Newsletter - February 2023

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Contents

Direct Tax – Circulars and Notifications

A. Circular issued by CBDT in the month of January 2023

1. CBDT extends compliance deadline for claiming Sec.54 to 54GB exemptions to Mar'23

Circular no. 1 / 2023, dated 6th January 2023

CBDT, extends time limit for compliance to be made for claiming any exemption under Section 54 to 54GB. The last date has been extended to Mar 31, 2023 if the last date of such compliance falls between Apr 1, 2021 to Feb 28, 2022 (both days inclusive). The extension applies to compliances to be made by the taxpayers such as investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for claiming the exemption.

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

B. Notification issued by CBDT in the month of January 2023

1. Directorate (Systems) expands scope of SFT on interest income, excludes Jan Dhan A/c

Notification no. 1/2023, dated 5th January 2023

Directorate of Income-tax (Systems), issues notification with regard to reporting interest income in Statement of Financial Transactions as per Section 285BA and Rule 114E. As per the new notification, the information is to be reported for all account/deposit holders where any interest exceeds zero per account in the financial year excluding Jan Dhan Accounts. Earlier the reporting requirement was limited to all account/deposit holders where cumulative interest exceeded Rs.5,000/- per person in the financial year. The modification is effective from Jan 5, 2023

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

Direct Tax – Legal Rulings

1. **ITAT: Disallowance of delayed PF deposit not debatable. SC Checkmate ruling applies retrospectively.**

   Garuda Security Services [TS-1005-ITAT-2022 (Bang)]

   Bangalore ITAT dismisses Assessee's appeal, upholds prima facie disallowance of employees' PF & ESI contribution while processing the return by CPC under Section 143(1) based on information in the Tax Audit Report that payment was made after the due date prescribed under Section 36(1)(va). Holds that issue of disallowance of employees' contribution to PF is now settled by SC ruling in *Checkmate Services* and the same cannot be considered as debatable.

   Observes that the issue of non-payment of contribution of PF and ESI of employees is apparent from the tax audit report filed by the Assessee under Section 44AB and on that basis, CPC came to know that there was incorrect claim of deductions towards employees contribution to PF and ESI in the year under consideration and the same was disallowed after following the due procedure prescribed in Section 143(1)(a)(ii) as the issue in dispute is not debatable at the time of disallowance.

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

2. **ITAT: Restricts Sec.54F benefit as sum not duly deposited in capital gains account scheme**

   Ramalingam Nagarajan [TS-24-ITAT-2023 (CHNY)]

   Chennai ITAT dismisses Assessee's appeal, upholds CIT(A) order restricting Assessee's Section 54F claim in respect of capital gains arising on sale of residential property during AY 2015-16 for non-deposit of un-utilized consideration in 'Capital Gains Account Scheme' in terms of Sec 54F(4). Also holds that conditions prescribed in Section 54(2) were not complied as Assessee fails to deposit the unutilized capital gain in 'Capital Gain Account Scheme' on or before due date of furnishing of return of income under Section 139(1) or Section 139(4) and neither furnished any evidence to substantiate the construction of another residential house within three years from sale of original asset to claim deduction under Section 54F.

   Remarks that "*Section 54(2) is a beneficial provision which needs to be construed liberally so as to allow benefits to the tax payer, but the benefit could only be allowed if Assessee demonstrate with evidences that full amount of capital gains is invested in purchase of new residential house property on or before filing of income under Section 139(1) or 139(4)*". ITAT notes that the assessee failed to furnish any evidences with regard to completion of construction of house within three years except a statement showing certain payments to builder and accordingly, failed to satisfy conditions prescribed under Section 54 for remaining account. Accordingly, upholds Revenue's proportionate disallowance of deduction under Section 54F.

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

3. **HC: Rules on taxability of foreign donation for trust not registered under Sec.12A**

   Akshay Educational & Social Welfare Charitable Trust [TS-20-ITAT-2023 (PAT)]

   Patna ITAT holds that donations received without a specific direction of forming part of corpus of trust would fall within ambit of

'income' of a trust derived from property and includible in total income. ITAT remarks that even for the sake of argument if it is accepted that the donation was towards corpus fund, still the donation will form part of taxable income as the trust was not registered under Section 12A.

During AY 2011-12, Assessee, a Trust not registered under Section 12A received donation of Rs.57.25 Lacs from the US-based Association Akshy Patriarca, for infrastructural development and other development and showed it as 'development fund' in its 'receipt and payment account' but not in 'income and expenditure account'. Thus, claimed to be a capital receipt.

ITAT refers to Circular 551 dated January 23, 1990 wherein the intention of legislature to amend Section 2(24) vide Direct Tax (Amendment) Laws, 1987 and 1989 was elaborated and it was stated that corpus donations would be treated as income in hands of the recipient in case the trust complies with the requirements of exemption under Section 11, however, the corpus donation will fall within the ambit of taxable income, in case trust loses exemption under Section 11 or have not complied with the condition laid down in Section 12A. Observes that admittedly the Assessee has not been registered under Section 12A, therefore, the exemption provided under Section 11 and 12 would not be available to the Assessee for the year under consideration and the benefit of pre-amended Section 2(24)(iia) at the time of its insertion from Apr 1, 1973 could not be provided due to subsequent amendment in the year 1987 and 1989 and accordingly, corpus donation would be treated as income in the hands of the recipient in absence of fulfilment of condition of Section 12A.

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

4. **ITAT: Partner's remuneration as salary, bonus or commission not amenable to Sec.192 TDS**

Dhar Construction Company [TS-03-ITAT-2023(GAU)]

Gauhati ITAT holds that the TDS provisions applicable to salary under Section 192 would not be applicable where remuneration includes salary, bonus, commission paid to a partner by a partnership firm. Deletes the addition of Rs.14.82 Lacs on account of non-deduction of tax at source on commission paid to partners. Further deletes the addition of Rs.66.43 Lacs under Section 40(b)(v) on account of excess commission by holding that the excess commission consists of remuneration paid to the working partner which is in accordance with the provisions of Section 40(b)(v) and the partnership deed.

On TDS default on commission paid to partners, ITAT holds that provisions of Section 192 related to salary would not be applicable in cases where remuneration which includes salary, bonus, commission or remuneration, has been paid by partnership firm to its partners, as per Explanation 2 to Section 15. Further notes CIT(A)'s view that the said excess payment to the working partner was in the form of remuneration and commission which was within the permissible limit under section 40(b)(v) and in accordance with the partnership deed. Deletes the addition by observing that the salary, bonus, remuneration or commission are collectively termed by Assessee as remuneration and the remuneration paid during the year is within the permissible limit provided under Section 40(b)(v).

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

5. **ITAT: Holds TP-adjustment cannot be beyond 100% of sale consideration receivable. Denies economic adjustments**

Lotus Footwear Enterprises Ltd [TS-21-ITAT-2023 (CHNY)-TP]

Chennai ITAT directs TPO to restrict TP adjustment considering 100% of sale consideration receivable from Nike, denies economic adjustments in second round of proceedings to assessee (engaged in manufacturing of shoes) for AYs 2009-10, 2010-11 and 2011-12. Notes the matter had been remitted by this bench vide order dated 21.09.2016 observing that assessee entered into an Advance Pricing Agreement (APA) and nature of assessee's business would have considerable bearing on Arm's Length Pricing Study.

Notes that in the second round also, TPO discarded assessee's claim of being a risk bearing manufacturer since assessee bore same risk as borne by any other contract manufacturers. TPO noted that assessee retained 90% of invoice value while selling goods to its AE which sold the goods to final customer (Nike). The AE in turn retained only 1.15% of the balance 10 % and distributed the rest (8.85%) to other AEs as renumeration for Design, Models and Technical, Know-how. Further TPO denied the economic adjustments assessee sought owing to initial years of business operations during start-up phase. Against this, assessee submitted that APA covered AYs 2015-16 to 2019- 20 with a roll back period of three years covering AYs 2012-13 to 2014-15. ITAT takes the above undisputed facts into consideration and states, "*….it could be seen that Ld. TPO has proposed overall adjustment of Rs.60.50 Crores for all the three years which far exceeds the 100% of revenue ultimately realized by the assessee group from Nike. The same could not be held to be justified from any angle particularly considering the fact that in APA for subsequent years, it has been agreed that ALP, in no case, would exceed 100% of sale consideration receivable from ultimate customer*". Accepts assessee's plea and directs TPO to restrict TP adjustment, for all the three years, by considering 100% of sale consideration receivable from Nike. Also directs TPO verify the figure as worked out by assessee and restrict adjustment to that extent, thereby denying any economic adjustment to assessee.

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

MCA Updates

1. **Amendment vide Notification Dated 20th January, 2023 - Companies (Appointment and Qualification of Directors) Rules, 2014.**

   The Form DIR-9 is filed as a report by a company to the Registrar of Company (ROC) for intimating the disqualification of the director. The Form DIR-9 is pursuant to Section 164(2) of the Companies Act of 2013, read with rule 14(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014.

   Whenever a company receives the Declaration given by the Director in Form DIR-8 about the changes in his directorship along with form MBP-1, company shall, within thirty days of such receipt, file Form DIR-9 with the Registrar if there is any disqualification in the Directorship.

   This amendment shall come into force with effect from 23rd January, 2023.

2. As per rule 14(5) of the companies act, an application will be made to the registrar of companies in form DIR-10 and filed before the Regional Director for the removal of name from the disqualification. However, such application be made only after the completion of 5 years.

   This amendment shall come into force with effect from 23rd January, 2023.

3. **Companies (Accounts) Rules, 2014,**

   In the Companies (Accounts) Rules, 2014, Form AOC-5 is to be filed as per Section 128 of the Companies Act, 2013 as a notice of the address at which the books of account of a company are being maintained somewhere else other than registered office.

   An additional requirement of attaching a Photograph of registered office showing external building and second will be inside office also showing therein at least one director / KMP who has affixed his/her digital signature to this form has to be attached.

   This amendment shall come into force with effect from 23rd January, 2023.

4. **Amendment vide Notification Dated 19th January, 2023**

   COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

   For Appointment and fixing of Remuneration of Managerial personnel Form MR-1 and Form MR-2 had to be filed, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

   This amendment shall come into force with effect from 23rd January, 2023.

5. **Companies (Authorised to Register) rules, 2014**

   The Form URC-1 is used for registering an entity as a Part I Company under Companies Act, 2013. Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

   This amendment shall come into force with effect from 23rd January, 2023.

6. **Amendment vide General Circular No. 01/2023 Dated 09th January, 2023**

   List of 45 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, 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:

Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 45 forms which are planned for roll-out on 23rd January 2023.

Therefore, keeping in view the fact above, it has been decided by the Competent Authority to allow additional time of 15 days, without levying additional fees, to the stakeholders, in cases where the due dates for filing of these 45 forms e-forms fall during the period between 07th January 2023 to 22nd January 2023.

7. Two Company Forms will be rolled-out on 23rd January 2023:

For removal of difficulties with respect to filing of forms GNL-2 (filing of prospectus related documents) and MGT-14 (filing of Resolutions relating to prospectus related documents) the ministry allowed to submit the forms in Physical mode only for these two forms with respect to prospectus related documents.

8. Amendment vide Notification Dated 19th January,2023

Companies (Incorporation) Amendment Rules, 2023

- In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules) in rule 4,-

  (i) for sub-rule (2), the following sub-rule shall be substituted, namely:-
  "(2) The name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and such nomination details along with consent of such nominee shall be filled in Form No. INC-32 (SPICe+) as a declaration and the said Form alongwith fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.";
  (ii) in proviso to sub-rule (3), for the words, letters and figure, "in Form No. INC.3" the words, letters and figure, "which shall be filed in form of a declaration in Form no. INC.4." shall be substituted;
  (iii) in sub-rule (4), for the words, letters and figure, "in Form No. INC.3", the words, letters and figure, "in form of a declaration in Form No. INC-4" shall be substituted;
  (iv) in sub-rule (5), for the words, letters and figure, "prior consent of such another person in Form No. INC-3", the words, letters and figure, "consent of such another person and his declaration shall be filed in Form No. INC-4" shall be substituted;
  (v) in proviso to sub-rule (5), for the words, letters and figure, "written consent of the new nominee in Form No. INC-3" the words, letters and figure, "particulars of consent of new nominee in form of a declaration in Form No. INC-4" shall be substituted;
  (vi) in sub-rule (6), for the words, letters and figure, "prior written consent of the person so nominated in Form No. INC-3" the words, letters and figure, "particulars of consent of the person so nominated in form of declaration in Form No. INC-4" shall be substituted;

- In rule 6 of the said rules,-

  (i) for sub-rule (3), the following sub-rule shall be substituted, namely:-
  "(3) The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.";
  (ii) for sub-rule (4), the following sub-rule shall be substituted, namely:-
  "(4) On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.";

- In rule 7 of the said rules,-

  (i) for sub-rule (4), the following sub-rule shall be substituted, namely:-
  "(4) The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely:-

  (i) altered e-MOA and e-AOA;
  (ii) copy of NOC of every creditors with the application for conversion;
  (iii) affidavit of directors confirming that all the members of the company have given their consent for conversion.";
  (ii) for sub-rule (5), the following sub-rule shall be substituted, namely:-
  "(5) On being satisfied that the requirements stated herein have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.";

- in rule 19 of the said rules,-

  (i) in sub-rule (3),-
  (a) in sub-clause (b), the words, letters and figures, "in Form No. INC.14", shall be omitted;
  (b) in sub-clause (d), the words, letters and figures, "in Form No. INC-15", shall be omitted;

- in rule 20 of the said rules,-

  (i) for sub-rule (2), the following sub-rule shall be substituted, namely:-
  "(2) The application under sub-rule (1), shall be accompanied by the following details and documents, namely:-
  (a) the e-Memorandum of Association and e-Article of Association of the company;
  (b) the declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 of the Act and rules made thereunder and that all the requirements of the Act and the rules made thereunder or supplemental thereto have been complied with;
  (c) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
  (d) the certified copy of the resolution passed in general or board meetings approving registration of the company under section 8 of the Act; and
  (e) a declaration by each of the persons making the application.";
  (ii) for sub-rule (5), the following sub-rule shall be substituted, namely:-
  "(5) The Registrar shall after considering two years financial statements immediately preceding the date of application or when the company has functioned only for one financial year, for such year including Board's reports and audit reports, relating to the existing companies, and after considering objections, if any received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.";

- in rule 21of the said rules, for sub-rule (4), the following sub-rule shall be substituted, namely:-

  "(4) An intimation alongwith copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the Registrar through MCA system.";

- in rule 22 of the said rules,- (i) in sub-rule (6), for the words, "attach with the application a certificate" the words, "file the application with a declaration " shall be substituted;

  (ii) in sub-rule (10), in clause (ii), for sub-clause (b) the following sub-clause shall be substituted, namely:-
  "(b) amended e-Memorandum of Association and amended e-Article of Association of the company.";

- In rule 28 of the said rules, in sub-rule (1) for the words, "following documents" th

words "following details and documents" shall be substituted;

- In rule 30 of the said rules,-

  (i) in sub-rule (1), for the words "following documents" the words "following details and documents", shall be substituted;
  (ii) in sub-rule (2) for the words "attached to the application", the words, "particulars of" and for the word "details" the words, "details in the application" shall be substituted.
  (iii) in sub-rule (4),-
  (A) the words "Registrar and" shall be omitted;
  (B) the following proviso shall be inserted, namely:-
  "Provided that the applicant need not to submit separate copy of application with the Registrar and an intimation of filing of application in Form no. INC-23 with the Regional Director shall be shared with the Registrar through MCA system."

- in rule 33 of the said rules, for sub-rule (2), the following sub-rule shall be substituted, namely.-

  "(2) subject to the provisions of sub-rule (1), for effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD-1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director."

- in rule 37 of the said rules,- (i) in sub-rule (3), (a) for the words, "by attaching the following documents", the words "by attaching the following documents and declarations" shall be substituted;

  (b) in clause d., for the words "a copy of altered Memorandum of Association as well as Articles of Association", the words, "altered e- Memorandum of Association as well as e-Articles of Association" shall be substituted;

- In rule 39 of the said rules, in sub-rule (5), for the words "enclosing the altered Memorandum of Association and altered Articles of Association", the words "along with e- Memorandum of Association and altered e-Articles of Association" shall be substituted;

- In rule 40 of the said rules, in sub-rule (2), the words, letters and figure "in e-form RD-GNL 5" shall be omitted;

- In rule 41 of the said rules,-

  (i) in sub-rule (1), in clause (a), for the words, "a draft copy of the Memorandum of Association and Articles of Association", the words "e-Memorandum of Association and e-Articles of Association", shall be substituted;
  (ii) in sub-rule (6), in clause (b) the words, letters and figure "in e-form RD-GNL-5" shall be omitted;

- In Annexure to the said rules,-(i) the form numbers, INC-3 One Person Company-Nominee Consent Form, INC-14 Declaration, INC-15 Declaration and RD-GNL-5- Form for filing addendum for rectification of defects or incompleteness shall be omitted;

  (ii) for Form numbers RUN, INC-4, INC-6, INC- 9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-31, SPICE+ (INC-32), INC-33, INC-34, INC-35 and RD-1

9. Amendment vide Notification Dated 21st January, 2023

COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014

Form MGT-3 is used to give Notice of situation or change of situation or discontinuation of situation, of place where Foreign Register shall be kept. Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023.

10. Amendment vide Notification Dated 20th January, 2023

COMPANIES (MISCELLANEOUS) RULES, 2014

Form MSC-1 is used for applying to Registrar for obtaining the status of dormant company, Form MSC-2 is used for obtain certificate of status of a Dormant Company and Form MSC-3 is used to file return of dormant companies, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023

11. Amendment vide Notification Dated 20th January, 2023

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014

Form PAS-2 is an Information Memorandum which is defined under Section 31 of Companies Act,2013. This form is used by the companies who have to file the Shelf Prospectus. Information memorandum contains information about the securities to be offered by the company, Form PAS -3 is used to file a return of allotment to Registrar within thirty days of such allotment including the complete list of allotees to whom the securities have been issued and Form PAS-6 is a half-yearly 'Reconciliation of Share Capital Audit Report' form. It needs to be submitted by the unlisted public companies to the Registrar of Companies (ROC). The main objective of Form PAS-6 is to report the details and changes in the share capital of companies on a half-yearly basis, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023

12. Amendment vide Notification Dated 20th January, 2023

COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014

New rule 8A has been inserted, Signing of e-forms wherever applicable shall be signed by Insolvency resolution professional or resolution professional or liquidator of companies under insolvency or liquidation, as the case may be, and filed with the Registrar along with the fee as mentioned in Table annexed these rules.

Form GNL-2 is used for submission of documents with the Registrar of Companies, GNL-3 is used to file when a company charges any person with the responsibility of complying with the provisions of the Act and GNL-4 is used to submit such additional documents required by ROC, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023

13. Amendment vide Notification Dated 20th January, 2023

COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014

Form FC-1 is used to Intimate the receipt of foreign contribution by way of gift / as Articles / Securities / by candidate for Election, Form FC-2 is used to Apply for seeking prior permission of the Central Government to accept foreign hospitality, Form FC-3 is used for the acceptance of foreign contribution by an association having definite cultural, economic, educational, religious or social programme and Form FC-4 is used to file Annual Return of a Foreign Company, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023

14. Amendment vide Notification Dated 21st January, 2023

COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014

Form SH-7 is used to give Notice to Registrar of any alteration of share capital, Form SH-8 is used to file the Letter of Offer and Form SH-9 is used to file Declaration of Solvency, Now after this amendment this form is shifted to Online Filing forms with minor changes and has to be filed through V3 portal along with necessary attachments.

This amendment shall come into force with effect from 23rd January, 2023

15. Amendment vide General Circular No. 03/2023 Dated 07th February, 2023

Due to change in way of filing in Version-3, including fresh process of registration of users on MCA-21 and process of stabilization of 45 forms launched with effect from 23.01.2023, and after considering various representations, in continuation of General Circular 01/2023 dated 09.01.2023, it has been decided to allow further additional time of 15 days for filing of these forms, without additional fees, to the stakeholders.

Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, and whose due dates for filing fall between 20.01.2023 and 06.02.2023, can also be filed without payment of additional fees for a period of 15 days.

FEMA

1. **Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds**

   i. Attention is also invited to the Fully Accessible Route (FAR) introduced by the Reserve Bank, vide A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

   ii. The Government Securities that were eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD. FMSD. No.25/14.01.006/2019-20 dated March 30, 2020 and circular no. FMRD . FMID . No. 04 /14.01.006/2022-23 dated July 07, 2022.

   iii. It has now been decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2022-23 as 'specified securities' under the FAR.

2. **The following changes are being implemented with respect to the reporting of foreign investment in SMF on FIRMS portal:**

   i. The forms submitted on the portal will be auto-acknowledged. The AD banks shall verify the same within five working days based on the uploaded documents, as specified. In cases of delayed reporting, the AD banks shall either advise the Late Submission Fee (LSF) to the applicants, which will be computed by the system or advise for compounding of contravention, as the case may be.

   ii. The salient features of the changes made in the system are given below for ready reference.

The forms submitted in FIRMS will now be processed as detailed below:

a. All forms submitted with the requisite documents will be auto-acknowledged on the FIRMS portal with a time stamp and an auto-generated e-mail will be sent to the applicant.

b. The forms submitted within prescribed timelines, will be verified by the AD banks based on the uploaded mandatory documents and ensure that the same are in compliance with the extant guidelines.

c. The system would identify the delay in reporting, if any. For forms filed with a delay less than or equal to three years, the AD banks will approve the same, subject to payment of LSF.

d. The LSF will be computed by the system and an e-mail will be sent to the applicant and the concerned Regional Office (RO) of RBI specifying the amount and the timeline within which it is to be paid to the concerned RO of RBI.

e. Once the LSF amount is realised, the concerned RO will update the status in the FIRMS portal and the updated status will be communicated to the applicant through a system generated e-mail, which can also be viewed in the FIRMS portal.

f. The AD bank will approve the forms filed with a delay greater than three years, subject to compounding of contravention. The applicant may thereafter approach RBI with their application for compounding.

g. The remarks of the AD Bank for rejection of forms, if any, will be communicated to the applicant through a system generated e-mail and the same can also be viewed in the FIRMS portal.

Indirect Tax Updates

1. **Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December 2022:**

   a. **Rab - classifiable under Tariff heading 1702:**

   It has been stated that under the U.P. Rab (Movement Control Order), 1967, "Rab" means 'massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.' Although, a product of sugarcane, Rab exists in semi-solid/liquid form, and is thus not covered under heading 1701. The Hon'ble Supreme Court in its order in Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703.

   Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th of June, 2017).

   b. **Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni:**

   Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni.

   The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st of January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.

   Further, as per recommendation of the GST Council, in view of genuine doubts regarding the applicability of GST on subject goods, matters that arose during the intervening period are hereby regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST, dated the 3rd August, 2022, till the date of coming into force of the above-said S. No. 102C and the entries relating thereto. This is in addition to the matter regularized on as is basis vide para 8.6 of the said Circular.

   c. **Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice':**

   It is hereby clarified that the applicable six-digit HS code for the goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para 4.2 cover all such carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

   d. **Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums'):**

It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

e. Applicability of Compensation Cess on Sports Utility Vehicles (SUVs):

It is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

f. Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate):

On the basis of the recommendation of the GST Council in its 47th Meeting, held in June 2022, the IGST rate has been increased from 5% to 12% on goods, falling under any Chapter, specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, when imported for the specified purpose (like Petroleum operations/Coal bed methane operations) and subject to the relevant conditions prescribed in the said notification. However, some goods specified in the list annexed to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, are also eligible for a lower schedule rate of 5% by virtue of their entry in Schedule I of notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017.

Accordingly, it is hereby clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

Click here to read/download the Circular No. 189/01/2023-GST dated 13th January 2023

2. Clarifications regarding applicability of GST on certain services:

a. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

b. <u>Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:</u>

Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

Click here ***to read/ download the Circular No. 190/02/2023- GST dated 13th January 2023.***

Indirect Tax – Legal Rulings

1. **2023-TIOL-40-CESTAT-AHM**

Sanstar Bio Polymers Ltd Vs CC

Cus - The issue relates to correctness of classification of 'Maize (corn) Starch' declared by appellant to customs for claiming export benefit under DFIA scheme - Export item namely "liquid glucose concentrate (food grade)" was manufactured from using "starch slurry" which is essentially a "starch" albeit in slurry form - However, case of revenue is that since 'Starch' is manufactured out of "Maize" which is base input, correct SION for export item-liquid glucose is 'Maize' specified under SION Entry E76 and not 'Starch' specified under SION Entry E22 and that appellant has mis-classified its product in order to claim undue benefit of DFIA Scheme - There is no dispute to classification of export item - Dispute relates to import item-input - One of the specified import items under E22 is "Starch" whereas "Maize" is the specified import item under SION E76 - Since undisputedly 'Starch slurry' is used as immediate input by appellant in manufacturing of its export item-liquid glucose concentrate, it cannot be said that starch was not appellant's input for export item - It is settled law that when a claim of an applicant under a beneficial scheme or exemption notification, qualifies under two conflicting entries, for having opted for one which is more beneficial to him would not amount to mis-declaration - The immediate parent material was starch slurry i.e. 'starch' and 'not maize' and therefore case of department that SION E76 was correct norm cannot be sustained - Since the immediate parent material for manufacturing exported goods was starch falling under SION E22, it is clear that 'Starch' was correctly applicable SION - Denying the benefit under DFIA on the ground that 'Starch' is not original input and that 'Maize' is original input which alone is eligible for benefit of DFIA is bereft of any legal basis - As regards, jurisdiction of customs to demand duty from appellant invoking section 28AAA of the Act, it is undisputed fact that all the 7 DFIA licences were granted by DGFT are valid and subsisting and further no proceedings for cancellation or suspension of any of these authorizations have been initiated by DGFT - It thus follows that DGFT which is proper authority to determine classification of goods under DFIA claim has not disputed and has accepted the classification of import item under E22 of SION - Further, appellant has correctly classified its product under SION E22 - Finding of commissioner that appellant resorted to mis-declaration and suppressed facts cannot be sustained - Customs would have no jurisdiction to invoke section 28AAA of the Act or to deny exemption from customs duties or any other benefit flowing from such subsisting license - Impugned order cannot be sustained and is set aside: CESTAT

- Appeals allowed: AHMEDABAD CESTAT

2. **2023-TIOL-35-CESTAT-DEL**

CST Vs Simplex Infrastructures Ltd

ST - Department has filed this appeal to assail that portion of order passed by Commissioner that drops the demand proposed in SCN on services rendered by Simplex Infrastructures Limited the sub-contractor to main contractor WPIL Limited and DC Industrial Plant Services Pvt. Ltd. - Commissioner has dropped the demand for work undertaken prior to 23.08.2007, on which date the Master Circular was issued that a sub-contractor would also be liable to pay service tax even if main contractor had paid service tax - It is noticed that dispute relates to period from 2006-07 to 2008-09; SCN was issued on 22.10.2010; the Commissioner decided the matter on 27.11.2013; and the appeal was filed before Tribunal in 2014 - In such circumstances, it is appropriate to examine this issue instead of remitting the matter to Commissioner for taking a decision - It cannot be disputed that prior to issuance of SCN and Master Circular dated 23.08.2007, sub-

contractors were not discharging their service tax liability because of decisions of Tribunal and this fact has also been noticed by Larger Bench while referring to decision of Tribunal in Urvi Construction 2009-TIOL-1890-CESTAT-AHM - The Larger Bench also referred to a number of decisions which had taken view that a sub-contractor was not required to discharge service tax liability if main contractor had discharged the liability - Such being the position, it is clearly a case where sub-contractor was under a bona fide belief that he was not required to discharge service tax liability - In such a situation, extended period of limitation could not have been invoked - Service tax demand for aforesaid work performed by sub-contractor, could not have been confirmed for extended period of limitation - Appeal filed by Department, therefore, deserves to be dismissed: CESTAT

- Appeal dismissed: DELHI CESTAT

3. 2023-TIOL-87-HC-DEL-GST

Rekha Saxena Vs CCGST

GST - Petition is filed quashing the orders dated 29.09.2022 and 16.09.2019 - Petitioner also seeks an order or direction in the nature thereof directing the respondents to revoke the impugned order dated 16.09.2019 and restore the GST registration of the petitioner during the pendency of the present petition.

Held: Record shows that the order of cancellation of registration dated 16.09.2019 has been passed without due application of mind - Inasmuch as there are two contradictory statements contained in the order in the sense that the order begins by referring to a reply dated 12.09.2019 and then goes on to say that no reply has been filed - Petitioner has also not covered herself with glory either inasmuch as it appears that the petitioner filed an appeal against this order dated 16.09.2019 only on 24.08.2022, after a delay of nearly 2 years and 8 months from the date when the order was passed - Appellate authority dismissed the appeal principally on the ground that it was barred by limitation - Bench is of the view that orders cancelling registration are a serious matter, they impact the registrants, and therefore, the officer concerned should carefully pen down the orders, and not rely on the system generated orders - It appears that the order dated 16.09.2019 was framed without due application of mind - Given the statement made by the petitioner that they are willing to pay tax as well as interest and fine, Bench is inclined to give another opportunity to the petitioner to make course correction - Those who are willing to be part of the tax regime should be given, as far as possible, an opportunity to do so - Impugned orders dated 29.09.2022 and 16.09.2019 are set aside - Matter is remitted to the Appellate Authority to examine the same on merits after the petitioner deposits the tax, along with interest and fine - Writ petition is disposed of: High Court [para 11, 12, 12,1, 13.1]

- Petition disposed of: DELHI HIGH COURT

4. 2023-TIOL-11-AAR-GST

Eden Real Estates Pvt Ltd

GST - Supply of services of right to use car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services - supply would be taxable @ 18%: AAR

GST - Apartments sold after receipt of completion certificate - Amounts collected for right to use of car parking space will not be treated as non-GST supply - GST payable on such services: AAR

GST - Even if the customer had not opted for car parking space at the time of purchase of apartment but sought the same after the apartment had received Occupation certificate, yet tax is payable on such supply of services of right to use of car parking space: AAR

- Application disposed of: AAR

5. 2023-TIOL-112-HC-AHM-GST

World Steel Tech India Pvt Ltd Vs State of Gujarat

GST - Petition has been filed seeking directions for quashing and setting aside of (i) show cause notice dated 23.2.2022, (ii) an order dated 8.3.2022 cancelling the registration of the petitioner and (iii) an appeal order dated 7.9.2022, rejecting the appeal of the petitioner on the ground of limitation. Held: It is noticed that it is not in dispute that the petitioner could not file its returns under GST Act, for the period from August, 2021 to January, 2022 because of the financial crisis faced in the business, on account of Covid-19 Pandemic - Though the notice states that the case will be decided ex-parte in case no reply is filed within the stipulated date or failure to appear for personal hearing on the appointed date, evidently, there is no appointed date mentioned for securing personal hearing for the petitioner company - This notice is issued without application of mind as well as in breach of principles of natural justice qua suspension of registration - Insofar as the order is concerned, authority has self-contradicted themselves by initially giving reference to reply dated 6.3.2022 and immediately in the next line stating that no reply to the show cause notice has been submitted; order dated 8.3.2022 is also issued without due application of mind - It would serve the ends of justice in the event the petitioner is provided a fresh opportunity to respond to the show cause notice - Resultantly, the writ petition deserves to be allowed and is accordingly partly allowed - The orders dated 8.3.2022 and 7.9.2022 are hereby quashed and set aside - Registration is restored forthwith - Matter is restored to the file of respondent No.2: High Court [para 8, 8.1, 8.2, 9]

- Petition disposed of: GUJARAT HIGH COURT

6. 2023-TIOL-75-CESTAT-MAD

Ars Steels And Alloy International Pvt Ltd Vs CC

Cus - The only issue that arises is, whether the PSI certificate submitted by appellant-importer was sufficient compliance with Appendix-28 ibid. and that the authorities are justified in ordering confiscation and offering redemption fine in lieu of the same - Authorities have found that violation, if any, has not resulted in any specified categories of items being imported or that there was any reason to hold that there has been an improper importation of goods in question, resulting in confiscation of same - To put it in simple terms, goods have not been imported contrary to any prohibition imposed by or under the Act or contrary to any prohibition imposed by any other law for time being in force - This is because the import is subject to fulfilment of stipulated condition, failing which the only consequence prescribed is 100% inspection of entire consignment - This, ipso facto, therefore, would not tantamount to improper import of goods within the meaning of Section 111(d) of the Act - Consequently, authorities below are not justified in demanding redemption fine and penalty under Section 112(a) of the Act - Impugned order cannot sustain and therefore, same is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

7. 2023-TIOL-124-HC-DEL-GST

Arvind Goyal CA Vs UoI

GST - A search operation was conducted at the residence of the petitioners on 04.12.2020, by certain officers of GST, AE, Delhi, West - During the course of the search, the officers found cash aggregating to Rs. 1,22,87,000/- and took possession of the said cash - Admittedly, no seizure memo was drawn in respect of the said cash - However, a panchanama was drawn up, which indicates that the officers took possession of certain items including cash aggregating to Rs.

18,87,000/- from the room of petitioner no.1 and cash amounting to Rs. 1,04,00,000/- from the room of petitioner no.2 - The said officers also took possession of mobile phones as well as a laptop belonging to petitioner no.1 - Petitioner has challenged the said search operation as unlawful inasmuch as it is contended that the officers could have no reason to believe that any goods liable for confiscation were lying in the premises of the petitioners; that the officers had no reason to believe that any records relevant to the proceedings would be available in the premises; that the action of the officers of taking possession of cash is without authority of law - Respondents have filed counter affidavit stating that a letter dated 04.12.2020 was received by CGST Delhi East Commissionerate Office from CGST Bhopal Commissionerate and the said search operations were pursuant to the same; that the officers had merely "resumed" cash as is noted in the panchnama and therefore, the same cannot be considered as seizure.

Held: One of the principal questions that requires to be addressed is whether cash can be seized by the officers under Section 67(2) of the GST Act - A plain reading of Section 67(2) of the GST Act indicates that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act" - Clearly, cash does not fall within the definition of goods and, prima facie , it is difficult to accept that cash could be termed as a 'thing' useful or relevant for proceedings under the GST Act - Counsel for respondent is unable to point out any provision in the GST Act that entitles any officer of GST to merely "resume" assets - Clearly, the petitioners had not handed over the cash to the concerned officers voluntarily - Undisputedly, the action taken by the officers was a coercive action - Bench finds no provision in the GST Act that could support an action of forcibly taking over possession of currency from the premises of any person, without effecting the same - GST officers have dispossessed the petitioners of the currency found in their premises during search operations conducted under Section 67(2) of the GST Act but have not seized the currency under the said provision - Insofar as WhatsApp chats between petitioners and officers are concerned, which are rather cryptic, Court considers it apposite to give notice to the concerned officers, Mr. Vinod Prakash Sharma, Superintendent and Mr. Sandeep Dhama , and to hear them before making any adverse comments - Insofar as the action of the officers of dispossessing the petitioners of their currency is concerned; it is clear that the said action of taking away currency was illegal and without any authority of law - The amount of Rs. 18,87,000/- has already been returned to petitioner no.1 - The respondents are directed to forthwith return the balance amount along with the interest accrued thereon to the petitioners - The bank guarantee furnished by petitioner no.1 for release of currency is directed to be released forthwith - Officers named are directed to be present in Court on the next date of hearing on 20.02.2023: High Court [para 13, 16, 17, 19, 20, 22]

- Interim order passed: DELHI HIGH COURT

8. <u>2023-TIOL-123-HC-AHM-GST</u>

Orson Holdings Company Ltd Vs UoI

GST - Goods/vehicle have been detained at 06.05 pm at Amirgadh on 27.09.2018, after about expiry of 48 hours of the e-way bill - From the facts, which are robust in nature, it can be gathered that there does not appear to be any ill-intent on the part of the petitioner to use the expired e-Way bill - The company is situated at Howrah, West Bengal and the place of delivery was Jamnagar, Gujarat and in transit, this e-Way bill has expired - Case is squarely covered by the decision of this Court in Shree Govind Alloys Pvt. Ltd. - Petition, therefore, deserves to be allowed - Impugned order demanding a sum of Rs.63,40,000/- is quashed and set aside - Order of detention as well as further notice issued u/s 129(3) in form GST MOV-07 is also quashed and set aside with all consequential benefits - Tax and penalty have been recovered - The penalty being an additional amount in wake of the quashment, the same is to be refunded to the petitioner, with interest, within eight weeks: High Court [para 7 to 11]

- Petition allowed: GUJARAT HIGH COURT

9. **2023-TIOL-74-CESTAT-MUM**

Course 5 Intelligence Pvt Ltd Vs CCGST

ST - The issue involved is, whether the authorities below are justified in rejecting refund claim filed by appellant under Rule(5) of CCR, 2004 r/w Notfn 27/2012 - CE(NT) on the ground of nondisclosure of availment of Cenvat Credit in ST-3 Returns - Time and again in series of decisions Tribunal has repeatedly held that non-mentioning of credit availed in ST-3 return is only a procedural lapse for which substantial relief cannot be denied to assessee but despite that the lower authorities seem to be adamant in not taking cognizance of views of Tribunal - From impugned order, it seems that although Commissioner agreed with submission of appellant about violation of principle of natural justice but according to him since he has heard appellant therefore natural justice has been restored, which is not correct understanding of law on aforesaid principle - Mistake committed by assessee is merely a procedural lapse which they tried to rectify immediately thereafter but were not permitted and substantial relief was denied to them, which is not permissible in law - Admittedly, ST-3 Returns manually filed by assessee were not verified as same were not accepted by authority below - Matter remanded to Original Authority in order to decide issue afresh: CESTAT

- Matter remanded: MUMBAI CESTAT

10. **2023-TIOL-70-CESTAT-DEL**

NIIT Ltd Vs CCGST

ST - This appeal has been filed against rejection of refund claim of Service Tax - Under transitional provision Section 142 of CGST Act, 2017, limitation have been done away with for purpose of refund arising under existing law - Appellant have demonstrated during course of hearing by producing extracts from their accounts maintained on SAP system, wherein they have demonstrated that they have debited invoices which were raised and no service was provided and have also demonstrated the copies of credit notes issued to their customers - Appellant have not taken any credit in their accounts nor claiming transition refund by through Form TRAN-1 through GST regime - Further, appellant have passed bar of unjust enrichment as under the facts and circumstances they have not passed on any credit to their customers which is duly certified by their Chartered Accountant - Accordingly, impugned order is set aside - Adjudicating Authority is directed to grant refund within a period of 45 days alongwith interest as per rules: CESTAT

- Appeal allowed: DELHI CESTAT

11. **2023-TIOL-68-CESTAT-DEL**

Sindh Ispat Vs CCGST & CE

CX - The Adjudicating Authority rejected the refund claims of appellant holding that the same has been filed after one year from relevant date and accordingly, held that the claim is barred by limitation under Section 11B of Central Excise Act, 1944 - The Court Below has erred in rejecting the refund claim on ground of limitation, as evidently, the court below has failed to take notice of transitory provisions under CGST Act - Accordingly, refund claim is not barred by limitation - Adjudicating Authority is directed to grant the refund within 45 days along with interest under Section 35FF ibid @ 12% p.a.: CESTAT

- Appeal allowed: DELHI CESTAT

12. **2023-TIOL-67-CESTAT-AHM**

Sun Pharmaceuticals Industries Ltd Vs CCE

CX - Appellant a 100% EOU is engaged in manufacture of Bulk Drugs - During audit, officers observed that value of DTA sales by

appellant was more than 50% of FOB value of physical exports made during these years - SCN was issued demanding short payment of excise duty alongwith interest and penalty - A perusal of Paragraph 6.8 of FTP would show that subject to conditionalities contained therein, an EOU unit can make a DTA sale - The primary condition being, that sales to DTA units is limited to 50% of FOB value of exports, subject to fulfillment of positive NFE on payment of concessional duty - Here, there is no dispute about DTA sale entitlement and achievement of positive NFE by appellant and intimation to development commissioner about DTA sale entitlement - Case of revenue is that during year 2012-13 and 2013-14, appellant has made excess clearances into DTA than their actual entitlement, i.e., 50% of FOB value of export and such excess clearance of goods into DTA were not entitled to get exemption of duties under Notification No. 23/2003-C.E. - Whereas appellant claimed that during year 2012-13 and 2013-14 there was no excess DTA sales and it was within entitlement - Department has not considered carry-forward sales entitlements which were utilized during disputed period - Commissioner wrongly interpreted the condition of Notification and denied the benefit of Notification for the reason that DTA clearances made by appellant were in excess of 50% of FOB value of physical exports made - Whereas, it is clear from guidelines of Appendix 14-I-H, if DTA sale entitlement is not utilized within same year then it can be carry forwarded and can be utilized in next two years - The said Appendix clearly provides that DTA sales entitlement shall be availed of within three years of accrual of entitlement - The detail charts related to DTA sale entitlement submitted by appellant clearly shown that during disputed period there was sufficient DTA sale entitlement balance with them and they have not exceeded the limit as disputed by department - Further, condition of notification only restricted that clearance into DTA is not more than of 50% of Free on Board value of exports made during the year - Appellant has not exceeded the said limit, they have correctly utilized carry forwarded balance which was valid upto three years from its accrual - Benefit of notification cannot be denied to appellant - Impugned order is not sustainable, same is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

13. 2023-TIOL-107-HC-AHM-GST

Siddharth Associates Vs STO

GST - Petitioner challenges the action of the respondent authority essentially on two counts firstly, because the order of cancellation of registration is in breach of principles of natural justice being very cryptic and non-reasoned order and secondly, the appellate authority on the ground of its not having powers to condone the delay has chosen not to decide the matter on merit.

Held: Following the Coordinate Bench's decision in case of Aggarwal Dyeing & Printing Works (= 2022-TIOL-504-HC-AHM-GST), this petition is ALLOWED solely on the ground of violation of the principles of natural justice - The show cause notice dated 29.11.2021 and the impugned orders dated 25.03.2022 and 22.09.2022 passed by the respondent authorities are quashed and set aside granting liberty to the respondent No.2 to issue a fresh show cause notice with particular reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicant and to pass appropriate speaking order on merit - GST Registration Number of the applicant stands restored forthwith: High Court [para 10]

- Petition allowed: GUJARAT HIGH COURT

14. 2023-TIOL-65-CESTAT-DEL

Classic Interiors Vs CC

Cus - Appeal filed against impugned order whereby they partially allowed appellant's appeal and modified the provisional release order passed by Additional Commissioner to the extent of reducing bank guarantee for

provisional release of seized goods to 10% of value of goods - There was allegation of mis-declaration of value of goods which has been admitted to by appellant in letters and statements - SCN demanded differential duty which the appellant has already deposited - The SCN has also proposed confiscation of goods under Sections 111(l) and 111(m) - After adjudication, if goods are held liable for confiscation, they may be released on payment of redemption fine - If goods are confiscated and allowed redemption on payment of fine such fine has to be recovered from appellant and some security is necessary to cover it if goods are to be released provisionally before adjudication itself - Impugned order is modified reducing the amount of bank guarantee to 5% of value of goods: CESTAT

- Appeal partly allowed: DELHI CESTAT

15. 2023-TIOL-57-CESTAT-DEL

Balaji Ceramic Products Vs CC

Cus - The issue involved is, whether re-imported petroleum coke have been confiscated alongwith imposition of penalty under Section 112(b) of Customs Act, 1962 - Commissioner (A) have recorded the findings that appellant had purchased goods for export and on being rejected by buyer in Saudi Arabia, goods have been re-imported and admittedly, appellant have not availed any export benefit on impugned goods - Thus, both the identity of goods is also established and also that appellant had genuinely exported goods to the user buyer in Saudi Arabia - Further, on rejection by buyer, appellant was obligated to re-import the goods to mitigate his loss - Admittedly, re-imported goods have been found to be calcined Petroleum Coke - The minor variation in weight is normal, due to normal loss in transit - As per para 1.05 (Clause B) of Chapter 1 of FTP 2015-2020, provides that in case of change of policy from free to restricted/prohibited the imports or export already made before date of such regulation/restrictions will not be effected - Admittedly, export in this case was made through shipping bill which is before the date of restriction imposed vide aforementioned Notifications - Thus, calcined Petroleum Coke was free for export-import on day of export, re-import by appellant of rejected goods has to be treated as freely importable under Foreign Trade Policy - Impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

16. 2023-TIOL-84-HC-KAR-GST

Wipro Ltd India Vs Asstt. Commissioner of Central Taxes

GST - ITC availment - Error committed by the petitioner in showing the wrong GSTIN number in the Invoices which was carried forward in the relevant Forms as that of ABB India Limited instead of the 5th respondent i.e., M/s. ABB Global Industries and Services Private Limited, is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the Circular bearing No. 183/15/2022-GST dated 27.12.2022 would be directly and squarely applicable to the facts of the instant case - It would be just and proper to dispose of this petition directing the respondents 1 to 3 - revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent - Though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, Bench is of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also - Respondents 1 to 3 are hereby directed to consider the request made by the petitioner vide letter at Annexure-D dated 06.09.2021 and proceed further in accordance with law and in terms of the Circular dated 27.12.2022 as expeditiously as possible - Petition disposed of: High Court [para 6, 8, 9]

- Petition disposed of: KARNATAKA HIGH COURT

17. 2023-TIOL-81-HC-MUM-GST

Ramani Suchit Malushte Vs UoI

GST - Petitioner is impugning the order by which the petitioner's appeal came to be dismissed on the ground that the appeal was not filed within a period of three months provided u/s 107(1) of the Act, 2017 and even beyond the condonable period of one month - Petitioner submits that the order in original dated 14th November 2019 which was impugned in the appeal filed before Respondent No.3 has not been digitally signed and, therefore, it cannot be considered to have been issued in accordance with Rule 26(3) of the CGST Rules; therefore, the time limit for filing the appeal would begin only upon digitally signed order being made available; that the signature was affixed for the first time only on 19 May 2021 when Petitioner had to get an attestation from Respondent No.4 for the purposes of filing appeal. Held: In the affidavit-in-reply it is not denied that the order in original dated 14th November 2019 was not digitally signed - Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned order was admittedly received by petitioner electronically - However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant - In our view, unless digital signature is put by the issuing authority, that order will have no effect in the eyes of law - Order is quashed and set aside and the appeal is restored to the file of respondent no.3 who shall consider the appeal on merits and pass such order as deemed fit in accordance with law: High Court [para 4, 6]

- Appeal disposed of: BOMBAY HIGH COURT

18. 2023-TIOL-54-CESTAT-AHM

Krishak Bharti Cooperative Ltd Vs CCE & ST

ST - Appeals have been filed by appellant against confirmation of demand of service tax - CBIC has issued a Circular No. 178/10/2022-GST in which it has stated its stand on the issue of taxability of various transactions claimed to be "liquidated damages" - At the time of adjudication by commissioner and hearing before Tribunal, this circular was not available on record and therefore, Adjudicating authority could not take benefit of same - While the issue of levibility of service tax on liquidated damages is a debatable issue, CBIC has vide Circular No. 178/10/2022-GST clarified its stand on subject in respect of GST - Said circular also clarified the stand of CBIC on issue of forfeiture of salary or payment of bond made in event of employee leaving the employment before minimum agreed period - Prime facie Para 5(e) of Schedule-II of CGST Act, is identically worded as Section 66E(e) of Finance Act, 1994 - The circular was not available to Adjudicating authority when the matter was decided and he could not examine the issue in light of aforesaid circular - The issue in dispute can be decided in light of aforesaid circular - Consequently, impugned order is set aside and the matter is remanded to original adjudicating authority to decide the issue afresh: CESTAT

- Matter remanded: AHMEDABAD CESTAT

19. 2023-TIOL-60-HC-MUM-VAT

State of Maharashtra Vs M M Sales Corporation

Whether an appellate authority as well as the Tribunal can always consider a new or additional claim with respect to an assessment year which was not raised by the assessee before the assessing authority - YES: HC

- Appeal dismissed: BOMBAY HIGH COURT

About Us:

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.

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