)(c)/(d) with reference to alleged violation of Articles 19(1)(g) and 300A of the Constitution of India. In respect thereof, the Court observed that ITC is not a right and is in fact a creation of statute, as a result of which the legislature has the power to carve out exceptions for claiming such ITC. Such an exception was carved out to ensure that there is no encroachment upon the State's exclusive legislative powers to tax land and building under Entry 49 of List II. As such the challenge to the constitutionality of these section failed since there was no absence of intelligible differentia or absence of nexus with the object being sought to be achieved which may indicate a violation Article 19 read with Article 300A

Author's Notes:

> *The Hon'ble Supreme Court's Judgment comes as a relief to taxpayers, especially the real estate sector since it will curb outright denial of ITC used to procured goods and services for construction of commercial property, as buildings can be classified as 'plant' on the basis of the functionality test. Although the ruling concerned malls, the functionality test could well be applied to other immovable structures such as factories, ports, airports, warehouses, etc. to determine their coverage as 'plant'.*
>
> *It is also pertinent to note that 'cinema theatre' and 'hotels' have been categorially excluded from the ambit of 'plant'. However, the Judgement has left open the application of 'Functionality Test' for 'mall' and 'warehouse' to the wisdom of adjudication and facts of each case. Therefore, the Judgement has sought to achieve a fine balance between safeguarding rights of the taxpayer as well as the Revenue!*

INDUSTRY PERSPECTIVE

Kumar Gaurav

Tax Head

Tower Vision India Private Limited

01 Recently the Hon'ble Supreme Court had provided a landmark judgement on validity of Section 17(5)(c) and Section 17(5)(d), the interpretation of 'plant or machinery' and availability of ITC of immovable property used as a plant in case of the Safari Retreat. Can you please lay down the implications of the judgment on businesses?

The Hon'ble Supreme Court of India rendered a landmark judgment in the case of Chief **Commissioner of Central Goods and Service Tax & Ors. vs. M/s Safari Retreats Private Ltd. & Ors. [Civil Appeal No. 2948 of 2023]**. In this ruling, the Court upheld the constitutionality of Section 17(5)(c)/(d) of the CGST Act, a significant provision that outlines the eligibility for input tax credit in relation to certain goods and services. Moreover, the Court acknowledged the absence of a specific definition for 'plant' as referred in Section 17 (5)(d). To address this gap, the Court determined that the meaning of 'plant' should be established based on a 'functionality test.' This test involves evaluating the purpose and operational role of the equipment in question, and it will be applied on a case-by-case basis. The judgement by the Apex Court accords broader definition to the term 'plant' and is likely to allow the ITC of goods, services and works contract services incurred for construction of building/structure utilized as plant. This is a welcome judgment and shall help the real estate business a great deal.

02 What is your view on levy of GST under the RCM on premises other than residential dwellings rented by unregistered suppliers?

The CBIC issued Notification No. 9/2024-Central Tax dated October 8, 2024 to implement the recommendations made during the 54th GST Council Meeting. This notification mandates that renting of any property, excluding residential dwellings, by an unregistered person to a registered person will now be subject to RCM effective October 10, 2024. Consequently, the registered recipient will be responsible for paying GST at a rate of 18%. This change will not only impact commercial property but will also extent to other immovable structures such as towers (both for telecom companies and electricity distributors), warehouses, etc.

This shall have impact on working capital of the taxpayers who are required to pay GST under RCM on subject services in cash. Further, the taxpayers who are involved in making exempt supplies such as

Kumar Gaurav
Tax Head - Tower Vision India Private Limited

electricity generation/distributors, Healthcare service providers, food products related suppliers and so on, shall be required to incur additional costs as ITC is not available to them.

03 The tax landscape has been rapidly evolving in recent years. What effects have these changes had on the economy and the service sector? Do you think these changes support broader long-term growth goals?

Modifications in tax legislation can significantly alter the business environment by affecting investment choices, business structures, and site selections. It is widely acknowledged that tax changes can have a direct impact on demand and revenue across various industries. For instance, increased taxes on certain goods or services may dampen demand, whereas reduced taxes can stimulate demand and boost revenue for suppliers. Additionally, the need for more compliance can strain administrative resources, potentially impacting operational efficiency and profitability. Overall, the effects of tax changes can differ widely based on the specific context, influencing not only our country's economy but also the global economy. Therefore, a comprehensive analysis of various factors is essential to determine how well tax changes align with long-term growth objectives.

04 What is your perspective on digitization, and how can it enhance corporate governance and compliance?

The 'Digital India' initiative, a flagship program of the Government of India, is designed to transform the country into a digitally empowered society. Consequently, India's transition to digitalization in tax compliance has been anticipated. It is vital, however, to ensure transparency in these processes to mitigate tax evasion and bolster taxpayer confidence in the national tax system. In this context, digitization emerges as a fundamental pillar for improving governance and compliance, providing enhanced security, transparency, and efficiency in operations, including tax-related activities.

The government's persistent efforts to digitize the tax landscape have garnered robust support across various sectors nationwide. Amendments in compliance measures, such as the introduction of e-way bills, e-invoicing, and the tagging of IT return defaulters, have significantly increased transparency in these processes. However, these developments also impose a considerable burden on taxpayers, requiring readiness in IT systems, effective training and alignment of on-ground teams, and timely and accurate filing of monthly and annual tax returns. Thus, it is imperative for the government to acknowledge these challenges to foster greater participation in the tax system and to minimize the likelihood of tax avoidance stemming from practical difficulties.

05 How do you utilize technology to enhance tax compliance and reporting within your organization?

In our organization, technology plays a crucial role in improving tax compliance and reporting. We have implemented an integrated tax management system that centralizes all tax-related functions onto a single platform. This system automates the preparation and submission of tax returns, minimizing manual involvement and the associated risk of errors. Moreover, we employ advanced data analytics to monitor compliance in real time, providing insights that help us proactively address potential issues. The system also facilitates electronic document management, ensuring that all tax records are securely stored and easily accessible. By committing to continuous improvement and keeping up with technological advancements, we ensure that our tax compliance processes are efficient, accurate, and current.

DIRECT TAX
From the Judiciary

Hon'ble HC holds PE an independent taxable entity, global income irrelevant, overturns HC Coordinate Bench decision

Hyatt International Southwest Asia Ltd.

ITA 216/2020 & other connected matters

The Division Bench of the Hon'ble HC had referred the matter decided by the Coordinate Bench to the Full Bench doubting the view that profit attribution to a PE would be warranted only if the enterprise as a whole and the PE constituting merely a component thereof, had earned profits.

Placing reliance on the OECD commentary and a plethora of SC decisions, the Full Bench of the Hon'ble HC noted that the profits attributable to a PE were not liable to be ignored on the basis of the performance of the entity as a whole.

Moreover, delving into Article 7 in detail, the Full Bench of the Hon'ble HC noted that it would also be incorrect to interpret Article 7 as requiring them to ignore the income that may be generated pursuant to activities undertaken by a PE in one of the Contracting States and making the exercise of attribution dependent upon the profits or the income that the enterprise may otherwise earn at an entity level as Article 7 (1) in clear and unequivocal terms constructed a dichotomy between the profits that may be earned by an enterprise on a global scale and those which were attributable to a PE situated in the Contracting State.

Further, though the Coordinate Bench of the Hon'ble HC had earlier held that the issue of taxability could arise only if profits had accrued to the Assessee and that too only to the extent attributable to its PE in India, this had been misconstrued as enunciating a legal principle of global loss being pertinent for the purposes of considering whether income is allocable to the PE, therefore, agreeing with the doubts expressed by the Division Bench of the Hon'ble HC while referring the matter to the Full Bench of the Hon'ble HC, the Full Bench of the Hon'ble HC observed that Article 7 could not possibly be viewed as restricting the right of the source State to allocate or attribute income to the PE based on the global income or loss that may have been earned or incurred by a cross border entity.

Accordingly, reversing the decision of the Coordinate Bench of the Hon'ble HC, the Full Bench of the Hon'ble HC held that the activities of a PE were liable to be independently evaluated and ascertained in light of the plain language in which Article 7 stood couched and the fact that a PE was conceived to be an independent taxable entity could not possibly be doubted or questioned, therefore, the argument of global income or profit being relevant or determinative was totally unmerited and misconceived.

Hon'ble HC holds Assessee eligible for TDS credit as per 26AS, delay in updation of 26AS, no ground to deny TDS credit

Munchener Ruckversicherungs Gesellshaft Aktiengesellschaft In Munchen

W.P.(C) 14280/2023

The Assessee was a non-resident entity that had filed its return of income for AY 2015-16 and had claimed a refund of INR 1.90 Crores on the basis of the figures as reflected in Form 26AS, which included TDS of INR

5.95 Lakhs as deducted by Bajaj Allianz Life Insurance Company Limited.

The Assessee submitted that the TDS pertaining to the last quarter of the relevant AY was credited by the payer and consequently the original TDS of INR 5.95 Lakhs stood increased to INR 1.54 Crores. Thereafter, the Assessee was subject to scrutiny assessment for the relevant AY, meanwhile return for subsequent AY 2016-17 was filed by the Assessee wherein claim for TDS credit of INR 1.48 Crores stood embedded on account of the said amount having by then being captured in Form 26AS and which amount had remained unclaimed in the relevant AY. The return for relevant AY was duly accepted by the Revenue and the subsequent return for AY 2016-17 was processed under Section 143(1) of the IT Act whereby TDS credit was denied to the Assessee.

Consequently, the Assessee filed a rectification application and since the same was not attended to or disposed of, the Assessee approached the CIT(A) which observed that the Assessee should have revised its return of income and claimed the TDS credit in connection therewith, however since the Assessee failed to do the same, no relief was liable to be accorded to it. Accordingly, the Assessee filed a revision application under Section 264 of the IT Act, however the same was dismissed.

Aggrieved, the Assessee preferred a writ petition before the Hon'ble HC, challenging the CIT(A) order dismissing Assessee's application under Section 264 of the IT Act, thereby, denying the tax credit as deducted at source by the payer, Bajaj Allianz Life Insurance Company Limited, for AY 2015-16.

The Hon'ble HC observed that the CIT(A) had clearly erred in holding that the Assessee was liable to revise its return before being considered eligible to refund of TDS by referring to Section 155(14) of the IT Act which provided that once the amount was reflected in Form 26AS and the updated form came to be submitted before the Revenue, the Revenue was obliged to acknowledge the same and amend the assessment accordingly i.e. the provision essentially took care of contingencies where TDS was either subsequently credited or came to be reflected in Form 26AS after a time lag. Further, the Assessee was eligible for tax credit or refund as the tax was duly deducted, duly embedded in the Form 26AS and the income earned from that entity had never been held to be subject to tax.

Accordingly, the Hon'ble HC allowed the Assessee's writ petition, quashing the revision order of the CIT(A) under Section 264 of the IT Act holding it to be wholly illegal and arbitrary and directed the Revenue to refund the amount of INR 1.48 Crores along with the statutory interest forthwith.

Hon'ble SC dismisses Assessee's SLP, holds monies received for relinquishing trusteeship taxable, not being capital receipt

Jose Thomas

Special Leave Petition (Civil) Diary No. 36001/2024

The Assessee had filed an SLP before the Hon'ble SC against the order of the Hon'ble HC that held that the amounts received by the Assessee as consideration for relinquishment of trusteeship was taxable.

Before, the Hon'ble SC, the Assessee submitted that the Tribunal had observed that the receipts from the relinquishment of trusteeship qualified as capital receipts and that in the absence of any statutory provision under the IT Act that provided for a determination of the cost of acquisition of the asset, the capital gains could not be assessed.

Perusing the trust deed, the Hon'ble SC rejecting the findings of the Tribunal observed that nowhere in the trust deed was it indicated that any power was conferred on the trustees to relinquish their position as

trustees en banc, therefore, holding that the receipts would have to be treated as the individual income of the Assessee and be assessed accordingly under the appropriate head, the Hon'ble SC dismissed the SLP, upholding the order of the Hon'ble HC.

Hon'ble HC condones delay in filing Form 10-IC, holds rejection on technical ground untenable as taxpayer satisfies conditions under Section 115BAA of the IT Act

V M Procon Pvt Ltd.

R/Special Civil Application No. 9707 of 2024

The Assessee filed its return under Section 139(1) of the IT Act before the due date by applying the provisions of Section 115BAA of the IT Act and also filed an application for the condonation of delay in filing Form 10-IC and a review application for denial of the option of lower rate of tax under Section 115BAA of the IT Act.

The Revenue rejected the applications on the ground that the Assessee had failed to exercise the option of taxation under Section 115BAA of the IT Act in the return in Form 10-IC, as perusal of the Form 10-IC showcased that Column (e) did not provide any box for the option to be exercised by the Assessee, even though similar boxes were provided for other options which had been selected by the Assessee.

Aggrieved, the Assessee filed a petition under Article 227 of the Constitution of India before the Hon'ble HC which observed that in the absence of any box being provided for exercising the option by the Assessee, it was clearly evident that the Form 10-IC for the return was faulty. Moreover, the computation of income exhibited that the Assessee had exercised the option under Section 115BAA of the IT Act and therefore a technical consideration could not be applied to prevent substantial justice. Further, the CBDT had issued Circular No.19/2023 for AY 2021-22 consequent to Circular No.6/2022 for AY 2020-21, which was issued in pursuance to the representation highlighting instances where Form 10-IC could not be filed within the stipulated time and for avoiding genuine hardship to domestic companies.

Thus, holding that the Assessee could not be deprived of a lower rate of tax of 22% as prescribed under Section 115BAA of the IT Act as it satisfied the conditions for the benefit and the Revenue ought to have condoned the delay in filing of Form 10-IC instead of rejecting the applications on a technical ground, the Hon'ble HC allowed the petition.

DIRECT TAX
From the Legislature

NOTIFICATIONS

Sr No	Notification	Summary
1.	Notification No. 103/2024 dated September 19, 2024	**CBDT specifies the effective date of Vivad se Vishwas Scheme, 2024** The Finance Act, 2024, had proposed the Direct Tax Vivad se Vishwas Scheme, 2024, keeping in view the success of the previous Vivad Se Vishwas Act, 2020 and the mounting pendency of appeals at the level of the Commissioner of Income-tax (Appeals) with the objective of reducing pending income tax litigation by providing for a dispute settlement mechanism pursuant to which eligible taxpayers could settle their pending tax disputes by paying a specified portion of the tax arrears. Given this backdrop, the CBDT specifies October 1, 2024, as the date on which the Direct Tax Vivad Se Vishwas Scheme, 2024, shall come into force. The Direct Tax Vivad se Vishwas Scheme, 2024, is available for cases where disputes or appeals—whether initiated by the taxpayer or the tax authorities—are pending as of July 22, 2024. This includes matters before the Supreme Court, High Court, Income Tax Appellate Tribunal, Commissioner/Joint Commissioner of Income-tax (Appeals), the Dispute Resolution Panel, situations where the Dispute Resolution Panel has issued directions, but the final assessment order is still pending, or where revision petitions are awaiting a decision from the Commissioner of Income Tax.
2.	Notification No. 104/2024 dated September 20, 2024	**CBDT prescribes Rules & Forms related to Direct Tax Vivad se Vishwas Scheme, 2024** The CBDT prescribes new Rules and Forms related to the Vivad se Vishwas Scheme called the "Direct Tax Vivad se Vishwas Rules, 2024" ('Rules'). The Rules come into force on the day of publication in official gazette i.e. September 20, 2024. The Rules inter-alia provide that the declaration of dispute referred to in Section 91(1) of the Finance (No.2) Act, 2024 and the undertaking referred to in sub-section Section 91(4) of the Finance (No.2) Act, 2024, shall be made in Form-1 and the Designated Authority shall issue a certificate under Section 92(1) of the Finance (No.2) Act, 2024, electronically in Form-2 among others.

CIRCULARS

Sr No	Circulars/ Guidelines	Summary
1.	Press Release dated August 30, 2024	**CBDT rolls out e-Dispute Resolution Scheme, 2022, to mitigate litigation and provide relief to taxpayers** The CBDT notifies the e-Dispute Resolution Scheme, 2022 that aims to reduce litigation and provide relief to eligible taxpayers. The e-Dispute Resolution Scheme, 2022, enables the taxpayers, subject to certain conditions stipulated under Section 245MA of the IT Act, to file an application electronically for dispute resolution to the Dispute Resolution Committee designated for the region of the Principal Chief Commissioner of Income-tax having jurisdiction over the taxpayer. The Dispute Resolution Committee is mandated to pass its order within 6 months from the end of month in which application for dispute resolution is admitted by it. Application for e-DRS is to be filed in Form No. 34BC within one month from the date of receipt of specified order.
2.	Instruction No. 2/2024 dated September 09, 2024	**CBDT issues Instruction on SOP for handling internal audit objections'** The CBDT issues an Instruction on the Standard Operating Procedure for internal audit objections. The Instruction aims to supersede Instruction No. 6/2017 dated July 21, 2017, along with other previous instructions in this regard. This Instruction introduces a Standard Operating Procedure for managing internal audit objections, aiming to ensure timely resolution and improvement in the quality of assessments. The Internal Audit set-up is under the direct supervision of Principal Chief Commissioner of Income-tax. For charges such as International tax, Transfer Pricing, Central charges, and the Exemption Wing, the internal audit lies with Principal Commissioner of Income-tax/ Commissioner of Income-tax (Audit) reporting to the Principal Chief Commissioner of Income-tax in whose jurisdiction the audit office is located. Further, the Instruction provides the procedure of internal audit comprises of target of auditors, re-checking, auditable cases and allocation, conduct of audit and procedure for handling audit objections, among others while discontinuing the practice of 'Audit Observation'. This Instruction is effective immediately and shall be applicable to the currently pending internal audit objections

<table>
<tr><th>Sr No</th><th>Circulars/ Guidelines</th><th>Summary</th></tr>
<tr><td>3.</td><td>Circular No. 09/2024 dated September 17, 2024</td><td>

CBDT issues Circular revising monetary thresholds for litigation

As a step towards management of litigation, the CBDT revises the monetary limits for filing of appeals in income-tax cases as follows:

<table>
<tr><th>Sl.No.</th><th>Appeals/SLPs in In-come-tax matters</th><th>Monetary Limit (INR)</th></tr>
<tr><td>1</td><td>Before ITAT</td><td>60 Lakhs</td></tr>
<tr><td>2</td><td>Before HC</td><td>2 Crores</td></tr>
<tr><td>3</td><td>Before SC</td><td>5 Crores</td></tr>
</table>

Further, the CBDT provides that the above-mentioned monetary limits shall be applicable to all cases including those related to TDS/TCS under the IT Act, with exception to cases where the decision to appeal/file SLP shall be taken on merits, without regards to the tax effect and the monetary limits and an appeal shall not be filed merely because the tax effect exceeds the monetary limit.

Moreover, the CBDT exhorts officers to keep in mind the objective of reducing unnecessary litigation, while deciding on whether to file an appeal and also clarifies that the revised monetary limits shall apply to appeals/SLPs to be filed henceforth as well as the appeals/SLPs pending before the HC/ITAT/SC from the date on which the Circular is issued and comes into effect i.e. September 17, 2024.

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<tr><td>4.</td><td>Instruction No. 3/2024 dated September 17, 2024</td><td>

CBDT issues Instruction regarding Standard Operating Procedure for handling receipt audit objections

The CBDT issues a Standard Operating Procedure for addressing receipt audit (also known as "revenue audit") objections. This Instruction supersedes Instruction No. 7/2017 dated July 21, 2017, along with other existing instructions on revenue audits. It aims to ensure the effective and efficient mobilization of tax revenue in a fair, equitable and progressive manner, and is effective immediately.

Additionally, the Instruction provides guidance on the procedures for inter-departmental meetings, the maintenance of registers, reports, ledger cards and clarifies the role of the Principal Commissioner of Income Tax/Commissioner of Income Tax in the audit process, among other responsibilities.

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TRANSFER PRICING
From the Judiciary

Tribunal rules on adjustments qua manufacturing/trading segments, holds disallowance of payment to headquarters impermissible

Emersion Automation Solutios Intelligent Platforms Private Limited

2024-TII-149-ITAT-BANG-TP

The Assessee was engaged in the manufacturing of programmable logic controllers, automation software and related automation products that had entered into certain international transactions with its AE. The Revenue made TP-adjustments qua the manufacturing and trading/distribution segments, and payment made to headquarters in lieu of services received from AE.

Aggrieved, the Assessee approached the Tribunal which with regards to the manufacturing segment noted that the Assessee was aggrieved by the denial of customs duty adjustment when the Assessee had simply contended that spare parts imported by it were having distinctive characteristics but had not filed any data/analysis to establish distinctive features of foreign spare parts with that of local spares available in India. Moreover, similar adjustment was not allowed by the Revenue for previous years, and the Assessee had not made such adjustment AY 2016-17 onwards, accordingly the Tribunal upheld the TP adjustment made by the Revenue. With regards to the trading segment, the Tribunal noted the Assessee's contention that the Revenue erred in applying TNMM instead of RPM and accordingly held that the issue required fresh consideration by the Revenue and if the facts of the impugned year were akin to the facts of AY 2013-14, then applying the consistency principle, the Revenue would decide the matter, accordingly remitted the matter to the Revenue for fresh consideration.

With regards to the payment made to headquarters in lieu of services received from AE, the Tribunal noted that the Revenue rejected the Assessee's TNMM and adopted CUP method, therefore placing reliance on a plethora of judgments, the Tribunal observed that it was a settled position of law that for claiming of an expense, the incurring of expense as well as genuineness of expenses was to be seen and not the fruits ripped by the businessman on incurring of business expenses and it was an equally settled position of law that the Revenue would not sit in the arm chair of a businessman, accordingly, held the disallowance to not be permissible.

Tribunal quashes final assessment order as TPO/DRP's directions not complied with

Comparex India P Ltd.

ITA No.2151/DEL/2022

A draft assessment order was passed by the NFAC, Delhi and the income was assessed with TP-adjustments as proposed by the TPO. On filing of objections by the Assessee against the same before the DRP, the DRP issued certain directions to the AO/TPO and thereafter, the final assessment order was passed. The Assessee noted that the original adjustment proposed by the TPO stood reduced after giving effect to the DRP order, however, in the final assessment order, additions were sustained as per the draft order.

Aggrieved, the Assessee approached the Tribunal which noted that the final assessment order was passed by the AO without considering the DRP's directions, and that the AO had also not taken any steps to pass a rectification order till date, accordingly, placing reliance on a plethora of judgments wherein it was unanimously held that when an authority acted contrary to law, said act of the authority was required to be quashed and set aside as invalid and bad in law, the Tribunal observed that there was a gross violation on part of the AO and accepting the AO's submission that it was a mistake, retorted that the Department should have then acted upon the same to rectify the mistake within a reasonable time.

Thus, finding the non-consideration of the DRP's directions to be a clear violation of law which deserved to be acted upon and also finding the action of the AO to be contrary to the law, as for the purpose of any subsequent proceedings, what was relevant was the final assessment order for all purposes, including the collection of tax, the Tribunal holding that the assessment order so passed by the AO deserved to be quashed, quashed the same.

Tribunal confirms CIT(A)'s grant of working capital adjustment, dismisses Revenue's appeal

JKM Ferrotech Limited

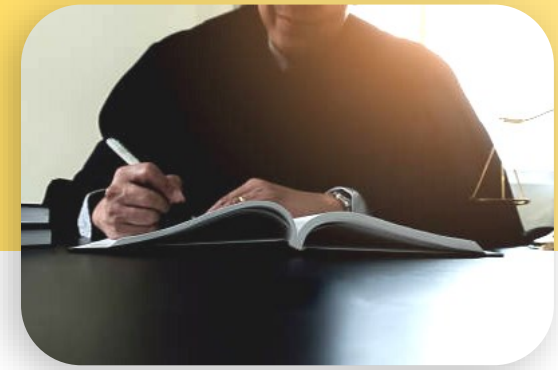
IT(TP)A No. 43/CHNY/2019

The Assessee had carried out certain international transactions with its AE and the same were referred to the TPO for determination of ALP. The Assessee adopted Cost Plus Model for benchmarking these transactions. In the alternative, the Assessee furnished benchmarking under CUP method also. However, both the methods were rejected by the TPO who adopted TNMM and proposed adjustments against these transactions. The Assessee had also claimed working capital adjustment. However, the TPO held that the Assessee was not operating with negative working capital and denied the grant of working capital adjustment.

Aggrieved, the Assessee approached the CIT(A) who granted the working capital adjustment based on reference to a catena of judgments wherein it was held that the capital employed by the Assessee including working capital, was one of the relevant factors for determination of ALP. Moreover, the Assessee was able to demonstrate the adjustment before the TPO and quantify the same.

Aggrieved, the TPO approached the Tribunal which upheld the grant of the working capital adjustment by the CIT(A) based on the fact that the Assessee was able to quantify the same and also the catena of judgments relied upon by the CIT(A) to come to this conclusion and accordingly, dismissed the TPO's appeal.

GOODS & SERVICES TAX
From the Judiciary



Supreme Court allows claiming ITC on construction expenses, subject to the functionality test

Chief Commissioner of CGST & Ors. Vs Safari Retreats Private Ltd & Ors.

Civil Appeal No. 2948 of 2023

The central issue involved whether Safari Retreats, which constructed a shopping mall to lease out, could claim ITC on the goods and services used in the construction of immovable property, despite restrictions under Section 17(5) of the CGST Act. The petitioners challenged the constitutional validity of clauses (c) and (d) of Section 17(5), which blocked ITC claims related to immovable property. They argued that this restriction was unfair, particularly in cases where the immovable property was used for furthering business activities, such as renting out commercial spaces.

Supreme Court's Findings:

- 'Plant or Machinery' vs. 'Plant and Machinery': The Court emphasized that the expressions "plant or machinery" and "plant and machinery" are not synonymous. It held that the phrase "plant or machinery" used in Section 17(5)(d) should be understood using the functionality test—i.e., whether the immovable property (in this case, the shopping mall) was essential for the taxpayer's business operations. If so, the building could be classified as a "plant" and therefore eligible for ITC.
- Constitutional Validity: The Supreme Court upheld the constitutional validity of the provisions under Section 17(5), stating that the legislature is empowered to make reasonable classifications for taxation purposes. The provisions did not violate Article 14 of the Constitution, which guarantees the right to equality.
- Remand to High Court: The case was remanded to the Orissa High Court to apply the functionality test and determine if the shopping mall qualifies as a "plant," which would then allow Safari Retreats to claim ITC.

Author's Notes:

> *This is indeed the second most important judgment in the evolution of the GST regime, after the Mohit Minerals Judgment of Ocean Freight. The ruling not only upholds the constitutionality of Sections 17(5) (c) and (d) of the CGST Act but also emphasizes the critical need for a Functionality Test to determine whether a building qualifies as 'plant' for the purpose of ITC.*
>
> *This judgment brings a significant ray of hope to businesses that utilize immovable property for their operations, as it acknowledges the functional role such properties can play in business activities. However, it also presents several practical challenges. The implementation of the Functionality Test introduces subjectivity into tax assessments, potentially leading to inconsistent interpretations across jurisdictions. Furthermore, the remand of cases for this test could result in increased litigation, complicating the claims process and burdening taxpayers with additional legal battles.*

HC: Invalidates consolidated SCNs for multiple assessment years

Bangalore Golf Club

Writ Petition No.16500 OF 2024 (T-RES)

The Petitioner had challenged the validity of a consolidated show cause notice, issued by the Department which pertain to multiple tax periods spanning from 2019-20 to 2023-24. The Petitioner contended that these notices were improperly consolidated into a single show cause notice and further the limitation period of three years under Section 73 applies separately to each assessment year, and therefore, each period must be addressed with individual notices.

The Court ruled that the issuance of consolidated show cause notices for multiple assessment years under Section 73 of the CGST Act was invalid. The HC emphasized that the law requires each assessment year to be treated separately, adhering to distinct limitation periods for tax actions. Citing the Supreme Court's decision in State of Jammu and Kashmir vs. Caltex (India) Ltd. [AIR 1966 SC 1350], the Court affirmed that assessments involving different years must be handled independently. As a result, the Court quashed the notices and permitted the issuance of separate notices for each assessment year, aligning with the statutory provisions of the CGST Act.

Author's Notes:

> *This judgment marks a significant development in the interpretation of procedural norms within the GST regime, particularly following the precedents set by prior rulings. By invalidating the practice of issuing consolidated show cause notices for multiple assessment years, the Court has reaffirmed the necessity of adhering to established legal principles that mandate distinct treatment for each assessment period. This decision underscores the importance of clarity and specificity in tax assessments, ensuring that taxpayers are provided with fair opportunities to respond to allegations without the confusion that can arise from bundled notices.*
>
> *Moreover, this ruling emphasizes the critical nature of compliance with statutory requirements under the CGST Act, potentially impacting how tax authorities formulate their assessments going forward. As such, this case not only provides immediate relief to the petitioner but also serves as a precedent for taxpayers facing similar challenges.*

HC: No additional IGST to be levied on Ocean Freight

BLA Coke Private Limited

R/Special Civil Application No. 19481 of 2023

The Petitioner claimed a refund of IGST paid on ocean freight, citing the Supreme Court's decision in Mohit Minerals Pvt. Ltd., which declared certain provisions of Notification No. 10/2017-IGST (Rate) as ultra vires. While the refund was initially sanctioned, the GST department contested this, arguing that the Supreme Court's ruling did not apply to FOB contracts. The Petitioner relied on the Supreme Court's judgment in Union of India v. Mohit Minerals Pvt. Ltd., which struck down Entry No. 10 of Notification No. 10/2017-IGST (Rate), declaring the levy of IGST on ocean freight as ultra vires the IGST Act, 2017.

The Court ruled in favor of the Petitioner, quashing the additional IGST levied on ocean freight for FOB

imports. It held that once IGST has been paid on the total value of the imported goods, including freight (whether on CIF or FOB basis), no additional IGST can be levied under the impugned notification. The Supreme Court in Mohit Minerals (supra) made no distinction between CIF and FOB contracts, and its ratio applies to both types of transactions. Thus, the impugned order withdrawing the refund of IGST paid on ocean freight for FOB imports was quashed.

HC: Time limit for GST refund to be determined from date of original application and not follow-up application

M/s Hallmark

WP(C) No.2025/2020

The Petitioner sought to quash a deficiency memo under Section 54, which rejected their refund application on the grounds of limitation. The department contended that the application was barred by limitation, despite not mentioning this in the initial deficiency memo. Agrrived the Petitioner preferred a Writ. The Petitioner argued that their refund application was filed within the permissible timeframe and that the Department's subsequent requests for documentation did not reset the limitation period. They also claimed that the rejection of their application was procedurally flawed.

The Court held that the time limit for refund of GST is determined from the date the original application was filed by the petitioner and not from the date of a follow-up application. It ruled that the follow-up application, submitted on the advice of the respondent, was merely a continuation of the original proceedings, and thus the time period for claiming the GST refund should be based on the original application. Thus, the Court quashed the deficiency memo.

HC: Quashes blocking of 'Electronic Credit Ledger' under Rule 86A in excess of available ITC

Best Crop Science Private Limited

W.P.(C) 10980/2024 and CM Nos.45297/2024 and 45298/2024

The Petitioners challenged the blocking of their ITC in the ECrl that resulted in a negative balance. Aggrieved, the Petitioner preferred a writ before the Delhi HC on the issue whether Rule 86A of the CGST Rules permits blocking of ITC in a taxpayer's ECL in excess of the credit balance available at the time of the order. The Petitioners argued that Rule 86A only allows blocking ITC to the extent of the credit currently available in the ECL. They contended that the rule must be interpreted literally, and any action that blocks ITC beyond what is available is unauthorized. They emphasized that ITC is a property under Article 300A of the Constitution, which cannot be restricted without explicit statutory authority. They relied on previous judgments, including Brand Equity Treaties Limited and Dee Vee Projects Limited, to support their claim that Rule 86A should be strictly construed.

The Court stated that Rule 86A requires two conditions to be met:

(a) ITC must be available in the ECrL, and

(b) there must be 'reasons to believe' that the available ITC was fraudulently availed or is ineligible. The Court rejected the Revenue's argument that 'amount equivalent to such credit' could refer to past ITC that has been fraudulently availed.

The Court also noted that Section 41 governs the availment of ITC, meaning that once credited, it becomes available for use or refund. The statutory provisions indicate that the ITC in question must be currently available in the ECrL to be blocked under Rule 86A. The Court further highlighted Circular CBEC-20/16/05/2021-GST dated 02.11.2021 wherein it has been clarified that the blocking of ITC under Rule 86A should be proportional to the suspected fraudulent or ineligible ITC. The Court ruled that blocking ITC under Rule 86A must align with the current available balance in the ECrL. Thus, the impugned orders that blocked amounts exceeding this limit were set aside.

GOODS & SERVICES TAX
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Advisory dated September 03, 2024	**GSTN issued Advisory on Reporting of supplies to un-registered dealers in GSTR1/GSTR 5** On July 10, 2024, the Government of India issued Notification No. 12/2024 – Central Tax, reducing the threshold limit for reporting invoice-wise details of inter-state taxable outward supplies made to unregistered dealers from Rs. 2.5 lakh to Rs. 1 lakh. This reporting is required in Table 5 of Form GSTR-1 and Table 6 of GSTR-5. The implementation of this change is currently under development on the GST portal and will be available to taxpayers shortly. In the interim, taxpayers are advised to continue reporting invoice-wise details of taxable outward supplies to unregistered dealers that exceed Rs. 2.5 lakh in the specified tables of GSTR-1 and GSTR-5 until the new functionality is activated on the portal.
2.	Advisory dated September 09, 2024	**Invoice Management System made effective on GST Portal** Effective October 1, 2024, the GST will introduce a new Invoice Management System on the GST portal to assist taxpayers in managing invoice corrections and ensuring accurate ITC. This system will enable taxpayers to match their invoices with those issued by suppliers, allowing them to accept or reject invoices as necessary. **Key Features:** • **Invoice Matching:** Taxpayers can match their records against invoices issued by suppliers. • **Actionable Options:** Recipients can **accept**, **reject**, or **keep invoices pending** until the filing of GSTR-3B. If no action is taken, invoices will be deemed accepted. • **Streamlined GSTR-2B Process:** Only accepted invoices will contribute to the ITC reflected in GSTR-2B. • **Quarterly Generation for QRMP Taxpayers:** GSTR-2B will be generated quarterly for taxpayers under the Quarterly Return Monthly Payment scheme.

Sr No	Notification/ Circular	Summary
		Work Flow of IMS: **1. Supplier Actions:** * When a supplier saves an invoice in GSTR-1, IFF, or GSTR-1A, the invoice details are automatically populated in the recipient's IMS dashboard. * The supplier can make amendments to invoices before filing GSTR-1. Any amendments will replace the original invoice in the IMS, regardless of the actions taken by the recipient on the original invoice. **2. Recipient Actions:** o Upon receiving invoices in the IMS, the recipient can take one of the following actions: * **Accept:** Accepted invoices will contribute to the ITC available in GSTR-2B and will auto-populate in GSTR-3B. * **Reject:** Rejected invoices will be excluded from GSTR-2B and will not be considered for ITC. * **Pending:** Invoices placed in pending status will remain in the IMS dashboard for future action but will not be included in GSTR-2B until accepted or rejected. **3. GSTR-2B Generation:** * GSTR-2B will be generated based on the actions taken by the recipient. The system will consider only accepted invoices for the computation of ITC. * For QRMP taxpayers, GSTR-2B will be generated quarterly. **4. Automatic Status Reset:** * If a supplier amends an invoice filed in GSTR-1 through GSTR-1A, the amended invoice will flow to the IMS, resetting the status of the original invoice on the recipient's dashboard. * The recipient must recompute their GSTR-2B if they take any action after the draft GSTR-2B is generated on the 14th of the subsequent month. **5. Compliance and Reporting:** * Records that are not acted upon by the recipient will be deemed accepted at the time of GSTR-2B generation. * All accepted, deemed accepted, and rejected records will be cleared from the IMS dashboard after filing the respective GSTR-3B.

Sr No	Notification/ Circular	Summary
		6. Pending Records Management: * Pending records can be acted upon in future months, but not later than the time limits prescribed by Section 16(4) of the CGST Act, 2017. * This structured data flow aims to enhance the accuracy and efficiency of the invoice management process under the GST regime, allowing for better tracking and verification of invoices for ITC claims.
3.	Circular No. 230/4/2024-GST dated September 10, 2024	**CBIC Clarification on GST on Advertising Services for Foreign Clients** CBIC has clarified that Indian advertising agencies providing comprehensive advertising services to foreign clients are not considered intermediaries under Section 2(13) of the IGST Act. These services, which include media planning, content creation, and strategy development, are supplied on a principal-to-principal basis, making the foreign client the recipient, thus qualifying these services as exports eligible for GST benefits. The place of supply is determined by the location of the recipient outside India, and the advertising services are not deemed performance-based as they do not involve physical presence. However, if an Indian agency acts merely as a facilitator between the foreign client and the media owner, it is classified as an intermediary, with the place of supply being the agency's location in India.
4.	Circular No. 232/26/2024 dated September 10, 2024	**CBIC issued clarification on determination of PoS for data hosting service provided to overseas service provider** CBIC has clarified the determination of the place of supply for data hosting services provided by Indian service providers to cloud computing service providers located outside India. The circular states that Indian data hosting service providers do not qualify as intermediaries since they supply services on a principal-to-principal basis directly to cloud service providers without interacting with end users. As such, the place of supply cannot be determined under Section 13(8)(b) of the IGST Act, which pertains to intermediary services. The circular further explains that data hosting services do not relate to goods 'made available' by cloud computing providers or to immovable property, thus excluding sections 13(3)(a) and 13(4) of the IGST Act from applicability. Instead, the place of supply is governed by the default provision in Section 13(2), indicating that it is based on the location of the recipient. Consequently, when these services are provided to recipients outside India, the place of supply is also outside India, allowing them to qualify for export benefits under the IGST Act, provided other conditions are met.

Sr No	Notification/ Circular	Summary
5.	Notification No. 17/2024 dated September 27 2024	**Government notifies effective date for amendments made in GST law vide Finance (No.2) Act 2024** The Ministry of Finance outlines the implementation dates for various sections of the Finance (No. 2) Act, 2024. According to the notification, sections 118, 142, 148, and 150 will become effective upon the publication of the notification in the Official Gazette. In addition, sections 114 to 117, 119 to 141, 143 to 147, 149, and 151 to 157 will be enforced starting from November 1 2024.

Tribunal upholds classification of imported Fork/Yoke Gear Shift as Parts of Gearboxes, imposing differential duty

Best Koki Automative Private Limited

2024-VIL-1175-CESTAT-DEL-CU

The present case revolves around the classification of imported Fork/Yoke 5th and reverse gear shifts. The Appellant classified these parts as "Transmission Shafts" under CTH 84831099, which attracts a BCD of 7.5%. However, the Department contested this classification, proposing to classify the goods under CTH 87084000 as parts of gearboxes, subject to a higher BCD of 10%.

The adjudicating authority concluded that the goods in question are assembly components located within the gearbox and are not integral to engines or motors. According to the Chapter Notes and Explanatory Notes of the Harmonized System of Nomenclature, parts of gearboxes are explicitly covered under CTH 87084000, while CTH 84831099 excludes gearbox components. The General Interpretative Rules (GIR) of the Customs Tariff further supported the Department's classification.

Despite the Appellant's argument that the goods qualify as "transmission elements," the Tribunal emphasized that these items are specifically designed for use in motor vehicles and fall squarely under the definition of gearbox components. As such, the demand for differential duty plus interest, was upheld. The Tribunal dismissed the appeal, confirming the classification under CTH 87084000 and the associated duty implications.

Tribunal upheld conversion of used toner cartridges into compatible cartridges as manufacture, setting aside customs duty and penalties

WEP Peripherals Limited

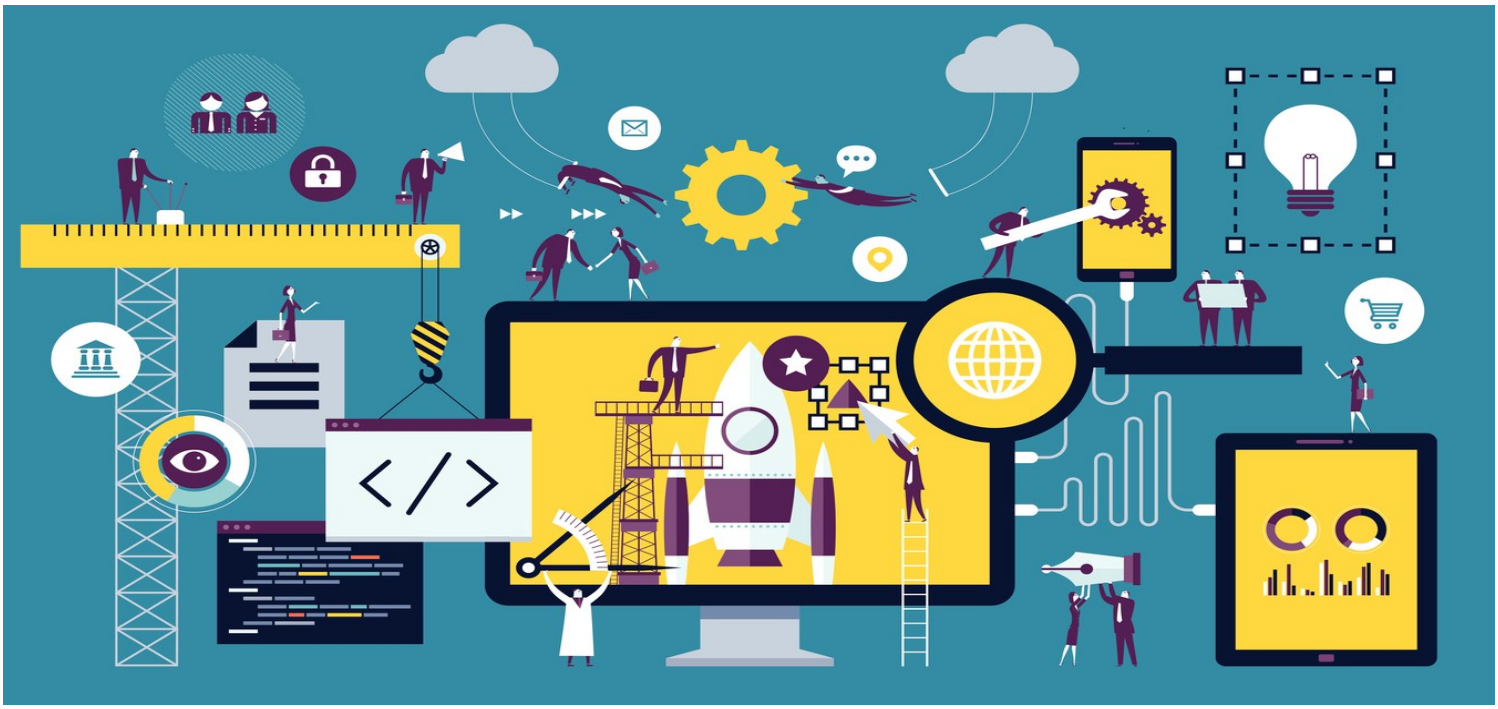
2024-VIL-1256-CESTAT-BLR-CU

The Appellant, imported "Toner Powder" under the Customs (Import of Goods at Concessional Rate of Duty for Manufacturing of Excisable Goods) Rules, 1996, and used the toner to convert used, empty toner cartridges into "Compatible Cartridges." The Appellant contended that this process amounted to "manufacture," enabling them to avail CENVAT credit and pay excise duty on the cleared cartridges. However, the Revenue alleged that this activity did not qualify as "manufacture" and demanded customs duty on the imported toner, reversal of CENVAT credit, and the imposition of penalties.

The primary issue was whether the activity of converting used toner cartridges into compatible cartridges constituted "manufacture" under the Central Excise Act, 1944. If the process was deemed not to amount to manufacture, the Appellant would lose the benefit of CENVAT credit and be liable for customs duty and penalties.

The Tribunal held that the Appellant's process of transforming used, empty toner cartridges into "Compatible Cartridges" did, in fact, amount to manufacture. The process involved dismantling, cleaning, refilling toner, replacing parts, and reassembling the cartridges, thereby creating a new marketable

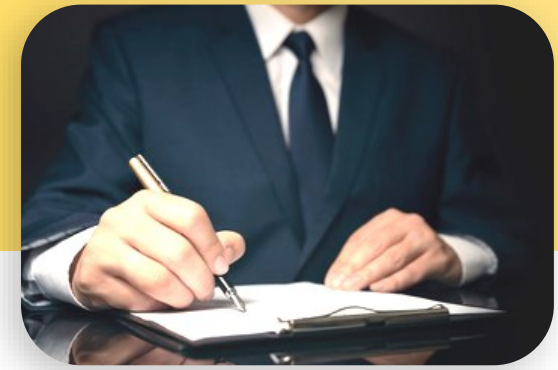
product with a different character. The Appellant also provided warranties and affixed labels with an assured shelf life on the final products, further solidifying the position that a new product had emerged In reaching its decision, the Tribunal referred to similar cases, including Tecumseh Products India Ltd. v. Commissioner and Gramaphone Company India Ltd. v. Collector of Customs, where the Hon'ble Supreme Court had ruled that processes like replacing parts and testing for quality amount to manufacture. Since the Appellant's activity was ruled as manufacture, the Tribunal found the demand for customs duty, the reversal of CENVAT credit, and the penalties imposed on the Appellant and its managing director to be unsustainable. Accordingly, the impugned orders were set aside, and the appeals were allowed with consequential relief.



CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 58/2024-Customs (N.T.) dated September 4 , 2024	**CBIC appoints authorities for customs violation adjudication** This notification by CBIC has been issued to appoint adjudicating authorities for handling Show Cause Notices (SCNs) related to customs violations, specifically for Zenlayer Inc. and others. The Additional or Joint Commissioners of Customs in various locations—including Mumbai, Chennai, Lucknow, New Delhi, Kolkata, Hyderabad, Bengaluru, Nagpur, and Indore—are assigned to adjudicate the matter.
2.	Notification No. 60/2024-Customs (N.T.) dated September 12 , 2024	**Amendments to Courier Imports and Exports Regulations** CBIC through this notification amends the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These changes are directed to enhance export promotion schemes by exempting the import and export of goods under schemes such as Duty Drawback, RoDTEP, and RoSCTL from certain regulations. The notification also mandates that only authorized couriers or agents licensed under the Customs Brokers Licensing Regulations, 2018, can handle electronic integrated declarations for these exports. Furthermore, authorized couriers are required to file electronic integrated declarations through ICES for exports claiming these benefits. The amendments also remove references to older schemes such as MEIS.

REGULATORY
From the Judiciary



NCLAT holds EPFO dues not part of Corporate Debtor's liquidation-estate, mandates full payment

Truvisory Insolvency Professionals Pvt. Ltd. vs. Employees Provident Fund Organisation

Company Appeal (AT) (Ins.) No. 580 of 2023

The Appellant was the Insolvency Professional Entity handling the CIRP of the Corporate Debtor that had filed an appeal before the NCLAT against the order of the NCLT which directed the Appellant to set aside amounts corresponding to the provident fund contributions of the employees of the Corporate Debtor from the funds available in the attached bank accounts and to furnish an undertaking to the 2 out of 8 EPFO (Respondents) that the Corporate Debtor shall remit the aforesaid dues upon the Respondents vacating the attachment over the bank accounts of the Corporate Debtor.

Noting that the provident fund dues including employee contributions, employer contributions, interest payable by the employer and damages were not part of the liquidation estate and were not subject to distribution under Section 53(1) of the IBC, however, the NCLT failed to treat all the claims of the Respondents equally and recognize that provident fund dues did not form part of the Corporate Debtor's assets, the NCLAT observed that the workmen and employees were entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount was to be paid by the Successful Resolution Applicant and the preferential treatment given to claims of 2 EPFOs would be discriminatory and bad in law.

Moreover, the employees were entitled to receive the amount of provident fund and gratuity in full since they were not part of the liquidation estate under Section 36(4) of the IBC and this principle applied even when the provident fund dues were secured through pre-CIRP attachment of the Corporate Debtor's bank accounts and even if no separate fund was available for provident fund, gratuity fund and pension fund, they had to be paid out of existing funds of the Corporate Debtor and the balance left after meeting the claims of the EPFO authorities formed part of the liquidation estate.

Thus, holding that the claims of all the 8 EPFO's were to be treated on par and the entire amount of claim under Sections 7A, 7Q and 14B of the EPF Act had to be paid to respective EPFO authorities from the funds available in the attached bank accounts of Corporate Debtor, the NCLAT removed the attachment on the bank accounts of the Corporate Debtor by the Respondents and directed the Liquidator to ensure the payment of provident fund dues to the respective EPFO authorities, allowing the Liquidator to continue with the liquidation process of the Corporate Debtor thereafter.

SEBI slaps penalty of INR 27 Crores on Company and its executives for fund diversion, misrepresentation and non-disclosure of related party transactions

In the matter of Binny Limited

QJA/GR/CFID/CFID/30579/2024-25

In the present case, SEBI received several complaints alleging siphoning / diversion of the funds of the

Company, misstatements in its financial statements, and undisclosed/unauthorized related party transactions. Upon analysis of the same, SEBI appointed a firm to inter-alia, conduct a forensic audit of the consolidated financial statements of the Company for 8 financial years from 2013-14 to 2020-21 with a special focus on misrepresentation of its financial statements and siphoning/diversion of its funds during this period resulting in the possible violation of several provisions of the Securities Contracts (Regulation) Act, 1956, the LODR Regulations and the PFUTP Regulations.

Basis the forensic audit report submitted by the firm to SEBI, SEBI inter-alia noted that the Company had advanced INR 329.29 Crores to 19 vendors for purchases unrelated to its core business, with a significant portion outstanding for over 5 years, which acted as conduits to channel funds to related parties, out of which INR 148.72 Crores, was traced to related parties of the Company, notably a promoter group company, without obtaining mandatory approvals from SEBI, audit committee, or shareholders and this lack of transparency aimed to conceal the true nature of these dealings. Additionally, the sale proceeds of land, amounting to INR 97.13 Crores, were also funneled through a network of vendors with a common director, ultimately benefiting related parties and the Company had also entered into a dubious agreement with a related party for an infrastructure project that was outside the scope of its authorized business activities, and despite the related party's inability to execute the project, the funds amounting to INR 29.18 Crores were largely diverted to the promoter group company.

Accordingly, SEBI found that the Company's attempts to regularize these transactions, particularly the advances to the promoter group company, through a settlement scheme involving land transfers, were marked by inadequate documentation, questionable valuations and potential violations of the Companies Act, 2013 and the Company's failure to disclose these transactions as related-party transactions further compounded the gravity of its misconduct, and highlighted a severe lack of transparency and corporate governance.

Thus, holding that the Company and its executives acted against the interest of the public shareholders and investors and undermined the integrity of the securities market, SEBI imposed a hefty penalty of INR 27.50 Crores on the Company and its executives and also restrained them from accessing the securities market and holding any position as directors or key managerial personnel of any other listed company for specified periods (2 years/3 years) for financial misconduct, including diversion and siphoning of funds, non-disclosure of related party transactions and misrepresentation of financial statements and directed them to recover and deposit INR 706.03 Crores, representing the diverted funds, to their bank account within 3 months with 12 % interest.

Hon'ble HC quashes reassessment notices pertaining to pre-resolution period, cites IBC's 'clean slate' principle

Uttam Galva Metallics Ltd vs. Assistant Commissioner of Income Tax and Anr.

Writ Petition (L) No. 9421 of 2022

In the present case, the Revenue had issued notices to the Petitioner (who had undergone a successful resolution process under the IBC) and initiated reassessment proceedings for the AY 2016-17 alleging escaped income of INR 111 Crores, aggrieved by which the Petitioner had approached the Hon'ble HC.

The Hon'ble HC noted that the principle enshrined in Section 31 of the IBC asserted that a resolution plan approved by the NCLT was binding on all stakeholders, including tax authorities, and as the aim of the IBC was to revive struggling companies, once a resolution plan was duly approved under Section 31(1) of the IBC, the debts as provided for in the resolution plan alone would remain payable and such position was binding, among others, on the Central Government and various authorities, including tax authorities

whereas all dues which were not part of the resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of any claim for any such due.

Accordingly, the Hon'ble HC observed that the outcome of the impugned reassessment proceedings, particularly if adverse to the Petitioner, would clearly be in relation to tax claims for the period prior to the approval of the resolution plan, and hence any attempt to re-agitate the assessment for AY 2016-17, evidently and squarely, would constitute a pursuit of claims for the period prior to even the initiation of the CIRP, and as, upon completion of the CIRP, the Petitioner had completely changed hands and had begun on a clean slate under new ownership and management, therefore, all the notices and communications issued by the Revenue in connection with the impugned proceedings, and the consequential actions, deserved to be set aside as they were untenable because they pertained to the period before the approval of the resolution plan.

Thus, quashing the reassessment notices issued by the Revenue for pertaining to the pre-resolution period, the Hon'ble HC disposed of the matter.

Hon'ble HC refuses to quash IBBI's 'lenient' order against Resolution Professional, cites limited scope of judicial-interference

Sarish Mittal and Anr vs. IBBI and Ors.

CWP No. 8750 of 2023

The Petitioners were the suspended directors of the Corporate Debtor that had filed petitions before the Hon'ble HC challenging the IBBI's decision to issue only a lenient warning to the Resolution Professional and seeking that the entire CIRP process be declared invalid, alleging irregularities in the Resolution Professional's appointment. Before the Hon'ble HC, the Petitioners contended that the RP's appointment was not valid, the inter se relations between the RP and the counsel were not disclosed in terms of the statutory provisions, the IBBI order was passed by an incorrectly constituted Disciplinary Committee and once the Disciplinary Committee found that the RP was guilty of misconduct, there was no scope of taking a lenient view, especially considering the fact that in similar circumstances, the IBBI had imposed a more stringent punishment.

Noting that the scope of judicial review in respect to proportionality/quantum of punishment was limited inasmuch as interference could be caused only when the punishment was found to be disproportionate, outrageous, in defiance of logic or was irrational suggesting lack of good faith or shocked the conscience of the Court, the Hon'ble HC observed that merely because in its opinion another alternate punishment would be more appropriate, could not be considered a ground to interfere with the discretion of the Disciplinary Authorities. Further, noting that the Petitioners' appeal was pending before the NCLAT, the Hon'ble HC deliberately refrained from expressing its opinion with reference to the Petitioners' prayer for setting aside the entire CIRP.

Thus, finding no infirmity in the order of the IBBI, and dismissing the Petitioners' argument that the IBBI violated natural justice principles by not affording them an opportunity of hearing, by accepting the IBBI's contention that in terms of the provisions of Section 217 and 220 of IBC read with Regulation 30 of IBBI (Inspection and Investigation) Regulations, 2017, the complainant could not become a party to the inquisitorial proceedings, the Hon'ble HC, upheld the IBBI's order, and dismissed the petitions.

Hon'ble SC holds non-signatories can be compelled to arbitrate based on conduct, intention to be bound by agreement

Jay Madhusudan Patel & Ors. vs. Jyotrindra S. Patel & Ors.

Arbitration Petition No. 19 of 2024

The Petitioner and the Respondent were a group of companies that had entered into a Family Arrangement Agreement. Owing to the emergence of disputes between the Petitioner and the Respondent, the Petitioner filed a petition under Section 11 of the Arbitration Act before the Hon'ble SC, seeking the appointment of a Sole Arbitrator to adjudicate the disputes.

Noting that another group of companies which was not a signatory to the Family Arrangement Agreement (non-signatory party), was involved in the execution, negotiation, implementation and performance of the Family Arrangement Agreement, the Hon'ble SC observed that this group of companies demonstrated an intention to be bound by arbitration and accordingly, included the same in the arbitration citing that the mutual intent of the parties, relationship of a non-signatory with a signatory, commonality of the subject matter, composite nature of the transactions and performance of the contract were all factors that signified the intention of the non-signatory to be bound by the arbitration agreement.

Further, the Hon'ble SC observed that the essence of an arbitration agreement was not limited to formal signatures but also extended to the parties' conduct and if a party showed an intention to be bound by the agreement, they could be included in arbitration proceedings.

With regards to the argument raised by the non-signatory party that a dual test had to be satisfied to compel it to be a party to arbitration, the Hon'ble SC observed that the conduct of the non-signatory party along with the other attending circumstances could lead the referral court to draw a legitimate inference that it was a veritable party to the arbitration agreement, however, ultimately, it was the arbitral tribunal which would decide the same based on evidence and in the present case a complete and effective resolution of the disputes between the Petitioner and the Respondent arising out of the Family Arrangement Agreement would not be achieved without the inclusion of the non-signatory party in the proceedings.

Further, placing reliance on a catena of its own judgments, the Hon'ble SC observed that that the definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act, included both the signatory as well as non-signatory parties and therefore, persons or entities who had not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement could also be considered to be bound by the terms of the agreement. Thus, the issue as to who was a "party" to an arbitration agreement was primarily an issue of consent of which actions or conduct could be considered an indicator.

SEBI penalizes textile company's promoters for incorrect shareholding pattern, open offer violations

In the matter of Alka India Limited

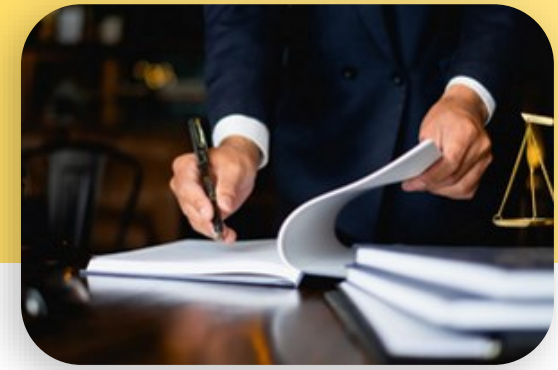
Adjudication Order No. Order/BM/RK/2024-25/ 30772-30780

SEBI conducted an examination in the matter of a textile company to ascertain whether there was any violation of the provisions of the SEBI Act and various other SEBI Regulations as well as the clauses of the Listing Agreement by the company.

During the course of the examination, SEBI observed that the promoters of the textile company had converted non-convertible redeemable preference shares into equity shares without obtaining the necessary approvals from shareholders and the stock exchange, which subsequently led to an increase in their shareholding and triggered the requirement for an open offer which was not fulfilled by the promoters even though it was known to the promoters that any person who was required to come out with an open offer and did not do so, was depriving the investing public of their statutory rights which SEBI was duty bound to protect. Moreover, the examination also revealed discrepancies in the company's shareholding pattern, including the failure to dematerialize 100% of the promoters' shares.

Accordingly, as the promoters breached various regulatory norms and violated several provisions of the SEBI Act and various other SEBI Regulations as well as the clauses of the Listing Agreement by maintaining an incorrect shareholding pattern, failing to ensure 100% shareholding in demat form and failing to make an open offer when required, SEBI passed an order imposing a monetary penalty of INR 5 Lakhs on the promoters requiring them to pay the same within 45 days of the receipt of the said order on failure of which recovery proceedings would be initiated for the realization of the said penalty along with interest by attachment and sale of the movable and immovable properties of the promoters.

REGULATORY
From the Legislature



RBI scraps monthly reporting for banks on Liberalised Remittance Scheme for individuals

Notification No. RBI/2024-25/74 dated September 06, 2024

The RBI through a Notification discontinues the monthly reporting requirement for the Liberalised Remittance Scheme for Authorised Dealer Category-I (AD Category-I) banks, effective from September 2024.

Previously, these banks were required to submit monthly returns detailing the number of LRS applications and the total amount remitted, as specified in earlier circulars. Henceforth, banks will hereafter only need to report transaction-wise data on a daily basis through the Centralised Information Management System with a 'NIL' report if no transactions occur.

This change aims to streamline reporting processes, and all previous related circulars have been withdrawn. Banks are instructed to update their practices accordingly, and the Master Direction on reporting under the Foreign Exchange Management Act, 1999 will be revised to incorporate this change.

MCA notifies Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024

Notification No. G.S.R. 552(E) dated September 09, 2024

The MCA amends the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ('the Rules') through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024.

The amendment inter-alia aims to clarify the process for transferring securities to legal heirs and increases the minimum claim amount for filing a claim with the Investor Education and Protection Fund Authority, provides for acceptance of legal heir certificates issued by revenue authorities with additional documentation, such as indemnity bonds and no objection certificates from other legal heirs and also introduces a new requirement for companies to obtain insurance coverage for risks associated with verification reports.

These changes are intended to streamline the process for investors to claim lost or unclaimed securities and protect the interests of both investors and companies.

MCA notifies Companies (Indian Accounting Standards) Second Amendment Rules, 2024, revising Ind-AS 116

Notification No. G.S.R. 554(E) dated September 09, 2024

The MCA through a Notification issues the Companies (Indian Accounting Standards) Second Amendment Rules, 2024 to amend the Companies (Indian Accounting Standards) Rules, 2015.

Through the said Notification, amendments have been made with respect to the accounting treatment for a seller-lessee involved in sale and leaseback transactions under Ind AS 116 - Leases. These amendments add on some new paragraphs, illustrative examples, appendix and requirements for retrospective application to maintain consistency in financial reporting and aim to increase transparency in financial reporting by ensuring that sale and leaseback transactions accurately reflect their economic substance and that they align AS 116 more closely with IFRS 16, improving global comparability for Indian companies.

Accordingly, Corporates must now reassess their sale and leaseback arrangements for compliance, while auditors must ensure that companies correctly apply the amended rules, especially regarding fair value adjustments and gain recognition.

Thus, the Second Amendment Rules, 2024, represent a significant update to the lease accounting standards in India, bringing greater clarity and aligning domestic standards with global practices.

MCA mandates RBI approval for foreign holding company mergers with domestic units

Notification No. G.S.R. 555 (E) dated September 09, 2024

The MCA through a Notification, amends the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

The amendment, effective from September 17, 2024, inter-alia focus on mergers or amalgamations involving a foreign holding company and its wholly-owned Indian subsidiary. The newly introduced sub-rule 5 under Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, stipulates that both companies must obtain prior approval from the RBI before proceeding.

Additionally, the Indian transferee company must comply with Section 233 of the Companies Act, 2013, and submit an application to the Central Government under the same section. The sub-rule further clarifies that the required declaration under sub-rule (4) of Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, should be made when the application is submitted.

This amendment brings more clarity and procedural requirements for cross-border mergers involving foreign holding companies and their Indian subsidiaries, ensuring compliance with both regulatory bodies and the Companies Act, 2013.

MCA issues clarification on holding of annual general meetings and extraordinary general meetings through video conference and other audio visual means and passing of ordinary or special resolutions

General Circular No. 09/2024 dated September 19, 2024

The MCA through a General Circular issues clarification on holding of annual general meetings and extraordinary general meetings through video conference or other audio visual means and passing of ordinary or special resolutions by the companies under the Companies Act, 2013.

Companies whose annual general meetings are due in the years 2023 or 2024 are now permitted to conduct their annual general meetings through video conference or other audio visual means. This extension applies to annual general meetings scheduled for or before September 30, 2025. However, it does not extend the statutory time for holding annual general meetings as per the Companies Act, 2013 and

therefore, companies failing to adhere to the statutory timelines are still liable to face legal action under the appropriate provisions of the Companies Act, 2013.

In addition to annual general meetings, the General Circular also extends the provision for conducting extraordinary general meetings through video conference or other audio visual means. Companies can transact items through postal ballots as per the framework provided in the relevant Circulars. This extension also applies up to September 30, 2025, maintaining consistency with the annual general meetings extension.

RBI extends Interest Equalisation Scheme for Rupee export credit

Notification No. RBI/2024-25/76 dated September 20, 2024

The RBI through a Notification, announces an extension of the Interest Equalization Scheme for pre and post -shipment Rupee export credit until September 30, 2024, as per the Government of India's directives.

This extension specifically targets MSME manufacturer exporters, capping the annual net subvention amount at INR 10 Crores per Importer-Exporter Code for a given FY, with a maximum of INR 5 Crores per Importer-Exporter Code for MSME manufacturer exporters until September 30, 2024, for FY starting April 1, 2024. For non-MSME manufacturers and merchant exporters, the cap is set at INR 2.5 Crores per Importer-Exporter Code until June 30, 2024.

The RBI also clarifies that all other provisions of the existing instructions on the scheme will remain unchanged. These measures aim to support exporters and streamline financing processes within the export credit framework.

INTERNATIONAL DESK

Germany: The Government Approved Proposals for Tax Breaks On Electric Vehicles

On September 04, 2023, Germany's coalition government approved a proposal for tax reductions to encourage electric vehicle adoption, following the abrupt end of a subsidy program last year. With new EV registrations dropping 36.8% in July compared to the previous year, the government aims to address concerns about affordability, charging infrastructure, and vehicle range.

The draft allows companies to deduct up to 40% of the purchase value of new electric and zero-emission vehicles from their taxes, gradually decreasing to 6%. This measure is estimated to cost around 465 million euros annually from 2024 to 2028. Additionally, the threshold for preferential tax treatment for electric company cars has been raised from 75,000 euros to 95,000 euros.

Economy Minister emphasized ongoing support for the transition to EVs, especially amid challenges faced by the German automotive industry. While the auto industry association welcomed the proposal, environmental groups expressed skepticism about its potential to significantly boost EV sales, noting that the benefits might mainly favor higher earners.

Thailand: Reintroduces A 300-Baht Tourism Tax to Boost Revenue and Enhance Infrastructure

Thailand plans to reintroduce a 300-baht tourism tax, which had been paused under the previous administration, to boost tourism revenue to 3 trillion baht this year. Foreign air travellers will pay 300 baht, while those arriving by sea and land will be charged 150 baht. However, the timeline for implementation is uncertain as the government assesses readiness.

Additionally, there are plans to revive successful pandemic-era initiatives, such as the "We Travel Together" scheme, to further stimulate the local economy. With the high season approaching, events like marathons and New Year celebrations are expected to help meet revenue targets.

The government is also exploring the potential of hosting a Formula One event to showcase Thailand's unique character. Concerns about price-dumping tours are being addressed, and measures are in place to combat illegal tourism practices. A meeting with 20 tourism industry representatives is scheduled to discuss future policies.

UAE: FTA Highlights the Essential Role of Certified Tax Agents

The FTA held its Annual Forum for Certified Tax Agents, emphasizing their crucial role in maintaining compliance and transparency in corporate taxation. Over 180 certified agents and FTA officials gathered at Zayed University's Convention Centre for discussions on current tax regulations and best practices.

The Director of the Taxpayer Services Department, highlighted the need for ongoing professional development, noting that the corporate tax landscape is continually evolving. The forum provided insights into corporate taxation principles, free zone tax regulations, and the documentation needed for corporate tax registration through the EmaraTax digital platform.

The FTA stressed the importance of ethical conduct and professional standards in the tax profession, reinforcing that certification enhances trust within the business community. The event concluded with a Q&A session, fostering direct engagement between tax agents and FTA officials, furthering the FTA's commitment to collaboration and support in navigating the complexities of corporate taxation.

Saudi Arabia to Eliminate Export Customs Fees and Reduce Import Fees Starting October 6

The Saudi Zakat, Tax and Customs Authority has announced the waiver of customs service fees for all exports and introduced a new fee structure for imports, effective October 6, 2024. Under this new system, import fees will be calculated at 0.15% of the value of incoming goods, with a maximum fee of SR 500 and a minimum of SR 15. Additionally, a fee of SR 15 will apply to customs declaration processing for individual shipments valued under SR 1,000.

The decision to waive export fees aims to support exporters, particularly small SMEs, by alleviating financial burdens and enhancing the competitiveness of Saudi exports. The waived fees encompass various services, including customs declarations and inspections, which are expected to streamline the export process.

ZATCA's new import fee structure is designed to reduce overall import costs and improve transparency, allowing importers to better calculate customs fees. This initiative aligns with Saudi Arabia's Vision 2030, which seeks to strengthen the country's position as a global logistics hub. For any inquiries, ZATCA has provided multiple contact options for customers.

OECD Unveils Members for First STTR MLI Signing Ceremony

On September 19, 2024, the OECD announced the jurisdictions that participated in the first signing ceremony of the Multilateral Convention aimed at implementing the Pillar Two STTR as part of the OECD/G20 Inclusive Framework on BEPS. The ceremony, held in Paris, represents a significant step forward in the global effort to reform international tax rules, underscoring the commitment of participating countries to create a more equitable and robust global tax system. At the time of signing, each jurisdiction was required to provide its STTR MLI position, ensuring clarity and consistency in the implementation of the new tax framework.

The list revealed that 9 members officially signed the STTR MLI, while an additional 10 jurisdictions expressed their intent to sign in the future. This collaborative effort reflects the OECD/G20's goal of addressing tax challenges arising from globalization and digitalization, promoting fairer taxation across borders. However, it is noteworthy that India was not included in either category, highlighting its absence from this crucial stage of international tax reform. The progress made during this ceremony is expected to lay the groundwork for further advancements in global tax cooperation and compliance.

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
AIFs	Alternative Investment Funds
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
BEPS	Base Erosion and Profit Shifting
BOI	Body of Individuals
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
CbC	country-by-country
CBCR	Country By Country Reporting
CbCR-VG	CbCR Publication Act
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CBLR	Custom Broker Licensing Regulations
CCI	Chief Commissioner of Income-tax
CCIT	Chief Commissioner of Income tax
CG	Central Government
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

Abbreviation	Meaning
CPC	Centralized Processing Centre
CPM	Cost Plus Method
CrPC	The Code of Criminal Procedure, 1973
CRS	Common Reporting Standard
CS	Company Secretary
CSR	corporate social responsibility
CUP	Comparable Uncontrolled Price
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
EPFO	Employees Provident Fund Organization
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
FIR	First Information Report
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
FY	Financial Year
G2B	Government to Business
GST	Goods and Services Tax
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
ICFR	Internal Controls Over Financial Reporting
IFRS	International Financial Reporting Standards
IFSC	International Financial Services Centres
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IMC	Indian Medical Council Act, 1956

GLOSSARY

Abbreviation	Meaning
Ind AS	Indian Accounting Standards
Inds AS	Indian Accounting Standard
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
KPIs	key performance indicators
KYC	Know Your Customers
LIC	Life Insurance Corporation
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
MNCs	Indian Multinational Corporations
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,
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
NDFC	Net Distributable Cash Flows
NELP	New Exploration Licensing Policy
NFRA	National Financial Reporting Authority
NFT	Non-Fungible Token
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
OECD	Organization for Economic Co-operation and Develop-
OFS	Offer for Sale
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCCI	Principal Chief Commissioner of Income-tax
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
PIV	Pooled Investment Vehicle
PLR	Prime Lending Rate
REITs	Real Estate Investment Trusts

Abbreviation	Meaning
RoC	Registrar of Companies
ROMM	Risk of Material Misstatements
RP	Resolution Professional
RPM	Resale Price Method
RPT	Related Party Transactions
RTGS	Real Time Gross Settlement
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
SCAORA	Supreme Court Advocates-on-Record Association
SCBA	Supreme Court Bar Association
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
SMF	Single Master Form
SPF	Specific Pathogen Free
SPV	Special Purpose Vehicle
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
TNMM	Transaction Net Margin Method
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
TPO	Transfer Pricing Officer
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 (Prohibition of Unlawful Activities) Act, 2005
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 relationships through cutting-edge ideas and solutions to its clients, across sectors.

Website: **www.taxcraftadvisors.com**

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

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

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

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

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