Newsletter September 2021

Vishnu Daya & Co. LLP
Chartered Accountants

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Direct Tax – Circulars

1. **CBDT extends due-dates for various forms including Form 15CC, EL Statement.**

Circular No. 15 / 2021, dated 3rd August 2021.

Press Release dated 3rd August 2021.

CBDT by Circular No. 15 of 2021 extends due dates considering difficulties reported by the taxpayers and other stakeholders in e-filing of various Forms and due to non-availability of utility.

Click here to read / download the copy of the circular.

Click here to read / download the copy of the press release.

2. **CBDT issues Circular on extension of various e-filing deadlines.**

Circular No. 16 / 2021, dated 29th August 2021.
CBDT issues Circular No. 16 of 2021 for extending timelines for filing of various electronic forms

SN	Compliance	Existing Date	Extended Date
1.	The application for registration or intimation or approval under Section 10(23C), 12A, 35(1)(ii)/(iia)/(iii) or 80G in Form No. 10A	31st August, 2021	31st March, 2022
2.	The application for registration or approval under Section 10(23C), 12A or 80G in Form No.10AB	28th February, 2022	31st March, 2022
3.	The Equalization Levy Statement in Form No.1 for the Financial Year 2020- 21	31st August, 2021	31st December, 2021
4.	Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India u/s 286(1) in Form No.3CEAC, under Rule 10DB	30th November, 2021	31st December, 2021
5.	Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India under sub-section (2) or sub-section (4) of section 286 in Form No. 3CEAD under Rule 10DB	30th November, 2021	31st December, 2021
6.	Intimation on behalf of an international group under proviso Sec. 286(4) in Form No. 3CEAE under Rule 10DB	30th November, 2021	31st December, 2021

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Direct Tax – Notifications

Notifications issued by CBDT in the month of August 2021

1. **CBDT notifies computation rules for income of specified funds covered u/s 10(4D), 115AD.**

   Notification no. 90 /2021, dated 9th August 2021.

   CBDT vide Notification No. 90/2021 notifies Income-tax (22nd Amendment) Rules, 2021, inserts Rule 21AI for computation of income of specified fund exempt u/s 10(4D) and Rule 21AJ for the determination of capital gains of a specified fund u/s 115AD(1A).

   Provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of Section 10(4D) and also for determination income of a specified fund in the nature of short-term or long-term capital gains referred to in Section 115AD(1)(b).

   Prescribes Form No. 10IG under Rule 21AI i.e., Statement of Income Exempt u/s 10(4D) and Form No. 10IH under Rule 21AJ i.e., Statement of Income of Specified Fund eligible for concessional tax u/s 115AD(1A) to be furnished annually, electronically.

   Click here to read / download the copy of the notification.

2. **CBDT notifies rules for computation of MAT relief in secondary adjustment / APA cases.**

   Notification no. 92/2021, dated 10th August 2021.

   CBDT vide Notification No. 92/2021, notifies Income-tax (23rd Amendment) Rules, 2021, inserts Rule 10RB for computation of relief in MAT payable by an assessee due to operation of sub-section (2D) of section 115JB.

   Sub-section (2D) to Section 115JB was inserted vide Finance Act, 2021 to provide relief in cases where previous year's income gets included in the current year due to an APA or a secondary adjustment under transfer pricing - in such cases, the taxpayer can make an application to the Assessing Officer (AO) requesting for the re-computation of book profit under section 115JB of the past year(s).

   Rule 10RB, now inserted, provides for a formula based approach for computation of relief in MAT liability. Notifies Form No. 3CEEA (to be filed electronically) for claiming such relief.

   Click here to read / download the copy of the notification.

3. **CBDT prescribes "any other person" for verifying returns, authorised representation for companies/LLPs.**

   Notification no. 93 /2021, dated 18th August 2021.

   CBDT vide Notification No. 93 of 2021 notifies IT (24th Amendment) Rules, 2021. CBDT notifies Rule 12AA for the purpose of clauses (c) and (cd) of Section 140 and Rule 51B for the purpose of Section 288(2)(viii). As per the Rules, "any other person" shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of: (i) an interim resolution professional, (ii) a resolution professional, (iii) or a liquidator, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder. Explains that Adjudicating Authority shall have the same meaning as assigned to it Section 5(1) of the Insolvency and Bankruptcy Code, 2016.

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4. CBDT notifies extended timelines under Vivad se Vishwas.

Notification no. 94 /2021, dated 31st August 2021.

CBDT issues Notification No. 94 of 2021 for extending the last date under Vivad se Vishwas Act. Extends the last date for making payment without additional amount to September 30, 2021 from August 31, 2021 and the last date for making payment with additional amount to October 1, 2021 from September 1, 2021.

Click here to read / download the copy of the notification.

5. CBDT notifies Rule 9D for calculation of taxable interest on PF contributions.

Notification no. 95 /2021, dated 31st August 2021.

CBDT notifies Income-tax (25th Amendment) Rules, 2021. Inserts Rule 9D for calculation of taxable interest on contribution in a provident fund or recognised provident fund, exceeding specified limit.

Explains that non-taxable contribution account shall be the aggregate of: (i) closing balance in the account as on Mar 31, 2021, (ii) any contribution made during the previous year 2021-2022 and subsequent previous years apart from the contribution made in taxable account, (iii) interest accrued thereon as reduced by the withdrawal.

Further explains that the taxable contribution account shall be the aggregate of: (i) contribution made during the previous year 2021-2022 and subsequent previous years in excess of the threshold limit and (ii) interest accrued thereon as reduced by the withdrawal. The threshold limit shall be Rs.5 Lacs where there is no employer's contribution and Rs. 2.5 Lacs in other cases. The rule comes into effect from Apr 1, 2022

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Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of August 2021

1. **ITAT: Payments to Facebook, Amazon Web Services for advertising, marketing not taxable as Royalty.**

   Urban Ladder Home Décor Solutions Pvt. Ltd [TS-773-ITAT-2021(Bang)]

   Bangalore ITAT allows Assessee's appeal, holds payments for online advertising and marketing to non-resident payees not within meaning of 'Royalty' under DTAA provisions.

   Assessee-Company, dealing in home décor products, sold mainly through online marketing and made payments without deduction of tax at source to: (i) Facebook, Ireland for advertisements (ii) M/S Rocket Science Group for availing bulk mail facility and (iii) Amazon Inc., USA for availing Amazon Web Services.

   Revenue held the payments as 'Royalty' u/s 9(1)(vi) and liable for TDS u/s 195 and thus, treated Assessee as 'assessee-in-default' u/s 201 for AYs 2015-16, 2016-17 and 2017-18 resulting in a cumulative demand of Rs.7.35 Cr. inclusive of interest u/s 201(1A), which was confirmed by CIT(A) relying on jurisdictional HC's ruling in *Samsung Electronics*.

   ITAT relying on the SC ruling in *Engineering Analysis* holds that beneficial DTAA provisions are to be considered for determining taxability of income. On perusal of agreement with non-resident payees, ITAT observes that mere usage of facility provided by Facebook or Rocket Science does not render the payments as 'royalty', as copyright attached to the facility is not parted with. Further observes payment to Amazon Web Services are for use of information technology facilities, whereas billing depends on extent of usage of those facilities. Accordingly, ITAT holds the payments cannot be treated as 'Royalty'.

   Click here to read / download the copy of the ruling.

2. **ITAT: Advertising contracts in writing not pre-requisite for TDS u/s 194C.**

   Perfect Probuild P. Ltd [TS-799-ITAT-2021(DEL)]

   Dehi ITAT holds payment made by Assessee for advertisements is covered u/s 194C and not 194J. Assessee-Company engaged in business of construction incurred advertisement expenditure of Rs. 9.47 lakhs, on which TDS was made at 2% u/s 194C. Assessee also paid lease rent of Rs. 81.56 lakhs to Noida Authority, without deduction of tax at source.

   Assessee was submitted to TDS proceedings wherein Revenue held TDS was required on lease rent, and in absence of a written contract advertisement services was covered u/s 194J. CIT(A) deleted the demand for non-deduction of tax on lease rent but confirmed demand for short deduction of tax on advertisement expenditure.

   ITAT refers to CBDT Circulars on TDS and observes that payments made to an advertising agency are covered u/s 194C, whereas payments made by advertising agency to artists, director etc are covered u/s 194J. ITAT further remarks contact need not always be in writing, and can be implied also, accordingly holds payments made for advertising to be covered u/s 194C. Directs Revenue to verify whether Noida Authority paid tax on lease rent and if paid, Assessee would not be liable for TDS default.

   Click here to read / download the copy of the ruling.

3. **ITAT: iPads not substitute for computers, ineligible for depreciation at 60%**

   Kohinoor Indian Pvt. Ltd. [TS-806-ITAT-2021(ASR)]

   Amritsar ITAT holds iPads to be a communicating device, not a substitute for

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computers, thus, ineligible for higher rate of depreciation of 60%.

Assessee-Company claimed depreciation on iPads at 60%, applicable to computers, for AYs 2012-13 & 2013-14 whereas Revenue distinguished iPads from MacBooks and found it similar to iPhones to hold that the iPads were eligible for depreciation at 15% which was confirmed by CIT(A).

ITAT observes that in the absence of definition of computer in the Income-tax Act, definition of "computer" under Information Technology Act, 2000 can be taken as an aid of interpretation and also applies the common parlance test. Observes that iPad is communication as its main features are email, whatsapp, call, facetime, music, films etc. and though it discharges some of the functions of the computers it cannot be used as a computer.

ITAT holds that the Assessee has the onus to establish its entitlement for the higher rate of depreciation and merely on the basis of deduction/ assumption it cannot be concluded that iPad is a computer.

Click here to read / download the copy of the ruling.

4. **ITAT: Upholds allowability of pre-operative expenditure for business expansion project.**

Blue Coast Infrastructure Development Ltd [TS-802-ITAT-2021(CHANDI)]

Chandigarh ITAT upholds CIT(A)'s order treating professional expenses incurred at pre-operative stage for business expansion allowable as revenue expenditure for AY 2013-14.

Assessee-Company engaged in the business of real estate development and financing, filed a loss return which was revised enhancing loss to Rs. 5.89 Cr. Revenue held professional expenses of Rs. 3.47 Cr. incurred in connection with a project yet to commence was pre-operative expenditure required to be capitalised.

ITAT concurs with CIT(A)'s findings supported by the Delhi HC ruling in *SRF Ltd.* and Mumbai ITAT ruling in *Reliance Footprint Ltd.* wherein it was held expenses incurred on expansion of existing business, were to be treated as revenue expenditure.

Click here to read / download the copy of the ruling.

5. **ITAT: Amendment to Sec.43B by Finance Act 2021 to apply prospectively.**

Harendra Nath Biswas [TS-618-ITAT-2021(Kol)]

Kolkata ITAT deletes disallowance made for delayed contribution of employees' contribution beyond the due date under respective acts, but before the due date of filing return. Assessee deposited employees' contribution to PF and ESI of Rs. 1.10 Cr. beyond the due date specified under relevant statutes, but before the due date of filing return of income u/s 139(1), which was disallowed by AO and confirmed by the CIT(A) relying on the amendment to section 43B by Finance Act, 2021.

ITAT holds that amendment of Finance Act 2021 is prospective in application, w.e.f April 01, 2021 and thus not applicable in the instant case. ITAT relying on the binding decision of the jurisdictional HC *Vijayshree Ltd.* disagrees with CIT(A)'s order for denying claim of exemption, and allows Assessee's appeal.

Click here to read / download the copy of the ruling.

6. **ITAT: Interest on borrowing adjustable against income from investment of borrowed funds.**

Hinduja National Power Corporation Limited [TS-630-ITAT-2021(HYD)]

Hyderabad ITAT allows Assessee's claim for set-off of interest expenditure on borrowed funds of Rs.1.64 Cr. against income earned for AY 2013-14.

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Assessee Limited Company engaged in the business of power generation, earned interest of Rs.1.88 Cr. from fixed deposits out of which only Rs.24.44 lacs was offered to tax under the head 'Income from Other Sources'. Assessee contended that the interest was earned on the unutilized portion of the borrowed fund availed for setting up plant at Visakhapatnam, and after deducting proportionate interest paid on such borrowed funds u/s 57, net interest income was offered to tax.

Revenue denied Assessee's claim and made addition of Rs.1.64 Cr. under IFOS, further contended that interest payable on borrowed funds was to be added to cost of project. On appeal, CIT(A) sustained addition only of Rs.3.21 Lacs being interest on surplus fund available with the Assessee.

ITAT observes that Assessee has not started generating any income since the plant was not set up during the relevant year, and the entire funds deposited in the bank account represented borrowed funds or equity. ITAT in accordance with the provisions of sections 56 and 57, holds only residual interest income, i.e, Rs.24.44 lacs taxable and dismisses Revenue's appeal.

Click here to read / download the copy of the ruling.

7. **ITAT: TDS default on software purchase not bar against depreciation allowance.**

Kawasaki Microelectronics Inc [TS-647-ITAT-2021(Bang)]

Bangalore ITAT upholds depreciation allowance on purchase of software.

Assessee-Company had purchased software worth Rs.4.05 Cr, capitalised it under 'computers' block and claimed depreciation at 60%. Revenue held that payment for purchase of software to be in the nature of royalty liable for TDS and thus, disallowed the claim for depreciation u/s 40(a)(i). On appeal, both the CIT(A), and the ITAT ruled in Assessee's favour.

Before ITAT, Assessee placed reliance on the jurisdictional HC ruling in *Tally Solutions* wherein it was held that the section 40 refers to the outgoing amount chargeable under the Act and subject to TDS under Chapter XVII-B and the deduction under section 32 is not in respect of the amount paid or payable which is subjected to TDS, but is a statutory deduction on an asset which is otherwise eligible for deduction of depreciation. Section 40(a)(i) and (ia) provides for disallowance only in respect of expenditure, which is revenue in nature, therefore, the provision does not apply to a case of the assessee whose claim is for depreciation, which is not in the nature of expenditure but an allowance. ITAT rules in favour of the Assessee.

Click here to read / download the copy of the ruling.

8. **SC: Overturns Cal HC ruling, upholds order cancelling Trust's exemption over bogus donation, accommodation entries.**

Batanagar Education And Research Trust [TS-614-SC-2021]

SC overturns Calcutta HC ruling, upholds ITAT's order cancelling registration of Trust u/s 12AA and 80G for receiving bogus donations and facilitating accommodation entries, finds error on HC's part in deciding the appeal.

Assessee-Trust was registered u/s 12AA and was also approved u/s 80G. In a survey conducted on another entity, it was observed that Assessee was not carrying out its activities in accordance with its objects, and thus, was served with a SCN with a questionnaire in response to which the Managing Trustee of Assessee admitted to have received non-genuine donations, and admitted that most donations were in the nature of accommodation entries received to inflate the amount of reserves and facilitate procurement of loans from Banks.

CIT(E) cancelled Assessee's registration for exemption and held it to be acting in violation

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of its objects and engaged in money laundering activities. ITAT upheld the order of CIT(E)cancelling the registration against which HC admitted two substantial questions of law: (i) on validity of cancellation of registration and (ii) on evidentiary or probative value of a statement recorded during survey. HC held that Revenue was unable to establish a case justifying cancellation of registration and complicity of the Assessee in any illegal, immoral or irregular activity of the donors, and thus allowed the appeal in favour of the Assessee and directed the Revenue to restore the registration without delving into the second question.

SC observes that the answers given to the questionnaire by the Managing Trustee showed the extent of misuse of the exemption status enjoyed by the Trust. SC further observes that as evident from the answers given donations were received by way of cheques out of which, substantial money was ploughed back or returned to the donors in cash. SC holds that the Trust was misusing its status u/s 12AA and upheld cancellation of its registration by the Revenue.

Click here to read / download the copy of the ruling.

9. ITAT: Negligible income not enough to doubt business-commencement. Allows technology-recharge cost as revenue expenditure.

Experian Credit Information Company Pvt. Ltd [TS-642-ITAT-2021(Mum)]

Mumbai ITAT holds that commencement of business cannot be doubted only because the Assessee earns small income, allows claim for technology recharge expenditure as revenue expenditure and upholds its treatment as upkeep expenditure in relation to computer hardware and software.

Assessee-Company, engaged in the business of collecting information from various sources and providing credit reports to lenders and consumers to reduce the risk and facilitate responsible lending to customers, was required to commence business within 6 months from obtaining RBI certification in Feb'10. Assessee claimed to have commenced business from Aug'10, substantiated by incurring of expenditure on development of databases and software platform, and also by providing reports to 32 customers.

AO contended that complete development of databases and functionality of the software platform was achieved at much later stage, and further that issuance of reports to a small number of customers was an arrangement to show commencement of business, and disallowed the expenditure and depreciation claimed by the Assessee.

ITAT remarks that AO's opinion of the commencement of business was nothing but surmises and conjectures. ITAT holds that "*there is no law that there is a presumption that if the assessee earns a smaller income, commencement of business should be doubted*", and that AO was not technically qualified to comment on Assessee's preparedness on technological deliverables.

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10. ITAT: 'Management Consultancy' whether business or profession for audit u/s 44AB, debatable. Deletes penalty u/s 271B.

Pramod Lele [TS-786-ITAT-2021(Mum)]

Mumbai ITAT deletes penalty u/s 271B for failing to get the accounts audited u/s 44AB, holds that whether management consultancy is business or a profession is debatable and thus constitutes a 'reasonable cause' u/s 273B.

Assessee-Individual, engaged in management consultancy, filed his return for AY 2015-16 declaring income of Rs. 2.10 Cr, inclusive of management consultancy fee of Rs. 61.40 lakhs. Revenue held that Assessee was liable to tax audit since his professional receipts exceeded Rs.25 Lacs whereas Assessee submitted he was in the 'business' of rendering management consultancy services and would be required to get the audit conducted when his gross receipts would exceed Rs.1 Cr.

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Revenue imposed penalty u/s 271B which was confirmed by CIT(A).

ITAT holds that the rate at which tax is deducted by clients while making payments to the Assessee to be irrelevant for determining the character of receipt in Assessee's hands. ITAT on perusal of section 44AA finds 'management consultancy' does not form part of various professions mentioned therein, and neither falls within the ambit of technical consultancy.' ITAT holds that Assessee was not liable to tax audit. Thus, holds that in any case no penalty could be imposed on the Assessee.

Click here to read / download the copy of the ruling.

11. HC: Quashes Sec.197 Certificate issued to Virgin Airways. Grants interim relief of TDS at 0.01% instead of 1%.

Virgin Atlantic Airways Ltd [TS-628-HC-2021(DEL)]

Delhi HC sets aside certificate u/s 197 mandating TDS at 1% issued in disregard of Rule 28AA, rejects Revenue's argument of alternate remedy u/s 264 and remands the issue for fresh adjudication.

Assessee (Virgin Atlantic Airways Ltd.), a UK-based company preferred a writ petition challenging the certificate u/s 197 along with an order for AY 2022-23 directing TDS at 1%. Assessee has a branch office in India and is engaged in aircraft operations in international traffic with no income derived/earned in India other than the nominal interest of income tax refund and received Nil rate certificate for AYs 2009-10 to 2019-20 and certificate with 0.01% rate of deduction for AYs 2020-21 and 2021-22 as the Revenue's system rejected Nil rate of TDS but was issued certificate for 1% TDS rate for AY 2022-23.

Assessee submitted that the certificate issued by the Revenue: (i) is in circumvention of Rule 28AA, (ii) against the provisions of the India-UK DTAA, and (iii) violation of the permission letter Feb 15, 2003 issued by RBI which prohibits the Assessee from carrying out, by itself or in partnership or otherwise in association with others, any activity of trading, commercial or industrial nature in India without RBI's prior approval. Assessee clarified that it had not sought any such permission from the RBI and in any case, the increased TDS could not have been applied to its business of transportation of goods and persons by air.

Click here to read / download the copy of the ruling.

12. ITAT: Non-furnishing of Form 10 by Trust not a rectifiable error u/s 154.

Navodaya Education Trust [TS-651-ITAT-2021(Bang)]

Bangalore ITAT dismisses Assessee's appeal over rectification of intimation u/s 143(1) disallowing Rs.6.99 Cr. set apart due to non-furnishing of Form 10.

Assessee-Trust registered u/s 12A and engaged in running educational institutions, furnished return declaring Nil income for AY 2015-16 by setting apart Rs.6.99 Cr. towards application of income for specified purposes as per Section 11.

Revenue processed the return and made addition of Rs.6.99 Cr. due to non-submission of Form 10 within the stipulated time. Assessee contended that manual copy of Form 10 was not submitted at jurisdictional AO's instance, whereas for online filing, the requisite facility was not available on the portal. ITAT observes that Assessee did not file Form 10 manually. Thus, holds that the Assessee cannot seek rectification of intimation order passed u/s 143(1). With regards to power to condone the delay in furnishing Form 10 as per CBDT Circular No. 7 of 2019, ITAT observes that the Commissioner is required to satisfy that the assessee was prevented by reasonable cause in filing Form 9A and Form 10 within the stipulated time. But this Circular does not preclude the assessee in filing Form 10 manually before the jurisdictional AO. It only gives power to the Commissioner to permit the assessee to file Form 10 electronically belatedly.

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13. ITAT: Fixed Deposit, not 'application of income'. Form 10 to be filed by due-date u/s 139(1) w.e.f. AY 2016-17.

Ursuline Franciscan Congregation Generalate [TS-790-ITAT-2021(Bang)]

Bangalore ITAT holds investment in fixed assets cannot be treated as application of income u/s11(1)(a). Also holds that amendment of Section 11(2)(c) prescribing time limit for submission of Form 10 by the due date of filing of return u/s 139(1) is applicable prospectively from AY 2016-17.

Assessee Trust claimed Rs.2.83 Cr. as application of income u/s 11(1)(a) as amount spent towards acquisition of assets out of which Rs.1.47 Cr was invested in fixed deposits. Revenue rejected Assessee's claim for treating investment in fixed deposits as application holding it to be an administrative activity of converting liquid funds into fixed deposits which was confirmed by CIT(A).

ITAT observes that for exemption, income should have been applied for a charitable purpose for which the Trust is established.

ITAT observes that Assessee made a general statement for application of funds and holds it to be ineligible for exemption. Assessee filed Form 10 for the first time during the course of assessment proceedings, instead of submitting it along with return of income thus, Revenue doubted its genuineness and rejected it.

Assessee relying on the SC ruling in *Nagpur Hotel Owners Association* contended that Form 10 was filed after the due date of return but before completion of assessment proceedings, thus, shall be acceptable.

On appeal, CIT confirmed the rejection. ITAT observes the amendment in section 11(2)(c) prescribing time limit for submission of Form 10 to be effective from AY 2016-17.

Relies on Chandigarh bench ruling in *Infrastructure Development Fund* and holds that since Form 10 was submitted during assessment proceedings, Revenue to consider it. Restores matter with a direction to consider Form 10 and resolution filed and accordingly examine claim u/s 11(2).

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14. ITAT: Interconnected services, provided by Telenor to Unitech, under unified agreement constitutes PE in India.

Telenor ASA [TS-762-ITAT-2021(DEL)]

Delhi ITAT dismisses Assessee's appeal, holds that providing inter-connected, interlaced and sequential technical services under a unified agreement constitutes a PE in India and remits the matter back to Revenue for determination of income attributable to such PE.

Assessee-Company, a tax resident of Norway, entered into a Business Service Agreement (BSA) with Unitech Wireless (Tamil Nadu) India P. Ltd, providing numerous services through different Service Order Forms (SOFs). Assessee provided services related to Marketing, IT/IS, HR etc. and offered tax on income @ 10% on gross basis as Fees for Technical Services in accordance with Article 12 of India-Norway DTAA.

Revenue held that the Assessee had a PE in India and assessed the Assessee at Rs.8.26 Cr in relation to the service fee after allowing 40% as deduction on the receipts. ITAT finds various SOFs under the BSA to be inter-connected and its different facets as one seamless function. On perusal of the Assessee's sequence of activities, ITAT concludes that activities of the Assessee consist of same and interconnected projects. Referring to the consolidated billing pattern, ITAT holds, "*existence of the PE of the Assessee is undeniable*".

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15. ITAT: FTC Clause under India's DTAAs with Tanzania, Korea in pari materia.

Promac Engineering Industries Ltd [TS-784-ITAT-2021(Bang)]

Bangalore ITAT directs Revenue to grant foreign tax credit under Article 23 of India-Tanzania DTAA on taxes paid in Tanzania but limits it to the taxes payable in India on the doubly taxed income.

Assessee, engaged in the business of executing turnkey projects, declared income Rs.4.24 Cr. for AY 2014-15 where the total billing done by the Assessee on one project of Rs.63.32 Cr. and the same was included in the total turnover of Rs.380 Cr. as per the Tanzanian law and was subjected to TDS of Rs.1.71 Cr. against the income from Tanzania amounting to Rs.10.27 Cr. Whereas the Revenue allowed only Rs.3.71 Lacs as relief u/s 90/90A i.e., total tax payable in India on income attributable to Tanzania.

ITAT takes note of the coordinate bench's ruling in Ittiam Systems where, in the context of India-Korea DTAA, it was held, "in India FTC is available to the taxes paid in Korea and such credit shall not exceed the taxes payable in India on doubly taxed income. Thus, there is a difference in FTC available to assessee on taxes paid in USA, Japan and Germany vis-s-vis Korea.".

ITAT holds that Article 23 of India-Tanzania DTAA is in pari materia with Article 23 of India-Korea DTAA and the finds the present case to be squarely covered by India-Korea DTAA. Thus, directs AO to grant FTC "on the amount which is lower of the following i.e., Tax paid on income outside India. or payable in India on such doubly taxable income, whichever is lower".

Click here to read / download the copy of the ruling.

16. ITAT: Chargeability of income u/s 4 relevant for determining FTC.

Infosys BPM Limited [TS-788-ITAT-2021(Bang)]

Bangalore ITAT allows Assessee's claim for Foreign Tax Credit (FTC) on income eligible for exemption u/s 10AA, restores matter to Revenue to ascertain FTC.

Assessee, raised a ground against rejection of FTC for AY 2012-13 before CIT(A) who rejected Assessee's ground.

ITAT observes, "*what is required to be seen is whether income chargeable u/s 10AA is chargeable to tax u/s 4 and includible in total income, the fact that Assessee is not paying tax due to exemption or deduction granted was not relevant*". Restores the matter for the determination of FTC.

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17. ITAT: Directs ALP determination at 0.5% of corporate-guarantee and LIBOR-rates for interest-free foreign-AE loans.

Rosy Blue (India) Pvt. Ltd [TS-327-ITAT-2021(Mum)-TP]

Assessee had advanced interest free loan to its wholly owned subsidiary and charged no interest on the same stating that loan transaction cannot be considered as international transaction within the meaning of Section 92B of the Act.

TPO arrived at notional interest rate of 3.52% (i.e LIBOR 1.52%+ 2% spread) and proposed a TP-adjustment of Rs. 16.32 lacs which was further upheld by CIT(A). Aggrieved, assessee preferred an appeal before ITAT.

ITAT directs TPO to consider only LIBOR @1.52% as arm's length price for benchmarking the interest free loan given by the assessee to its AE and recompute the transfer pricing adjustment accordingly.

ITAT notes that assessee had given corporate guarantee during the year on behalf of its AE in

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favour of Barclays Bank PLC and that assessee has not charged any commission / fees for issue of such guarantee. Further notes that the TPO determined fee / commission for corporate guarantee at 2.25% and the same was restricted by CIT(A) at 0.5%.

ITAT relies on coordinate bench ruling in assessee's own case for AY 2014-15 wherein coordinate bench had upheld CIT(A)'s order of charging corporate guarantee commission at 0.5%. Accordingly, ITAT confirms CIT(A)'s action determining commission on corporate guarantee at 0.5% on the loans availed.
Separately, ITAT rules on various corporate tax issues.

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18. HC: Holds neither Sec 92BA nor 40A(2) applicable for 100% purchases from domestic related party.

Mercury Fabric Creations Pvt Ltd [TS-316-ITAT-2021(DEL)-TP]

Delhi ITAT allows assessee's appeal and renders addition made by applying Sec.92BA devoid of any merit for AY 2012-13.

Assessee had another Indian company which was a related concern having common directors - entire purchases of the assessee was made from such related concern. The Assessee highlighted the difference in business of the two parties and also submitted that the product could not be purchased from another independent supplier given the specific customisation of type and quality as offered by the related party.

Ignoring Assessee's submissions, AO after comparison of the gross profit and net profit ratio of the assessee with the related party, increased the net profit of the assessee by 1% of the turnover of Rs.52.99 cores and made addition of Rs.52.99 lakhs. On appeal, CIT(A) restricted such addition to Rs.17.66 lakhs (on application of Sec 92BA) holding that there is difference in in the tax liability of both the companies and that there existed a tax arbitrage.

ITAT observes that Sec 92BA was omitted w.e.f.1.04.2017 and refers to Hon'ble Karnataka HC decision in case of Texport Overseas (P) Ltd wherein it was clarified that Clause (i) of Sec.92BA having been omitted by Finance Act, 2017 w.e.f.1.04.2017 from statute and hence, decision taken by AO under effect of Sec.92BA was invalid and bad in law. ITAT clarifies that 100% sales of the related party is not to the assessee.

ITAT holds that comparison of the gross profit and net profit of a manufacturing unit with a marketing unit is not proper. ITAT thus holds that the addition sustained by the CIT(A) is devoid of any merit and not in accordance with the law.

Click here to read / download the copy of the ruling.

19. ITAT: Treats amortization of goodwill and non-compete fee as non-operating, to be excluded for TNMM computation

DHR Holding India Pvt Ltd [TS-370-ITAT-2021(DEL)-TP]

In respect of treatment of amortization of goodwill and non-compete fees, ITAT notes that under the provision of Marketing Support Services, as a result of acquisition of different line of products from third party, assessee recognized a part of the purchase price as goodwill and non-compete fees in its balance sheet. For computation of tested party margins, assessee considered amortization of goodwill and non-compete fees as non-operating expenses as these did not pertain to the provision of services to the AEs.

On the other hand, TPO aggregated business support services and distribution of marketing services and treated amortization of goodwill as part of operating cost like depreciation. ITAT refers to Rule 10B(1)(e) which is in line with OECD Guidelines as it clarifies that only costs incurred in relation to international transaction of provision of services to the AEs should be

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considered in computation of operating margin. ITAT directs AO to treat amortization of goodwill and non-compete fees as abnormal and non-recurring expense and exclude them while computing TNMM operating margin earned from provision of services to AEs.

In regards to TP-adjustments on purchase of medical equipment, ITAT notes that cost of analysers imported by the assessee from AEs, were capitalized in assessee's books of accounts and its related operating cost, i.e. depreciation, has been charged to the P&L account while computing the profitability of the trading segment. ITAT opines that equipment would not have been imported at Nil price even in an independent scenario and that TPO fails to apply any method for benchmarking purpose which is in violation of Rule 10B. ITAT directs AO to allow the claim of depreciation on the purchase of fixed assets.

Lastly, ITAT dismisses assessee's plea regarding TP-adjustment on account of interest on outstanding receivables (given small amounts involved).

Click here to read / download the copy of the ruling.

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Direct Tax/ PF / ESI Compliance due dates during the month of September 2021

Due Date	Form	Period	Comments
07.09.2021	Challan ITNS-281	August 2021	Payment of TDS/TCS deducted /collected in August 2021.
14.09.2021	TDS Certificate	July 2021	Due date for issue of TDS Certificate for tax deducted under Section 194IA / 194IB / 194M in the month of July, 2021
15.09.2021	Advance Tax Payment	July to September 2021	Second instalment of advance tax for July to September for the assessment year 2022-23.
15.09.2021	E-Challan & Return	August 2021	E-payment of Provident Fund.
15.09.2021	ESI Challan	August 2021	ESI payment.
30.09.2021	TDS Challan-cum-statement	August 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194 IB, 194M.
30.09.2021	Income Tax Return	AY 2021-22	ITR filing for non-audit cases and who have not entered into any international or specified domestic transactions.
30.09.2021	Linking of Aadhaar		Due date for linking of Aadhaar number with PAN 2021).
On or before 30.09.2021			Compliances to be made such as investment, deposit, payment, acquisition, purchase, construction or such other action, for claiming exemption u/s 54 to 54GB.

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MCA Updates

MCA Mandates filing of annual report on independent directors' capacity building

MCA amends the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, inserts Rule 6 to lay down provisions w.r.t. annual report on the capacity building of independent directors.

It stipulates that the Indian Institute of Corporate Affairs shall within 60 days from the end of every FY send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in the provided format.

Accordingly, MCA notifies the format for the aforesaid annual report, which inter alia mentions participation of the director in e-learning modules, other training programs/courses and colloquium / workshops /events organized by IDDB (Independent Director's Databank).

Electronic based offering of securities in IFSCs not "electronic mode" for foreign cos.

MCA notifies amendments to Companies (Specification of definitions details) Rules, 2014 and Companies (Registration of Foreign Companies) Rules, 2014, states that electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres ('IFSCs') set up u/s 18 of the Special Economic Zones Act shall not be construed as 'electronic mode' for the purpose of 2(42) of the Act [defines Foreign company].
Further, exempts foreign companies and companies incorporated or to be incorporated outside India from the provisions of Sec. 387 to 392, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the IFSC set up u/s 18 of the Special Economic Zones Act.

MSME Ministry: Cos. with turnover above Rs. 500 Cr. to get themselves on-boarded on TReDS

Union Minister for MSMEs, Shri. Narayan Rane, in a written reply in Rajya Sabha, states that where the conciliation fails under the provisions of the MSME Development Act, the MSME Facilitation Council ('MSEFC') shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration.

Further, referring to Sec. 18(4) of the MSMED Act, states that the MSEFC or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

Moreover, the Minister also apprises that the Government of India has instructed Central Public Sector Enterprises and all companies with a turnover of Rs. 500 Cr. or more to get themselves on-boarded on Trade Receivable Discounting System (TReDS); Apprises that TReDS is an electronic platform for facilitating the discounting of trade receivables of MSMEs through multiple financiers.

Due date:

The due date to hold annual general meeting for the financial year ended March 31, 2021 is September 30, 2021.

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FEMA Updates

1. Guidelines for Implementation of the circular on Opening of Current Accounts by Banks

The instructions were issued vide the above circulars in order to enforce credit discipline amongst the borrowers as well as to facilitate better monitoring by the lenders; and for this purpose, a graded approach had been prescribed on opening and operating of current accounts and CC/OD facilities. Banks were required to implement these instructions in a non-disruptive manner while keeping the bonafide business requirements of the borrowers in mind.

It is reiterated that:

a. In case of borrowers **who have not availed of CC/OD facility from any bank**, there is no restriction on opening of current accounts by any bank if exposure of the banking system to such borrowers is less than ₹5 crore.

b. In case of borrowers **who have not availed of CC/OD facility from any bank** and the exposure of the banking system is ₹5 crore or more but less than ₹50 crore, there is no restriction on lending banks to such borrowers from opening a current account. Even non-lending banks can open current accounts for such borrowers though only for collection purposes.

c. The restriction applies to borrowers in case they avail of CC/OD facility since all operations that can be carried out from a current account can also be carried out from a CC/OD account as banks in a CBS environment follow a one-bank-one-customer model as against a one-branch-one-customer model.

Due to Several requests from the banks for some more time to resolve the operational issues while implementing the circular in letter and spirit. Therefore, in order to ensure that the instructions are implemented in a non-disruptive manner, it has been decided that

a. Banks will be permitted time till October 31, 2021 to implement the provisions of the circular. This extended time line shall be utilised by banks to engage with their borrowers to arrive at mutually satisfactory resolutions within the ambit of the circular. Such issues which banks are unable to resolve themselves shall be escalated to Indian Banks' Association (IBA) for appropriate guidance. Residual issues, if any, requiring regulatory consideration shall be flagged by IBA to the Reserve Bank for examination by September 30, 2021.

b. Banks are not permitted to open current accounts for borrowers who have availed agricultural/ personal Overdraft (OD) or OD against deposits.

2. Master Directions on Prepaid Payment Instruments (PPIs)

PPIs have been widely used in the country for many years, but have seen significant commercial changes in recent times to reach a wider consumer base, given the high market penetration of mobile internet in India.

Keeping these changes in mind, the RBI has taken a proactive regulatory role to effectively harness the potential of PPIs, in the form of its recent master direction on PPIs, issued on August 27, 2021 ("2021 PPI Master Direction").

The 2021 PPI Master Direction simplifies the categories of PPIs to be regulated by the RBI from the erstwhile position of 'closed system PPIs', 'semi-closed system PPIs' and 'open system PPIs' to the newer classification of 'small

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PPIs' and 'full-know your customer ("KYC") PPIs'.

Small PPIs' are instruments issued after receiving minimum details of the PPI holder, to be utilised only for the purchase of goods and services with a group of pre-identified merchants, whereas 'full-KYC PPIs' are instruments that are not restricted to an identified group of merchants, require the KYC process of PPI holders to be completed, and support fund transfers and cash withdrawals.

The RBI's intent to regulate 'full-KYC PPIs' could be seen in its May 2021 circular, which mandated interoperability for full-KYC PPIs, *i.e.*, ensuring technical compatibility with other digital payment systems to enable cross-platform usage. The RBI has also taken pointed steps to simplify the KYC process by introducing video-based KYC for both the issuance of a full-KYC PPI and converting a small PPI to a full-KYC PPI.

With the new classification, the RBI has narrowed its focus to small PPIs and full-KYC PPIs. Hence, we may now expect closer scrutiny from the RBI on PPI operations in the Indian digital economy.

With the changes introduced in the 2021 PPI Master Direction, the RBI has sought to balance the need to mitigate risks with its push to adopt fintech solutions in the burgeoning digital economy. The simplified categorisation of PPIs potentially indicates closer regulatory scrutiny over the PPI industry in India in the future. Overall, the RBI has taken a similar regulatory approach in both the 2021 PPI Master Direction and the PA/PG Guidelines.

Please click on below link for Master Direction.

https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12156

FEMA

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Indirect Tax Updates

GST Notifications

1. The Government has amended rule 80 of the Central Goods and Services Tax Rules, 2017, Namely: -

"80. Annual return
(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:
Provided that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR - 9B.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

***Click here** to read / download the notification no. 30/2021 – Central Tax dated 30th July, 2021.*

2. The Commissioner, on the recommendations of the Council, exempts the registered person whose aggregate turnover in the financial year 2020-21 is up to two crore rupees, from filing annual return for the said financial year.

***Click here** to read / download the notification no. 31/2021 – Central Tax dated 30th July,2021.*

3. The time lines for GSTR-3B, GSTR-1/IFF and CMP-08 filing through EVC facility has been extended from 31st August 2021 to 31st October 2021.

***Click here** to read / download the notification no. 32/2021 – Central Tax dated 29th August, 2021.*

4. Time line for FORM GSTR-3B late fee Amnesty Scheme has been extended from 31st August, 2021 to 30th November, 2021.

***Click here** to read / download the notification no. 33/2021 – Central Tax dated 29th August, 2021.*

5. Where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the CGST Act,2017 falls during the period from the 1st day of March, 2020 to 31st day of August, 2021, the time limit for making such application has been extended up to the 30th day of September, 2021.

***Click here** to read / download the notification no. 34/2021 – Central Tax dated 29th August,2021.*

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GST Circulars

Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021.

The said notification would be applicable in the following manner:

(i) application for revocation of cancellation of registration has not been filed by the taxpayer - In such cases, the applications for revocation can be filed up to the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer - In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection – In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority - In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.

(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer - In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

Further, it may be recalled that, with effect from 01.01.2021, proviso to sub-section (1) of section 30 of the CGST Act has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional/ Joint Commissioner and by another 30 days by the Commissioner. Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of CGST Act, 2017) under sub-section (1) of section 30 of the CGST Act or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of 30.09.2021. It is clarified that:

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only; and

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:

   a. Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30th

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September 2021, without any further extension of time by Joint Commissioner/Additional Commissioner/ Commissioner.

b. Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act.

c. Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act.

***Click here** to read / download the Circular No. 158/14/2021-GST dated 6th September, 2021*

Other indirect tax updates

1. **The Remission of Duties and Taxes on Export Products Scheme("RoDTEP")**

   The Remission of Duties and Taxes on Export Products Scheme("RoDTEP") is a new scheme that is formed to replace the Merchandise Exports from India Scheme (MEIS). RoDTEP was notified and made operational by the Ministry of Finance (MoF) with effect from 1 January 2021. The much-awaited guidelines and rates under RoDTEP were finally notified on 17th August 2021. The Notification lays down guidelines, objectives and operating principles for RoDTEP under chapter 4 of the FTP along with rate of remission for products as per appendix 4R of FTP.

   RoDTEP is created for reimbursing taxes / duties / levies at the central, state, and local level, which are incurred in the process of manufacture and distribution of exported products, but which are currently not being refunded under any other mechanism or scheme. However, there will be no reimbursement of duties already exempted, remitted or credited.

   To read the full text of the notification and rates, click the below links for respectively.

   https://content.dgft.gov.in/Website/dgftprod/ee052ba4-d026-4e3b-a100-20fdd0daeba2/Notification%20No.%2019%20English.pdf

   https://content.dgft.gov.in/Website/dgftprod/d2eeb635-1227-469a-848c-496256397ff8/Appendix%204R%20as%20notified%20on%2017%20August%202021%20for%20DGFT%20Portal.pdf

2. **Notification of extention of time under Karasamadhana Scheme 2021.**

   The due date under Karasamadhana Scheme 2021 has been extended to 30.10.2021

   Click here to read/download the notification.

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Indirect Tax Rulings

1. **2021-TIOL-206-SC-GST**

   UoI Vs Awadkrupa Plastomech Pvt Ltd

   GST - Goods exported - Zero rated supplies - High Court while allowing the petition observed that in the case of the writ-applicant, the drawback rates being the same, it represents only the Customs elements, which did not get subsumed in the GST and thus, the writ-applicant cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback - Accordingly, the respondents were directed to immediately sanction the refund towards the IGST paid in respect of the goods exported - Revenue is in appeal against this order.

   Held: There is a clear finding of fact which has been recorded by the Division Bench in its order dated 15 December 2020 = 2020-TIOL-2238-HC-AHM-GST that the respondent had claimed an IGST export refund only to the extent of the customs component - No error in this finding - Special Leave petition is dismissed: Supreme Court [para 2]

   - Petition dismissed: Supreme Court of India

2. **2021-TIOL-450-CESTAT-MAD**

   Nilkamal Ltd Vs CGST & CE

   ST - The appellant is seeking refund of Service Tax and interest paid by it under Reverse Charge Mechanism on freight services received from foreign shipping line during the period from April to June 2017 - It is the case of appellant that despite being struck down, the Revenue insisted for payment of Service Tax along with interest - Immediately thereafter, the appellants filed refund claim of said amount claiming that the said payment was under mistake of law and that the levy itself was ultra vires, in response to which a SCN was issued inter alia proposing to reject the same on the ground that the same was neither covered by Section 142 of CGST Act, 2017 nor relatable to Section 11B(2) of Central Excise Act, 1944, as made applicable to Service Tax - The Revenue having collected perforce the Service Tax along with interest, appellant is pushed into a situation where its refund claim is denied and even the credit of Service Tax so paid is also not allowed to be availed, with the introduction of CGST Act in 2017 - It is the settled position of law that a taxpayer cannot be a victim of change in law - In this regard, reliance placed on the decision in case of M/s. 3E Infotech - 2018-TIOL-1268-HC-MAD-ST is very apt, wherein it has been categorically held that the Service Tax paid under mistake of law has to be refunded irrespective of period covered as refusal thereof would be contrary to the mandate of Article 265 of the Constitution of India - Denial of refund is contrary to settled position of law and accordingly, impugned order is set aside: CESTAT

   - Appeal allowed: Chennai Cestat

3. **2021-TIOL-469-CESTAT-MUM**

   Nssl Pvt Ltd Vs CCE, CGST & CE

   ST - The appellant had filed refund application claiming refund of service tax paid by it under the Reverse Charge Mechanism - The refund applications filed by appellants were returned on the ground that input tax credit can only be claimed under GST/CGST Act, 2017 and not otherwise - The Commissioner (Appeals) has relied upon sub-section (8)(a) of Section 142 of CGST Act, 2017 for rejecting the refund applications filed by appellant - Appellant is not falling under scope and ambit of sub-section (8)(a) of Section 142 inasmuch as no assessment/adjudication orders were passed by competent authorities in determining the tax liability, which the appellant was required to pay under erstwhile statute - Rather, case of appellant is governed under provisions of sub-section (3) of Section 144 ibid - An assessee can file the application, claiming

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refund of amount of CENVAT credit after appointed day and that the said application shall be disposed of by authorities in accordance with erstwhile statute - The authorities below have not questioned the issue regarding entitlement of appellant to CENVAT credit under erstwhile CENVAT statute - The refund claims filed by appellants should merit consideration under provisions of sub-section (3) of section 142 ibid, and as such, it should be entitled for benefit of refund of service tax paid by it - No merits found in impugned order, insofar as it has rejected the refund application filed by appellant: CESTAT

- Appeals allowed: Mumbai Cestat

4. **2021-TIOL-192-AAR-GST**

Aswani Chips And Bakers

GST - Jackfruit Chips, Banana Chips, Potato chips, Tapioca Chips, Chembu chips and Pavakka chips are classifiable under CTH 2008.1940 and liable to GST @12% as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017-CTR: AAR

GST - Roasted, salted, roasted and salted Cashew nuts are classifiable under CTH 2008.1910 and roasted, salted, roasted and salted Ground nuts and other nuts are classifiable under CTH 2008.1920 - All are liable to GST at the rate of 12% as per Entry at Sl No. 40 of Schedule II of Notification No. 01/2017-CTR : AAR

- Application disposed of: AAR

5. **2021-TIOL-191-AAR-GST**

Goodwill Autos

GST - Section 15 of the Act, 2017 - Contract entered between applicant and recipient is for hiring of DG Set and is a comprehensive contract with the consideration having a fixed component and a variable component - The fixed component is the monthly fixed rent charged in the invoice for the DG Set and the variable charge is the charge for the diesel used - Though it appears that the applicant is receiving the reimbursement of diesel cost, the recipient is not paying for the diesel but for the services of DG Set, which is an integral part of the supply of DG Set rental service - There is no separate contract for supply of diesel and the invoice issued for the reimbursement of diesel cost is nothing but a supplementary invoice issued for the supply of rental service of DG Set - Hence, consideration for reimbursement of expenses as cost of the diesel for running of the DG Set is nothing but additional consideration for the renting of DG Set and attracts CGST @ 9% and KGST @ 9%: AAR

- Application disposed of: AAR

6. **2021-TIOL-216-AAR-GST**

Ghodawat Eduserve LLP

GST - Applicant provides commercial training or coaching service for students appearing for 11th and 12th standards who are desirous of appearing for IIT etc. - Applicant is also providing hostel facility to the students on demand basis and charging them additionally - such services are optional - Hostel provides basic residential facilities required to study and which include well-maintained furnished residence, Light, water, etc. and for which facility the applicant charges a lump-sum fee of Rs.34,000/- per year per student i.e. Rs.951/- per day - Applicant is of the view that such services by way of renting of residential dwelling for use as a residence is exempt vide Sr. no. 12 of notification 12/2017-CTR - A ruling is sought in this regard.

Held: Rooms in the hostel are let out to the students on sharing basis for residential and study purpose only and that too during the training and coaching periods - Applicant's contention that the said activity is covered under Entry no. 12 of 12/2017-CTR as 'services by way of renting of residential dwelling for use as residence' is not acceptable because the criteria for residential

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dwelling under the common parlance test are not satisfied - Applicant is providing hostel on rent to various students where the fees charged per student per day per room is much less than Rs.1000 per day per person - Entry no. 14 to notification 12/2017-CTR provides Nil rate of GST when the services supplied by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, has a declared tariff of a unit of accommodation below one thousand rupees per day or equivalent - The word "hostel" not being specifically mentioned implies that the same would be covered under the term 'whatever name called' - Description of the service is user based meaning that, if the accommodation is used for residential or lodging purpose, then it is immaterial who the user is - Therefore, where the Hostel fees charged per student per day is much less than Rs.1000/-, the applicant's activity satisfies the conditions of Entry Sr. no. 14 of notification 12/2017-CTR and hence it would be exempt from taxes - CBIC Circular 32/06/2018-GST dated 12 February 2018 is relied upon: AAR

- Application disposed of: AAR

7. **2021-TIOL-518-CESTAT-BANG**

Kirloskar Toyota Textile Machinery Pvt Ltd Vs CCT

CX - Appellant has filed the refund claim of accumulated balance of unutilized credit of Education Cess and Secondary and Higher Education Cess available in their books under Section 11B of Central Excise Act within a period of one year from the introduction of GST law - With the introduction of GST, there is a restriction for these cesses to be transitioned into GST by virtue of Section 140(1) of the Act and therefore the appellant did not transfer the said credit of cesses into GST and preferred to file the refund claim under Section 11B of Central Excise Act - This issue was considered by Division Bench of Tribunal in the case of Bharat Heavy Electricals Ltd. 2020-TIOL-1341-CESTAT-DEL and after considering the decision of Apex Court as well as the High Court of Karnataka in case of Slovak India Trading Co. Pvt. Ltd. 2006-TIOL-469-HC-KAR-CX has held that the appellant is entitled to refund of an unutilized credit of Education Cess and Higher Education Cess after the introduction of GST - As far as time-bar aspect is concerned, the findings in impugned order regarding time-bar is beyond the SCN as well as O-I-O and the same is not sustainable in law: CESTAT

- Appeal allowed: Bangalore Cestat

8. **2021-TIOL-214-AAR-GST**

Shailesh Ramsunder Pande Pooja Vaishnavi School Bus Service

GST - Applicant entered into a contract with Ratan India Power Limited for supply of non-AC buses for transportation of their staff under contract carriage - Applicant seeks to know as to whether GST is applicable for the said contract and applicability of Sl. no. 15, heading 9964, of 12/2017-CT(R).

Held: Essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers and does not allow any other passenger to board or alight from the carriage at will - A 'contract carriage' carries passengers as a group and cannot pick up passengers en-route -

Applicant does not satisfy the condition prescribed in clause (a) nor specified in clause (b) of clause (7) of section 2 of the Motor Vehicles Act, 1988 and accordingly, they cannot be considered as 'non air-conditioned contract carriage' and are hence not eligible for exemption under the serial no. 15 of the exemption notification no. 12/2017-CTR - Service provided by the applicant falls under 'Rent-a-Cab' service - Subject case is clearly covered by Entry Sr. No. 10 of Notification No. 11/2017-CT(R) inasmuch as there is a Rental services of transport vehicles with or without operators - All activities of Renting of any motor vehicle/transport vehicle which is designed to carry passengers where the cost of fuel is included in the

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consideration charged from the service recipient are chargeable to either 5% GST or 12% GST depending on availment of ITC: AAR

- Application disposed of: AAR

9. 2021-TIOL-213-AAR-GST

Yashaswi Academy For Skills

GST - Applicant's activities are Charitable and they hold registration under Sec 12AA of Income Tax Act 1961 - Applicant, registered as a third-party aggregator under the Apprentice Act, 1961 provides support for mobilizing the trainees under National Apprenticeship Promotion Scheme for providing them on-the-job practical training in industries - For that purpose, Applicant enters into agreements with various companies/organizations (industry partner) who impart actual practical training to the students - During the duration of the training, the apprentices are paid monthly stipend - Applicant is assigned the function of preparing monthly attendance record of apprentices; processing and payment of stipend; providing uniform and safety shoes; take insurance policies and for carrying out the above, the applicant gets fixed professional service charge fees per candidate per month from the industry partner - The question on which a ruling is sought is whether the reimbursement by industry partner to the applicant of the stipend attracts GST.

Held: Industry partner that provides training to the trainees is required to pay stipend to the trainees - This stipend is not directly paid to the trainees by the companies, rather the same are routed through the applicant - The applicant has submitted that the entire amounts received as stipend from the companies are paid to the trainees without any amount being retained. Thus, the applicant is only acting as an intermediary in collecting the stipend from the companies and then disbursing the same to the trainees in full since the applicant is not allowed to make any deductions from the stipend before disbursing the same to the trainees - The applicant is only a conduit for the payment of stipend and the actual service is supplied by the trainees to the trainer companies (industry partners) against which stipend is payable - Hence the amount of stipend received by the applicant from the industry partners and paid in full to the trainees is not taxable at the hands of the applicant - Hence, reimbursement by Industry Partner to the applicant of the stipend paid to students does not attract GST: AAR

- Application disposed of: AAR

10. 2021-TIOL-514-CESTAT-DEL

Rakesh Luthra Vs CC

Cus - The appellants when arrived at IGI Airport, New Delhi from Bangkok were found carrying hand bags - These bags when scanned were found to contain gold bars - A SCN was issued on appellants proposing not only the seizure of recovered gold but also recovery of requisite customs duty along with interest and proportionate penalties - As per Section 129(A) Customs Act, 1962, Tribunal has no jurisdiction to decide any appeal in respect of an order which relates to any goods exported or imported as Baggage - The appellants have brought the gold from outside India into their handbags without requisite declaration as required under section 78 of Customs Act - The act of appellant is held as 'Import as Baggage' - The High Court of Judicature at Madras in case of Payangadi Moidu Mohammed Ali - 2017-TIOL-202-HC-MAD-CUS have also taken the same view - Accordingly, it is held that since appeal relates to Baggage, the same is not maintainable before Tribunal - Appellant is at liberty to move the appropriate remedy before the Authority who is competent to decide in respect of an order which relates to Baggage: CESTAT

- Appeals disposed of: Delhi Cestat

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11. **2021-TIOL-506-CESTAT-MUM**

Haldex India Ltd Vs CCE

CX - The appellant is engaged in manufacture of Parts of Brakes - During audit, it was observed that the appellant had availed cenvat credit on the basis of photocopies of 13 nos. of Bills of Entry - Since, the appellant did not produce original copy of Bills of Entry for verification, original authority had disallowed the cenvat credit and also ordered for recovery of interest and equal amount of penalty from the appellant - The appellant submitted that the certificate issued by Jurisdictional Customs Authorities, certifying that appropriate duty liability had already been discharged in respect of the goods imported under the disputed Bills of Entry - It is evident that the duty paid character of goods and receipt of the same in the factory for use in the intended purpose have been duly complied with - Thus, on the strength of certificate issued by Jurisdictional Customs Authorities, cenvat benefit should be available to the appellant - Accordingly, the impugned order is set aside: CESTAT

- Appeal allowed: Mumbai Cestat

12. **2021-TIOL-208-AAR-GST**

Anjali Enterprises

GST - Applicant seeks to know as to whether fitting of battery is mandatory in two & three-wheeled battery powered electric vehicles while selling the same to the dealers for getting the benefit of 5% GST rate applicable for Electrically Operated Vehicles as specified against Sr. no. 242A of Schedule I to Notification 1/2017-CTR.

Held: The referred entry defines the term 'electrically operated vehicle' to mean "vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include e-bicycles - That means it is a type of electric vehicle (EV) that exclusively uses chemical energy stored in rechargeable battery packs, with no secondary source of propulsion (eg. hydrogen fuel cell, internal combustion engine, etc.) - An Electric vehicle with battery pack uses electric motors and motor controllers instead of Internal Combustion Engines for propulsion - It derives all power from battery packs and thus has no internal combustion engine etc. - Electrically operated vehicles are designed to run only on electrical energy - As such, they will run on battery as and when put to use - Hence for vehicles to be classified as electrically operated vehicles, it must be such that it would run "solely" on electrical energy derived from one or more electrical batteries, as and when put to use - The Revisionary authority in case of Reva Electric Car Company P Ltd. held that if electrical battery operated cars is exported, though not fitted with batteries at the time of export, the same is still classifiable as "battery powered road vehicles" and would run on battery when put to use - Hence, the Authority holds that fitting of battery in the vehicle, at or before the time of supply, is not a pre-condition for the same to be classified as electrically operated vehicle - Held further that a two or three-wheeled 'battery powered electric vehicle' when supplied with or without battery pack is classifiable under HSN 8703 as an 'electrically operated vehicle' and is taxable @5%GST as per Sr. no. 242A of Schedule I to 1/2017-CTR: AAR

- Application disposed of: AAR

13. **2021-TIOL-498-CESTAT-DEL**

WMW Metal Fabrics Ltd Vs Commissioner, CGST

CX - The appellant is engaged in manufacture of Galvanized Transmission and Communication Tower Plants - A refund claim was filed by appellant against the cash amount deposited in their PLA account, for payment of duty as shown in their current account and was also shown in their ER-1 Return for the month of June, 2017 - Same was rejected - Appellant was having account current/ PLA for payment of duty - It also

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cannot be disputed that the purpose of such account is that the money deposited by appellant in such account has to be debited there-from as and when the duty for clearance of goods is required to be paid by appellant i.e. against a liability that has to reckon in future - Admittedly, the closing balance of said PLA account as on 30th June, 2017 was Rs.2,02,162/- - As on 30.07.2017, duty liability of appellant for impugned period was discharged and aforesaid amount was appellant's money to be adjusted against any duty liability arising after 01.07.2017 which has been the date of transition into GST - The aforesaid amount remained unutilized by appellant - The said closing balance has also been duly reflected in ER-1 Return filed by appellant - These admissions makes it clear that the amount in question was not at all the amount of duty or interest it was rather appellants own amount which either could be utilized by him while discharging his duty liability else the appellant was entitled to get the refund thereof - This amount cannot been made subjected to any other appropriation - Nor the time limit under Section 11B of CEA, 1944 can be invoked when such money is sought to be refunded - High Court of Punjab & Haryana in case of Indian Oil Corporation Ltd. has held that when there was no duty liability of appellant but some amount stands deposited by him, the same has to be refunded back to the appellant without raising any issue of limitation - It was specifically held that state cannot enrich itself unjustly when no duty was liable to be paid by appellant - The Commissioner (A) has wrongly invoked the Section 11 B of CEA,1944 and the concept of limitation embodied in the said section, said order is accordingly, set aside: CESTAT

- Appeal allowed: Delhi Cestat

14. 2021-TIOL-206-AAR-GST

Varachha Cooperative Bank Ltd

GST - Applicant is constructing new administrative building and incurring cost of various services - they have sought to know as to whether they would be entitled for ITC on a host of items/services.

Held: ITC is admissible on New locker cabinet and Generator, however, ITC is blocked u/s 17(5)(c) in respect of Central Air Conditioning Plant, Lift, Electrical fittings, fire safety extinguishers, roof solar plant being immovable property and blocked u/s 17(5)(d) on Architect Service and Interior decorator fees being services received for construction of an immovable property: AAR

- Application disposed of: AAR

15. 2021-TIOL-204-AAR-GST

Andritz Hydro Pvt Ltd

GST - The goods were delivered at the project site by the vendors of the applicant - In the Pre-GST regime, such transactions, inter-state, were exempted subjected to certain conditions as per CST Act - In the GST regime, every limb of supply with/between a supplier and receiver is to be considered as a supply - In the case at hand, the applicant provides composite supply of Works Contract to TANGEDCO based on the agreement entered - To fulfil the scope of the contract, they supply the Components/spares for the Operation and Maintenance period and the cost of such supplies are included in the contract price - Thus, the supply of Components/spares for the Operation and Maintenance period are part of the supplies of Works Contract entered into with TANGEDCO and, therefore, liable to GST at the appropriate rates - In the present case, the components purchased by the applicant in a sale-in-transit transaction from its Vendors and supplied to TANGEDCO amounts to supply of goods and/ or services for consideration, in the course of furtherance of business - will attract levy of goods and services tax: AAR

- Application disposed of: AAR

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