Newsletter
April 2022

Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars and Notifications

Circulars issued by CBDT in the month of March 2022

1. **CBDT issues Circular for TDS on Salary for FY 2021-22**

   Circular No. 4 / 2022, dated 15th March 2022.

   CBDT issues Circular for TDS applicable on income chargeable under the head "Salaries" during FY 2021-22. The Circular explains related provisions and the Rules along with illustrations and various Forms applicable for TDS compliance.

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

2. **CBDT relaxes e-filing of Form 3CF, allows physical filing until availability of e-filing facility or upto September 30.**

   Circular No. 5 / 2022, dated 16th March 2022.

   CBDT allows physical filing of Form No. 3CF required under the provisions of Section 35(1)(ii)/(iia)/(iii) read with Rules 5C(1A) and 5F(2)(aa). The relaxation from e-filing is applicable from the date of issuance of this Circular upto the date on which e-filing is made available for Form No. 3CF but not beyond Sep 30, 2022.

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

3. **CBDT condones delay in filing of Form 10-IC for AY 2020-21, subject to conditions.**

   Circular No. 6 / 2022, dated 17th March 2022.

   CBDT condones the delay in filing of Form No. 10-IC required as per Section 115BAA read with Rule 21AE for claiming concessional tax-rate of 22% by domestic companies. CBDT specifies following conditions for condonation of delay: (i) ITR is filed on or before the due date under Section 139(1), (ii) Assessee opted for taxation under Section 115BAA in "Filing Status" in "Part A-Gen" of ITR-6, and (iii) Form 10-IC is filed electronically on or before Jun 30, 2022.

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

4. **CBDT issues Circular on relaxation of Rule 114AAA(2) on non-intimation of Aadhaar upto Mar 31, 2023.**

   Circular No. 7 / 2022, dated 30th March 2022.

   CBDT issues Circular No. 7/2022 on relaxation in applicability of Rule 114AAA(2) for non-intimation of Aadhaar upto Mar 31, 2023 and repercussion of non-intimation thereafter. The Circular provides that in case of failure to intimate the Aadhaar by the last extended date i.e. Mar 31, 2022, the PAN allotted to the person shall become inoperative.

   Under Rule 114AAA, such person will not be able to furnish, intimate or quote his PAN and shall be liable to all the consequences such as: (i) inability to file ITR, (ii) non-processing of pending ITRs, (iii) non-issuance of pending ITRs, (iv) non-completion of pending proceedings, (v) TDS at higher rate, (vi) face difficulty in complying with KYC.

   The Circular clarifies that these consequences will not follow for FY 2022-23 as the Rule 114AAA(2) will come into effect on Apr 1, 2023. Thus, taxpayers with inoperative PAN shall not be deemed that they have not furnished, intimated or quoted PAN and shall not be liable for all the consequences for not furnishing, intimating or quoting PAN only upto Mar 31, 2023. However, such taxpayer shall be liable to pay fee as per Rule 114(5A)

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

5. **CBDT extends e-application filing date for registration under Sec. 10(23C), 12A, 80G to Sept 30.**

   Circular No. 8 / 2022, dated 31st March 2022.

   CBDT extends last date for electronically filing of Form No.10AB for seeking registration or approval under Section 10(23C), 12A or 80G to Sept 30, 2022 where the last date for filing falls on or before Sept 29, 2022.

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

Notifications issued by CBDT in the month of March 2022

1. **Govt. extends time-limit for passing order under Sec.26(3) of Benami Act to Sep 30.**

   Notification no. 16 /2022, dated 28th March 2022.

   CBDT issues Notification for extension of time limits for passing order under Section 26(3) of Prohibition of Benami Property Transaction Act, 1988. As per the Notification, Central Government under Section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, (TOLA), specifies that time limit for completion of any action referred to in Section 3(1)(a) of TOLA that relates to passing of any order under Section 26(3) of Benami Act shall be extended to Sep 30, 2022 which was earlier extended to Mar 31, 2022

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

2. **CBDT prescribes fee for delayed intimation of Aadhaar. PANs to become inoperative after Mar 31 on non-intimation.**

   Notification no. 17 /2022, dated 29th March 2022.

   CBDT notifies amendments in Rules 114 and 114AAA. Inserts Rule 114(5A) to provide that delayed intimation of Aadhaar under Section 139AA(2) shall attract fee of: (i) Rs.500/-, where intimation is made within three months from the date prescribed under Section 139AA(2) and (ii) Rs.1,000/-, in all other cases. Amends Rule 114AAA(1) to make PAN inoperative after Mar 31, 2022 for non-intimation of Aadhaar.

   Also amends Rule 114AAA(3) to re-operationalise PAN on payment of fee under Rule 114(5A). CBDT to specify date for bringing into effect Rule 114AAA(2) which provides that a person, whose PAN becomes inoperative still furnishes, intimates or quotes his PAN, it shall be deemed that he has not furnished, intimated or quoted the PAN in accordance with the provisions of the Act and shall be liable for all the consequences arising from default of not furnishing, intimating or quoting PAN. The amended Rules come into effect from Apr 1, 2022

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

3. **CBDT provides window for intimating Aadhaar upto Mar 31, 2023.**

   Press release dated 30th March 2022

   Pursuant to Notification No. 17/2022 dt. Mar 29,2022, CBDT provides a window to the taxpayers upto Mar 31, 2023 to intimate their Aadhaar without facing repercussions. Thus, taxpayers will be required to pay a fee under Section 234H of Rs. 500 up to three months from Apr 1, 2022 and a fee of Rs.1000 after that, while intimating their Aadhaar. CBDT clarifies that till Mar 31, 2023, the PAN of the taxpayers who have not intimated their Aadhaar will continue to be functional for the procedures like furnishing of return of income, processing of refunds etc.. After Mar 31, 2023, the PAN of taxpayers who fail to intimate their Aadhaar, as required, shall become inoperative and all the consequences under the Act for not furnishing, intimating or quoting the PAN shall apply to such taxpayers

   Click here to read/download the press release

4. **CBDT notifies e-Assessment of Income Escaping Assessment Scheme, 2022.**

   Notification no. 18 /2022, dated 29th March 2022.

   CBDT notifies e-Assessment of Income Escaping Assessment Scheme, 2022 in exercise of powers under Section 151A(1)/(2). The Scheme covers: (i) assessment, reassessment or re-computation under Section 147 and (ii) issuance of notice under Section 148. The Scheme provides for automated allocation as per CBDT's risk management strategy for issuance of notice under Section 148 and in a faceless manner, to the extent provided in Section 144B for making assessment or reassessment of total income or loss of assessee.

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

5. **CBDT notifies Faceless Inquiry or Valuation Scheme, 2022.**

   Notification no. 19 /2022, dated 30th March 2022.

   CBDT notifies Faceless Inquiry or Valuation Scheme, 2022. The Scheme covers: (i) issuance of notice under Section 142(1), (ii) making inquiry before assessment under Section 142(2), (iii) directing the assessee to get his accounts audited under Section 142(2A) and (iv) valuation under Section 142A for estimating the value of any asset, property or investment by a Valuation Officer. The Scheme provides that the aforesaid actions shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in Section 144B

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

6. **CBDT exempts non-residents visiting India from TCS under Sec. 206C(1G).**

   Notification no. 20 /2022, dated 30th March 2022.

   CBDT notifies that Section 206C(1G) shall not apply to individuals visiting India who are non-residents as per Section 6(1)/(1A). Section 206C(1G) provides for collection of tax at source from a person remitting money out of India under RBI's Liberalised Remittance Scheme or purchasing an overseas tour package.

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

7. **CBDT notifies ITR Forms for AY 2022-2023**

   Notification no. 21 /2022, dated 30th March 2022.

   CBDT notifies ITR Forms for AY 2022-23. Forms notified are SAHAJ ITR-1, ITR-2, ITR-3, SUGAM ITR-4, ITR-5, ITR-6, ITR-V and ITR- Ack.

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

Direct Tax – Legal Rulings

1. **ITAT: Income from access to online database, not royalty under India-US DTAA.**

   OVID Technologies Inc. [TS-186-ITAT-2022 (DEL)]

   Delhi ITAT allows Assessee's appeal, holds that revenue from providing limited access to online database of text journals and books cannot be taxed as royalty under Article 12 of India-US DTAA.

   Assessee-Company, tax resident of USA, allowed access to data / information which is available on public domain, for a fee after making certain value addition such as analysis, indexing, description and appending notes for facilitating easy access. Revenue held that Assessee had granted license to access online database which falls within the definition of 'Royalty'.

   ITAT states that there is no transfer of legal title in the copy righted article as the same rests with the Assessee, explains that the user has no authority to reproduce the data in any material form to make any translation in the data or to make adaptation in the data. Holds that the end user cannot be said to have acquired a copyright or right to use the copyright in the data, opines that the revenue derived by the Assessee from granting limited access to its database is akin to sale of book, whereby the user only enjoys the content/ product in the normal course of business and does not receive the right to exploit the copyright in the database. Thus, holds that consideration for accessing database of the Assessee cannot be considered as royalty under Article 12 of the India-US DTAA.

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

2. **ITAT: JV's factory in India not fixed place PE absent 'control' over premises. Rejects supervisory PE plea.**

   FCC Co. Ltd [TS-167-ITAT-2022(DEL)]

   Delhi ITAT allows Assessee's appeal, holds that the premises of Assessee's joint venture entity in India did not constitute a 'fixed place' Permanent Establishment (PE) in India for Assessee as per Article 5(1) of India-Japan DTAA, also holds that no supervisory PE was constituted through Assessee's employee visiting India.

   Assessee-Company (FCC Co. Ltd.), a tax resident of Japan engaged in manufacture of clutch systems & facing for cars & bikes, entered into a JV agreement with Rico Auto and formed JV named FCC Rico Ltd (FRL). Assessee received income from three streams from FRL: (i) royalty income, offered to tax @ 10%, (ii) FTS, offered to tax @ 10% and (iii) Income from supply of raw material, components and capital goods, which were not offered to tax being in the nature of business profit, not taxable in India in absence of PE.

   Revenue, held that Assessee's JV premises in addition to hosting the business activities of FRL, served as a 'branch' and office of the Assessee, thereby constituted fixed place PE. Also held that since Assessee's employees helped FRL in setting up a new product line in India, supervisory PE was constituted.

   ITAT explains that manufacture, sale and receipt of consideration for sale occurred outside India, thus the title of goods passed outside India, accordingly holds that Assessee did not carry out any operation in India in relation to supply of raw material/capital goods and thus Assessee does not have a Fixed Place PE in India.

With respect to constitution of Supervisory PE, ITAT peruses documents submitted by the Assessee and opines that "*none of the activities performed by the employees are in the nature of supervisory functions, supervision being the act of overseeing or watching over someone or something which is not reflected in the work done by the engineers in India for FRL.*" States that technical services rendered by Assessee's employees were duly offered to tax and thus, there is no Supervisory PE of the Assessee.

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

3. **ITAT: Baker Hughes' interest on IT refund taxable at 15%. Not 'effectively connected with PE' to attract 40% tax.**

Baker Hughes Singapore Pte [TS-158-ITAT-2022(DDN)]

Dehradun ITAT dismisses Revenue's appeal, 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 provisions of Section 90(2) and opines that the assessment of interest for tax under the treaty would be more beneficial as compared to the assessment under the Act, since tax payable under the Act (40%) is more than the tax payable under the treaty (15%), thus opines that "*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.*".

Rejects Revenue's contention that interest income was effectively connected to Assessee's PE in India and thus was taxable as business income. Remarks, "*Interest income need not be necessarily business income in nature for establishing the effective connection with the PE because that would render provision contained in paragraph 4 of Article XI redundant*". Refers to the provisions of Articles 7 and 11 of India-US DTAA and opines, "*it can be concluded that interest on income tax refund is not effectively connected with the PE either on the basis of asset-test or activity-test*", thus holds that the interest is to be taxed @ 15%.

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

4. **ITAT: Pledging of shares for AE's loan akin to corporate guarantee. Upholds benchmarking on similar lines.**

Virgo Valves & Controls Ltd [TS-167-ITAT-2022(Mum)-TP]

Mumbai ITAT holds pledge of shares against loan granted to AE as an 'international transaction', "*...akin to a corporate guarantee and is, therefore, required to be benchmarked as such*". Scales down the commission rate from 2.5% to 0.5% with a direction for computation based on correct value of shares and for the actual period of pledging, deletes penalty imposed under section 271(1)(c), also upholds LIBOR-based interest rate for benchmarking Euro and US denominated loans granted to AEs of the assessee in AYs 2008-09 to 2010-11.

Assessee had pledged certain shares with State Bank of India as a collateral security for loan to AE which TPO considered as an 'international transaction' and proposed a TP adjustment by imputing commission rate of 2.5% on book value of pledged shares amounting to Rs.6.38 crores. ITAT refers to section 92F(v) that defined 'transaction' and opines that pledging of shares for the benefit of an AE would be construed to be a 'transaction'.

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

5. **ITAT: Upholds Sec.201 proceedings against Biocon for TDS default on year-end provisions, despite suo motu disallowance under Sec.40(a)(i)/(ia)**

Biocon Ltd [TS-216-ITAT-2022(Bang)]

Bangalore ITAT holds that *suo motu* disallowance under Section 40(a)(i)/(ia) does not exonerate the Assessee from the liability under Section 201. Holds Assessee to be 'assessee-in-default' for non-deduction of tax on year end provisions and remits the matter back to file of AO to recompute liability under Section 201(1)/(1A) considering the fact that the Assessee deducted tax at the time of accounting of invoices/payments.

Assessee-Company (Biocon Ltd) disallowed certain expenses under Section 40(a)(i)/(ia) for non-deduction of tax at source under various sections i.e 194C, 194J, 194I, 194H and 195. Revenue, for AY 2012-13, raised a demand of Rs. 1.68 Cr (equivalent to TDS amount) whereas CIT(A) granted partial relief by directing the Revenue to recompute the interest liability only up to the date of deduction as against until the date of order.

ITAT observes that each of the consequences on failure to deduct tax at source i.e. disallowance, TDS proceedings, penalty and prosecution are independent of each other and holds, "*The assessee can escape from the disallowance to be made u/s 40(a)(i)/40(a)(ia), if he is not treated as an "assessee in default"….the converse is not true, i.e., if the assessee makes disallowance u/s 40(a)(i)/40(a)(ia), he will not be exonerated from the liability u/s 201 of the Act.*"

ITAT restores the issue to Revenue's file to enable him to recompute the liability, if any, under Section 201(1) and interest under Section 201(1A).

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

6. **ITAT: Lull in production no reason to disallow depreciation since assets put to use.**

The Fertilizer Corporation of India Ltd [TS-203-ITAT-2022(DEL)]

Delhi ITAT dismisses Revenue's appeal and upholds CIT(A) order allowing depreciation on plant and machinery despite it not been put to use during the year.

Assessee-PSU, incurred continuous losses and for the AY 2013-14 could not carry out its manufacturing activity, its plant and machinery remained idle and the Govt. decided to discontinue the operations of all the units, however, later decided to revive the closed units of the Assessee. Revenue disallowed depreciation of Rs.3.12 Cr on the ground that no manufacturing activity was carried during the year and that the assets were not put to use during the year. CIT(A) allowed Assessee's claim. ITAT notes that the depreciation was allowed to the Assessee in earlier years and rejected Revenue's ground that though depreciation has been allowed in the earlier years on the plant & machinery which has been put to use, the depreciation cannot be allowed in the relevant assessment year on the grounds that there was lull in the production activity.

Explains that the purpose of depreciation is to compensate the diminishing value of the fixed assets and value of the asset invariably befall down from year to year due to wear & tear and the compensation was envisaged in the form of depreciation. Thus, upholds the CIT(A)'s order.

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

7. **ITAT: Upholds disallowance of unascertained loss on embezzlement, pending investigation & not charged to P&L A/c.**

Avijit Dewanjee [TS-130-ITAT-2022(Bang)]

Bangalore ITAT dismisses Assessee's appeal, upholds disallowance of loss claimed in the return of income but not charged to profit and loss account. Remarks that till the point of time Assessee entertained the hope of recovering the loss, the amount could not be allowed as a deduction as it was not possible to hold that it was an ascertained liability.

Assessee-Individual was a dealer in Honda vehicles and claimed Rs.2.24 Cr as loss representing cash embezzled by staff from payments received from customers. Based on the statutory auditor's statement in the audit report that pending final investigation the implication of loss on account of such fraud was unascertainable, Revenue contended that such fraud and the quantum of embezzlement was not ascertained by the Police and thus disallowed the loss.

ITAT notes in Assessee's submission that cash was embezzled on a day to day basis which came to be known in the assessment year under consideration and finds that Assessee had shown the liability under the head 'sundry debtors suspense'. Opines that *"unless the write off takes place at the time of finalisation of account and reflected in the books of account, it cannot be treated as write of at all."* Remarks that the alleged embezzlement loss which was not proved cannot be allowed as a deduction.

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

8. **ITAT: Disallows sales return provision under Sec.37(1), since not 'past event' with 'present obligation' as per AS-29.**

Herbalife International India Private Ltd [TS-126-ITAT-2022(Bang)]

Bangalore ITAT holds that provision for sales return is not allowable u/s 37(1) on the basis that sales return is not a past event for which present obligation would arise requiring creation of provision. Since there is no corresponding increase in stock against such provision, it cannot be considered as an expenditure for the purposes of Section 37(1).

Assessee-Company created provision for sales return consistently in accordance with AS-9 issued by ICAI dealing with Revenue Recognition which was disallowed by the Revenue on the basis that Assessee's estimation was not scientific or reasonable since sales returns for currey year pertained to sales of preceding years, thus, had no relationship with current year sales.

ITAT also refers to AS-4 - Contingencies and Events Occurring after Balance Sheet Date and observes that sales return is a separate event and not a contingency or any condition existing on the Balance Sheet date, requiring its recognition in the financial statements.

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

9. **ITAT: Allows increase in book profit based on Form 26AS, Assessee cannot gain from omission in P&L A/c**

Everest Kanto Cylinder Ltd [TS-135-ITAT-2022(Mum)]

Mumbai ITAT dismisses Assessee's appeal, upholds addition to book profits of the amount offered under normal tax provisions and reflected in Form 26AS.

Assessee-Company was subjected to assessment proceedings for AY 2013-14 whereby Revenue found a difference in the income returned by the Assessee and the amount reflected in Form 26AS and asked Assessee to reconcile it. On such enquiry, Assessee offered the amount to tax in computation under normal provisions whereas Revenue also made the addition to book profits under Section 115JB which was upheld by the CIT(A).

On perusal of Explanation 1 to Section 115JB, ITAT observes that book profit means the profit as shown in the profit and loss account for the relevant previous year drawn according to the provision of Section 129 of the Companies Act, 2013. Observes that it was not Assessee's case that income shown in Form 26AS was not its income or was not required to be shown in the books of account and remarks, "*the income which was now shown and offered by the assessee as income of the assessee was required to be duly shown by the assessee in the book profit while preparing the accounts, including the statement of the profit and loss account*".

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

10. HC: Upholds penalty against Swiss Bank A/c holder for non-compliance with Sec.142(1) notice.

Jayanti Dalmia [TS-174-HC-2022(DEL)]

Delhi HC dismisses Assessee's appeal and upholds the penalty imposed under Section 271(1)(b) for non-compliance of notice issued under Section 142(1).

Pursuant to the information received from the French official sources indicating Assessee-Individual as the account holder with HSBC Bank in Switzerland, Revenue served a notice under Section 142(1) to the Assessee calling upon her to co-operate and fill a consent-cum-waiver form to enable the Revenue for obtaining more information from the concerned Bank. Revenue imposed penalty on the Assessee under Section 271(1)(b) for not complying with the notice which was sustained by the CIT(A) and the ITAT.

HC notes that Assessee disputed Revenue's claim that she was an account holder in the said Swiss Bank and submitted that she was not obliged to fill such consent form as she was in no way involved in those transactions. Opines that, "*if the assessee really had no connection with the Swiss Bank accounts, no prejudice would have been caused to her if she had complied with the notice under Section 142(1) of the Act and filled the consent form*". HC stresses that the Assessee cannot be allowed any benefit because the penalty is upheld with regard to the attorney holder for the same bank account. Thus, upholds the ITAT order confirming the penalty under Section 271(1)(b), holding that no question of law arises and that the penalty imposed cannot be construed as erroneous and unwarranted.

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

11. ITAT: Interest under Sec. 24 not deductible sans proof of completion of construction & readiness to let out

Netra Software Technologies P Ltd [TS-193-ITAT-2022(Bang)]

Bangalore ITAT dismisses Assessee's appeal, disallows interest under Section 24 and rejects the claim for its carry forward on Assessee's failure to prove that the construction of the building was complete and it was ready to let out.

Assessee paid interest of Rs.1.38 Cr on loan taken for construction of commercial property and claimed it under Section 24, of which Rs.41,332 was set off against income from other sources and balance was sought to be carried forward. Revenue held that the interest was incurred in pre-commencement stage and thus was liable to be capitalized to the cost of the building, thus reducing the loss to be carried forward to Rs.1.08 Cr. which was affirmed in rectification order under Section 154 and upheld by the CIT(A).

On appeal, ITAT rejects Assessee's claims that the construction of the building was complete and it was ready to let out but could not be let out due to market conditions, and that the interest expenses were to be allowed. Notes that Assessee did not provide any evidence to suggest that the commercial building was ready to let out or any steps were taken to let it out. Opines that in absence of any evidence with regard to completion of construction of

the building and its readiness to let out, the interest incurred on loan borrowed for construction of building has to be capitalised to the cost of the building. Thus, holds that the Revenue was justified in disallowing Assessee's claim of interest on loan for construction.

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

12. ITAT: Date of possession, not date of registration relevant for construing purchase for Sec.54 benefit.

Reji Easow [TS-155-ITAT-2022(Mum)]

Mumbai ITAT holds that date of possession of the property should be considered as the date of purchase as against date of registration of agreement as contended by the Revenue.

Assessee-Individual, sold his residential property in May 2014 and claimed exemption of Rs.79.92 lakh under Section 54 for AY 2015-16 against a property purchased for which the agreement was registered in Feb'12. Assessee purchased the new property by availing a housing loan and utilised the sale proceeds for repaying the loan. Revenue denied the benefit on the grounds that Assessee did not purchase the new property within the period stipulated in the provision and considered the date of registration of the agreement as the date of purchase which was 2 years and 3 months prior to the sale of original asset.

On appeal, CIT(A) observed that the date of registration of the agreement was to be considered as date of purchase of new asset and denied Assessee's claim. ITAT finds that in respect of the new property, the allotment was made in Jul'11 whereas Assessee took the physical possession in Apr'16.

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

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

Due Date	Form	Period	Comments
07.04.2022		March 2022	Payment of equalization levy
14.04.2022	TDS certificate	February 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in the month of February 2022.
15.04.2022	ESI Challan	March 2022	ESI payment.
15.04.2022	E-Challan & Return	March 2022	E-payment of Provident fund
30.04.2022		March 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 March 2022.
30.04.2022			Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2021 to March 31, 2022
30.04.2022			Due date for deposit of TDS for the period January 2022 to March 2022 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.
30.04.2022		March 2022	Due date of depositing TDS/TCS liabilities under Income Tax Act, 1961 for the previous month.
30.04.2022			A self-declaration form for seeking non-deduction of TDS on specific income as annual income of the tax assessee is less than the exemption limit.

MCA Updates

1. **MCA extends date for confirming "audit trail" use in Auditors report, filing Form CSR-2**

   MCA amends Companies (Accounts) Rules, 2014 to *inter alia* provide that:

   - For Financial Year commencing on or after April 1, 2023 (earlier April 1, 2022), every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording 'audit trail' of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

   - Further extends the date for separate filing of Form CSR-2 (CSR Report) for FY 2020-21, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be, from March 31, 2022 to May 31, 2022.

2. **MCA amends LLP Rules, PAN, TAN to be issued in Certificate of Incorporation**

   MCA notifies LLP (Second Amendment) Rules, 2022, w.e.f. March 4, 2022, with following amendments:

   - Increases the number of individuals that can be appointed as Designated Partner without a DPIN or DIN, from 2 to 5.

   - The Certificate of Incorporation of LLP shall be issued by Registrar in Form 16 mentioning PAN and Tax Deduction Account number issued by the Income Tax Dept.

   - Regarding financial disclosures, provides that where Corporate Insolvency Resolution Process (CIRP) has been initiated against the LLP, or it has come under liquidation under IBC or LLP Act, the statement of account and solvency may be signed on behalf of LLP by IRP or RP or Liquidator or LLP Administrator.

   - Further stipulates that, where CIRP has been initiated against an LLP having turnover upto Rs. 5 Cr. during corresponding FY or contribution upto Rs. 50 lakh has come under liquidation, the annual return of the LLP which it to filed with the Registrar in Form 11, maybe signed on behalf of LLP by IRP or RP or Liquidator or LLP Administrator and no certification by a designated partner shall be required.

   - The formats for various forms namely, RUN LLP, FiLLiP, Form 3, Form 4, Form 5, Form 8, Form 9, Form 11, Form 12, Form 15, Form 16, Form 17, Form 18, Form 22,

Form 23, Form 24, From 25, Form 27, Form 28 (merged with Form 29), Form 31 and Form 32 has been amended and makes all Forms of LLP web based.

3. More than 3.42 lakh companies struck-off till FY 2020-21 under RoC's special drives

- Union Minister of State for Corporate Affairs Shri. Rao Inderjit Singh, in a written reply to Rajya Sabha, states that more than 3.82 lakh companies were struck off till the Financial Year 2020-21, under the Special Drives taken by the Registrar of Companies ('RoC').

- Explaining that the term "Shell Company" refers to a company without active business operation or significant assets, which in some cases are used for illegal purpose such as tax evasion, money laundering, obscuring ownership, benami properties etc., Shri. Rao informs that the Special Task Force set up by the Govt. to look into the issue of "Shell Companies" has, *inter-alia*, recommended the use of certain red flag indicators as alerts for identification of suspected Shell Companies.

- The Minister further informs that RoC struck off those companies after following the due process of law from the Register of companies when RoC has reasonable cause to believe that those companies are not carrying on any business or operation for a period of two immediately preceding financial years.

4. Compliances for new financial year:

- All DIN holders to complete their KYC either through web KYC or through filing form DIR 3 KYC for the financial year 2022-23.

- Directors to provide the disclosure of interest and declaration in form MBP 1 and form DIR 8 to the Company at the first meeting of board of directors.

5. Due dates:

- For filing form MSME to show the outstanding amount exceeding 45 days payable to MSME vendors as on 31st March 2022 – April 30, 2022

- For filing for CSR 2 FY 2020-21 – May 31, 2022

FEMA Updates

1. **Review of FDI Policy for permitting foreign investment in Life Insurance Corporation of India (LIC) and other modifications for further clarity of the existing FDI Policy**

   DIPP Press Note No. 1 (2022 Series) dated March 14, 2022

   The Government of India has reviewed the extant FDI Policy for permitting foreign investment in Life Insurance Corporation of India and other modifications for consistency and further clarify of the existing FDI Policy. Accordingly following amendments have been made under the Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy):

   a. Definition of Convertible Note (Para 2.1.9): in the definition of convertible the period of conversion has been changed from "period not exceeding five years" to "period not exceeding 10 years".

   b. Definition of Indian Company (Para 2.1.27): Definition of Indian Company has been clarified and same reads as under:
      - Indian Company means a Company as defined in Companies Act 2013 which is incorporated in India, or a body corporate established or constituted by or under any Central or State Act. Note: a. It is clarified that reference to "Company" or "investee company" or "transferee company" or "transferor company" in the FDI policy also includes a reference to a body corporate established or constituted by or under any central or state act.
      - It is further clarified that if the term "company" or "Indian company" or "Investee company" is qualified by reference to a company incorporated under the Companies Act, such term shall mean a company incorporated under Companies Act but not a body corporate.
      - It is also clarified that "Indian Company" does not include a society, trust or any entity, which is excluded as an eligible investee entity under the FDI Policy

   c. New Definition of Share Based Employee Benefits added (Para 2.1.47A): a new para is inserted in FDI Policy defining Share Based Employee Benefits as under:

      Share Based Employee Benefits means any issue of Capital Instruments to employees, pursuant to share based employee benefits schemes formulated by a body corporate established or constituted by or under any Central or State Act.

   d. New definition of Subsidiary added (Para 2.1.48A): A new para is inserted defining Subsidiary as under:

      Subsidiary shall have same meaning as assigned to it under Companies Act 2013 as amended from time to time.

e. Definition of Real Estate Business at para 5.1(f) of existing FDI Policy and Note (i) to Para 5.1.10.2 are amended and aligned:

Amended definition of Real Estate business at para 5.1(f) will be as under: "Real estate business" means dealing in land and immovable property with a view to earning profit there from and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations 2014. Further, earning of rent/ income on lease of the property, not amounting to transfer, will not amount to real estate business. The same definition has been amended at Note (i) of Para 5.1.10.2 of FDI Policy.

f. FDI In Life Insurance Corporation – New para 5.2.22.1A is inserted:

FDI in LIC is allowed upto 20% under automatic route subject to conditions. New para 5.2.22.1A has been inserted in existing FDI Policy of 2020.

The other conditions in para 5.2.22.3 of FDI Policy are now bifurcated in two parts through insertions of new paras 5.2.22.3.1 and 5.2.22.3.2 applicable on Indian Insurance Companies / Intermediaries or insurance intermediaries and LIC respectively. The existing clauses (a) to (j) and amended clause (k) under para 5.2.22.3 are placed under para 5.2.22.3.1 titled "Other Conditions applicable to Indian Insurance Companies and intermediaries or insurance intermediaries" and new clauses (a) to (c) are placed under para 5.2.22.3.2 titled "Other Conditions applicable to Life Insurance Corporation of India (LIC). Please refer Press Note for detailed amendments to Other Conditions clause.

Para 4 and Para 5 of Annexure 3 of FDI Policy relating to acquisition of shares under scheme of merger/amalgamation/demerger and issue of employees stock option scheme (ESOPs) / seat equity are amended. The detailed amendments can be seen at Press Note link given at the end.

The above changes will take place with effect from March 14, 2022.

Indirect Tax Updates

GST

1. Special composition scheme for Brick Kilns, as recommended by 45 GSTC

Sl No	Tariff item, sub-heading, heading or Chapter	Description (Brick Kilns)
1	6815	Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks
2	69010010	Bricks of fossil meals or similar siliceous earths
3	69041000	Building bricks
4	69051000	Earthen or roofing tiles

Brick kilns has been brought under special composition scheme with threshold limit of Rs. 20 lakhs Aggregate Turnover, with effect from 1.4.2022. Bricks will attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.

All the relevant Notifications are as follows:

Click here to read / download the Notification No. 03/2022-Central Tax dated 31st March 2022.

Click here to read / download the Notification No. 04/2022-Central Tax dated 31st March 2022.

Click here to read / download the Notification No. 02/2022-Central Tax (Rate) dated 31st March 2022.

Click here to read / download the Notification No. 01/2022-Central Tax (Rate) dated 31st March 2022.

Customs

2. Exemption benefit of IGST and Compensation Cess to Export Oriented Units (EOU) on Imports has been extended up to 30/06/2022.

Click here to read / download the Notification No. 18/2022-Customs dated 31st March 2022.

3. Exemption from Integrated Tax and Compensation Cess has been extended by another three (03) months i.e., up to 30.06.2022 on goods imported against AA/EPCG authorizations.

Click here to read / download the Notification No. 19/2022- Customs dated 31st March 2022.

4. CBDT exempts the deposits, -
   a. with respect to goods imported or exported in customs stations where customs automated system is not in place,
   b. with respect to accompanied baggage,
   c. other than those used for making payment of, -
      (i) any duty of customs, including cesses and surcharges levied as duties of customs
      (ii) integrated tax
      (iii) Goods and Service Tax Compensation Cess

(iv) interest, penalty, fees, or any other amount payable under the said Act, or the Customs Tariff Act, 1975 (51 of 1975),

from all the provisions of section 51A of the said Act.

Click here to read / download the Notification No. 19/2022-Customs (N.T.) dated 30th March 2022.

5. The Central Government has further amended the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR) to simplifying the procedures with a focus on **automation and making the entire process contact-less** and the same are as follows:

a) The process is being automated. The Rules prescribe the submission of the necessary details electronically, through the common portal. (The common portal is the one notified vide notification 33/2021 dated 29-03-2021 and accessible at the URL www.icegate.gov.in).

b) The various forms have been standardized and notified for the purpose of electronic submission of details.

c) Individual transaction based permissions and intimations, such as - intimation of the intent to import goods at a concessional rate of duty, intimation of the receipt of goods, permission to re-export or clear goods domestically etc., are all being done away with.

d) A monthly statement would to be submitted by the importer on the common portal

e) A procedure for inter-unit transfer of the imported goods has been provided for.

f) An electronic option for voluntary payment through the common portal, as specified in the rules, is also being developed for implementation.

Click here to read / download the Notification No. 07/2022 - Customs (N. T.) dated 01st February 2022.

Click here to read / download the Circular No. 04/2022-Customs dated 27th February 2022.

Notification issued by Department of Commerce

6. The existing Foreign Trade Policy 2015-2020 which is valid upto 31.03.2022 is extended upto 30th September 2022.

Click here to read / download the Notification no. 64 / 2015-2020 dated 31st March 2022.

7. As per the notification No-58/2015-2020 issued DGFT. The IEC holders has to update the details in its IEC every year during April-June period. even there is no changes in the IEC Details same needs to be confirmed online.

Click here to read / download the Notification No-58/2015-2020 dated 12th February 2021.

8. The RCMC (Registration Cum Membership Certificate) Holders to be renew their certificate for FY-2022-23 in DGFT Portal as per the Trade Notice-35/2021-22.

Click here to read / download the Trade Notice No - 35/2021-2022 dated 24th February 2021.

Indirect Tax Rulings

1. **2022-TIOL-174-CESTAT-AHM**

Astron Zinc Industries Vs CCE & ST

CX - Assessee had filed a refund claim application for duty deposited during investigation of case and Pre-deposit made under Section 35F of Central Excise Act, 1944 - Assessee suo motu deposited amount of duty during investigation - The said amount become refundable consequent to Tribunal's order dated 12.01.2018 - Before this date, there was no reason for refunding amount even in terms of Section 11B ibid, if any, refund is arising out of the order of appellate authority - The relevant date for filing refund is within one year from the date of such order therefore, when refund itself was not arising before the Tribunal's order, there is no question of any interest - However, for entertaining the appeal, assessee is required to pay 7.5% or 10% as pre deposit in terms of section 35F ibid - If any assessee pays an amount more than that which is otherwise not required, no interest is accurable on amount over and above the mandatory pre deposit in terms of Section 35FF ibid - Therefore, demand of interest on refund over and above the mandatory pre deposit was rightly rejected: CESTAT

- Appeal dismissed: AHMEDABAD CESTAT

2. **2022-TIOL-175-CESTAT-MUM**

BA Continnum India Pvt Ltd Vs CST

ST - Issue arises for consideration is, whether the appellant had suo motu reversed excess CENVAT Credit taken under intimation to Revenue, which was admittedly never used, whether demand of said credit by impugned order along with order for recovery of interest and imposition of penalty under Sections 77 & 78 of Finance Act, 1994 is justified - Impugned order is under the teeth of Supreme Court as per the law laid down in case of Chandrapur Magnet Wires (P) Ltd. 2002-TIOL-41-SC-CX , wherein it has been held that the CENVAT Credit taken and which have been suo motu reversed without utilization, amounts to CENVAT Credit never to have been taken - There is clear distinction made in statute that interest is to be recovered only in case of utilization of CENVAT Credit taken wrongly - Appellant had given cogent explanation that the excess credit occurred due to system error - Further, appellant had reversed the credit suo motu under proper intimation to Department and also had their quantum of refund reduced proportionately - It is apparent that SCN is issued after more than three years from the date of reversal and its intimation to Department - Accordingly, impugned order is set aside: CESTAT

- Appeal allowed: MUMBAI CESTAT

3. **2022-TIOL-411-HC-MUM-CX**

CNH Industrial India Pvt Ltd Vs UoI

CX - Petitioner has prayed for a writ of certiorari for quashing and setting aside the Show Cause Notice dated 17th February, 2006 [Period June 2001 to December 2001] and seeks writ of prohibition to prohibit the respondents from adjudicating the said show cause notice against the petitioner; that the petitioner was never informed about the objection raised by the department to the query raised by the office of the Comptroller and Accountant General nor was informed about the show cause notice allegedly having been transferred to call book - On 18th June, 2008, the name of the company i.e. 'Fiat India Private Limited' was changed to 'New Holland Fiat (India) Private Limited' and on 12th August, 2016, name was changed to 'CNH Industrial (India) Private Limited' - Petitioner requested the respondent No. 2 to provide copies of all the documents relevant to the said show cause notice, as available on record from the files of the respondents, since there was no communication from the respondents, since the date of issuance of show cause notice till the date of said intimation [of personal hearing] dated 19th February, 2019 - as there was no response, the present petition.

Held : There was thus gross delay of more than 12 years in adjudicating upon the said show cause notice dated 17th February, 2006 - If the Respondent would have informed the Petitioner about the said show cause notice having been kept in call book, the Petitioner would have immediately applied for appropriate reliefs by filing the appropriate proceedings - It is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the Show-Cause Notice - The Respondent having issued the Show-Cause notice, it is their duty to take the said Show-Cause notice to its logical conclusion by adjudicating upon the said Show-Cause Notice within a reasonable period of time - In view of the gross delay on the part of the Respondent, the Petitioner cannot be made to suffer - The principles of law laid down by the Division Bench of this Court in the case of The Bombay Dyeing and Manufacturing Company Limited (2022-TIOL-269-HC-MUM-CX) apply to the facts of this case - Bench does not propose to take any different view in the matter - Hearing of show cause notice belatedly is in violation of principles of natural justice - In the matter of WP 1068 of 2021, there is gross delay of more than 10 years on the part of the respondents in adjudicating upon the show cause notices - Impugned SCN(s) are quashed and set aside: High Court [para 14, 16, 26, 27]

- Petitions allowed: BOMBAY HIGH COURT

4. 2022-TIOL-247-CESTAT-BANG

Carclo Technical Plastics Pvt Ltd Vs CCT

CX - Appellant is in appeal against impugned order wherein the refund claim has been dismissed as time barred - The appellant filed refund claim before Assistant Commissioner of Service Tax on 04/02/2013 which was well within the time and Assistant Commissioner returned the refund claim on 03/04/2013 after the last date of filing of refund claim - In fact, Assistant Commissioner of Service Tax could have transferred the application of refund claim to Assistant Commissioner of Central Excise itself, if that could have been done, refund claim would not have been held time barred - Therefore, relying on the decision in case of Anurag Enterprises 2019-TIOL-2426-CESTAT-ALL and AIA Engineering Ltd. , wherein High Court was of the view that the application of refund was filed within time limit and which was returned by authorities and the respondent filed the same after a lapse of time and as such, it is not barred by limitation - Refund claim filed by appellant is in time - As both the authorities have not dealt with merits of claim of refund, impugned order is set aside and matter is remanded to Adjudicating authority to entertain the claim on merits: CESTAT

- Matter remanded: BANGALORE CESTAT

5. 2022-TIOL-406-HC-KERALA-GST

Muhammed Basheer Vs UoI

GST - Petitioner contends that due to the financial difficulty faced, he was unable to clear the tax liability for the period February 2021 and March 2021 and seeks the benefit of payment of the tax in 20 instalments.

Held: Though section 80 of the Act confers power upon the Commissioner to extend the time for payment, the said benefit is limited for payments other than those due under self-assessed returns - In cases of self-assessed returns, the Commissioner of GST does not have the power to permit payment of tax in instalments - As far as the present case is concerned, petitioner has not paid the tax for the period from February 2021 till date and hence he has already got the benefit of almost 12 months - The petitioner has already got the benefit of almost 12 months and respondents have agreed to accept the entire tax, if paid in full, immediately - In view of the aforesaid, a further grant of instalment is not warranted and the petitioner is bound to clear the liability without fail, immediately - Petitioner is bound to pay the tax for the month of February 2021 onwards, within a period of one month respondents shall accept the same and permit the petitioner to continue his registration under the Act - Petition disposed of : High Court [para 6, 8, 9]

- Petition disposed of: KERALA HIGH COURT

6. 2022-TIOL-407-HC-AHM-GST

Parekh Plastichem Distributors LLP Vs UoI

GST- IGST Refund - Main grievance as regards non-sanctioning of the amount towards refund has been taken care - The only issue now remains is as regards the statutory interest to be paid on the delayed refund amount- Counsel for Revenue submits that there was delay in processing the refund amount and actually crediting the said amount in the account of the writ-applicant on account of some technical glitch.

Held: Having regard to the facts and circumstances of the case, held that the writ-applicant herein is entitled to interest on the delayed payment towards refund at the rate of 6% [six per cent] as provided under Section-56 of the Act- Amount towards interest to be paid within a period of six weeks- Application disposed of: High Court [para 11, 12]

- Petition disposed of: GUJARAT HIGH COURT

7. 2022-TIOL-409-HC-MUM-ST

Reliance Transport And Travel Pvt Ltd Vs UoI

ST - Petitioner has prayed for a writ of certiorari and quashing and setting aside the impugned SCNs dated 24th October, 2011, dated 4th September, 2012, dated 4th November, 2013 and dated 20th April, 2015 with consequential reliefs - Petitioner submits that though the respondent no.2 had granted personal hearing to the petitioner on 13th February, 2013, 18th June, 2015 and 19th February, 2016, the respondent no.2 did not pass any order on the said show cause notices nor gave any intimation from 2016 onwards which was the last date of hearing nor passed any order till date; that the petitioner cannot be made to suffer due to the gross delay on the part of the respondents in not adjudicating upon the show cause notices in last several years; that the amounts deposited during the course of investigation under protest are liable to be refunded to the petitioner; that the petitioner was never informed about the transfer of the show cause notices to the call book at any point of time; that show cause notices thus ought to have been adjudicated within a period of one year and there is nothing to show that it was not possible to adjudicate the said show cause notices within the time provided in the said provision of s.73(4AB) of the FA, 1994; that if the respondents are allowed to adjudicate upon the proceedings after the gross delay as is demonstrated in this case and if the respondents call upon the petitioner to pay the substantial amount of duty and penalty with interest for all these years, the petitioner cannot be made to suffer for the payment of interest for the entire period i.e. from the date of show cause notices till the date of passing an order.

Held: Circular relied upon by the respondents for transferring the show cause notices to the call book, clearly indicates that an intimation has to be furnished to the petitioner while transferring the show cause notices to the call book to enable the assessee to challenge the said decision of the respondents - No such intimation was ever given to the petitioner - It is held by the High Court in the case of Bombay Dyeing and Manufacturing Company Limited [2022-TIOL-269-HC-MUM-CX] that the respondent having issued the Show-Cause notice, it is their duty to take the said Show-Cause notice to its logical conclusion by adjudicating upon the said Show-Cause Notice within a reasonable period of time; that in view of gross delay on the part of the respondent, the petitioner cannot be made to suffer; that principles of law laid down by this Court in the above referred judgment would apply to the facts of this case - Writ Petition (L) No. 6097 of 2020 is allowed in terms of prayer clause (a) - Respondents are directed to refund the amount recovered from the petitioner during the course of the investigation within four weeks with interest at the rate of 12% per annum: High Court [para 15, 18 to 20]

- Petition allowed: BOMBAY HIGH COURT

8. 2022-TIOL-403-HC-AHM-CX

L And T Hydrocarbon Engineering Ltd Vs UoI

CX - Larsen & Toubro Ltd. proposed to hive off/demerge its Hydrocarbon Division as a going concern to a separate legal entity - The demerger is governed by the procedure as prescribed under the Companies Act, 1956 particularly Section 394 thereof - As required under the said Companies

Act, Larsen & Toubro Ltd. filed the Company Scheme Petition on 28th June 2013 before the Bombay High Court and the scheme was approved by the Bombay High Court vide its Order dated 20th December 2013 - Copy of the order dated 20th December 2003 passed by the High Court was filed with the Registrar of companies on 16.1.2014, therefore, 16th January 2014 became the effective date - Writ applicant (i.e. the successor entity) vide the application dated 1st April 2014 formally applied to the jurisdictional central excise authority for the new central excise registration in its own name as a new legal entity - Jurisdictional Central Excise officer accepted the said application of the writ applicant and granted fresh central excise registration on 7th April 2014 - Pending the filing of the scheme with the High Court and its approval, the business of Larsen & Toubro Ltd. including its Hydrocarbon Division continued as in the past - Impugned show cause notice dated 31st December 2018 came to be issued to the writ applicant raising the demand of Rs.19,61,06,399/- towards the excise duty for the clearances between December 2013 and March 2014 - The demand of excise duty of Rs.96,20,02,091/- for the clearances effected from December 2013 to March 2014 availing exemption for the supplies against the ICB contract was also sought to be raised - Applicant challenges the said notices on inter alia the ground that the absence of pre-show cause notice consultation in accordance with the CBEC master circular No. 1053/2/2017-CX dated 10th March 2017 is fatal to the impugned show cause notice; that the excise duty has been discharged by Larsen and Toubro Limited i.e. the transferor / demerged entity; that even if it is considered as discharge of excise duty by a wrong person, such duty so paid should be adjusted against the duty payable if any by the correct person; that asking the writ applicant [L&T Hydrocarbon Engineering Ltd.] herein to discharge the very same liability of payment of excise duty i.e. the very duty paid by the Larsen and Toubro Limited would amount to double taxation of the same transaction, and therefore, manifestly illegal.

Held:

+ If in a given case, ex-facie, the ingredients for invoking the extended period of limitation are not attracted based on the very averments in the show cause notice, the notice would be ex-facie barred by limitation. It is now well settled that the question of limitation is a question of jurisdiction. [para 60, 61]

+ In the case on hand, the facts are not in dispute. A pure question of law is to be decided based on the very averments made by the Respondent in the show cause notice. Therefore, the present writ application could be said to be maintainable. [para 72]

+ Insofar as the demand of excise duty of Rs.19,61,06,399/- as detailed in Annexure A to the show cause notice is concerned, the excise invoice has been duly issued by the predecessor entity. On such clearances, the applicable excise duty liability was discharged by the Larsen & Toubro Ltd. This is also evident from the ER-1 return filed by the predecessor. These facts are duly noted and accepted in para 3.8, 3.9, 4.3, 4.5 and 6 reply of the impugned show cause notice. In other words, the demand is raised on the very same dispatches on which same amount of excise duty has been duly discharged by the predecessor. The demand of excise duty from the successor entity is exactly of the same amount as already paid by predecessor. Hence, the present case is a clear case of double taxation. [para 73]

+ In the present case, the Central Government was a party to the scheme through the Office of the Regional Director, Ministry of Corporate Affairs, Western Region Mumbai. Thus, the respondent No. 1 was aware of the Scheme at all times. Once, the Scheme has been approved by the High Court and has attained finality, the Respondent is now barred to raise any objection to the said scheme in the present proceeding. [para 81]

+ The contention of the A.S.G. is that since the present case originated from the intelligence gathered from the DGGI such pre-consulting is not required. The said contention runs contrary to the recent clarification issued by the Board. For the very objection now being raised, a clarification was sought by the DGGI office from the Board as to whether the DGGI formations will fall under the exclusion category of the master circular dated 10th March 2017 read with the circular dated 19th November 2020. The Board vide the Circular No. F.No . 116/13/2020-CX-3 Dated 11.11.2021 clarified that the exclusion from the pre-show cause notice consultation is

case specific and not formation specific. Therefore, merely because in the present case, the case originated on account of investigation of the DGGI will not be a sufficient ground for not following the mandatory procedure prescribed by the Board which is binding on the department. Therefore, it was mandatory for the adjudicating authority in the present case to conduct the pre-show cause notice consultation and in absence of the same the present proceedings could be said to be bad in law and deserves to be quashed and set aside. [para 84]

+ It is clear that a mere mechanical repetition of the language of the provision in the show cause notice would not confer jurisdiction on the Collector of Central Excise to issue a show cause notice under Section 11A of the Act beyond the period of six months taking advantage of the proviso to the Section. [para 103]

+ The taxable event for the levy of excise duty is manufacture. In that sense, it is not even a tax on goods. Demanding excise duty once again on the same taxable event, even on the ground that the liability towards the excise duty ought to have been discharged only by the transferee would amount to double tax. [para 109]

+ The present impugned notice is raising excise duty demand on the very same goods on which the duty has already been paid by the L&T (albeit at nil rate availing the exemption) and accepted by the department. This also is a clear case of double taxation in the sense that same goods are being subject to excise duty against two persons which is impermissible. [para 122]

+ Without anything more, the registration granted by the central excise department to the predecessor Larsen & Toubro Limited could be said to have automatically stood vested as a registration in favour of the writ applicant. The formal application made on 1st April 2014 by the writ applicant for fresh registration could be said to be a compliance of the procedural requirement out of the abundant caution and was an unnecessary step. It is more in the nature of intimation of the department to formally correct the name of the writ applicant in its record. Hence, the objection that the writ applicant has not taken a registration in its name prior to 1st April 2014 is also invalid. [para 125]

Conclusion: [para 127]

[a] The Revenue is not correct in its stance that in the case on hand, the pre-show cause notice consultation was not necessary as the impugned show cause notice is for preventive / related to an offence. Just because, the origin of the show cause notice is the intelligence gathered from the Additional Director General, the same by itself would not bring the show cause notice within the ambit of preventive / offence.

[b] The extended period of limitation under Section 11A(4) of the Act, 1944 is not applicable in the case on hand as it is the case of the Revenue that the goods were removed illicitly without a statutory invoice. The failure to follow any procedure may be an error or omission on the part of the assessee, but the same, by itself, would not amount to suppression. The question of suppression would arise only when an assessee makes an attempt to obtain a benefit not available to him under the law.

[c] The amalgamation has its origin in the statute and is statutory in character, the transfer and vesting is by operation of law and not an act of a transferor - company nor an assignment by it, but is the result of a statutory instrument. A scheme of amalgamation when sanctioned by the company court under the relevant provisions of the Companies Act is distinct and different from a mere agreement signed by the necessary parties. When an agreement takes place, the transfer of assets takes place by the force of the company's court order and/or by operation of law; it ceases to be a contractual or a consensual transfer. The respondents are bound by the order dated 20th December 2013 passed by the Bombay High Court approving the scheme of demerger.

[d] The writ application challenging the legality and validity of the show cause notice is maintainable as no disputed questions of fact are involved and the legal issues have been decided on the basis of the facts as admitted by the parties. The impugned show cause notice could be said to be lacking inherent jurisdiction and therefore, asking the writ applicant to avail of an alternative remedy, therefore, could not arise.

+ The impugned show cause notices are hereby quashed and set aside. [para 128]

- Petitions allowed: GUJARAT HIGH COURT

9. 2022-TIOL-400-HC-RAJ-GST

Pacific Industries Ltd Vs UoI

GST - Section 25, Rule 41A - Petitioner assails the action of the respondent Department whereby the petitioner was deprived from submitting the Form GST ITC- 02A online and as a consequence, the petitioner was deprived from availing the Input Tax Credit to the tune of Rs.2,58,03,590/- through Form GSTR-3B - Petitioner has raised a pertinent grievance that the Form GST ITC-02A was not available on the GSTN Portal for the entire period of 30 days from the registration of its separate business verticals and even till the date of filing of the instant writ petition and as a consequence, the petitioner was denied the opportunity of transferring the unutilized input tax credit to its new registration which became effective on 16.04.2019 - Petitioner claims to have uploaded a manual copy and submitted the same to the Deputy Commissioner, CTO Ward, A-Circle Udaipur on 14.05.2019 but the same was not accepted - The petitioner claims to be suffering immense financial difficulty on account of not being able to use the unutilised input tax credit of GST to fulfil the tax liability of the new business registration.

Held: Bench is of the firm opinion that the impugned action whereby, the respondents have failed to acknowledge and transfer the input tax credit to the tune of Rs.2,58,03,590/- accruing to the petitioner pursuant to the registration of its new business unit in accordance with Rule 41A of the GST Rules, is grossly illegal, arbitrary and unjust - Respondents are directed to regularise the input tax credit in favour of the petitioner as per entitlement - The petitioner shall be allowed to avail the Input Tax Credit of Rs.2,58,03,590/- through the next GSTR-3B return - Petition allowed: High Court [para 7, 8]

- Petition allowed: RAJASTHAN HIGH COURT

10. 2022-TIOL-236-CESTAT-BANG

Gautam Bhattacharya Vs CCT

ST - Appellants are the partners of partnership firm namely M/s. Ernst & Young, LLP - They had filed their income tax returns showing components such as 'sale of services', against which partners have shown certain amount received from partnership firm as their income - Authorities below after examining the same raised a query to appellants, why not on account of sale of service be taxed under Finance Act, 1994 - The appellants replied to the queries but authorities below confirmed the demands on account of service tax payable by appellants - The service recipient at the best in this case is only a partnership firm - The partner of a partnership firm is none other than the same, therefore, one would cannot provide service to oneself - As there is no recipient of service in this case, no service has been provided by appellant - In income tax returns, figures shown by appellants as sale of service is just a portion of profit earned by them from the partnership firm - On merits itself, appellants are not liable to pay service tax - Moreover, said view has got support from the decision of Mumbai High Court in case of Amrish Rameshchandra Shah 2021-TIOL-583-HC-MUM-ST who is the another partner of appellants - No merit found in impugned orders, same are set aside: CESTAT

- Appeals allowed: BANGALORE CESTAT

11. 2022-TIOL-223-CESTAT-BANG

MSPL Ltd Vs CCE & C

ST - Appellant availed 'own your wagon scheme' introduced by Indian Railways by purchasing and leasing out rakes of railway wagons under agreements to M/s. South Western Railway; the dry leaves of wagons was initially for a primary period of 10 years extendable to secondary period of up to 20 years - Revenue proposed demand of service tax on lease/rental charges received on lease of wagons under category 'Supply of Tangible Goods' as per Section 65(105)(zzzzj) of Finance Act, 1994 - Though the wagons are purchased and provided by appellants, effective control of wagons is with the Indian Railways - The lessor-appellant need not pay for standard

maintenance; Indian Railways will be at liberty to make necessary modifications/changes on leased wagons and that Indian Railways are free to deploy the wagons as per their schedule and not necessarily only to the appellants - It is on record that appellant have paid relevant VAT for the impugned transaction along with penalty though in a belated manner, agreement entered by appellant with Railways cannot be deemed to be a not sale by any standard - As the VAT stands paid in view of the provision of Section 65B(44) of Finance Act, 1994, transaction of appellants constitutes a deemed sale and as such, the supply of wagons by appellants in impugned case will automatically go out of taxable service - Activity undertaken by appellant does not constitute a taxable service of "Supply of Tangible Goods" - Impugned order is set aside: CESTAT

- Appeals allowed: BANGALORE CESTAT

12. 2022-TIOL-218-CESTAT-BANG

Indian Oil Corporation Ltd Vs CC

Cus - The appellants are engaged in business of refining of crude oil and marketing petroleum products and procured Liquified Petroleum Gas or LPG for domestic market by importing the same - The issue arises is, whether the demurrage charges are includible in assessable value - Issue has been settled by Apex Court in case of Mangalore Refinery & Petroleum Chemicals Limited 2015-TIOL-306-SC-CUS wherein it has been held that the demurrage charges are not includible in assessable value - Therefore, demurrage charges are not includible in assessable value as the same are essentially post importation charges that are incurred after the goods reached the Indian ports - So, the demands on account of inclusion of demurrage charges in assessable value are set aside - As regards to entitlement for benefit of exemption Notification Nos. 82/2004-Cus. and 37/2005-Cus., issue of availability of benefit of notification was never raised by appellants during course of filing provisional Bills of Entry - Moreover, neither any protest was made and appellants themselves have classified their product under Tariff Item 2711 13 00 of Customs Tariff Act, 1975 - While filing provisional Bills of Entry, no protest was made with regard to classification of their product, i.e., LPG - Issue of classification cannot be raised to get the benefit of said Notfns - Similar view was taken by Tribunal in case of Hindustan Petroleum Corporation Limited 2020-TIOL-1357-CESTAT-MUM and H.P.C.L 2019-TIOL-1272-CESTAT-KOL - Therefore, appellants are not entitled for benefit of exemption Notification Nos. 82/2004-Cus. and 37/2005-Cus.: CESTAT

- Appeals disposed of: BANGALORE CESTAT

13. 2022-TIOL-361-HC-ALL-GST

Gamma Gaana Ltd Vs UoI

GST - The petitioner had approached this Court seeking that writ be passed to declare Rule 90(3) of the CGST Rules 2017 and corresponding Rule 90(3) of the UPGST Rules 2017 and relevant parts of Circular F. No. 125/44/2019-GST dated 18.11.2019, as ultra vires of Article 14 of the Constitution - The petitioner sought that directions be issued declaring that the fresh applications for refund made pursuant to deficiency memorandums issued under Rule 90(3) of the Central Goods and Services Tax Rules, 2017 and corresponding Rule 90(3) of the Uttar Pradesh Goods and Services Tax Rules, 2017, will date back to the date of the original application for refund - It was also sought that the orders passed against the petitioner be quashed. Held - On the facts in the present case, the refund application of the petitioner cannot be rejected solely on grounds of delay, particularly in ignorance of the directions of the Supreme Court vide its order dated 10.01.2022, wherein it was held that i n cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022 - It was also held that in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply - Considering such observations, the order rejecting the refund claimed by the petitioner, merits being quashed: HC

- Writ petition allowed: ALLAHABAD HIGH COURT

14. 2022-TIOL-362-HC-MP-ST

Al Sadik Haj Tour Organizers Vs CC

ST - The present petitions were filed to contest orders passed by the CESTAT against the petitioner - In the relevant period, a demand of recovery was issued against the petitioner - The petitioner claimed that such order was not communicated to itself - When the petitioner finally obtained a copy of the order, it prepared to file appeal against it, whereupon the appeal came to be dismissed, with directions that the appeal be filed again before a different officer - When the appeal was filed again, it was observed that the delay in filing the appeal is one month and 20 days and the same cannot be condoned, hence the same was dismissed - The petitioner filed appeal before the CESTAT, but that too came to be dismissed.

Held - The dismissal of the appeal on grounds of limitation is not sustainable considering that the O-i-O in question was not served upon the petitioners - Hence the Orders passed by the CESTAT and the Commr.(A) are unsustainable - Matter remanded to the Commr.(A) concerned, for re-consideration on merits: HC

+ From a bare perusal of Sub-section (3A) of Section 85 of the Act 1994, it is luminescent, that an appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 relating to service tax, interest or penalty under this Chapter. The proviso attached to sub-section (3A) provides, that if the Commissioner of Central Excise (Appeals) is satisfied that the appeal was presented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month. Thus, the total period, including the extended period to prefer an appeal under Section 85 of the Act 1994, is three months. The provisions of Section 85 nowhere states that limitation shall commence from the date when the order is served upon the person concerned or his authorized agent. Moreover, Annexure-R/1, dated 31-12-2018 appended to the return filed by the respondent contains instructions (Para 12);

+ Perusal of the order reveals that the copy of the order in question, is served upon the person to whom it has been issued. This is abundantly clear from a perusal of Clauses (1) & (3) of the instructions contained in the impugned order. Moreover, Clause (3) is also important and has direct nexus with the instant matter. It says, that the order which has been issued in the name of a particular person, an appeal should be filed within a period of 60 days from the date when the order is communicated to the person in the name of whom the order has been issued (Para 14);

+ Apparently there was no proper service of the order dated 31-01-2018 passed by the Original Authority/Assessing Authority upon the petitioner, so as to enable him to prefer an appeal before the Commissioner of Central Excise (Appeals) in accordance with Section 85 of the Act 1994. (Para 18);

- Writ petitions allowed: MADHYA PRADESH HIGH COURT

15. 2022-TIOL-217-CESTAT-DEL

KEC International Ltd Vs CCE

CX - The appellants are registered with the Central Excise Department and engaged in the manufacture of galvanised towers and structures, which are dutiable - The appellants supplied their goods, which are subject to Price Escalation Clause, as per purchase agreement and deposited the differential excise duty, if any, upon finalisation of the price between parties - During the course of audit, it was observed that the appellant had issued supplementary invoices on the price variation finalisation, in respect of the clearances made in the previous months. Thereafter, the appellant had paid the differential excise duty including cess against the price variation bills regularised for the goods cleared in the past on payment of duty. The Revenue issued show cause notices, as mentioned in the aforementioned tables. As the appellants had not paid the amount of interest for the period from the date of original invoice till the date of payment of differential duty, upon raising of the price variation bills/ supplementary invoices, show cause notice was issued demanding amount of interest under Section 11 AB read with Section 11 A(2B) of the Act and further penalty was also proposed - On adjudication, the

proposals in the SCN were confirmed. Held - Having considered the contentions, following the ruling of Delhi High Court in the case of Hindustan Insecticides Ltd., which is based on the ruling of the Apex Court in the case of Commissioner Vs. T.V.S. Whirlpool Ltd., it is held that the benefit of extended period of limitation is not available to Revenue in the present matters, there being no element of fraud, mis-statement or contumacious conduct on the part of the appellant - Thus, the demand of interest is hit by limitation: CESTAT

- Assessee's appeal allowed: DELHI CESTAT

16. 2022-TIOL-213-CESTAT-AHM

Hotel Utsav Vs CCE & ST

ST - A ppellant have been discharging service tax in respect of food served in restaurant to their customers - However, they are not paying service tax in respect of packed food which is sold as take away either on the counter of restaurant or through delivery boys to customer's place - Food is not served in the hotel whereas the same is sold in packed form therefore, as per the nature of this activity, it is clearly a sale of food, no service is involved - This issue is no longer res-integra as the same has been considered by Madras High Court in case of Anjappar Chettinad A/C Restaurant 2021-TIOL-1270-HC-MAD-ST - Therefore, the activity is clearly of sale of food and no service is involved - Accordingly, appellant's activity of sale of food does not fall under category of service - Hence, same is not liable for service tax: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

17. 2022-TIOL-209-CESTAT-MAD

Perfect Trading Company Vs CC

Cus - The appellant imported certain goods which were declared as "mini tower computer case with power supply accessories" - The adjudicating authority after considering the facts of case and representation given by appellant that the goods were intended to be supplied to another customer of another country has accepted the request for re-export put forward by appellant - Department has not filed any appeal against said order - Appellant has filed appeal before Commissioner (Appeals) challenging only the imposition of redemption fine and penalty - The contention raised by appellant was that when adjudicating authority allowed the re-export of goods, there was no requirement to impose any redemption fine - It was also contended that the department has failed to bring out any mens rea against importer, for which reason, penalty cannot sustain - Even though there was no appeal filed by department, Commissioner (Appeals) has set aside the order passed by adjudicating authority allowing the appellant to re-export the goods - This conclusion arrived at by Commissioner is highly erroneous in absence of an appeal filed by department - The said order passed by Commissioner (Appeals) to confiscate the goods without option to redeem the goods for re-export requires to be set aside - On such score, when goods have not been intended to be imported by appellant, no penalty can be imposed - Impugned order cannot sustain, same is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

18. 2022-TIOL-203-CESTAT-DEL

Mithila Drugs Pvt Ltd Vs CCGST

CX - The issue arises is, whether refund has been rightly rejected on CVD + SAD paid for regularisation of advance licence (import licence) - Payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme - It is also not disputed that the appellant have paid CVD and SAD in August, 2018 by way of regularisation on being so pointed out by Revenue Authority - Further, Court below have erred in observing that without producing proper records of duty paid invoices in manufacture of dutiable final product, refund cannot be given - Refund of CVD and SAD in question is allowable, as credit is no longer available under GST regime, which was however available under erstwhile regime of Central

Excise prior to 30.06.2017 - Accordingly, appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act - Such refund shall be granted within a period of 45 days alongwith interest under Section 11BB of Central Excise Act - Impugned orders are set aside: CESTAT

- Appeals allowed: DELHI CESTAT

19. 2022-TIOL-202-CESTAT-DEL

Abdul Khalique Vs CCGST

ST - The only grievance of assessee is about the penalty being confirmed against him against the duty liability - To adjudicate as to whether the said imposition is not permissible being disproportionate, Tribunal rely upon the decision of Karnataka High Court in case of M/s. Philip Electronics India Ltd. wherein it has been held that the penalty cannot be more than the tax amount to be recovered from assessee - Keeping in view the decision in Hindustan Steel Limited 2002-TIOL-148-SC-CT-LB and also keeping in view that per day penalty at the rate of Rs.200/- can be levied in terms of sub-clause (3) of section 77 of Central Excise Act and the SCN is silent about specifically invoking the said sub-clause (3), the grievance of appeal stands already covered - The issue, therefore, is no more res-integra - Imposition of penalty of Rs.2,56,000/-+ Rs.5000 + 40318/- as against the duty demand of Rs.40,318/- is therefore, held to be unreasonable being absolutely disproportionate - Question of adjusting the said amount except for Rs.40,318/- from the refund sanctioned to the appellant, therefore, does not arise - The order under challenge is hereby set aside - However, adjudication with reference to impugned SCN's is still pending due to matter being remanded back for afresh adjudication of claim for abatement and reverse charge, same shall take its own independent course - Hence, setting aside of present order under challenge to the extent beyond deduction of Rs.40,318/- shall not be prejudicial to the interest of either of the parties to the lis: CESTAT

- Appeal allowed: DELHI CESTAT

20. 2022-TIOL-229-CESTAT-KOL

Paradip Port Trust Vs CCGST & Excise

ST - The assessee is in appeal against impugned order, whereby demand of service tax has been confirmed under category of Declared Service under Section 66E(e) of Finance Act, 1994, for the period 2013-14 as proposed in SCN - The Tribunal in case of South Eastern Coalfields Limited 2020-TIOL-1711-CESTAT-DEL has examined in detail the provisions of Declared Service under Section 66E(e) of FA, 1994, which was introduced in Negative List based regime effective from 01.07.2012 - The Tribunal came to a conclusion that by collecting the penal amount, it is not the intention of assessee to tolerate non performance of obligation which was cast upon him as per the commercial contract entered by assessee with other party - Rather it was the intention of assessee that the other party should comply with contractual obligations and penal amount was charged only to deter the other party from violating contractual terms - The said decision of Tribunal is squarely applicable in instant case, wherein the amount collected by appellant by encashment of Bank Guarantee for shortfall of quantity as against Minimum Guarantee Tonnage (MGT) as per scheme cannot be said towards tolerating any act or a situation on the part of appellant and thus, there is no rendition of Declared Service under Section 66E(e) by assessee - Hence, impugned demand cannot be sustained and is thus set aside - Penalty imposed on appellant is also set aside: CESTAT

- Appeal allowed: KOLKATA CESTAT

21. 2022-TIOL-227-CESTAT-MAD

Visoka Engineering 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 period involved in these shipping bills are after the amendment of section 149 of Customs Act, 1962 w.e.f. 1.8.2019 - The amended provision states that the proper officer can allow amendment of a document if presented within such time, subject to restriction and conditions as may be prescribed - However, so far there is no

notification issued prescribing time limit or stipulating any conditions for amendment of shipping bill - The department has relied upon Board Circular 36/2010 - The said Circular being issued much prior to the amendment of section 149 of Customs Act, 1962, same cannot be applied to reject the request for conversion of shipping bill, when the Courts and Tribunal has repeatedly held that when the statute does not provide any time limit, the request for amendment cannot be rejected as time barred applying the Board Circular - The second ground for rejection for conversion of free shipping bills is that the goods exported have not been physically examined - There is no requirement under section 149 of Customs Act, 1962 that the conversion can be allowed only if the goods have been subjected to physical examination - Therefore, rejection of request for conversion of free shipping bills to Advance Authorization shipping bills are not justified - Impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

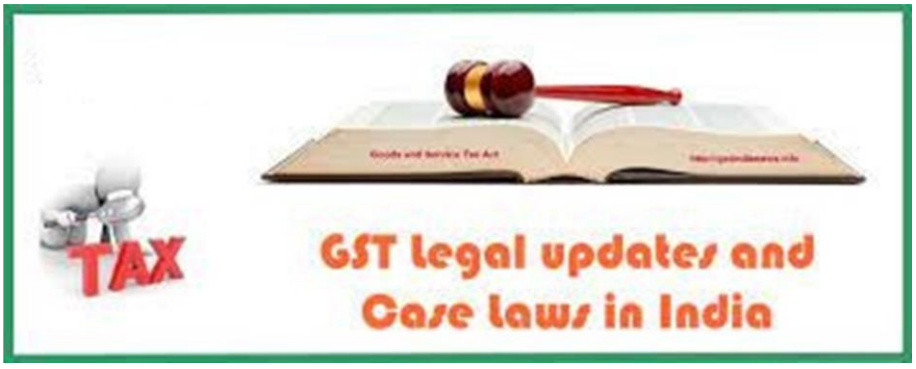
22. 2022-TIOL-09-AAAR-GST

Platinum Motocorp LLP

GST - Appellant is an authorised Dealer of Maruti Suzuki India Limited and purchases 'Demo Cars' for demonstration purpose along with the purchases of vehicles for further supply - Each Demo car is used for demonstration for a maximum period of 2 years from the date of purchase after which it can be sold as a second-hand car -Appellant submits that after use of the Demo Cars for demonstration purposes these are sold off, on payment of GST, which is on the transacted value - Appellant had sought a ruling as to whether Input Tax Credit (ITC) can be availed on such Capital Goods (demo cars) and set off against output tax payable under GST and whether Input Tax Credit (ITC) can be availed on ancillary input services such as insurance and repair and maintenance availed in respect of demo cars - AAR had denied the ITC on both counts and, therefore, the present appeal beforethe AAAR.

Held: The law s.17(5)(a) ofthe Act provides for ITC in case of "further supply" of said vehicles - However, in the present case, first the vehicles are purchased, then they are used for Demonstration of 2 years or so and in the first demonstration run it loses the character of a new vehicle and this demo vehicles is sold akin to second hand goods and which is different from new Vehicle and accordingly treated differently under GST law - Thus it cannot be said that the demo vehicle is for further supply of such motor vehicles - The purpose and intent of the law is thus very clear inasmuch as allowing the ITC will be ultra vires the basic provisions of 'further supply of such motor vehicles' -Demo Vehicles received by the Appellant have never been received with the intent to simply 'further supply/sell' as such - Input Tax Credit on these vehicles, thus, cannot be allowed -On the same rationale, under Section 17(5)(ab), the credit of the input services of repair/ insurance/ maintenance used in respect of said vehicles with seating capacity up to 13 passengers, cannot be allowed - Order of AAR upheld and appeal dismissed: AAAR

- Appeal dismissed: AAAR



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