Newsletter - January 2023

Vishnu Daya & Co. LLP

Chartered Accountants

Contents

Direct Tax – Circulars and Notifications

A. Circulars issued by CBDT in the month of December 2022

1. CBDT releases circular regarding TDS on salary for FY 2022-23

Circular no. 24 / 2022, dated 7th December 2022

CBDT issues Circular for TDS applicable on income chargeable under the head "Salaries" during FY 2022-23. 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.

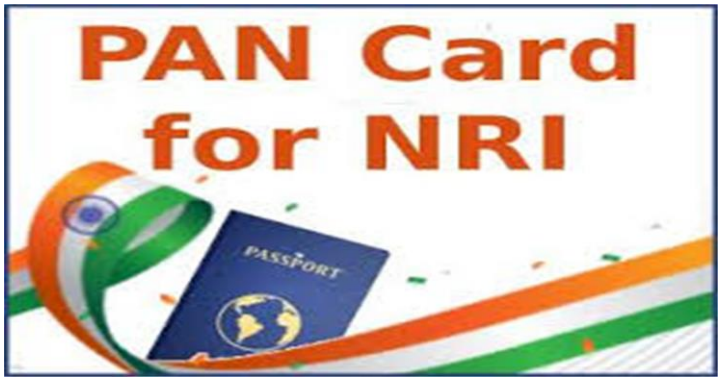
B. Notifications issued by CBDT in the month of December 2022

1. Non Resident's without PAN exempt from e-filing Form 10F upto Mar'23

E-filing notification dated 12th December 2022.

Directorate of Income-tax (Systems) exempts non-resident taxpayers who are not having PAN and not required to have PAN as per the law from mandatory e-filing of Form 10F until Mar 31, 2023. Clarifies that such persons may make statutory compliance of filing Form 10F in manual form.

Click here to read /download the E-filing notification.



Direct Tax – Legal Rulings

1. **ITAT: Seconded employees' salary reimbursement to Toyoda by Indian AE, not FTS**

   TOYODA Gosei Company [TS-993-ITAT-2022 (Bang)]

   Bangalore ITAT allows Toyoda Gosei's i.e. Assessee's appeal, holds that cost of seconded employees reimbursed to the Assessee by its Indian counterparts was not taxable as Fees for Technical Services under Article 12 of India-Japan DTAA.

   For AY 2019-20, Revenue noted that Assessee had entered into secondment agreements with two of its Indian entities whereby 18 of its employees were seconded to these Indian entities, who were functioning as administrative heads at various levels. Revenue held that the services provided by such seconded employees were managerial in nature and also in the nature of consultancy, thus covered within the definition of FTS both under Section 9(1)(vii) as well as Article 12 of India-Japan DTAA and brought to tax Rs.2.52 Cr received by the Assessee.

   ITAT notes that out of 18 employees seconded to India, reimbursement with respect to payment for social security for 11 employees were not accepted by the Revenue. Observes that the Assessee paid salary to the seconded employees as a means of administrative convenience and also deducted necessary tax under Section 192. Further notes that the Revenue accepted the salary payments directly to the employees and while computing total income of the employees, the social security amount was considered as income in the hands of the employee.
   ITAT Finds that the reimbursements paid to the Assessee were on cost-to-cost basis and no element of profit was involved therein, thus holds that "*The amount paid by the assessee company is only the reimbursement, which is part of the salary of expatriate employees, which is covered by the Article 12 of DTAA provisions between India and Japan…. following the judgment of Hon'ble jurisdictional High Court of Karnataka, the issue is covered in favour of the assessee.*"

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

2. **ITAT: Upholds share application money as loan to AE, FCCB interest paid plus 1% markup as ALP interest.**

   Prime Focus Ltd [TS-863-ITAT-2022(Mum)-TP]

   Mumbai ITAT upholds CIT(A) treating share application money as loan to AE, treats 7.375% plus markup of 1% as the arm's length rate of interest in respect of loan advanced by assessee for AY 2010-11 and 2011-12. For AY 2010-11, notes that assessee advanced INR 23 crores to its AE which assessee submitted that to be share application money to its AE and not a loan transaction and interest was charged on such an amount when the same was treated as loan in the subsequent year.

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

3. **HC: Upholds prosecution for undisclosed foreign bank account, considering age at 'commission of offence'**

   Rajinder Kumar [TS-973-HC-2022(DEL)]

   Delhi HC dismisses Assessee's Criminal Miscellaneous Application seeking quashing

of complaint for prosecution under Section 276C(1), 276D and 277 and all consequential proceedings arising therefrom. HC holds that the Assessee cannot be permitted to take benefit of CBDT Instruction dt. Feb 7, 1991, whereby prosecution is not allowed to be initiated against a person above the age of 70 years. HC holds that age of the Assessee relevant for applicability of the CBDT Instruction is the age at the time of commission of offence and not the age at the time of initiation of prosecution.

Assessee-Individual was subjected to post search assessment and Section 271(1)(c) penalty of Rs. 90.45 Cr. based on information received from the French Government that the Assessee had an HSBC account in London since 1991. Revenue, for AY 2006-07, initiated prosecution against the Assessee for not disclosing his correct income and foreign account, against which Assessee filed an application under Section 245(2) Cr.P.C. for dropping of proceedings and consequential discharge which was dismissed by the Trial Court.

HC remarks that it was only after the show cause notice under Section 274 read with Section 271 was issued and penalty under Section 271(1)(b) for non-compliance of notice under Section 142(1) was levied, that the Assessee filed a revised return. Opines that the Assessee, merely by filing the revised return of income declaring the maximum credit balance in the said undisclosed bank account, cannot evade the judicial process of law for not disclosing his correct income and foreign account since the year 1991.

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

4. **ITAT: Restricts TP-adjustment to value of business unit actually transferred, directs excluding assets retained by assessee.**

Saxo India Pvt Ltd [TS-837-ITAT-2022(DEL)-TP]

Delhi ITAT rules on TP adjustment with respect to ALP of consideration received for transfer of business undertaking to AE by assessee (engaged in design and development of customized software applications) for AY 2017-18. Assessee, on 01.04.2016, transferred its IT Support Services and back office support services business units to AE for consideration of Rs.15.83 crores, whereas TPO held that the actual sale should have occured at Rs. 31.39 crores.

ITAT notes assessee's contention that part of assets and liabilities were retained, in support of which assessee had placed various documents in the form of Addendum to BTA, etc. Observes that TPO rejected assessee's contention by stating that neither Addendum to BTA nor the exhibits forming part of BTA were filed before the TPO. Further observes that even though Addendum to BTA and exhibits forming part of BTA were filed before DRP, it found no reason to interfere with TPO's order, which was incorrect.

Thus directs TPO to take cognizance of the Addendum, the exhibits forming part of BTA and the other evidences and calculate the value of only those assets transferred by the assessee and exclude the assets which were retained, for the purpose of determining ALP. Also directs that consideration received by the assessee on transfer of assets shall be computed under the head "capital gains" and not under the head "Income from Business" (as done by AO/TPO).

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

5. **ITAT: Hospital charging market-rates, ineligible for 'tax-exempt' registration. Follows SC Charitable Institutions' ruling.**

Fernandez Foundation [TS-950-ITAT-2022 (HYD)]

Hyderabad ITAT dismisses Assessee's appeal, upholds CIT(E) order rejecting application under Section 12AA, 10(23C) and 80G by holding that the Assessee is involved in activities in the nature of trade and provides services at market rates.

Assessee converted from a private limited company to a Section 8 company w.e.f. Aug 3, 2018 and changed its name to 'Fernandez Hospital'. However while filing Form 10A online, Assessee had given the name as "Fernandez Hospital Foundation". Owing to the mismatch in the name of the Assessee from ROC to Form 10A, a show cause notice was issued to the Assessee for furnishing detailed reply on specific points and upon perusal of evidence, CIT(E) rejected Assessee's application treating the same as non est due to: (i) ambiguity with regard to the name of Assessee company and also list of directors, (ii) Assessee is involved in activities which are in the nature of trade and provides services at market rates, and (iii) Assessee had violated the provision of Section 13 as huge amounts were paid to the directors/ interested persons.

ITAT States that neither the activities nor the management nor the place of services nor the charges for treatment had changed in any manner by conversion and only the name of the Assessee had changed albeit the Assessee is claiming registration / approval.

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

6. **ITAT: Shipping income taxable in Singapore on accrual, not remittance basis. Rejects LoB plea**

Maersk Tankers Singapore Pte. Ltd [TS-929-ITAT-2022(Rjt)]

Rajkot ITAT allows Assessee's appeal, rejects invocation of Limitation of Benefits (LoB) clause in Article 24 and allows benefit of Article 8 on all voyages carried out by the Assessee. Holds that "*the shipping profits derived by a Singapore resident shipping enterprise from the operation of ships in international traffic shall be taxable only in Singapore in accordance with Article 8(1) and the same does not confer the Indian Authorities to the right to tax such profits.*"

Assessee earned freight income from shipping operations in India. Assessee's agent filed provisional return under Section 172(3) in respect of two voyages undertaken by the Assessee, declaring freight income, against which NOC was granted under Section 172(6). However, subsequently, after Assessee filed the final return, the revenue observed that the Assessee had remitted freight income to its agent in Denmark and accordingly held that Assessee was not eligible to claim exemption under Article 8 of India-Singapore DTAA, by invocation of Article 24.

ITAT holds that Revenue was not justified in denying benefit of Article 8 by invoking Article 24(1), opines that Revenue's exercise of co-relating the remittances and denying the certificate issued by the Singapore Tax Authorities is not proper and also that Revenue erred in not considering the Singapore Income Tax Returns filed by the Assessee. Accordingly, sets aside Revenue's order and directs Revenue to allow the benefit of Article 8 to all the voyages carried out by the Assessee.

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

7. **SC: Allows Revenue's appeal against education cess allowability as per Sec.40(a)(ii) retrospective amendment.**

   Chambal Fertilisers & Chemicals Limited [TS-966-SC-2022]

   SC allows Revenue's appeal against Rajasthan HC ruling in Chambal Fertilisers wherein education cess was held to be an allowable expenditure in absence of a bar in Section 40(a)(ii). SC notes Assessee's statement that in view of the amendment by the Finance Act, 2022 with retrospective effect from Apr 1, 2005 to Section 40(a)(ii), the present appeal has to be allowed. SC, in view of Assessee's statement, directs that "*the Education cess paid by the respondent-assessee would not be allowed as an expenditure under Section 37 read with 40 (a) (ii) of the Income Tax Act, 1961.*". Assessee also states that it has also paid the tax applicable on the disallowance. Thus, SC allows Revenue's appeal.

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

Direct Tax/ PF / ESI Compliance due dates during the month of January 2023

Due Date	Form	Period	Comments
07.01.2023	Challan No. 285	December 2022	Payment of equalization levy
07.01.2023	Challan No. 281	December 2022	Due date for deposit of tax deducted /collected
07.01.2023	Challan No. 281	October to December 2022	Due date for deposit of tax deducted /collected when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
14.01.2023	TDS certificate	November 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M.
15.01.2023	Form 27EQ	October to December 2022	Quarterly statement of TCS for the quarter ending December 31, 2022.
15.01.2023	ESI Challan	December 2022	ESI payment.
15.01.2023	E-Challan & Return	December 2022	E-payment of Provident fund
30.01.2023	TCS certificate	October to December 2022	Quarterly TCS certificate in respect of the quarter ending December 31, 2022
30.01.2023	challan-cum-statement	December 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194-M.

31.01.2023	Form 26Q, 24Q, 27Q	October to December 2022	Quarterly statement of TDS deposited for the quarter ending December, 2022
31.01.2023	Form No. 3CEAC	Accounting year	Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is a non-resident

Indirect Tax compliance due dates during the month of January 2023

DUE DATE	TYPE OF THE TAXPAYER	FORM TYPE	FORM FREQUENCY
10-01-2023	Persons required to deduct TDS under GST	GSTR-7	Monthly
10-01-2023	E-commerce operators who are required to deduct TCS uder GST	GSTR-8	Monthly
11-01-2023	Tax payers having an aggregate turnover of more than **Rs. 5 crores**	GSTR-1	Monthly
11-01-2023	Tax payers having an aggregate turnover of not more than **Rs.5 crores**	GSTR-1	Monthly
13-01-2023	Tax payers having an aggregate turnover of not more than **Rs.5 crores** & opted for QRMP scheme (Oct-Dec 22)	GSTR-1	Quarterly
13-01-2023	Non Resident Taxable person (NRTP)	GSTR-5	Monthly
13-01-2023	Input Service Distributors (ISD)	GSTR-6	Monthly
18-01-2023	Composition Taxpayer	CMP-08	Quarterly
20-01-2023	Tax payers having an aggregate turnover of more than **Rs.5 crores**	GSTR-3B	Monthly
20-01-2023	OIDAR service provider	GSTR-5A	Monthly
20-01-2023	Tax payers having an aggregate turnover upto **Rs. 5 crores**	GSTR-3B	Monthly
22-01-2023	Tax payers having an aggregate turnover upto **Rs.5 crores** and opted for QRMP scheme (Part-A states/UT) (Oct- Dec 22)	GSTR-3B	Quarterly
24-01-2023	Tax payers having an aggregate turnover upto **Rs.5 crores** & opted for QRMP scheme (Part-B states/UT) (Oct- Dec 22)	GSTR-3B	Quarterly
28-01-2023	Persons who have been issued a Unique Identification Number	GSTR-11	Monthly
31-01-2023	Opt-in opt out of QRMP scheme for quarter Jan-Mar 2023		

MCA Updates

The Ministry of Corporate Affairs is launching Second set of Company Forms.

Covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms will be launched on 09th January 2023 and the remaining 46 forms on 23rd January 2023.

List of 10 Company forms will be rolled-out on 09th January 2023:

SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1.

List of 46 Company forms will be rolled-out on 23rd January 2023:

DIR-12, DIR-11, DIR-3, DIR-3C, DIR-5, DIR-6, INC-12, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-4, INC-6, MGT-14, MR-1, MR-2, NDH-4, PAS-3, SH-7, SH-11, SH-8, SH-9, NDH-1, NDH-2, NDH-3, GNL-3, PAS-6, MGT-3, PAS-2, DIR-9, DIR-10, AOC-5, FC-1, FC-2, FC-3, FC-4, GNL-2, GNL-4, MSC-1, MSC-3, MSC-4, RD-1.

To facilitate implementation of these forms in V3 MCA21 portal, stakeholders are advised to note the following points:

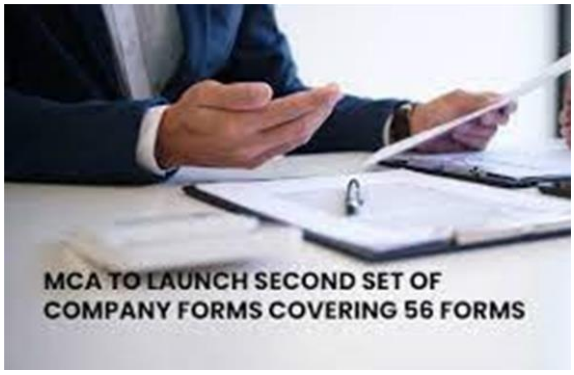
(1) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023.

(2) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 46 forms which are planned for roll-out on 23rd January 2023.

(3) All stakeholders are advised to ensure that there are no SRNs in pending payment and Resubmission status.

(4) Offline payments for the above 56 forms in V2 using Pay later option would be stopped from 28th December 2022 12:00 AM. You are requested to make payments for these forms in V2 through online mode (Credit/Debit Card and Net Banking).

(5) V2 Portal for company filing will remain available for all the forms excluding above mentioned 56 forms.



FEMA

I) Reserve Bank of India (Financial Statements – Presentation and Disclosures) Directions, 2021 – Disclosure of material items

These instructions are applicable to all commercial banks. These instructions shall come into effect for disclosures in the notes to the annual financial statements for the year ending March 31, 2023 and onwards.

1. In terms of Part A of Annexure II to the Directions, in case any item under the subhead "Miscellaneous Income" under the head "Schedule 14-Other Income" exceeds one per cent of total income, particulars shall be given in the notes to accounts. Similar instructions exist in case of subhead "Other expenditure" under the head "Schedule 16-Operating Expenses".

2. In order to ensure greater transparency, it has been decided that banks shall also disclose the particulars of all such items in the notes to accounts wherever any item under the Schedule 5(IV)-Other Liabilities and Provisions-"Others (including provisions)" or Schedule 11(VI)-Other Assets-"Others" exceeds one per cent of the total assets.

3. Further, Payments Banks shall also disclose particulars of all such items in the notes to accounts, wherever any item under the Schedule 14(I)-Other Income-"Commission, Exchange and Brokerage" exceeds one per cent of the total income.

4. We also invite attention to Clause 6 of the Chapter IV of the Directions ibid, in terms of which more comprehensive disclosures than the minimum required are encouraged, especially if such disclosures significantly aid in the understanding of the financial position and performance of banks.

II) ELIGIBLE ENTITIES TO HEDGE THEIR EXPOSURE TO PRICE RISK OF GOLD ON EXCHANGES IN IFSC

Resident entities in India are currently not permitted to hedge their exposure to price risk of gold in overseas markets. On a review, it has been decided to permit eligible entities to hedge their exposure to price risk of gold on exchanges in the International Financial Services Centre (IFSC) recognised by the International Financial Services Centres Authority (IFSCA).

III) Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022

Hedging of Commodity Price Risk and Freight Risk in Overseas Markets

Within the contours of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No. FEMA. 25/RB-2000 dated May 3, 2000), the Reserve Bank issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act, 1999 (Act 42 of 1999).

These Directions lay down the modalities for the AD Cat-I banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers / constituents. The Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 are enclosed herewith. AD Cat-I banks may bring the contents of these Directions to the notice of their customers/constituents concerned.

IV) Review of SLR holdings in HTM category

1. At present, banks have been granted a special dispensation of enhanced Held to Maturity (HTM) limit of 23 per cent of Net Demand and Time Liabilities (NDTL), for Statutory Liquidity Ratio (SLR) eligible securities acquired between September 1, 2020 and March 31, 2023, until March 31, 2023.

2. On a review, it has been decided to further extend the dispensation of enhanced HTM limit of 23 per cent of NDTL upto March 31, 2024 and allow banks to include securities acquired between September 1, 2020 and March 31, 2024 under the enhanced limit of 23 per cent.

3. The enhanced HTM limit of 23 per cent shall be restored to 19.5 percent in a phased manner, beginning from the quarter ending June 30, 2024, i.e., the excess SLR securities acquired by banks during the period September 1, 2020 to March 31, 2024 shall be progressively reduced such that the total SLR securities held in the HTM category as a percentage of the NDTL do not exceed:
   a. 22.00 per cent as on June 30, 2024
   b. 21.00 per cent as on September 30, 2024
   c. 20.00 per cent as on December 31, 2024
   d. 19.50 per cent as on March 31, 2025

V) Standing Liquidity Facility for Primary Dealers

1. Monetary Policy Statement dated December 07, 2022, it has been decided by the Monetary Policy Committee (MPC) to increase the policy repo rate under the Liquidity Adjustment Facility (LAF) by 35 basis points from 5.90 per cent to 6.25 per cent with immediate effect. 2. Consequently, the standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 6.00 per cent and 6.50 per cent respectively, with immediate effect.

2. All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as indicated below:

   Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (9.15 per cent) or Bank Rate plus 5.0 percentage points (11.15 per cent).	Bank Rate plus 3.0 percentage points (9.50 per cent) or Bank Rate plus 5.0 percentage points (11.50 per cent).

Indirect Tax Updates

GST Updates

1. **Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017:**

The board has clarified the above issue as under:

In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act, which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.
In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.
In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
In the case mentioned at Sl. No. 1,	The supplier of service shall report place of supply of such service by selecting State code

what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in **FORM GSTR-1**?	as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in **FORM GSTR-1**.

Click here to read/ download Circular No. 184/16/2022-GST dated 27th December 2022

2. Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation:

Board has clarified the above issue as under:

Issue	Clarification
In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. • Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. **within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be**.
How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the

	provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act. • In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. • In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. • Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.

Click here to read / download Circular No. 185/17/2022-GST dated 27th December 2022

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the below issues:

a. Taxability of No Claim Bonus offered by Insurance companies

Issue	**Clarification**
Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	As per clause (a) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15 of the CGST Act. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance

	company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

b. applicability of e-invoicing w.r.t an entity:

Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax dated 21st March 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

Click here to read/ download Circular No. 186/18/2022-GST dated 27th December 2022

4. Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016

As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.

Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-

25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

Click here to read/ download Circular No. 187/19/2022-GST dated 27th December 2022.

5. Prescribing manner of filing an application for refund by unregistered persons:

In order to enable such unregistered person to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Further, sub-rule (2) of rule 89 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. 26/2022-Central Tax dated 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the following:

a. Filing of refund application:

Unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category 'Refund for unregistered person'. The applicant shall upload statement 8 (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

b. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

c. Minimum refund amount:

Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

d. In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

Click here ***to read/ download Circular No. 188/20/2022-GST dated 27th December 2022***

6. Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19:

Circular No. 183/15/2022-GST dt. 27.12.2022 has been issued to provide clarification regarding the manner of dealing with discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19, as under:

In the following circumstances:

a) Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.

b) Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.

c) Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.

d) Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.

The proper officer shall seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR-3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i. that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents
ii. that he has received the goods or services or both
iii. that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16.
In order to verify the condition of clause (c) of sub-section (2) of section 16 that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer.

- In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate

issued by CAs can be verified from ICAI Website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx.

- In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

In circumstance listed out in point (d), additionally, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

It may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.

It may also be noted that the clarifications given here are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

Click here ***to read/ download Circular No. 183/15/2022-GST dated 27th December 2022.***

Central Tax Rate

1. Click here to read /download the notification 12 / 2022 dated 30th December 2022.
2. Click here to read /download the notification 13 / 2022 dated 30th December 2022.
3. Click here to read /download the notification 14 / 2022 dated 30th December 2022.
4. Click here to read /download the notification 15 / 2022 dated 30th December 2022.

Indirect Tax – Legal Rulings

1. 2022-TIOL-145-AAR-GST

Attica Gold Pvt Ltd

GST - The applicant states that they are into sale of second hand goods i.e used gold jewellry which they are buying from individual persons and hence they following "Marginal Scheme" for discharging GST liability under Rule 32(5) of CGST Rules 2017 - Applicant wants to know whether they can claim Input Tax Credit on expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses while being under Marginal Scheme - Rule 32(5) clearly bars availment of input tax credit on purchase of those second hand goods which he is supplying, however there is no restriction on availment of input tax credit in respect of input services or capital goods - After going through section 16 of CGST Act 2017 i.e Eligibility and conditions for taking input tax credit, it can be seen that there is no bar on registered tax payer to claim input tax credit on input services and corresponding expenses like Rent, Advertisement expenses, commission, Professional expenses, other like expenses and capital Goods while being under Margin Scheme (Rule 32(5) of CGST Rules) - Hence, applicant who is under Marginal Scheme can claim Input Tax Credit on expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017 - ITC can be claimed on Capital Goods by the Applicant under Marginal Scheme subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017: AAR

- Application disposed of: AAR

2. 2022-TIOL-1184-CESTAT-KOL

Charanjit Singh Vs CC

Cus - Appellant filed the appeals against imposition of penalty under Section 112(a), 112(b) & 114AA of Customs Act, 1962 - The allegations are made that appellant had actively participated in operations regarding fraudulent import of said cars and undertook the clearance of cars, where said car was cleared as per declaration - There was no mis-declaration at all as these documents were being forwarded from foreign countries - At the most, appellant has acted as mode to hand over all documents - Appellant is not aware about contents of documents - Allegation of abetment charged upon on appellant are totally false and baseless in nature - Authorities below had discussed in detail in respect of imposition of penalty on appellant - It is evident from record that in some of the cases, appellant's involvement cannot be denied - However, quantum of penalty is quite excessive - Proceeding is hit by bar of limitation - Availing of benefit of Notfn, which the Revenue subsequently formed an opinion was not available, cannot lead to charge of misdeclaration or mis-statement, and even if an importer has wrongly claimed the benefit of exemption, it is for department to find out the correct legal position and to allow or disallow the same - Quantum of penalty is reduced @10% of penalty imposed in each case: CESTAT

- Appeals disposed of: KOLKATA CESTAT

3. 2022-TIOL-154-AAR-GST

Rajasthan Housing Board

GST - Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 of notification no. 12/2017-

Central Tax (Rate) - Services provided by the Rajasthan Housing Board, as a governmental authority, such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are covered under article 243 W of the constitution and exempt as per Sl. No.4 of Notification no. 12/2017-CTR: AAR

- Application disposed of: AAR

4. 2022-TIOL-151-AAR-GST

Capfront Technologies Pvt Ltd

GST - The applicant stated that they are a private limited company, a start-up based in Bengaluru, incorporated on 22-11-2018, with the focus on providing data analytics, digital marketing services & product development; registered under CGST/KGST Act 2017 - The applicant own a mobile application, developed and owned by them, called as "LoanFront", which is a Fintech product and is used as a digital platform to facilitate lending of short term personal loans; they intend to transfer the said mobile application software to their wholly owned subsidiary M/s Vaibhav Vyapaar Private Limited (VVPL) - The Applicant approached the AAR seeking to know whether GST would be applicable on the aforesaid transfer of mobile application software.

Held - The statement of facts conveys that the transfer of business pertains to "LoanFront" app sought to be sold is a fully functional part of the business and the transaction contemplates the transfer of the entire aforesaid business to a new person(WPL), who would not only enjoy a right over the assets but shall also take over the liabilities - It thus postulates that there will be a continuity of business, as the said part of business is said to be functional and is decided to be transferred as a whole to a new owner, and thus amounts to transfer of a going concern, of the said independent part of the business - The transfer of independent part of business pertaining to "LoanFront" app, a mobile software, qualifies to be a transfer of going concern, and the said activity amounts to "Service by way of transfer of going concern as an independent part" and thus is exempted from GST in terms of Sl.no.2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended: AAR

- Application disposed of: AAR

5. 2022-TIOL-1567-HC-DEL-CUS

Singtel Global India Pvt Ltd Vs UoI

Cus - The issue relates to petitioner's claims for unutilised input tax credit relating to three separate periods - Assistant Commissioner rejected the petitioner's claim by questioning the decision of Commissioner (A) to allow petitioner's appeal and reject the Revenue's appeals - Impugned order has been passed in complete disregard of judicial discipline - It is, ex facie, apparent that Assistant Commissioner has attempted to overreach the orders passed by superior authority - Since the revenue was seeking to defend impugned order, Court had called upon Senior Standing Counsel, Central Board of Indirect Taxes and Customs (CBIC), to also file written submissions even though he was not appearing in present petition - He has fairly submitted that impugned order, which proceeds on the basis that petitioner is a provider of intermediary services, is incorrect and it is not open for Revenue to take this stand - Revenue would necessarily have to wait for outcome of appeals preferred by CESTAT - Impugned order is set aside - Revenue is directed to process the petitioner's application within a period of four weeks - The revenue shall also consider the petitioner's entitlement to interest considering the delay in processing its application: HC

- Writ petition disposed of: DELHI HIGH COURT

6. 2022-TIOL-1565-HC-MAD-CUS

N R Colours Ltd Vs CC

Cus - Petitioner has challenged the order rejecting their appeal on the ground that the same is barred by limitation - Petitioner submits that the O-in-O is dated 19.07.2012, however, it is the case of the petitioner that the entity, as against which the order had been passed, had been amalgamated with the petitioner and hence, the assessee, N.R.Chemicals Private Limited, ceased to exist on and from 06.05.2011; that the order has been served in the name of the erstwhile entity, to its address - Case of the petitioner to the effect that order had come to its notice only when a detention notice had been issued on 12.03.2019 and furthermore, on 19.06.2019, upon request made by the petitioner, the Deputy Commissioner of Customs has supplied a copy of the order-in-original paving the way for the filing of appeal before the first Appellate Authority. Held : Contention of the petitioner is acceptable - Bench is of the considered view that the intervening period is liable to be eschewed in the computation of statutory limitation for filing of appeal - Since the order has been received by the petitioner on 19.06.2019 and the appeal has been filed on 20.06.2019, there is no delay - Impugned order passed by the 2nd respondent on 05.08.2020 is set aside and the appeal is restored to the file of the 2nd respondent to be heard on merits and in accordance with law - Petitioner will appear before the Commissioner of Customs (Appeals)/R2 on Friday, the 2nd of December, 2022 at 10.30 a.m. and the appeal shall be disposed within a period of four weeks - Petition disposed of: High Court [para 6, 7, 8, 10]

- Petition disposed of: MADRAS HIGH COURT

7. 2022-TIOL-1157-CESTAT-AHM

Harish And Associates Vs CCE & ST

ST - Assessee is in appeal against demand of service tax, interest and imposition of penalties - They had paid an amount of Rs. 1 Lac vide challan and demand SCN was issued after adjusting Rs. 1 Lac already deposited by them - SCN nowhere alleges suppression or misdeclaration on the part of assessee and therefore, there cannot be any ground for invocation of extended period of limitation - Demand for extended period of limitation cannot be sustained - Assessee is not registered under section 23 of Architect Act, 1972 - Revenue had argued that appellant as commercial concern is engaged in providing services in nature of designing, planning, Architecture and site supervision - Without proper registration no one can provide services in field of Architecture - Thus, the allegation that assessee is providing services of Architect is unsubstantiated - Moreover, in statement of Shri Harish R Patel, Proprietor of assessee firm has also stated that they were giving designing, planning, Architecture and site Supervision of construction work which by no means amounts to provision of Architect Service - No merit found in impugned order, demand is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

8. 2022-TIOL-1154-CESTAT-DEL

Jaisawal Neco Industries Ltd Vs Pr.CCT & CE

CX - The issue involved is, whether the provisions of Rule 3(5)(B) of CCR, 2004 are attracted in case of making a general provision in books of account for slow moving/non moving inventory, without reducing the value of such inventory - Appellant have only created a general provision for slow/non-moving inventory and have admittedly not written of inventory from inventory or the asset account - In actuality, such provision have been made by appropriation in profit and loss account, without writing of any amount/value from the asset/inventory account - Rule 3(5B) of CCR is attracted only when the value of asset and/or inventory is written off fully or partially or wherein any specific provision to write off a fully or

partially has been made in books of account - Appellant have made a general provision, which is not attributable to any particular asset/inventory - Admittedly, revenue have not been able to identify the details of inventory or asset, for which general provision has been made - Appellant have demonstrated that such provision has been made year to year by way of increasing or reducing the provision, depending on usage of inventory as required - Impugned order is set aside - The ground of limitation raised is left open: CESTAT

- Appeal allowed: DELHI CESTAT

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Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients. Each Partner is specialized in different service area. The services are structured differently in accordance with national laws, regulations, customary practice, and other factors. We continuously strive to improve these services to meet the growing expectations of our esteemed customers.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.

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