Newsletter
March 2022

Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars ……..…….……3

Direct Tax – Legal Rulings……3

Direct Tax Due Date Compliances……...9

MCA Updates…….....11

FEMA Updates……...14

Indirect Tax Updates…….……17

Indirect Tax Rulings……..19

Direct Tax – Circulars

Circular issued by CBDT in the month of February 2022

CBDT issues clarification on Most-Favoured-Nation (MFN) clause in DTAAs.

Circular No. 03/2022, dated 3rd February 2022.

CBDT issues Circular No. 3 of 2022 on MFN clause in the Protocol to India's DTAAs with certain countries. Clarifies that: (i) unilateral decree of a treaty partner does not represent a shared understanding on the applicability of the MFN clause, (ii) the third state should be the member of OECD on the date of conclusion of the DTAA with India, (iii) concessional rate or restricted scope to apply from the date of entry into force of the DTAA with the third state and not from the date on which such third state becomes an OECD member, (iv) as per SC ruling in Azadi Bachao Andolan, a notification u/s 90 is required and states that India has not issued any notification for importing the beneficial provisions from DTAAs with Slovenia, Lithuania & Colombia to the DTAAs with France, the Netherlands or Switzerland, and (v) import of concessional rates by invoking MFN clause cannot be done selectively and the benefit of lower rate or restricted scope of source taxation will available only when the conditions specified in the Circular are met.

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

Direct Tax – Legal Rulings

1. **ITAT: Autoliv's receipts under sub-contract for coordination with Ford's technical personnel, not FTS under India-US DTAA**

   Autoliv ASP Inc [TS-108-ITAT-2022(DEL)]

   Delhi ITAT holds Autoliv APS Inc. did not make available any technology, skill, knowledge, process, etc. by providing engineering services pursuant to sub-contract with Autoliv India. Thus, holds the engineering fees received by Assessee to be not taxable as FTS in India as per India-US DTAA. Also holds reimbursement of software cost to be not taxable as royalty by relying on SC rulings in *Engineering Analysis* and *AP Moller*.

   Assessee-Company i.e., Autoliv APS Inc., incorporated in the US is engaged in providing design and development services and engineering services of vehicle safety systems and received engineering fees, reimbursement for software costs and reimbursement of salary & related costs which was not offered to tax. For AY 2015-16, Revenue held that Assessee's services made available technical knowledge, skill etc. and treated the revenue therefrom as FTS and reimbursement of software costs as royalty.

   ITAT opines that Assessee had no occasion to transfer or make available any technology, skill, knowledge, process, etc. involved in carrying out the engineering services to Autoliv India. Remarks that in the instant case, Autoliv India had to approach the Assessee for engineering design etc., which means that even after receiving the services from the Assessee, Autoliv India was not enabled to apply technology for other projects.

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

2. ITAT: CBDT Circular on MFN Clause transgresses Sec.90(1), neither binding on ITAT nor retrospective.

GRI Renewable Industries S.L [TS-79-ITAT-2022 (PUN)]

Pune ITAT holds that CBDT Circular No. 3 of 2022 dt. Feb 3, 2022 specifying the need for a separate notification for importing the beneficial treatment from another DTAA cannot have a retrospective effect. Observes that once DTAA is notified all its integral parts, including Protocol, get automatically notified and there remains no need to again notify the individual limbs of the DTAA.

Further observes that the Circular specifying the need for a separate notification for importing the beneficial treatment from another DTAA as a corollary of Section 90(1) overlooks the plain language of the provision in juxtaposition to the language of the Protocol, which treats the MFN clause an integral part of the DTAA. Opines that it is trite law that a CBDT Circular is binding on the AO and not on the assessees or the ITAT or other appellate authorities and the Circular transgressing the boundaries of section 90(1) cannot bind the ITAT.

Observes that the Circular attaches a new disability of a separate notification for importing the benefits of a DTAA with the second State into the treaty with first State, thus, cannot operate retrospectively to the transactions taking place in any period prior to its issuance. The appeal before ITAT pertained to AY 2016-17 and involved invocation of MFN clause under the Protocol to India-Spain DTAA by resorting to India-Portugal DTAA for taxability of royalty/FTS at a lower rate or 10%.

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

3. ITAT: Deletes addition u/s 56(2)(viib), holds Revenue not entitled to change share valuation method adopted by Assessee.

M/s. Fortigo Network Logistics Pvt. Ltd. [TS-55-ITAT-2022 (Bang)]

Bangalore ITAT allows Assessee's appeal, holds that Revenue cannot change the valuation method adopted by the Assessee for purpose of Section 56(2)(viib).

Assessee-Company, engaged in providing platform to players in transportation industry, issued 40,765 preference shares during AY 2016-17, having a face value of Rs.10 per share for a price of Rs.3,158 per share. Revenue found that Assessee had issued the shares at a price higher than the valuation report, and rejected the DCF method and proceeded to determine the value of shares under NAV, assessed excess share premium issued to residents u/s 56(2)(viib) and u/s 68.

On appeal, the CIT(A) confirmed the additions against which Assessee preferred the instant appeal. Before ITAT, Assessee filed additional evidences related to the Mauritius based company since the CIT(A) observed that Assessee had failed to prove the creditworthiness of the said company which were admitted by the ITAT.

ITAT finds that, both the additions, i.e. addition made u/s 56(2)(viib) and Section 68 related to share premium amount and thus, arise out of a common issue. ITAT relies on the Bombay HC ruling in Vodafone M Pesa and the coordinate bench ruling in *Futura Business Solutions* wherein it was held that Revenue was not entitled to change the method of valuation of shares. ITAT thus sets aside the CIT(A)'s order with a direction to Revenue to follow the directions in the coordinate bench ruling.

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

4. **ITAT: Balance Sheet on valuation date sufficient when subsequently audited without any financial difference.**

Electra Paper and Board Pvt. Ltd [TS-58-ITAT-2022 (CHANDI)]

Chandigarh ITAT rules in favour of the Assessee and deletes the addition made u/s 56(2)(viib), holds that subsequent audit of Balance Sheet drawn on the date of valuation of shares, would be sufficient compliance of Rule 11U(b) where there was no difference in the financials before and after the audit.

Assessee-Company issued shares at a premium of Rs.10 each to the family members and related group companies on Mar 31, 2016. Revenue, for AY 2016-17, rejected FMV of shares determined by the Assessee on the basis of Average NAV as on Mar 31, 2015 and Mar 31, 2016 and recomputed the FMV based on audited Balance Sheet as on Mar 31, 2015. Revenue contended that since on the date of share valuation, the Balance Sheet as on Mar 31, 2016 was not audited, valuation should be based on last available audited Balance Sheet drawn on Mar 31, 2015.

Observes that, on the date of share valuation, a Balance Sheet was drawn albeit it was unaudited on that date. Notes that subsequently the said Balance Sheet was audited and ostensibly there was no difference in the financials in the Balance Sheet after the audit, thus opines that the twin conditions mandated under Rule 11U(b) are satisfied. Accordingly, upholds the FMV of shares issued by Assessee determined based on unaudited Balance Sheet which was subsequently audited.

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

5. **ITAT: Interest on IT Refund for Foreign Co. taxable under Article 11, not as business profits. Eligible for treaty benefits.**

Transocean Offshore International Ventures Ltd [TS-56-ITAT-2022(DEL)]

Delhi ITAT rules in favour of the Assessee, holds interest on income-tax refund to be taxable at 15% under Article 11 of India-US DTAA and not at 40% applicable to foreign companies.

ITAT refers to Section 90(2) providing that where provisions of DTAA apply to an Assessee, provisions of the Act shall apply to the extent they are more beneficial to that Assessee, states that it is clear that application of the provision can be made after ascertaining: (i) tax payable by the Assessee under the DTAA, and (ii) tax payable by the Assessee under the Act.

Opines that on making the assessment of tax under the treaty and the under the Act, if it is found that tax payable under the Act is more than the tax payable under the treaty, "*the aforesaid provision will come to the aid of the assessee to come to an automatic conclusion, without exercise of any option, that it should get the benefit under the DTAA. No other consideration is material for this purpose….it can be held that the assessee is entitled to the benefit under the treaty.*". Rejects Revenue's contention that interest income is effectively connected to PE and thus taxable as business income.

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

6. ITAT: Holds Group Management Fee not FTS, applies India-Portugal DTAA by invoking MFN Clause in India-Belgium DTAA.

Magotteaux International SA [TS-91-ITAT-2022(DEL)]

The Delhi ITAT allows Magotteaux International's appeal, applies India - Portugal DTAA by invoking MFN clause in India-Belgium DTAA to hold that group management services rendered by the Assessee to an Indian company did not 'make available' technical know-how/skills, thus, not liable to tax as FTS.

Assessee-Company, a tax resident of Belgium and engaged in the business of providing operational consultancy services to group entities, provided group management services. Revenue held that the fees received by the Assessee for rendering different services under a service agreement with the Indian Company were both managerial and consultancy services including consultancy of technical nature, thus, taxable in India u/s 9(1)(vii) and Article 12 of India-Belgium DTAA.

ITAT takes note of Assessee's submission for invoking MFN clause under India-Belgium DTAA and states that considering the protocol to the India-Belgium Tax DTAA, the India-Portugal DTAA has to be considered for most favourable nation clause, thus, refers to definition of FTS under India-Portugal DTAA which contains the make available clause.

Holds that the business support services rendered by the Assessee from Belgium do not qualify the test of make available under DTAA, accordingly, directs Revenue to delete the addition. As regards levy of surcharge and cess on treaty rate, ITAT rules that "*when tax rate is prescribed under DTAA, education cess is not leviable*", Directs Revenue to apply treaty rate without applying surcharge and cess.

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

7. ITAT: Disallows duties, penalty u/s 43B paid on import of generator leased from promotor.

I.G. Petrochemicals Limited [TS-119-ITAT 2022 (Bang)]

Bangalore ITAT dismisses Assessee's appeal, disallows deduction of customs duty, excise duty and penalty incurred on import of generator under Section 43B, leased out to the Assessee by its promoter. Observes that the lease agreement was extended from time to time with supplementary agreements but there was nothing on record or in the lease agreement to suggest that Assessee would be liable for statutory dues in import of turbine generator.

Assessee-Company claimed deduction under Section 43B for AY 2008-09, incurred towards customs duty, excise duty, interest and penalty for the import of turbine generator set. This amount was levied by the Customs and Central Excise authority. Assessee's claim for exemption for duty free import was held to be wrong which was disallowed in the assessment proceedings.

CIT(A) observed that the amount was paid under protest and was a disputed liability and observed that since the amount was paid as penalty for specific infraction, it could not be allowed as a deduction.

ITAT observes that it is imperative that for claiming deduction under Section 43B, the amounts should be otherwise deductible. Also observes that the payment was made under protest and remarks the amount is definitely a disputed liability and cannot be said that the liability has crystallized / accrued in the relevant AY.

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

8. **ITAT: First proviso to Sec.40(a)(ia) inapplicable for allowing expenditure not claimed in relevant AY**

Geetha Pundaleeka [TS-75-ITAT-2022 (Bang)]

Bangalore ITAT dismisses Assessee's appeal, holds first proviso to Section 40 (a) (ia) inapplicable for allowability of prior period expenses claimed in the year of payment thus, confirms the disallowance of prior period expenses.

Before ITAT, Assessee contended that in view of proviso to Section 40(a)(ia), the expenditure should be allowed in the year of payment i.e. AY 2013-14 despite the fact that the expenditure pertained to prior period. ITAT analyses the provisions of Section 40(a)(ia) along with successive amendments and notes that the first proviso allowing expenditure subject to deduction and payment of tax at source on expenditure during subsequent year is applicable with respect to the year in which tax deducted is paid.

Holds that it is settled law that deduction can be permitted only with respect to those expenses which are incurred in the relevant AY, finds that the expenditure were crystallised in the prior years and thus the said expenditure cannot be allowed as deduction as first proviso to section 40(a)(ia) has no applicability in the present case.

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

9. **ITAT: Payment for time charter of ships made to NRs not chargeable to tax in India**

Terapanth Foods Limited [TS-99-ITAT-2022(Rjt)]

Rajkot ITAT dismisses Revenue's appeal, upholds CIT(A) order deleting disallowance u/s 40(a)(i) for non-deduction of tax at source on ship hiring charges paid to non-resident.

Assessee Company, engaged in manufacturing of refined iodized salt and trade in iron-ore, paid non-residents for hiring of ship and on weather report without withholding tax. ITAT notes Assessee's submission that no liability u/s 195 arose since the payment was for time charter of ships and not for carriage of goods, passengers, live stocks etc. and in terms of Section 172, there is no liability to pay tax on such receipts by the non-resident recipients, thus, liability to deduct tax u/s 195 did not arise.

Refers to Section 172 and opines that the provisions not at all indicate that there is any liability to pay tax on charter ships by the non-resident recipients, thus upholds CIT(A) order deleting the disallowance. As regards disallowance of weather report charges paid to a British company, notes that CIT(A) gave a categorical finding that income received by the non-resident for giving weather routing report in the form of analysis of data in tabular form/graphical representation is not chargeable to tax under any provision including various sub-sections of Section 9(1).

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

10. **ITAT: Extended period of 16 years for reopening of assessment, retrospective. Deviates from Delhi HC's Brahm Dutt ruling**

Dilip J Thakkar [TS-81-ITAT-2022(Mum)]

Mumbai ITAT allows Revenue's appeal, holds extended period of 16 years for reopening of assessment to be retrospective, thus, applicable to AY 1999-2000. Relies on SC Constitution Bench ruling in *Vatika Township* on principles of retrospectivity, holds, "*there cannot be any good reasons to hold the section 149(1)(c) to be only prospective in effect. It must be given full effect as visualized and stated by the law itself*".

Assessee-Individual was subjected to reopening of assessment for AY 1999-2000 in Mar'15 by invoking the provisions as amended w.e.f. Jul 1, 2012 to allow reopening in cases involving income from assets located outside India upto 16 years from the end of relevant AY. Observes that the Explanation below Section 149(3) which categorically made the amendment retrospective and clarifies, *"It is not the position that the said Explanation has been held to be ultra vires or unconstitutional"*.

Further relies on jurisdictional HC ruling in *Thana Electricity* and adds that non-jurisdictional HC rulings do not bind ITAT on law in all the situations, particularly when Explanation below Section 149(3) was not considered by Delhi HC which has explicitly been relied upon by the Revenue in the present case.

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

11. SC: Dismisses Apex Labs' appeal over freebies to Doctors. Participation in action plainly prohibited by law, precludes deduction u/s 37(1).

Apex Laboratories Pvt. Ltd [TS-104-SC-2022]

SC dismisses appeal for AY 2010-11 preferred by Apex Laboratories P. Ltd. against Madras HC ruling, holds incentives or freebies given to the doctors directly resulted in exposing them to the "*odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect*".

Observes that the prohibition on medical practitioners from accepting gifts or freebies "*was no less a prohibition on the part of their giver, or donor*". SC observes, "*one arm of the law cannot be utilised to defeat the other arm of law*".

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

12. ITAT: Denies Sec.11 exemption absent real connection between construction activity & trust's objectives

Zilla Nirmiti Kendra [TS-107-ITAT-2022 (Bang)]

Bangalore ITAT dismisses Trust's appeal and denies exemption under section 11, finds no connection between the activities relating to construction business and the attainment of the objects of the trust.

Assessee is a society with the main objective of serving as a Seminal Agency to generate and propagate innovative ideas on housing and is registered u/s 12A. Revenue, for AY 2015-16, held that the activities carried out by the Assessee not for charitable purpose as provided in Section 2(15), thus, the profits of Assessee are chargeable to tax and denied the exemption under Section 11.

Assessee contended that the activities are performed without any profit motive and that each and every activity is carried on with the motive to inculcate innovative housing techniques and low cost housing techniques. ITAT notes that the CIT(A) upheld the assessment order on the ground that there is no link between activities performed by the Assessee and objectives of the trust.

ITAT opines that there is no connection between the activities relating to construction business and the attainment of the objects of the trust, rejects Assessse's contention that the surplus will be utilized for fulfilling the objects of the trust and holds that mere application of whole or some part of the income from the construction business for charitable purposes would not render the business itself being considered as incidental to the attainment of the objects. ITAT upholds the order of CIT(A) denying the exemption.

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

13. **HC: Assessee at liberty to seek CCIT's permission u/s 119(2)(b) for belated filing of Form 10-IC for Sec.115BAA concessional regime**

Rajkamal Healds And Reeds Pvt. Ltd [TS-73-HC-2022 (GUJ)]

Gujarat HC holds, Assessee is at liberty to file an application u/s 119(2)(b) seeking permission for condonation of delay in filing of Form No. 10-IC electronically and observes that on filing of such application, the Chief CIT should expedite it and may exercise discretion keeping in mind the object behind Section 119(2)(b) and also consider the hardships that Assessee will face if not permitted to file the Form No. 10-IC electronically.

Assessee-Company filed its return of income for AY 2020-21 by resorting to concessional tax rate u/s 115BAA but failed to file Form No. 10-IC electronically, mandatory for availing the concession. Assessee's return was thus processed as regular return and a demand of Rs.1.05 Cr was raised. HC considers Assessee's submission that it was the first return of the Assessee filed in accordance with section 115BAA where inadvertently Assessee's CA missed filing the Form No. 10-IC electronically. Refers to the provisions of section 115BAA and Section 119(2)(b), concurs with Revenue's stand that the legal remedy available is to make a request with PCCIT/CCIT u/s 119(2)(b).

Therefore, directs the Assessee to *file an application making a request to permit him to file the Form 10 IC electronically after condoning the delay*. On Assessee's grievance against recovery of demand already raised, HC observes that if any steps are taken for recovery, Assessee may file an application before the AO requesting to keep the demand in abeyance.

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

Direct Tax/PF /ESI compliance due dates during the month of March 2022

Due Date	Form	Period	Comments
02.03.2022		January 2022	Due date furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194M in the month of January, 2022
07.03.2022	Challan - 281	February 2022	Payment of TDS/TCS deducted /collected.
07.03.2022		February 2022	Payment of equalisation levy.
15.03.2022	Challan - 280	AY 2022-23	Fourth Instalment of advance tax for the Assessment Year 2022-23.
15.03.2022	Challan - 280	AY 2022-23	Due date for payment of whole amount of advance tax for assessee covered under presumptive scheme of section 44AD / 44ADA

15.03.2022	ITR	AY 2021-22	Due date for filing of return of income for the assessment year 2021-22 for (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited.
15.03.2022	ESI Challan	February 2022	ESI payment.
15.03.2022	E-Challan & Return	February 2022	E-payment of Provident fund
17.03.2022	TDS certificate	January 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in the month of January 2022.
30.03.2022		February 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194-IC in the month of February 2022.
31.03.2021			The due date for linking PAN and Aadhar number information.
31.03.2021	Form no. 3CEAD	AY 2021-22	Country-By-Country Report in Form No. 3CEAD for the previous year 2020-21 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group. (Reporting accounting year is April 1, 2020 to March 31, 2021)
31.03.2022			Filing of belated/revised return of income for the assessment year 2021-22 for all assessees.
31.03.2022	Form 10A		Filing of application for registration / provisional registration / intimation / approval / provisional approval of Trust or institutions.
31.03.2022	Form 10AB		Filing of application for conversion of provisional registration into regular registration or renewal of registration / approval after five years of registration / approval of Trust or institution.

MCA Updates

1. MCA further extends deadline for filing Financial Statements and Annual Return

MCA further extends the due date for filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 (XBRL) and AOC-4 (Non-XBRL), i.e. financial statements, till March 15, 2022, without additional fees.

Further, states that e-Forms MGT-7/MGT-7A (Annual Return) can be filed by March 31, 2022.

2. Certain Companies Act provisions to be applicable to LLPs w.e.f. Feb 12

- MCA directs that certain provisions of the Companies Act, 2013 shall apply to LLPs, except where the context otherwise requires, with specified modifications to suit LLPs, w.e.f. February 12, 2022.

- Among these applicable provisions is Sec. 90 of the Companies Act, which inter alia requires companies to maintain a Register of significant beneficial owners in a company.

- Sec. 164 [Disqualifications for appointment of Director] of the Companies Act shall also apply to LLPs, and states that as per Sec. 165 of the Companies Act, no person shall become designated partner in more than 20 limited liability partnerships, similar to the cap of 20 companies for Directors under the Companies Act.

- Also makes Sec. 206(5) of the Companies Act applicable to LLPs, thereby empowering the Central Govt. to direct inspection of books and papers go an LLP.

- Sec. 439 of Companies Act [Offences to be non-cognizable] to also apply to LLPs, wherein pursuant to modification in Sec. 439(2), "*No court shall take cognizance of any offence under this Act which is alleged to have been committed by any limited liability partnership or any designated partners or partners or employee thereof, except on the complaint in writing of the Registrar, or a partner of limited liability partnership, or of a person authorised by the Central Government in that behalf…Provided that nothing in this sub-section shall apply to a prosecution by limited liability partnership of any of its officers.*

3. MCA: Appoints ROCs as adjudicating officers under LLP Act

- In line with the amendments in the LLP Rules, MCA delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Guwahati, the powers and functions vested in it u/s 17 of the LLP Act [Change of name of limited liability partnership], w.e.f. April 1, 2022.

- Delegation to be subject to the condition that the Central Govt. may revoke such delegation of powers or may itself exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest.

- MCA Separately, appoints Registrar of Companies as adjudicating officers for the

purposes of LLP Act, while also enlisting their respective jurisdiction.

- MCA States that appeals (if any) filed before the concerned RD shall be disposed of according to the specific Notifications issued by MCA in this regard from time to time.

- Further specifies that "*in pursuance to rule 37B to 37D of the Limited Liability Partnership Rules, 2009, for the State of Sikkim, jurisdictional powers shall be vested with Regional Director, Eastern Region Directorate, Headquarter at Kolkata in the matters of appeal.*"

4. MCA: Mandates Service Request Number for official communication by RDs/RoCs to Companies, LLPs

MCA apprises that the Ministry directed the Registrar of companies and the Regional Directors of the Ministry of Corporate Affairs at all locations to enter all cases of complaints against the Companies and LLPs, inspections, inquiries, investigations and prosecutions in the MCA Electronic registry i.e., MCA21 before issuing any letter, notice order etc., followed by the generation of a Service Request Number ('SRN').

MCA directs the mandatory mention of such SRN in all such communications to companies, LLPs, their officers, auditors, etc.. Advises all the stakeholders to treat any such communication received without SRN as unauthorised that need not be responded to.

Lastly, states that any instance of communication received without mentioning SRN may be brought to the notice of the Office of the Director General of Corporate Officer.

5. MCA Tightens norms for allotting new name to existing LLP, lays down penalty-adjudication procedure

- MCA notifies the LLP (Amendment) Rules, 2022, w.e.f. April 1, 2022, inter alia introducing Rule 19A which provides for allotment of new name to existing LLP u/s 17(3) of the LLP Act.

- MCA states that in case an LLP fails to change its name or new name in accordance with the direction issued u/s 17(1) within 3 months, the letters "ORDNC" the year of passing of the direction, the serial number and the existing LLPIN of the LLP shall become the new name of the LLP without any further act or deed by the LLP, and the Registrar shall accordingly make entry of the new name in the register of LLP and issue a fresh certificate of incorporation in Form No. 16A.

- The LLP whose name has been changed shall at once make necessary compliance with the provisions of Sec. 21 and the statement, "Order of Regional Director Not Complied (under section 17 of the LLP Act, 2008)" shall be mentioned in brackets below the name of LLP on its invoices, official correspondence, and publications; Also introduces a new Rule 37A for Adjudication of penalties, empowering the Govt. to appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the LLP Act, and also provides the procedure for such adjudication proceedings.

- Further, specifies that appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having

jurisdiction in the matter, within 60 days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved party.

- MCA amends the fee structure for registration of LLPs including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership, and also inserts a Table of additional fee for delay in filing of forms by LLPs.

6. LLP Amendment Act, 2021, to come into force w.e.f. April 1, 2022

MCA appoints April 1, 2022 as the date on which the provisions of the LLP (Amendment) Act, 2021 shall come into force.

The Amendment Act was introduced, seeking to encourage the start-up ecosystem and further boost ease of doing business, states that the Central Govt. may appoint different dates for different provisions of the Act.

The Amendment Act inter alia introduces the concept of "small limited liability partnership" in line with the concept of "small company" under the Companies Act, 2013.

Further, the amendments decriminalise certain offences under the LLP Act, and empowers the Govt. To establish "Special Courts" for providing speedy trial of offences.

7. Companies to furnish Report on CSR in Form CSR-2

MCA amends the Companies (Accounts) Rules, 2014, to insert a new form CSR-2 [Report on CSR], requiring every company covered u/s 135(1) to furnish a report on CSR, to the RoC.

Form to be furnished before the Registrar for the preceding financial year (2020-21) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

For FY 2020-21, Form CSR-2 shall be filed separately on or before March 31, 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

8. Due dates:

- For Filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL – March 15, 2022

- For filing of e-forms MGT-7/MGT-7A – March 31, 2022

- For filing form CSR 2 – March 31, 2022

- Spending of CSR obligation amount to be spent during FY 2021-22 - March 31, 2022

FEMA Updates

1. Voluntary Retention Route (VRR) for Foreign Portfolio Investors (FPIs) investment in debt

A.P. (DIR Series) Circular No. 22 dated February 10, 2022 Please refer to paragraph 3 of the Statement on Developmental and Regulatory Policies dated February 10, 2022 regarding enhancement of the investment limit under the Voluntary Retention Route (VRR). The investment limit under the VRR is increased to Rs. 2,50,000 crore from Rs. 1,50,000 crore.

These directions shall be applicable with effect from April 1, 2022.

2. Regulations Review Authority (RRA 2.0) – Interim Recommendations – Discontinuation / Merger / Online Submission of Returns

A.P. (DIR Series) Circular No. 26 dated February 18, 2022 As part of the implementation of the interim recommendations of the RRA 2.0, it is proposed to discontinue/merge the returns listed below:

Sl. No	Return Name	Return Description
1	Details of guarantee availed and invoked of from non-resident entities	Non-resident guarantee for fund based and non-fund based facilities (such as Letters of Credit / guarantees / Letter of Undertaking (LoU) / Letter of Comfort (LoC) entered into between two persons resident in India.

Further, it is also proposed to convert, the paper based/ e-mail-based returns listed below into online filing:

Sl. No	Return Name	Return Description
1	FII Weekly	All AD banks advised to report inflow/ of outflow of foreign funds on account of investment by FIIs/FPIs in the Indian capital market in a format which consists of two parts: Part A: Inflow/outflow- Fund Position and Part B: Residual Maturity Pattern.
2	MTSS	Statement showing details of remittances received through Money Transfer Service Scheme during the quarter ended, within 15 days from the close of the quarter to which it relates.
3	Statement of default in MTT	Statement on default in Merchanting Trade Transactions (MTT)
4	Details of remittances made by NRO account	Remittances made out of NRO accounts up to 1 million USD per calendar year - Facilities to NRIs/PIOs and foreign nationals – liberalization
5	Overseas Principal-wise list of Sub Agents	Overseas principal-wise list of sub-agents of MTSS Indian Agents
6	Declaration confirming the veracity of the list placed on RBI website	Confirmation of veracity of the list of sub-agents
7	List of additional locations	List of additional locations of MTSS Agents
8	Statement of Foreign Currency Account/s maintained in India in their names with AD Category-I Banks out of export proceeds of Foreign Currency Notes/ encashed Travelers' Cheques	Statement of Foreign Currency Account/s maintained in India in their names with AD Category-I Banks out of export proceeds of Foreign Currency Notes/ encashed Travelers' Cheques
9	Statement of the amount of foreign currency written off during a financial year	Statement of the amount of foreign currency written off during a financial year
10	Form RMC-F	RMC- Restricted Money Changing
11	Statement of the collateral held by MTSS Indian Agents	Statement of the collateral held by MTSS Indian Agents
12	Details of Online Payment Gateway Service Providers (OPGSP) arrangements	Details of Online Payment Gateway Service Providers (OPGSP) arrangements
13	Extension of time in respect of clean credit for import of rough, cut and polished diamonds	Extension of time in respect of clean credit for import of rough, cut and polished diamonds
14	Advance remittances made for import of rough diamonds without a bank guarantee or standby letter of credit, where the amount of advance payment is equivalent to or exceeds USD 5,000,000/-	Advance remittances made for import of rough diamonds without a bank guarantee or standby letter of credit, where the amount of advance payment is equivalent to or exceeds USD 5,000,000/
15	ESOP reporting	"Statement of shares repurchased by the issuing foreign company from Indian employees/ Directors under ESOP Schemes for the year ended March 31, ……. (Year)

		(to be submitted on the letterhead of the Indian Company / Office / Branch through their AD bank)"
16	FLM8 – (Sale and Purchase of Foreign Currency)	Summary statement of purchases and sale of foreign currency notes during the month reported by FFMCs and AD-Category II
17	LO/BO/PO	Consolidated list of all the Branch Office (BO)/ Liaison Office (LO) / Project Office (PO) opened and closed by them during a month
18	Reporting of Long term Advance	Reporting of Long term Advance of USD 100 million & more along with Progress Report to be submitted by Authorised Dealer Bank on utilization of Long term export Advances
19	Form ECB	Application and Reporting of loan agreement details
20	Form ECB 2	Reporting of actual ECB transactions through AD Category -1 banks
21	Form TC	Compilation of short-term credit extended for imports and payments thereof

3. New Definition of Micro, Small and Medium Enterprises – Clarification

a) In this connection, we inform that Government of India, vide their Gazette Notification S.O. 278(E) dated January 19, 2022, has notified amendments in the paragraph (7) sub-paragraph (3) in the notification of Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119 (E), dated June 26, 2020, published in the Gazette of India.

b) In view of the above amendment, paragraph 3 of the said circular would stand modified as under:

c) "The existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained till June 30, 2020 shall remain valid till March 31, 2022."

d) Further, it is clarified that the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated March 8, 2017 (RBI Circular FIDD.MSME & NFS.BC.No.10/06.02.31/2017-18 dated July 13, 2017), for classification of MSMEs upto June 30, 2020, are also valid upto March 31, 2022.

e) All other provisions of the circular remain unchanged.

Indirect Tax Updates

GST

1. As per the latest notification no. 01/2022 Central Tax, the e-Invoicing system will get extended to those registered persons, whose annual aggregate turnover exceeds Rs.20 crore starting from 1st April 2022.

   Click here to read/ download the notification no. 01/2022 – Central Tax dated 24/02/2022

Customs

2. **Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/Cess:**

   In this regard, it may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.

   Thus, it is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

   Click here to read/ download the circular no. 3/2022-Customs dated 01/02/2022

3. **Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022:**

   Manner and time limit for applying for post export conversion of Shipping Bill in certain cases. -

   (1) The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods U/s 51(1) or 69 of the act.

   Provided that the jurisdictional Commissioner of Customs, having regard to the circumstance under which the exporter was prevented from applying within the said period of one year, may consider and decide, for reasons to be recorded in writing, to extend the aforesaid period of one year by a further period of six months:

   Provided further that the jurisdictional Chief Commissioner of Customs, having regard to the circumstances under which the exporter was prevented from applying within the said period of one year and six months, may consider and decide, for reasons to be recorded in writing, to extend the said period of one year and six months by a further period of six months.

   (2) For the purpose of computing the period of one year under sub-regulation (1), the period, during which stay was granted by an order of a court or tribunal, shall be excluded.

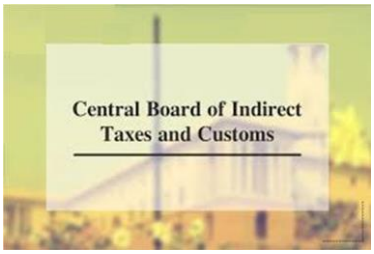
(3) The jurisdictional Commissioner of Customs, may, in his discretion, authorize the conversion of shipping bill, subject to the following, namely:

(a) on the basis of documentary evidence, which was in existence at the time the goods were exported.

(b) subject to conditions and restrictions provided in regulation 4;

(c) on payment of a fee in accordance with Levy of fees (Customs Documents) Regulations,1970.

(4) Subject to the provision of sub-regulation (1), the jurisdictional Commissioner of Customs shall, where it is possible so to do, decide every application for conversion within a period of thirty days from the date on which it is filed.



4. Conditions and restrictions for conversion of Shipping Bill. -

(1) The conversion of shipping bill and bill of export shall be subject to the following conditions and restrictions, namely: -

(a) fulfilment of all conditions of the instrument based scheme to which conversion is being sought;

(b) the exporter has not availed benefit of the instrument based scheme from which conversion is being sought;

(c) no condition, specified in any regulation or notification, relating to presentation of shipping bill or bill of export in the Customs Automated System, has not been complied with;

(d) no contravention has been noticed or investigation initiated against the exporter under the Act or any other law, for the time being in force, in respect of such exports;

(e) the shipping bill or bill of export of which the conversion is sought is one that had been filed in relation to instrument based scheme.

Click here to read/ download the notification no. 11/2022-Customs (N.T.) dated 22/02/2022

Notification issued by Department of Commerce

5. The last date of submitting applications under certain scrip-based FTP Schemes has been extended.

Click here to read/ download the Notification no. 58/2015-2020 dated 7th March 2022.

Indirect Tax Rulings

1. 2022-TIOL-252-HC-JHARKHAND-GST

Rungta Mines Ltd Vs CCGST & CE

GST - The petitioner-company held Central Excise Registration for manufacture of sponge iron, billet and TMT Bar - The petitioner was also registered under Service tax only as a person liable to pay service tax under Reverse Charge Mechanism. Admittedly, the "port services" involved in this case is not covered under Reverse Charge Mechanism and therefore the same was not includable in the service tax return filed by the petitioner under ST-3 - As such the petitioner was not entitled to avail CENVAT credit of service tax paid on port services - Nonetheless, the petitioner could avail credit of service tax paid on port servies if used in manufacturing activity for which assessee was registered under CEA 1944 - Thereafter in the relevant period, the petitioner imported coal for using the same in or in relation to manufacture of dutiable final products - The petitioner received a bundle of services from M/s Kolkata Port Trust in the nature of port services and who issued a bill which included service tax element - The assessee claimed to have paid the entire bill and was entitled to claim the service tax paid on "port services" as CENVAT Credit in their ER-1 return as per the provisions of existing law - Admittedly, the petitioner did not claim the service tax paid on "port services" involved in this case as CENVAT Credit in their relevant ER-1 return - Due to non-inclusion of the service tax paid on port services in ER-1 Return, the petitioner could not have claimed the transition of the said CENVAT Credit as permissible transitional credit referrable to section 140 of CGST Act through TRAN-1 and could not utilise the same under CGST Regime - The petitioner missed the chance to exercise its rights to avail transitional credit of service tax paid on port services through the mechanism prescribed under the CGST Act and the CENVAT Credit Rules 2002 - Notably, the existing provision did not permit CENVAT Credit of service tax paid on "port services" without its inclusion in ER-1 Return and in absence of such inclusion within the prescribed time line the claim of credit stood completely lost and could not be claimed in TRAN - 1 as transitional credit under CGST Act - The petitioner was also not entitled to laim the service tax paid on "port services" in their service tax return ST-3 as the petitioner was not an output service provider and was liable to file service tax return and pay service tax only under reverse charge mechanism.

Held - No reason to interfere with the findings and reasons assigned by the adjudicating authority as well as the appellate authority rejecting the application for refund filed by the petitioner under section 11B of Central Excise Act read with Section 142(3) and 174 of CGST Act - The orders are well reasoned orders calling for no interference: HC

+ section 142(3) of CGST, Act clearly provides that refund application with respect of any amount relating to CENVAT Credit, duty, tax, interest or any other amount paid under the existing law is to be disposed of in accordance with the provisions of existing law and if any such amount accrues the same shall be paid in cash. Such right to refund in cash has been conferred notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11-B of the Central Excise Act, 1944. (Para 41)

+ In the peculiar facts of this case, the petitioner did not claim transitional credit but claimed the impugned amount of service tax on "port services" as credit in their ST-3 return which they were admittedly not entitled as they were assessee under service tax only on reverse charge mechanism and admittedly the "port services" availed by the petitioner was not covered under reverse charge mechanism. Thus, the petitioner on the one hand illegally took credit of service tax on "port services" as credit in their ST-3 return and on the other hand filed application for refund of the same

amount under section 142(3) of the CGST, Act which is certainly not permissible in law. The authorities have rightly considered these aspects of the matter also while rejecting the application for refund filed by the petitioner. (Para 49)

+ It is not in dispute that the petitioner has claimed the credit of service tax involved in the present case paid on "port services" as "input service" in ST-3 return filed on 22.09.2017, though they were not entitled to claim such a credit. It is further not in dispute that the petitioner did not include the impugned service tax paid on "port services" in its ER-1 return and accordingly was neither entitled to include nor included the same as transitional credit in TRAN-1 under CGST Act. As per the notification (Annexure-5) extending the date of filing TRAN-1 to 31.10.2017, the same was in relation to certain service tax issues which were paid after 30.06.2017 under reverse charge basis to cover instances of bills raised on 30.06.2017 since credit is available only if the payment is made and the payment in such cases could be made only after 30.06.2017. However, in the instant case the bill was admittedly generated on 23.05.2017, services availed and bill amount including service tax was paid in April 2017 but the original bill did not reach the petitioner for unknown/undisclosed reasons. (Para 50)

+ It is apparent from the impugned orders that the specific case of the respondent is that the petitioner had claimed CENVAT Credit under ST-3 return thereby treating the services involved in the present case as their input services used for providing output service, whereas they are not output service provider and the same cannot be used for providing output services. Therefore, it cannot be their input services under Rule 2 (l) of CENVAT Credit Rules, 2004. I am also of the considered view that the petitioner could not have claimed the impugned service tax on port services in ST-3 return as they were registered for discharging their liability under the service tax only on reverse charge mechanism. Rather it is the case of the petitioner that they had included the impugned service tax in ST-3 Return under compelling circumstances of non-receipt of original invoice dated 23.05.2017 and this was done only attempting to save their credit which they had failed to claim through ER-1 return and then as transitional credit through TRAN-1 under section 140(1) of the CGST Act. Thus, the authority has rightly held that petitioner had wrongly claimed Credit of the impugned service tax under ST-3 return and omitted to claim the impugned service tax as CENVAT Credit in ER-1 Return. (Para 51)

+ Further case of the respondent is that the petitioner as a manufacturer was eligible to claim CENVAT Credit on impugned service i.e "port services" and should have claimed the credit in their ER-1 Return within the prescribed time and accordingly could have claimed transitional credit through TRAN-1 under section 140 of CGST, Act. Thus, late receipt of the original invoice which has been cited as the reason for failure to claim CENVAT Credit under the existing law and transitional credit under section 140(1) of the CGST, Act was wholly attributable to acts and omissions of the petitioner and its service provider of the "port services" and the respondent authorities had no role to play. The petitioner had failed to avail the opportunity to claim CENVAT Credit of service tax on port services in terms of the existing law read with section 140 of CGST, Act and had no existing right of refund on the date of coming into force of CGST, Act. The petitioner having not used the port services for export was not entitled to claim refund under the existing law. The petitioner was also not entitled to refund on account of the fact that the petitioner had already taken credit of the service tax paid on port services in ST-3 Return of service tax although admittedly the petitioner was not entitled to take such credit in ST-3 Return. On account of aforesaid three distinct reasons the petitioner was rightly held to be not entitled to refund under section 142(3) of CGST, Act by the impugned orders. (Para 52)

+ All the aforesaid provisions referred to and relied upon by the counsel of the petitioner do not entitle a person like the petitioner to any relief in the circumstances of acts and omissions of the service provider (port authority) or the service recipient (the petitioner) who have failed to comply the

provision of law, both under the existing law and also under the CGST Act. The relied upon provisions of CGST Act do not cover any such situation relating to any consequences due to inter parte acts and omissions. In the instant case, as per the case of the petitioner, the entire problem has cropped up due to non-receipt of the invoice in original from the port authorities although the port services were availed and payments for the same to the port authorities were made by the petitioner in the month of April 2017, the invoice was generated by the port authorities in the month of May 2017 but the original invoice was received by the petitioner only on 20.09.2017 i.e after coming into force of CGST Act. The late receipt of the invoice is essentially between the petitioner and the port authorities and the tax collecting authorities had nothing to do in the matter. Certainly, the delay in receipt of original invoice is not attributable to the respondent authorities under the existing law or under the new law. (Para 53)

+ The authorities have held in the impugned orders that in the instance case, the timeline for claiming CENVAT Credit qua the service tax paid on port services was not followed by the petitioner, although the services were availed, the entire payment was made and the bill was also generated in the month of April/May, 2017. Further, it has also been held in the impugned orders that the petitioner not only failed to claim the CENVAT Credit as per law, but illegally claimed the credit of the same while filing service tax return although the petitioner was not entitled to do so as the petitioner was not registered as a service provider. The authorities have also held that the service tax paid on port service was not eligible for refund under the existing law as the said services were not utilised for export. Thus, the petitioner on the one hand did not claim CENVAT Credit as per the procedure established by law under the existing law and on the other hand violated the provisions of law while filing his service tax returns and claimed the amount as input service and thereafter filed his petition for refund on 28.06.2018 referring to Section 142(3) of the CGST Act. The petitioner never had a right to claim refund under the existing law and had failed to exercise their right to claim CENVAT Credit as per law and wrongly claimed the impugned amount as credit in Service Tax Return (S.T. 3 return). (Para 54)

- Writ petition dismissed: JHARKHAND HIGH COURT

2. 2022-TIOL-251-HC-AHM-GST

Sri App Enterprises Vs Pr.CC

GST - Petitioner seeks a direction to the respondent authorities to immediately sanction the refund of IGST aggregating to Rs.1,00,424/- paid in regard to the goods exports i.e. 'Zero Rated Supplies' along with interest @9% - Grievance of the writ applicant is that the exports were made in September 2017, but till this date, the I.G.S.T. has not been refunded.

Held : Issue raised in the present writ application is no longer res integra after the decision of this High Court in the case of Amit Cotton Industries = 2019-TIOL-1443-HC-AHM-GST - Respondent is directed to immediately sanction the refund of the I.G.S.T. paid in regard to the goods exported i.e. the Zero Rated Supply with 9% simple interest from the date of the shipping bills till the date of actual refund - Writ Application disposed of: High Court [para 8, 10]

- Petition disposed of: GUJARAT HIGH COURT

3. 2022-TIOL-12-SC-ST

Adiraj Manpower Services Pvt Ltd Vs CCE

ST - The assessee-company obtained service tax registration under the category of 'Manpower Recruitment or Supply Agency Service' - The assessee entered into an agreement with one M/s Semco Electric Pvt Ltd (later known as M/s Sigma) and was required to provide personnel for activities such as felting, material handling, pouring and supply of material to furnace - Fresh

agreements were signed subsequently - Subsequently SCN was issued to the assessee demanding service tax along with interest and with a proposed penalty of Rs. 10,50,23,672, alleging that the assessee failed to pay its dues for the relevant period; that the assessee had failed to assess and discharge service tax liability on the service value in accordance with their sales ledgers relating to Sigma; that the assessee had suppressed the facts and made a misrepresentation by filing incorrect ST-3 returns for the above period and did not declare the true and correct taxable value and service tax thereon; that supply of manpower services by the appellant conformed to the provisions of the Contract Labour (Regulation and Abolition) Act 1970; that the assessee had not declared the provision of job work services and that the assessee had not obtained registration for Business Auxiliary Services - On appeal, the Tribunal held that that the services provided by the appellant were in the nature of contract labour and not job work - The Tribunal held that (i) clause 10, 11 and 17 of the agreement required the assessee to obtain a licence under the CLRA; (ii) the agreement imposed the responsibility for the payment of wages to the employees/workmen and for making payments under the Employees' State Insurance Act 1948 and Provident Fund in respect of the employees of the contractor on the appellant - The Tribunal accordingly held that the agreement between the assessee and Sigma is a contract labour agreement executed for the purpose of providing requisite manpower and is not a job work contract to extend the benefit of Notification No.25/2012-Service Tax dated 20 June 2012.

Held - The issue before the Court is whether the assessee is a job worker within the meaning of the exemption notification dated 20 June 2012 or is merely a supplier of contract labour for the work of the establishment - The substratum of the agreement between the assessee and Sigma deals with the regulation of the manpower which is supplied by the assessee in his capacity as a contractor - The fact that the assessee is not a job worker is evident from a conspicuous absence in the agreement of crucial contractual terms which would have been found had it been a true contract for the provision of job work in terms of Para 30(c) of the exemption notification - The agreement does not mention the nature of the process of work which has to be carried out by the assessee; provisions for maintaining (a) the quality of work; (b) the nature of the facilities utilised; or (c) the infrastructure deployed to generate the work; the delivery schedule; specifications of the work to be perfomed and any consequences arising from breach of contract - On reading the agreement as a whole, it is apparent that the contract is pure and simple a contract for the provision of contract labour - An attempt has been made to camouflage the contract as a contract for job work to avail of the exemption from the payment of service tax - Hence the judgment of the Tribunal is sound & suffers from no error of reasoning: SC

- Assessee's appeal dismissed: SUPREME COURT OF INDIA

4. 2022-TIOL-28-AAR-GST

KRBL Infrastructure Ltd

GST - The Applicant-company is engaged in the business of constructing commercial complex, renovation, fabrication, furnishing and built out interiors works of the building for the purpose of letting to different tenants on rental basis - The applicant is undertaking to construct of commercial complex for the purpose of letting out - The applicant is discharging the applicable GST liability on rental income - The Applicant for the purpose of carrying out the said outward supply, has taken various services in the nature of 'Civil and Interior Works' at different floors of the building of the registered premises of the applicant - The applicant, till date has incurred expenses in relation to interior and other civil works - The Applicant is also planning to undertake the activity of construction of a commercial complex for the purpose of renting out to prospective tenants for which the applicant would procure various goods & services to effectuate the ultimate outward supply of renting of commercial complex - The Applicant approached the AAR seeking to know whether the Applicant is eligible to take ITC in respect of expenditure incurred for Civil

and Interior Works in respect of a property to be used for letting out to different tenants on rental basis and whether ITC on construction of commercial complex is available to the Applicant in case the building is used for purpose of renting out.

Held - Applicant is not eligible to take input tax credit in relation to expenditure incurred for 'Civil and Interior Works' in building located at C32, Sector-62, Noida, Gautam Buddha Nagar, Uttar Pradesh, 201301 at different floors, since the said property is further used for letting out to different tenants on rental basis viz. for furtherance of business - ITC on construction of commercial complex located at Plot No. 18, BLOCK C, SECTOR - 153, NOIDA, Gautam Buddha Nagar, Uttar Pradesh, 201310, will not be available to Applicant in case the said building is used for the purpose renting out: AAR

- Application disposed of: AAR

5. 2022-TIOL-27-AAR-GST

Cmepediagerda Huguette Emma Van Hoecke

GST - The Applicant is a proprietary concern registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 - The applicant provides service to health care professional bodies such as State Medical Councils and Dental Councils, Institutes for Healthcare education and hospitals - The Applicant approached the AAR seeking to know whether paid educational content used by healthcare professionals or students to fulfill a mandatory demnd by professional body or institute is exempt from tax & whether the fee for portfolio management, which will reduce the administrational pressure on professional bodies and health care professionals, and which will increase the transparency in the certification of educational activities, exempt of tax.

Held - The paid education content, which is used by health care professionals or students to fulfill a mandatory demand by their professional body or institute is not exempt to tax under the provisions of the Central Goods and Services Tax Act or Karnataka Goods and Services Tax Act or Integrated Goods and Services Tax - The fee collected for the portfolio management is also not exempt from tax under the provisions of the Central Goods and Services Tax Act or Karnataka Goods and Services Tax Act or Integrated Goods and Services Tax Act, 2017: AAR

- Application disposed of: AAR

6. 2022-TIOL-271-HC-JHARKHAND-GST

NKAS Services Pvt Ltd Vs State of Jharkhand

GST - The present petition was filed to challenge SCN issued u/s 73 of the Jharkhand Goods and Services Tax (JGST) Act, 2017 and the summary of the show cause notice in Form DRC-01 also issued by the Revenue under Rule 142(1)(a) of the JGST Rules, 2017 since the previous show cause notice dated 07.06.2021 issued under Section 73 of the JGST Act has been withdrawn.

Held - The show cause notice does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice: HC

+ A perusal of the impugned show cause notice at Annexure-1 creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner. The summary of the show cause notice under DRC-01 indicates that as per the statistics received from the headquarter/ government treasury, it has come to the notice of the department that the petitioner has received a sum as payment from the government treasury against works contracts services completed / partly completed during the above mentioned period April 2020 to March 2021 whereas the liability reflected by him through filed returns is less than the above mentioned sum as per GSTR-3B. As such, he was not reflecting the total payment received and consequent total liability accrued in the filed returns just to evade payment of due tax

to the government. It needs to be mentioned here that even the summary of the show cause notice does not disclose the information as received from the headquarter / government treasury as to against which works contract service completed or partly completed the petitioner has not disclosed its liability in the returns filed under GSTR-3B. We have held in the case of the same petitioner in W.P.(T) No. 2444 of 2021 related to a show cause notice under Section 74 of the JGST Act that a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the JGST Rule, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of proper show cause notice. (Para 11);

+ As held there in, the requirement of principles of natural justice can only be met if (i) a show cause notice contains the materials / grounds, which according to the Department necessitate an action; (ii) the particular penalty/ action which is proposed to be taken. Even if it is not specifically mentioned in the show cause notice, but it can be clearly and safely discerned from the reading thereof that would be sufficient to meet this requirement;

+ We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act. (Para 14);

- Writ pettion allowed: JHARKHAND HIGH COURT

7. 2022-TIOL-269-HC-MUM-CX

Bombay Dyeing And Manufacturing Company Ltd Vs DC of CGST & CX

CX - The SCN has not been adjudicated upon for about 16 years - In the affidavit-in-reply, Respondent does not allege that the Petitioner was informed about SCN having been kept in call book as sought to be alleged in affidavit-in-reply filed by Respondent - If Respondent would have informed the Petitioner about said SCN in year 2005 itself, having been kept in call book, Petitioner would have immediately applied for appropriate reliefs by filing appropriate proceedings - It is not expected from petitioner to preserve the evidence/record intact for such a long period to be produced at the time of hearing of SCN - The Respondent having issued SCN, it is their duty to take said SCN to its logical conclusion by adjudicating upon said SCN within a reasonable period of time - In view of gross delay on the part of Respondent, Petitioner cannot be made to suffer - The law laid down in case of Parle International Limited 2020-TIOL-2032-HC-MUM-CX applies to the facts of this case - Hearing of SCN belatedly is in violation of natural justice - The impugned SCN is quashed and set aside: HC

- Writ petition allowed: BOMBAY HIGH COURT

8. 2022-TIOL-168-CESTAT-MAD

Carboline India Pvt Ltd Vs CC

Cus - The appellant is aggrieved by rejection of their request for conversion of free shipping bills to advance authorization shipping bills - The department has relied upon Board Circular No. 36/2010 - When the statute does

not prescribe any time-limit for filing an application for conversion of a shipping bill, department cannot rely upon a circular to frustrate the provisions contained in statute - When there is a conflict, statute will definitely prevail over the Board circular - The issue whether the time limit prescribed as per the Board circular will apply was considered by Tribunal in case of Autotech Industries (India) Pvt. Ltd. 2021-TIOL-717-CESTAT-MAD and held that time-limit of three months prescribed in Board circular cannot be applied to reject the request of conversion/amendment of shipping bills - The High Court of Kerala in case of Parayil Food Products Pvt. Ltd. had considered the very same issue and held that when section 149 does not prescribe any time-limit, request for conversion cannot be denied by application of Board circular - The second ground for rejecting request for conversion of free shipping bills is that the goods exported have not been subjected to physical examination - Appellant have clearly stated in shipping bills that the goods are exported under advance authorization scheme - On one shipping bill, there is a mistake in noting the license number of advance authorization - In both the shipping bills, the scheme code was wrongly mentioned though they have stated that the goods are exported under advance authorization - Section 149 is a provision which permits the importer/exporter to request for amendment of documents for mistakes that may have happened while filing the documents - When an application for amendment is received, if it is very much clear from documents that the mistake was only an inadvertent mistake and there is no attempt of fraud or mis-statement to evade duty, request for conversion ought to be allowed - The rejection of request for conversion of free shipping bills to advance authorization scheme shipping bills are not justified - Impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

9. 2022-TIOL-167-CESTAT-AHM

Rishabh Plast Industries Vs CCE & ST

CX - Assessee is in appeal against denial of cenvat credit on certain services, demand of interest and imposition of penalty - It is pointed out that credit has been denied on Works Contract Service used for Repair of their factory premises - Assessee pointed out that the definition of input service specifically includes in inclusion part services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises - He pointed out that the services are specifically included in inclusive part in definition of Input services - From the definition of input services and sequence, it is clear that definition of Input service is first expanded by introducing inclusive part in definition and thereafter restriction is placed by exclusive part of definition - Tribunal agrees with argument made by Commissioner (Appeals) - The sequence of definition clearly suggest that the exclusive part supersedes or overrides the main definition and inclusive part - It is obvious that an exclusive part can only exclude what is otherwise included in the inclusive part, therefore if anything is covered in exclusive part it remains excluded irrespective of the fact that the same was specifically included in the main definition or the inclusive part - This is so because the exclusive part comes at the end of the definition and not before the inclusive part: CESTAT

- Appeal dismissed: AHMEDABAD CESTAT

10. 2022-TIOL-165-CESTAT-AHM

Aquamarine Exports Vs CCE & ST

ST - Appellant is engaged in export of textiles goods such as fabrics, scarves, sarees and dress materials to various countries - During scrutiny of Shipping bills, it is revealed that appellant have shown the commission amount to the tune ranging from 11% to 12% paid to commission agent located outside the India - Revenue has confirmed demand of service tax on commission which was shown as deduction in export invoice - Further, revenue has treated this commission as a commission against foreign commission agent

service - Firstly, there is no commission agent exists who provided the service for export trading of goods exported by appellant - When no service provider is in existence it cannot be said that the appellant have received commission agent service - Secondly, appellant have not paid the commission to any person in foreign country - Therefore, in absence of any consideration paid for alleged commission agent services, no service tax can be demanded - In export invoice, appellant have deducted an amount in nomenclature of commission from gross sale price thus, deduction was passed on to the buyer of export goods which is nothing but a discount given to Foreign Buyers of goods - Neither any service provider exist nor was any consideration paid to any service provider - On the identical issue, Tribunal has taken a consistent view that merely because in invoice commission is mentioned, that alone is not sufficient to treat it as a commission but the same should be treated as discount only - Consequently, no service exist hence no service tax can be demanded: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

11. 2022-TIOL-15-SC-CX

Krishi Upaj Mandi Samiti Vs CCE & ST

Whether when fees collected was not deposited into Government Treasury and used by Market Committee itself, then same is not 'statutory levy' and not entitled to service tax exemption - YES: SC

12. 2022-TIOL-164-CESTAT-AHM

PD Industries Vs CC

Cus - Appellant had filed bill of Entry wherein the goods imported by them were declared as "Petroleum Hydrocarbon Solvent" - The samples of product were drawn and sent for testing wherein it is confirmed that the goods imported are having characteristics of Superior Kerosene Oil and falling under CTH 27301910 as against the description of Petroleum Hydrocarbon Solvent classified under CTH 271019990 as declared by importer - As per IS specification for Kerosene i.e. 1459:1974 total eight parameters need to be tested - However, in test report all the parameters were not admittedly tested - High Court of Gujarat directed the revenue to get goods tested from Indian Institute of Petroleum (IIP) - However, department intimated the appellant that testing facilities for this type of work are not available at CSIR-IIP - In this fact the test of parameters of Kerosene could not be done conclusively - Therefore, department did not discharge the burden to prove their case of classification - In the identical facts and situation, this Tribunal has considered the case of Swarna Oil Services 2020-TIOL-970-CESTAT-AHM which is directly applicable - The goods imported by appellant are used as raw material in manufacture of their final product i.e. solvent - Appellant post hearing submitted certain documents such as certificate, invoices copies of their final product and the process flow diagram - This fact also strengthen the case of appellant that the goods imported by them is not Superior Kerosene Oil - Declaration of goods and classification made by appellant in bill of entry is correct and the department's claim of classification as Superior kerosene Oil could not be established - Therefore, impugned order is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

13. 2022-TIOL-162-CESTAT-BANG

Capgemini Technology Services India Ltd Vs CCE & CST

ST - The appellant have filed refund claim for the period April 2006 to April 2007 seeking refund of unutilized credit under Rule 5 of Cenvat Credit Rules r/w Notfn 05/2006-CE (NT) - Revenue issued a SCN to reject the refund on the ground that appellant was engaged in export of non-taxable services i.e. Development of Computer Software; which was not qualifying as exports under Export of Services Rules, 2005 - Commissioner (A) finds

in impugned order that adjudicating authority has rightly rejected the refund claim on the ground that Development of Software is not taxable under Clause (105) of Section 65 of FA, 1994 and cannot be treated as 'exports' made under Export of Services Rules, 2005 - The availment of credit is not contested by Revenue and appellants having exported the services cannot be disentitled to refund under Rule 5 on the ground that the exported services are exempt - Appellant have filed a miscellaneous application for seeking interest on delayed payment in terms of Section 11BB of CEA, 1944 - There is no substance in submissions as far as interest on delayed payment is concerned: CESTAT

- Appeal allowed: BANGALORE CESTAT

14. 2022-TIOL-159-CESTAT-AHM

Kaybee Tex Spin Ltd Vs CC

Cus - Appellant, a 100% EOU was engaged in manufacture of Texturized Yarn, Twisted Yarn and Knitted Fabrics - Revenue has confirmed the demand of customs duty on raw material imported duty free in terms of Notification No. 52/2003-Cus. on the ground that the appellant have cleared goods in DTA without obtaining permission of Development Commissioner therefore, appellant failed to follow the procedure laid down under Exim policy and failed to fulfil the condition of exemption notification - Though the appellant have not obtained permission from Development Commissioner for removal of goods in DTA but they have paid full duty on finished goods wherein, such imported raw material have been consumed - Once the duty free raw material got consumed in manufacture of final product and the final product is cleared on payment of excise duty then demanding of customs duty on raw material shall amount to double payment of duty - Therefore, no duty of customs can be demanded on such raw material - Appellant have also raised the ground of limitation, since there is no suppression of fact on the part of appellant as all the informations were available to department in the form of ER-2 return, demand for extended period is not sustainable - Demand of customs duty on raw material is not sustainable on merit as well as on limitation - Accordingly, impugned orders are set aside: CESTAT

- Appeals allowed: AHMEDABAD CESTAT

15. 2022-TIOL-235-HC-RAJ-ST

Rajasthan Tourism Development Corporation Ltd Vs Pr.CCGST

ST - Whether the Government company formed with the object of developing tourism and infrastructure related to it and running a luxury train called "Palace on Wheels" can be charged of rendering Business Auxiliary Service on account of realizing facilitation fee from empaneled showrooms/Emporia's, which was required for avoiding fraud, cheating and to protect the foreign and domestic tourist - The term Business Auxiliary Service has been defined in Section 65 (19) of Finance Act, 1994 as to mean, besides others, promotion for marketing or sale of goods produced or provided by or belonging to the client - The Tribunal came to the conclusion that the activity amounted to marketing of goods for sale - Court is in agreement with the view of Tribunal - The agreement between shop owners and the assessee provided that the shop owner would pay facilitation fees per season to the corporation on the condition that the tourist buses of corporation would stop at the showroom of the shop owners for the purpose of shopping by tourist travelling in 'palace on wheels' - It was thus a clear case of promotion of sale of goods of the shop owners or the showroom owners - No question of law arises: HC

- Appeal dismissed: RAJASTHAN HIGH COURT

16. 2022-TIOL-218-HC-DEL-GST

Fides Distribution Pvt Ltd Vs CCGST

GST - Petitioner's ITC account has been unblocked on 7th February, 2022 - Nonetheless, petitioner presses for grant of

interest as ITC under Rule 86A of the Central Goods and Services Tax Rules, 2017 could have been blocked only for a period of one year whereas in the present case the blocking has been done for two years.

Held : Respondents to file reply affidavits confined to the interest matter within eight weeks - Matter listed on 14 th September 2022: High Court

- Matter listed: DELHI HIGH COURT

17. 2022-TIOL-139-CESTAT-MAD

S Sakthikumar Vs CGST & CE

ST - Refund claim - A SCN was issued to appellant proposing to reject the refund claim on the ground that the same was hit by limitation of time - The decision of High Court of Judicature at Madras in case of M/s. 3E Infotech 2018-TIOL-1268-HC-MAD-ST is binding wherein it is held that when service tax is paid by mistake, a claim for refund cannot be barred by limitation merely because the period of limitation under Section 11B of Central Excise Act, 1944 had expired - The rejection of refund is unsustainable - Hence, impugned order of First Appellate Authority is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

18. 2022-TIOL-181-HC-DEL-GST

Rakesh Kumar Garg Vs ACGST Department

GST - Section 29 of the Act, 2017 - Inability to continue business due to deteriorating health - Cancellation sought of GSTIN - Petition has been filed seeking a direction to Respondent No. 1 to comply with the order dated 5th April, 2021 passed by the Respondent No. 2 in its letter and spirit thereby allowing the petitioner to surrender his GSTIN voluntarily w.e.f. 4th March, 2020 to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said impugned order dated 30th July, 2021. Held: Appellate Authority has passed a clear and cogent order - It is apparent that the registration has been cancelled at the request of the petitioner and the Appellate Authority has categorically held that the Petitioner was entitled to discontinue its business - Further, the date of cancellation of registration is from the date the petitioner had applied for i.e. 4th March, 2020 and not from the date when its registration was cancelled by the respondent No. 1 - Writ petition is allowed and the Respondent No. 1 is directed to comply with the order dated 5th April, 2021 by allowing the petitioner to surrender his GSTIN voluntarily w.e.f. 4th March, 2020: High Court [para 6, 7, 9]

- Petition allowed: DELHI HIGH COURT

19. 2022-TIOL-130-CESTAT-MAD

Mettupalayam Agricultural Producers Cooperative Marketing Society Ltd Vs CGST & CE

ST - Appellant is engaged in conducting of auction of goods and property for a consideration - Revenue opined that this constitutes a taxable service under "Auctioneers' Service" and the appellants are required to pay service tax - Appellant submits that they are only facilitating the auction and actual auction would be carried out by owners of agricultural produce and prospective buyers; they have no role in fixing the sale price - They charge only a fixed percentage of commission / market fee at the prescribed rates - I mpugned order does not survive in view of decision in M/s. Attur Agricultural Producers Co-operative Marketing Society Ltd. 2019-TIOL-3058-CESTAT-MAD - Assistance rendered by appellants to their member farmers in auctioning their agricultural produce does not tantamount to rendering any service classifiable under "Auctioneers' Service": CESTAT

- Appeal allowed: CHENNAI CESTAT

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In case of any clarification please reach us:

Particulars	Name	Mail ID	Mobile Number
Indirect Taxes	Dayananda K	daya@vishnudaya.com	+91 9845 025 682
Indirect Taxes	Vinayak Hegde	vinayaka@vishnudaya.com	+91 9902 586 492
Direct Taxes	Shankar D	shankar@vishnudaya.com	+91 9880 715 963
Direct Taxes	Anju Eldhose	anju.eldhose@vishnudaya.com	+91 9496 148 918
Direct Taxes	Manjula A	manjula@vishnudaya.com	+91 9740 854 009

Our Offices:

Bangalore	Chennai
GF No. 7 & 3rd Floor, Karuna Complex, No. 337 Sampige Road, Malleshwaram Bangalore – 560 003 Tel +91 80 2331 2779 Fax +91 80 2331 3725	No. 3A, 3rd Floor Amber Crest Apartment (Next to Egmore Ashoka Hotel) Pantheon Road, Egmore Chennai – 600 008 Tel +91 44 2855 4447 Fax +91 44 2855 3521