Newsletter - March 2023

Vishnu Daya & Co. LLP

Chartered Accountants

Contents

Direct Tax – Notifications

Notifications issued by CBDT in the month of February 2023

1. **CBDT notifies centralised processing of Equalisation Levy Statement Scheme 2023.**

   Notification no. 3 / 2023, dated 7th February 2023

   The Central Board of Direct Taxes (CBDT) has notified the Centralised Processing of Equalisation Levy Statement Scheme, 2023. The scheme provides that the Centralised Processing Centre (CPC) shall process a valid Equalisation Levy Statement. Scheme also provides that no assessee shall be required to appear personally or through an authorized representative before CPC in connection with any proceedings. Written or electronic communication in the format specified by CPC shall be sufficient compliance with the query or clarification received from CPC.

   Click here to read /download the notification.

2. **CBDT notifies ITRs for AY 2023-24.**

   Notification no. 4 / 2023, dated 10th February 2023

   CBDT notifies ITR Forms for AY 2023-24 i.e. ITR-1 SAHAJ, ITR-2, ITR-3, ITR-4 SUGAM, ITR-5, ITR-6, ITR-V and ITR Acknowledgement.

   Click here to read /download the notification.

3. **CBDT notifies ITR-7 for AY 2023-24.**

   Notification no. 5 / 2023, dated 14th February 2023

   CBDT notifies ITR-7 for AY 2023-24.

   Click here to read /download the notification.

4. **CBDT notifies new audit reports for Charitable or Religious Trusts, Education Institutions, Universities etc.**

   Notification no. 7 / 2023, dated 21st February 2023

   CBDT notifies new Form 10B and 10BB by amending Rules 16CC and 17B. The new rules and forms come into effect from Apr 1, 2023. Form 10B is the audit report for fund or institution or trust or any university or other educational institution or any hospital or other medical institution as required under clause (b) of tenth proviso to Section 10(23C) where during the previous year: (i) total income without giving effect to the provisions of Section 10(23C)(iv), (v), (vi) and (via) exceeds Rs.5 Cr., or (ii) any foreign contribution is received, or (iii) part of income is applied outside India. Form 10B also applies to trust or institution required to furnish audit report under Section 12A(1)(b)(ii) where during the previous year: (i) total income, without giving effect to the provisions of sections 11 and 12, exceeds Rs.5 Cr., or (ii) any foreign contribution is received, or (iii) part of income is applied outside India. In all other cases, the audit report shall be furnished in Form 10BB. The new Rules also clarify that 'foreign contribution' shall be as defined under Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010.

   Click here to read /download the notification.

Direct Tax – Legal Rulings

1. **ITAT: Interest on delayed TDS remittance, not 'expenditure' under Sec.37(1)**

   Premier Irrigation Adritec (P.) Ltd. [TS-39-ITAT-2023 (Kol)]

   Kolkata ITAT dismisses Assessee's appeal, holds that interest on delayed TDS remittance under Section 201(1A) is not an expenditure wholly and exclusively incurred for business purpose, ineligible for deduction under Section 37(1).

   During AY 2014-15, Assessee-Company claimed expenditure of Rs.4.99 Lac on interest paid on TDS under Section 37. Revenue disallowed the said expenditure on the premise that such expenses are penal in nature and cannot be considered to have been incurred wholly and exclusively for business purpose to allow deduction under Section 37(1). CIT(A) dismissed Assessee's appeal.

   ITAT observes that interest on late payment of TDS is not covered either under provisions of Section 30 to 36, nor it qualifies as expenditure wholly and exclusively incurred for the purpose of business or profession under Section 37(1). Holds that interest payment on delayed deposit of income tax, whether TDS or otherwise, is not an allowable expenditure.

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

2. **ITAT: LLP, as partner in firm, eligible for Sec.10(2A) exemption**

   Mulberry Textiles LLP [TS-51-ITAT-2023 (Bang)]

   Bangalore ITAT allows Assessee's appeal and holds that LLP, being a partner in a partnership firm, to be entitled for exemption under Section 10(2A) with respect to share of profit received from the partnership firm. Holds that the term 'firm' includes LLP and there is no restriction on a firm for becoming a partner in other partnership firms.

   ITAT explains that Section 10(2A) exempts the share of profit received by a person being a partner of firm which is separately assessed. Observes that the term 'firm' as defined under Section 2(23) includes LLP also. Further observes that there is no restrictions on a firm for becoming a partner in other partnership firms, thus a firm can be a partner in other partnership firms. Thus allows Assessee the exemption under Section 10(2A) on share of profit received from the partnership firm.

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

3. **DC: Upholds conviction for ITR non-filing as Assessee fails to rebut mens rea presumption**

   Hema Chetan Shah [TS-59-DC-2023(Mum)]

   The Court of Additional Sessions Judge, Mumbai upholds the Trial Court order convicting Assessee as an offender for non-filing the return of income pursuant to a notice under Section 153A. Dismisses Assessee's plea that no criminal liability can be fastened on her as it was not possible for her to file the return since the documents were seized by the search party.

   The Court observes that the Revenue afforded the Assessee several opportunities for collecting the photocopies of the seized documents, despite which the Assessee failed to comply with the impugned notice. Opines that since Assessee was in default, it was incumbent upon her to prove to the contrary of the presumed existence of mens rea beyond

reasonable doubt, which the Assessee failed to do.

The Court of Additional Sessions Judge observes that the Assessee, on cross-examination, made contrary statements regarding collection of the photocopies of the seized documents. Opines that, "*undoubtedly the factum of willful def ault is well propelled and the complainant agency has succeeded in proving their case beyond reasonable doubt*".

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

4. **SC: Dismisses foreign national's plea for condoning delay in filing ITR**

Puneet Rastogi [TS-60-SC-2023]

SC dismisses Special Leave Petition preferred by a foreign citizen enjoying OCI status against Delhi HC ruling dismissing writ petition against denial of condonation of delay in filing of return. Before Delhi HC, the Assessee had sought directions for condoning the delay in filing return of income and grant of refund. HC observed that ignorance of law is not an excuse and found that the Assessee had filed his ITR for an earlier AY (7 years ago) within the prescribed time limit. HC noted that in the present case there was no genuine hardship or reasonable cause for late filing of the return. HC opined that the order denying condonation of delay was clear, cogent and passed with the approval and sanction of PCCIT after adherence to the principles of natural justice. SC finds no good ground and reason to interfere with the Delhi HC ruling and dismissed the Special Leave Petition.

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

5. **ITAT: Sec.32AC deduction meant only for manufacturing sector. Holds Infosys ineligible**

Infosys Ltd [TS-44-ITAT-2023(Bang)]

Bangalore ITAT holds that benefit of deduction under Section 32AC is available to only manufacturing sector and not the service sector, thus holds Infosys ineligible for Section 32AC deduction.

For AY 2014-15, Assessee claimed deduction under Section 32AC amounting to Rs.132 Cr on account of investment in new plant and machinery. Revenue disallowed the claim holding that deduction under Section 32AC was to give impetus to the manufacturing sector only and since Assessee's activity of software development falls within the purview of service sector, it was ineligible to claim the deduction, which was upheld by CIT(A).

ITAT notes that main question to be considered is whether the software development activity of the Assessee qualifies as "business of manufacture or production of any article or thing", refers to definition of manufacture under Section 2(29BA) and observes that to qualify as 'manufacture', the change should be in a non-living physical object or article or thing. Points out that software is intangible and not physical object or article or thing, thus "*at the threshold, software development activity cannot qualify as 'manufacture'.*". Further holds that creating or maintenance of software programs, does not result in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use. or bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

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

MCA Updates

1) MCA: Extends time for filing 45 forms launched on V3-portal, till March 31, 2023

MCA extends time for filing of 45 company e-Forms in MCA 21 Version 3.0 ('V3'), which are due for filing between February 7, 2023 and February 28, 2023, without additional fees, till March 31, 2023. The Ministry apprises that the extension is granted in light of 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 w.e.f. January 23, 2023. Further, MCA informs that Form PAS-03 which was closed for filing in Version-2 on January 20, 2023 and launched in Version-3 on January 23, 2023, and whose due dates for filing fall between January 20, 2023 and February 28, 2023, can also filed without payment of additional fees till March 31, 2023. Moreover, permits extension of the reservation period for the names which are reserved u/s 4(5) of the Companies Act, 2013, by a further period of 20 days, as also the re-submission period under Rule 9 of the Companies (Incorporation) Rules, 2014 falling between January 23, 2023 and February 28, 2023, by 15 days.

This amendment shall come into force with effect from Feb 22,2023.

Previously, on 7th February, 2023, MCA had allowed additional 15-days' time for filing of 45 forms launched on V3 portal ('V3') w.e.f. January 23, 2023, without additional fees. The Ministry apprises that the extension has been provided considering the change in way of filing in V3, including fresh process of registration of users on MCA-21 and process of stabilization of the said 45 forms, as well as various representations received from the stakeholder. Further, MCA also permits the filing of Form PAS-03 which was closed for filing in Version-2 on January 20, 2023 and launched in V3 on January 23, 2023, and whose due dates for filing fall between January 20 and February 6, 2023, without payment of additional fees for a period of 15 days.

2) MCA: Permits physical filing of Forms GNL-2, MGT-14, PAS-3, SH-8 without fees MCA notifies that the companies intending to file –

(i) Form GNL-2 (Filing of prospectus related documents and private placement),
(ii) MGT-14 (Filing of Resolutions relating to prospectus related documents, private placement),
(iii) PAS-3 (Allotment of Shares),
(iv) SH-8 (Letter of offer for buyback of own shares or other securities),
(v) SH-9 (Declaration of Solvency) and
(vi) SH-11 (Return in respect of buy-back of securities)

from February 22, 2023 to March 31, 2023 on the MCA-21 Portal, may file such Form in physical mode, duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee.

The Ministry adds that such filing will be accompanied by an undertaking from the company that it shall also file the relevant Form in electronic form on MCA-21 portal along with fee payable as per Companies (Registration Offices and Fees) Rules. Specifying that the move comes in wake of migration from V2 Version to V3 Version in MCA 21 Portal, Ministry apprises that representations were received requesting for clarification about filing of Form GNL-2, for the purposes of filing prospectus related documents, MGT-14, PAS-3 and SH-8 during February 22, 2023 to March 31, 2023 due to process of stabilization of 45 forms launched w.e.f. January 23, 2023, and that stakeholders stated that such forms were required to be filed due to time bound activities. Lastly, MCA mentions that, "*As clarified by General circular Number 04/2023 dated 21.02.2023 no*

additional fees will be levied as referred in the said circular."

This amendment shall come into force with effect from Feb 22,2023.

3) MCA: E-forms for companies under CIRP to be signed by IRP/RP/Liquidator

MCA notifies amendment to the Companies (Registration Offices and Fees) Rules to *inter alia* provide that, 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 fee. The Amendment also revises Form Nos. GNL-2 (Form for submission of documents with the Registrar), GNL-3 (Particulars of persons charged) and GNL-4 (Form for filing Addendum for rectification of defects or incompleteness), *inter alia* requiring disclosure of details regarding advertisement inviting deposits under Form GNL-2. Vide a separate Notification, MCA amends the Companies (Management and Administration) Rules, stipulating a declaration to the Form No. MGT- 3 pertaining to notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept. The Amendment removes the requirement of filling up the detail regarding registration of proposed resolution u/s 94(1) of the Companies Act, in Form MGT-14 (Filing of Resolutions and agreements to the Registrar). Further, the Ministry also amends the Companies (Registration of Foreign Companies) Rules, *inter alia* making optional the inclusion of spouse's name for each of the persons included in the list of directors and secretary or equivalent (by whatever name called) of the foreign company, as also removes the requirement of filling up the ISO code of the country where the foreign company is registered, from Form FC-1.

This amendment shall come into force with effect from Jan 25,2023

4) MCA: Tweaks Rules for appointment of Managerial Personnel, Directors

MCA notifies the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023 *inter alia* substituting Form Nos. MR-1 and MR-2. Under Form-MR 1 viz. Return of appointment of managerial personnel, the Amendment *inter alia* introduces the requirement of disclosing whether the company is a public company or subsidiary of a public company and whether the appointee is a Non-Resident. Under Form-MR 2 (application to the Central Govt. for approval of appointment of managing director or whole-time director or manager), the Amendment *inter alia* introduces the mandatory disclosure relating to details of application pending before NCLT/NCLAT. Separately, MCA also notifies the Companies (Appointment and Qualification of Directors) (Amendment) Rules, *inter alia* substituting the formats for Forms DIR-3, DIR-3C, DIR-5, DIR-6, DIR-8, DIR-9. DIR-10. DIR-11 and DIR-12. The revised Form No. DIR-9 viz. report by the company to Registrar for disqualification of Directors *inter alia* requires the mandatory disclosure as to whether the application is being filed on the basis of alert issued by ROC, and also requires disclosure of the reason for disqualification of Director: MCA

This amendment shall come into force with effect from Jan 25,2023

5) MCA: Proposes slew of changes to streamline CIRP, recast liquidation process under IBC

MCA proposes a slew changes to the Insolvency and Bankruptcy Code ('IBC') in relation to the admission of CIRP applications, streamlining the insolvency resolution process, recasting the liquidation process, and the role of service providers under the Code, with a view to strengthen the functioning of IBC, invites comments from the public on the changes being considered, by February 7, 2023. The Ministry *inter alia* proposes that while considering an application filed u/s 7 and 9

of IBC, the Adjudicating Authority ('AA') will only rely on the record of the default available with the information utilities to determine if a default has taken place. In order to protect and preserve the assets of the Corporate Debtor during the pendency of this process and to avoid any recovery actions or syphoning off of assets, MCA suggests that the Applicant shall have the option to approach the AA to seek a moratorium (with the approval of a requisite majority of unrelated Financial Creditors). Highlighting that during CIRP, many disputes are raised in relation to the distribution of proceeds and there are concerns regarding inequitable distributions amongst the creditors, the Ministry opines that to alleviate these concerns, an objective formula may be devised to distribute proceeds during the CIRP, which shall be fair and equitable towards all creditors, thus, recommends that the Code may be amended to statutorily provide an equitable scheme of distribution of proceeds received pursuant to a resolution plan through a separate waterfall mechanism in the CIRP. The Ministry further apprises that a need to address abstention from voting was felt for the smooth conduct of the process, for instance, in cases where one or two members of the CoC, having a significant voting share, abstain from voting on key decisions, it unnecessarily prevents the process from progressing, accordingly, proposes that the voting threshold for major decisions should be revised to two-thirds of the CoC members present and voting in a meeting, however, when such decisions are undertaken, it should be ensured that the voting share of the members of the CoC who approve the decision should constitute at least 51% or more of the total voting share of the CoC. Lastly, recommending that the Code may be amended to enable the CoC to request the AA to dissolve the Corporate Debtor if it believes that conducting the liquidation process in such circumstances may not be feasible or beneficial for the stakeholders, MCA also proposes that similar to the regulatory regime for Insolvency Professionals under the Code, IBBI may be empowered to register and regulate a special class of valuers for rendering all valuation-related services during the processes envisaged under the Code: MCA. This amendment shall come into force with effect from Jan 18,2023

6) MCA: Permits companies to hold AGMs, EGMs due in 2023 via VC, till Sept. 30, 2023

MCA allows companies whose Annual General Meetings (AGMs) are due in the year 2023, to conduct their AGMs on or before September 30, 2023, through video conferencing ('VC') or other audio visual means ('OAVM'). However, clarifies that "*…this Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013…and the companies which have not adhered to the relevant timelines shall be liable to legal action…*". Vide a separate Circular, MCA also permits companies to conduct their EGMs via VC or OAVM or transact items through postal ballot, up to September 30, 2023: MCA

Earlier, vide **General Circular No. 02/2022**, MCA had clarified that companies whose AGMs are due in 2022, will be allowed to conduct their AGMs through VC or OAVM on or before December 31, 2022.

This amendment shall come into force with effect from Dec 29,2022

Some recent Caselaws under Companies Act, 2013 :

1) ROC (Patna): Imposes penalty on Co., MD for failure to file proceedings of AGM

ROC (Patna) imposes a penalty of Rs. 6.9 lakh on a producer Company and its MD for not filing its proceedings of annual general meeting ('AGM') along with the report of the Board of Directors, the audited balance sheet and profit and loss for the FYs 2015-16 till date as per the MCA portal, basis failure in compliance of Sec. 378ZA(10) of the Companies Act. Registrar highlights that the provisions of Sec. 378ZA(10) of the Act mandate that the proceedings of every AGM along with the report of the Board of Directors, the audited balance-sheet and profit and loss account shall be filed with the

Registrar within 60 days of the date on which the AGM is held, with an annual return along with the filing fees as applicable under the Act. Further, ROC observes that the provisions of Sec. 446B of the Act states that if penalty is payable for non-compliance of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than 1-half of the penalty specified in such provisions. Accordingly, in light of the applicability of Sec. 446B on the producer Company and its MD, ROC imposes a penalty of Rs. 5.16 lakh on the producer Company and Rs. 1.75 lakh on the MD u/s 450 r.w.s. 446B of the Act.

2) NCLAT : Upholds NCLT-order refusing to approve merger scheme envisaging transaction to evade law

NCLAT dismisses an appeal filed by a transferor company and transferee company ('Appellants') impugning NCLT order dismissing Appellants' application praying for sanction of Scheme of Amalgamation, on holding that "…if a 'Transaction', is entered into mainly with a view to circumvent, supplant, evade or avoid the 'Rules of the Game' or any 'Law' in 'Force', and also evade 'Tax Liability', a 'Tribunal' / 'Court of Law', cannot and will not 'approve', any 'Compromise' / 'Arrangement'. Moreover, if the 'Arrangement', is an 'inequitable' and 'unfair' one, the 'Scheme', cannot be given a 'Green Signal', for an 'Approval', sought for in the matter, by the `Party / Parties', concerned.". Observing that despite Appellants' projection that sanctioning of the arrangement would be for the advantage and benefit of Appellant companies, their shareholders and creditors, Appellate Tribunal highlights that Regional Director, MCA ('Respondent') pointed out that the Appellants had not adhered to the utmost provisions of the Companies Act 2013, which created an unfavourable circumstance, to and in favour of the Appellants, and that Respondent had also raised objections against the sanction of the Scheme. NCLAT finds that the unfavourable circumstance is that the Balance Sheets as on March 31, 2014, March 31, 2015 and March 31, 2016 indicate that the transferor company "…had tacitly accepted the 'Deposits' from 'Outsiders', the raising of 'Unsecured Loans' from other 'Persons' and not resting with that, a 'Misleading Disclosure', that the 'Loans and Advances', were received from 'Related Parties', under the caption 'Long Term Borrowings' (as seen from Note. 3) and all the more, these 'Disclosures', were made, in the 'Balance Sheet', as on 31.03.2017, 31.03.2018 and 31.03.2019.", further, notes that the transferor company had manipulated records to reflect that a sum was received from "Members" with a view to escapes from the ingredients of Sec. 58A of the Companies Act, 1956 (Deposits not to be invited without issuing an advertisement). Emphasizing on the fact that both the company directors were deemed to be disqualified in terms of Sec. 164(2)(b) of the Companies Act, 2013 r.w. Rule 14(2) of the Companies (Appointment & Qualification of Directors) Rules, Appellate Tribunal remarks that there is a clear cut violation of Sec. 73 of the Companies Act, 2013 w.r.t. the prohibition on acceptance of deposits from public for acceptance of deposits from the Directors of the transferor company, in respect of the years 2014-15 and 2015-16. Lastly, noting that Respondent had also sent Show Cause Notices to the Appellants and its directors, whereby, Appellants acknowledged the SCNs but had not given replies, NCLAT concludes that "…the 'Appellants', had not made out a fit and proper case, for 'Sanctioning the Scheme of Amalgamation', in accordance with 'Law'. Looking at it from that perspective and also on going through the 'impugned order'…is free from 'Legal Infirmities'. Consequently, the 'Appeal', is 'devoid of merits.":Chennai NCLAT

3) ROC (Bihar): Rs. 17 lakh penalty for failure to file Annual Return since Company's incorporation

ROC (Bihar) imposes a total penalty of Rs.17.44 lakh on a Company and its 2 Directors for failure to file annual returns for FYs 2014-15 to 2021-2022, thereby violating Sec. 92 of the Companies Act. Registrar notes that the Company was incorporated in 2014 and the Company has been in default for filing its Annual Return since its incorporation with the ROC. ROC highlights that Sec. 92(5) lays down that if a company fails to file its annual return u/s 92(4), before the expiry of the period specified therein, such company and every officer who is in default shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 2 lakh in case of a company and Rs. 50,000 in case of an officer who is in default. Accordingly, observing that the MCA record also reflects that the company had not filed its Annual Return since its incorporation till date, Registrar imposes a penalty of Rs. 10.21 lakh on the company and Rs. 3.61 lakh on each of its 2 Directors in terms of Sec. 92(5). This is in the matter of Hotel Holy Crest Bodhgaya Pvt. Ltd.

4) ROC (Tamil Nadu): Imposes Rs. 11.15 lakh fine for failure to file form MGT-14 for 5 FYs

ROC (Tamil Nadu) imposes a total penalty of Rs. 11.15 lakh on a Company and its Director for not filing the resolution or the agreement viz. form MGT-14, for FYs ending on 2015, 2016, 2017, 2018 and 2019, in violation of Sec. 117 of the Companies Act. Notes that the Company had filed an application for seeking status of Nidhi before the MCA in e-form NDH-4 in February 2020, however, MCA observed that the company had not filed Form MGT-14 for Board Resolution passed for approval of accounts with ROC for the FYs ending on 2015, 2016, 2017, 2018 and 2019, further notes that Company filed the requisite form only on October 3, 2022. ROC elaborates that as per Sec. 117(2), if any company fails to file the resolution or the agreement u/s 117(1) before the expiry of the period specified therein, such company shall be liable to pay a penalty of Rs. 10,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day. Accordingly, ROC imposes a penalty of Rs. 8.65 lakh on the Company and Rs. 2.5 lakh on the Director. This is in the matter of Shri Narayani Nidhi Ltd.

5) ROC (Chennai): Balance-sheet cannot be submitted to Auditor without prior approval from Directors. Imposes fine

ROC (Chennai) slaps a fine of Rs. 4 lakh on a Company and its two Directors on finding that Directors had not signed the balance sheet of the Company prior to its submission to auditor, in violation of Sec. 134(1) of the Companies Act, holds that the provisions of the Act do not contemplate the directors signing the Balance sheet in part. Notes that Regional Director, MCA issued directions to take action against Company and Directors on finding that Company's balance sheet for FY 2020-21 was signed by Directors at Pune on September 27, 2021, however, it was further observed that the Directors signed for a fellow subsidiary company on the same date in Chennai, thereafter, Regional Director established that Directors had not signed the Company's balance sheet on September 27, 2021 at Pune. Sec. 134(1) provides that the Financial Statement including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the Chairperson of the company where he is authorised by the board of by 2 directors out of which one shall be MD, if any, and the CEO, CFO and CS of the company, wherever they are appointed, for submission to the auditor for this report. Accordingly, opining that the balance sheet cannot be furnished to the Auditor without approval and signature as per provisions of Sec. 134(1) of the Act, ROC imposes a penalty of Rs. 3 lakh on the Company and Rs. 50,000 each on the two Directors in terms of Sec. 134(8) of the Act. This is in the matter of Michelin India Technology Center Pvt. Ltd.

6) ROC (Mumbai): Rs. 25,000 fine on CS for failure to give Board Meeting notice

ROC (Mumbai) imposes a fine of Rs, 25,000 on a CS, being an officer in default for not giving notice in holding a Board Meeting, in violation of Sec. 173(1) of the Companies Act. Registrar notes Company's submission that the default of Sec. 173 was due to the company's interpretation that in light of COVID 19, MCA provided relaxation u/s 173 and only 2-3 meeting had to be held, thus, Company had held only three meetings during FY2020-21. Sec. 173(1) of the Act provides that every company shall hold the first meeting of the Board of Directors within 30 days of its incorporation and thereafter hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between 2 consecutive meetings of the Board. Further, proviso to Sec. 173(1) provides that the Central Govt. may, by notification, direct that the provisions of Sec. 173(1) shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification. Adverting to the provisions of Sec. 173(4) which states that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of Rs. 25,000, ROC accepts Company's submission that the CS is the officer of the Company whose duty it was to give the notice u/s 173, and accordingly, imposes a penalty on the CS. This is in the matter of International Biotech Park Ltd.

7) ROC (Mumbai): Rs. 1.5 lakh fine on Company, Directors for failure to deliver securities-certificate

ROC imposes a penalty of Rs. 1.5 lakh on a Company and its 2 Directors for failing to deliver the certificate of securities to subscribers of the memorandum within a period of 2 months from the date of incorporation after issuing share certificates, thereby contravening Sec. 56 of the Companies Act. Sec. 56(4) *inter alia* provides that every company shall, unless prohibited by any provisions of law or any order of court, tribunal or other authority, deliver the certificate of all securities allotted, transferred or transmitted within a period of 2 months from the date of incorporation, in the case of subscription to the memorandum. Against Company's plea not to hold their non-Executive Director liable for the default, Registrar rejects the plea in light of MCA Circular dated March 2, 2020, which states that Sec. 149(12) is a non obstante clause that provides that the liability of a non-executive director would be only in respect of such acts of omission by a company which had occurred with his knowledge, attributable through Board process, and with his consent or connivance. Accordingly, highlighting that the non-executive Director was a subscriber to the memorandum and admitted attended the Board meeting, ROC establishes that the omission was to the knowledge of the Company's non-executive Director, hence, ROC imposes a penalty of Rs. 50,000 each on the Company, MD and the non-executive Director. This is in the matter of IMC India Securities Pvt.

8) ROC (Gujarat): Penalizes transferor co., its directors, given non-receipt of communications at registered address

ROC (Gujarat) imposes a penalty of Rs. 4,500/- on a transferor company and its directors for non-receiving of communications at its registered office, in violation of Sec. 12(1) of the Companies Act. Notes that Regional Director, MCA issued letters to a transferee company as well as the transferor company inter alia seeking information / documents w.r.t. the scheme of amalgamation of the companies, however, the letters issued were returned by the postal authorities with the remark "left". Perusing Sec. 12(1) of the Act, ROC observes that the provision lays down that a company shall, within 30 days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notice as may be addressed to it. Pursuant to company's submissions along with documents viz. photos, property papers etc. that reflected that the company maintained its registered office, ROC states that "*It appears that the company is maintaining its*

registered office.". Accordingly, in light of the fact that the company was not capable of receiving the aforementioned letters which amounted to violation of Sec. 12(1), Registrar imposes a penalty of Rs. 1,500 each on the Company and its two directors in terms of Sec. 12(8) of the Act. This is in the matter of Shree Gajanand Silk Mills Pvt. Ltd.

9) ROC (Odisha): Drops proceedings against Co. for non-compliance of filing MSME Form, cites matter sub-judice

ROC (Odisha) drops proceedings against a Company and its Directors for non-compliance in filing MSME Form-I in violation of Sec. 405 of the Companies Act basis present proceedings being sub-judice before the Jharkhand MSME Court. Registrar highlights that as per MCA Notification dated January 22, 2019, companies who get supplies of goods or services from MSMEs and whose payments to MSME suppliers exceed 45 days from the date of acceptance/deemed acceptance of the goods or services shall submit a half yearly return to MCA stating – (i) the amount of payments due and, (ii) the reasons of the delay, and that non-compliance of the provision attracted penalty u/s 405 of the Act. Company submitted that in respect of an ongoing case at Jharkhand MSME Court, neither the Company stood at any default, nor had any pending payments to be made to any MSME firm. Accordingly, noting that there was no documentary evidence that the Company had contravened the provisions of Sec. 405 of the Act and the fact that the matter was sub-judice before the Jharkhand MSME Court, RoC drops the present proceedings. This is in the matter of Bhagaban Mohapatra Constructions and Engineers Pvt. Ltd.

10) ROC (Gujarat): Penalizes Co., Directors for non-maintenance of registered office for 4 days

ROC (Gujarat) imposes a penalty of Rs. 16,000 on a Company and its Directors on finding that the Company was not maintaining its registered office, in violation of Sec. 12(1) of the Companies Act. Notes that ROC office had issued a letter on January 17, 2022 to the Company w.r.t. the difference noticed in the Authorised Capital as mentioned in the Annual Return, i.e. MGT-7, and the MCA database, however, the letter was returned back to the office with postal remarks signifying that the Company was not maintaining its registered office. ROC observes that "*…company has made violation of Section 12(1) of the Companies Act, 2013 during the period from January 17 - 20, 2022 i.e. 04 days, as no supporting documentary evidence produced before the Adjudicating Authority to justified cause for non-maintaining registered office from the aforesaid period*.". Accordingly, in light of the non-compliance of Sec. 12(1) by the Company and its Directors / KMPs for 4 days, Registrar imposes a penalty of Rs. 4,000 each on the Company and its 3 Directors. This is in the matter of Asian Petro Products and Exporters Ltd.

11) ROC (Gujarat): Rs. 6 lakh penalty on Company, Directors for failure to file e-form MGT-14

ROC (Gujarat) imposes a penalty of Rs. 6.48 lakh on a private limited Company and its Directors for non-filing of e-form MGT-14 in respect of Board resolutions as required under the provisions of Sec. 117(3)(g) of the Companies Act, pursuant to Company's *suo-moto* application in e-form No. GNL-1 for adjudication of penalty. Perusing Sec. 117(3)(g), ROC highlights that a copy of every resolution or any agreement in respect of matter specified in Sec. 117(3) together with the explanatory statement u/s 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within 30 days of the passing or making thereof in such manner and with such fees as may be prescribed. Registrar also observes that as per the Company's application, the Board of Directors at its meeting held on July 11, 2014 approved availing of credit facilities u/s 179 r.w.s. 117 of the Act, however, Company inadvertently defaulted to comply with the requirement of Sec. 117 till June 5, 2015. ROC further records that MCA notification dated June 5, 2015 declared that Sec. 117(3)(g) shall not be applicable to private limited companies. However, in light of the 299 days of default committed by the Company and

its Directors, Registrar imposes a penalty as per Sec. 117(2) of the Act. This is in the matter of Bock Compressors India Pvt. Ltd.

12) ROC (Bangalore): Rs. 2.75 lakh penalty on Company, Directors for non-appointment of whole-time KMP

ROC (Bangalore) imposes a penalty of Rs. 2.75 lakh on a Company and its Directors for non-appointment of a whole-time key managerial personnel (KMP) viz. MD, CEO or Manager within 6 months of the vacancy of a KMP, in default of Sec. 203(1) r.w.s. 203(4) of the Companies Act. Company submitted that the MD resigned w.e.f. February 29, 2016 and a Whole Time Director was appointed w.e.f. March 11, 2016, however, the Registrar opines that "*…the explanation given therein was not correct.*" and recorded that the MCA21 database and DIR-12 reflected that a Director was appointed w.e.f. March 11, 2016 and was re-appointed as a Whole Time Director w.e.f. September 12, 2016. Hence, observing that as per the MCA records, the Company's MD resigned w.e.f. February 29, 2016 and thereafter, a Whole Time Director was appointed only on September 12, 2016, with a delay of 13 days after the stipulated 6 months period, Registrar imposes the penalty u/s 203(5) of the Act for the default of Sec. 203(4) of the Act for the said period of 13 days. This is in the matter of Global Green Company Ltd.

13) ROC (Gujarat): Company and its Directors penalized for failure to attach Annual Return in form MGT-9

ROC (Gujarat) imposes a penalty of Rs. 40,000 a Company and 3 of its Directors for failure to attach the extracts of Annual Return in prescribed format MGT-9 as part of Board's Report with AOC-4 for FY 2018-19 under the MCA21 portal, in violation of Sec. 137(1) r.w.s. 92(3) of the Companies Act. Notes that the Company Secretary submitted that they missed attaching the Board Report filed with MCA due to oversight, however, holding that the Company/Directors have not performed their duty as prescribed under the Companies Act and that ignorance of Law should not be excused, ROC imposes penalties u/s 137(3) of the Companies Act. Accordingly, slapping a monetary penalty of Rs. 10,000 each on the Company and its Directors, ROC directs Company to file e-form AOC-4 afresh along with the requisite fees/ additional fees for filing correct Financial Statement/ Director's Report for the year ended March 31, 2019 within 30 days as per the procedure provided under the Companies Act and Rules made thereunder. This is in the matter of D.J. Shah Investment Finance Pvt. Ltd.

14) ROC (Pondicherry): Rs. 19.5 lakh penalty on Co., Directors for failure to file Annual Returns, Financial Statements

ROC (Pondicherry) ex-parte imposes a penalty of Rs. 19.5 lakh on a Company and its Directors for not filing their due Annual Returns and Financial Statements for FYs 201819 and 2019–20, in violation of Sec. 92(4) and Sec. 137(1) of the Companies Act. ROC records that despite granting opportunity for hearing, the Company and its Directors had neither responded to the show cause notice nor appeared before the Adjudicating Authority. Hence, considering that the non-filing of statutory returns in MCA Registry (a public domain) is a violation of the Companies Act, ROC invokes the penal provisions u/s 92(5) and Sec. 137(3) of the Companies Act for the continuing failure. This is in the matter of Ashok Kumar Hotels (Cuddalore) Pvt. Ltd.

FEMA

I. FAQs for Legal Entity Identifier Number Reserve Bank of India has issued FAQs for obtaining Legal Entity Identifier Number pursuant to its guidelines issued by RBI vide A.P. (DIR Series) Circular No. 20 dated December 10, 2021. The FAQs are as under:

1. **Should an AD bank obtain a valid LEI for transactions less than INR 50 crore even if the customer has not done any transaction of INR 50 crore or above on or after October 1, 2022?**

   An AD bank must record valid LEI for cross border transactions of INR 50 crore and more undertaken through it on or after October 01, 2022. Post this, the AD bank must report the valid LEI for all cross border transactions, irrespective of the value of the transactions. However, if the AD bank already has a valid LEI of the entity, it must report it for all transactions irrespective of whether the entity has undertaken a transaction of INR 50 crore or above through it.

2. **Is it mandatory to obtain and validate the LEI of the non-resident counterparty as well? Does the stipulation of reporting LEI for all transactions of an entity, irrespective of transaction size, once the entity has obtained an LEI number apply for non-residents as well?**

   As regards the non-resident counterparty/ overseas entities, AD bank may be guided by the instructions contained in paragraph 2 of the circular.

3. **Is it mandatory to obtain LEI in case of transactions to and from a non-resident's account with an AD bank in India?**

   Any debit from or credit to a non-resident's account in India as a result of a transaction with a resident will attract the provisions of Foreign Exchange Management Act, 1999 (FEMA) and hence, the provisions contained in the circular shall apply.

4. **Does the responsibility to obtain LEI lie with an AD bank acting in the capacity of a correspondent bank?**

   The correspondent bank shall be responsible for the LEI of the non-resident counterpart. However, in this regard it may be guided by the instructions contained in paragraph 2 of the circular.

5. **Is there any specific field in the SWIFT message where LEI needs to be captured?**

   The circular does not prescribe any instructions with respect to SWIFT message formats.

6. **For transactions involving three parties (e.g., merchanting trade transactions), the AD bank has to obtain LEI for which party/ parties?**

   Each leg of remittance would have only two parties and hence, the AD bank should obtain the LEI accordingly as per the circular.

7. **In case of non-fund facilities such as Letter of Credit, guarantee, etc., should the LEI validation be done at the issuance stage itself?**

   In case of non-fund facilities, the AD banks need to ensure compliance with LEI requirements at the issuance stage itself.

II. Introduction of Foreign Contribution (Regulation) Act (FCRA) related transaction code in NEFT and RTGS Systems

1. Under the FCRA, 2010 (amended as on September 28, 2020), foreign contributions must be received only in the "FCRA account" of State Bank of India (SBI), New Delhi Main Branch (NDMB). The contributions to the FCRA account are received directly from foreign banks through SWIFT and from Indian intermediary banks through NEFT and RTGS systems.
2. In terms of extant requirements of Ministry of Home Affairs (MHA), Government of India, the donor details such as name, address, country of origin, amount, currency, and purpose of remittance are required to be captured in such transactions and SBI is required to report the same to MHA on daily basis.
3. Keeping in view the above, necessary changes have been introduced in NEFT and RTGS systems, technical details of which are provided in Annexure. Member banks are advised to incorporate necessary changes in their core banking / middleware solutions to capture the requisite details while forwarding the foreign donations through NEFT and RTGS systems to SBI. The instructions will be effective from March 15, 2023.
4. These instructions are issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

Annexure: Technical Details related to FCRA Transactions in NEFT and RTGS Systems

A) FCRA Transaction Code in NEFT and RTGS Systems:

Originating banks are required to select the following mandatory fields of NEFT / RTGS systems while remitting foreign donations to the FCRA account at SBI:

Field	Type	Code to be used
6305 (in N06 message)	NEFT	41
PmtTpInf/CtgyPurp/Cd (in Pacs.008 message)	RTGS	FCRA

B) Format for providing Donor Details in 7495 and RmtInf fields of NEFT and RTGS Systems:

Originating banks are required to pass on donor details in the following formats of 'Sender to remitter information' (field no. 7495) of NEFT and 'RmtInf' tag of RTGS:

System	Field / Tag	Code to be used	Transaction without Legal Entity Identifier (LEI) details	Transaction with LEI details
NEFT	6305 (in N06 message)	**41**	**Field- 7495** line 1: Donor Address line 2: Donor Address line 3: Name of the Donor line 4: Purpose of the Remittance – Alphanumeric line 5: Country of the Donor – Alphabet line 6: Currency and Amount – Alphanumeric	**Field- 7495** line 1: SL/20-digit sender LEI/ line 2: BL/20-digit beneficiary LEI/ line 3: Name of the Donor line 4: Purpose of the Remittance-Alphanumeric line 5: Country of the Donor-Alphabet line 6: Currency and Amount-Alphanumeric
RTGS	PmtTpInf / CtgyPurp / Cd (in Pacs.008 message)	**FCRA**	**Tag- RmtInf/Ustrd** loop 1: Name of the donor loop 2: Donor Address loop 3: Purpose of the Remittance-Alphanumeric loop 4: Country of the Donor, currency, and Amount – Alphanumeric	**Tag- RmtInf/Ustrd** loop 1: /SL/20-digit sender LEI/ loop 2: /BL/20-digit beneficiary LEI/ loop 3: Purpose of the Remittance – Alphanumeric loop 4: Country of the Donor, currency, and Amount – Alphanumeric

Indirect Tax Updates

GST updates

1. **Amendment to the Notification No. 12/ 2017 dated 28-06-2017**

   A new clause (iva) has been added to para 3 in explanation of Notification No. 12/2017 (Service exemption notification). As per this clause *any authority, board or body setup by the Central government or State government including National Testing Agency for conduct of entrance examination for admission to educational institution shall be treated as Educational Institution for limited purpose of providing services by way of conduct of entrance examination for admission to educational institution*.

   Hence, exemption earlier available to central and state educational boards has been extended to above mentioned authority, board, body, including NTA.

   Click here ***to read/ download the Notification No.01 /2023 Central Tax (Rate) dated 28-02-2023***

2. **Amendment to the Notification No.13/2017 dated 28-06-2017**

   In explanation in clause (h) of Notification No.13/ 2017 (RCM service Notification) for the words 'and state legislature' the words 'State legislature, courts and tribunals' shall be substituted.

   Now, the explanation read as follows: -
   Provisions of this notification in so far as they apply to the central government and state governments, shall also apply to the parliament, ***State legislatures, courts and Tribunals.***

   Now, RCM provisions shall apply to the Courts & Tribunals as they apply to the Central government and State governments.

   Click here ***to read/ download the Notification No.02 /2023 Central Tax (Rate) dated 28-02-2023***

3. **Amendment to the Notification No. 01 / 2017 dated 29-06-2017**

   a) **Tax on Rab-pre-packaged and Labelled**
   It is notified that GST rate on Rab sold pre-packaged and labelled shall be revised from 18% to 5%

   b) **Tax on pencil sharpeners**
   GST on pencil sharpeners has been reduced from 18% to 12% by reclassifying it under the HSN code 8214. Accordingly, the entry at SI. NO. 302A has been revised to exclude the refence to pencil sharpeners.

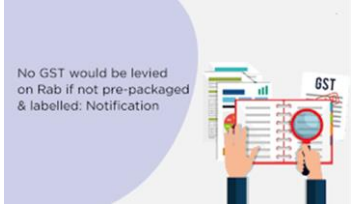
   Click here ***to read / download the Notification No.03 /2023 Central Tax (Rate) dated 28-02-2023***

4. **Tax on Rab- other than pre-packaged and labelled**

   In the Notification No. 02/ 2017 dated 28-06-2017 in the schedule, against S. No. 94, in column (3), after the item (ii) and the entries relating thereto, the following item and entry shall be inserted namely: -
   (iii) "Rab, other than pre-packaged and labelled".

   This notification grants exemption for Rab, also called liquid jaggery sold loose or without pre-packaging. With this change, GST rate has been cut on Rab from 18% to nil for loosely sold.

   Click here ***to read/ download the Notification No. 04/ 2023 Central Tax (Rate) dated 28-02-2023***



5. Compensation cess rate on Coal rejects

In the Notification No.01 / 2017 compensation cess (Rate) dated 28-06-2017, In the schedule, against SI. No. 41A, column (3), for the entry the following entry shall be substituted, namely: -

"Coal rejects supplied to a coal washery or by a coal washery, arising out of coal on which compensation cess has been paid and input tax credit thereof has not been availed by any person".

In entry No.41A of the compensation cess rate schedule It was there as "supplied by the Coal washeries" and now it is further "added as supplied to Coal washeries" also. Hence Now "Sale and Purchases" of Coal rejects both of coal washeries shall Nil Compensation rate subject to the condition mentioned above with respect to coal rejects. This is done for resolving industry specific issue. Power generating units which were not getting exemption while supplying coal rejects to the washery and hence were using ITC of cess on such supply. This was further obstructing Coal Washeries to supply Coal rejects at Nil Rate as Power unit has taken ITC of Cess earlier. Now with amendment this issue has been resolved. The burden of compensation Cess would remain on Power generating units.

Click here to read/ download the Notification No.01/2023 Compensation cess (Rate) dated 28-02-2023

Indirect Tax – Legal Rulings

1. **2023-TIOL-256-HC-AHM-GST**

Shree Ganesh Molasses Trading Company Vs Supdt. Office Of The Commissioner

GST - Petitioner seeks to invoke extra-ordinary jurisdiction of this Court seeking the direction to the respondent authorities to immediately refund Rs. 37,68,300/ - of reversal of the Input Tax Credit reversed under threat, coercion and without the will of the petitioner.

Held: At the time of issuance of notice on 23rd February, 2022, this Court prima facie found that the respondent was in contempt as he has violated the order of Court on 16th February, 2021 passed in batch of writ applications being Special Civil Application No. 3196 of 2021 and allied matters - 2021-TIOL-421-HC-AHM-GST - The only safeguard is of the tax officers to inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03 - These instructions [No. 01/2022-2023] surely are not keeping in pace with the directions issued in toto - As can be noticed that this conduct is also contrary to the instructions issued by the Board and, therefore, the action of the petitioner which is termed to be voluntary and not have any element of voluntariness - It is further fortified by the transcript which has been produced on record - Court requires to hold that the respondent revenue is required to reverse the ITC to the tune of Rs. 37,68,300/- along with 6% interest - Petition disposed of: High Court [para 19, 20, 22]

- Petition disposed of: GUJARAT HIGH COURT

2. **2023-TIOL-255-HC-AHM-GST**

Randhawa Construction Company Vs UoI

GST - Petitioner challenges the cancellation of registration and the OIA which dismissed their appeal on account of being time barred.

Held: Not only such auto-generated orders are being passed but they are being defended vehemently by the learned counsel for the respondents - This unpalatable apathy to the principle of natural justice would need surely quick rectificational approach on the part of the officers concerned - Bench would expect that in all the matters wherever there is absence/dearth of any reasonings this aspect be remembered that if from the date of the decision of this Court [in Aggarwal Dyeing and Printing Works - 2022-TIOL-504-HC-AHM-GST] any mistakes have been committed, let that correction be made at the end of the officer concerned - If due to excessive dependence on artificial intelligence, the respondent would continue to defend its actions in total disregard to the ratio laid down in the said decision, the Court shall need to adopt stringent approach case wise - Resultantly, this petition is allowed on the ground of violation of principles of natural justice - Bench sets aside the show cause notice and the order of cancellation of registration with consequential order with a liberty to the respondent to issue a fresh notice with particulars of reasons incorporated with details and to provide reasonable opportunity of hearing to the petitioner and to pass appropriate speaking order on merits: High Court [para 12.2, 13, 14]

- Petition disposed of: GUJARAT HIGH COURT

3. **2023-TIOL-145-CESTAT-DEL**

Cairn India Ltd Vs Asstt. Commissioner

CX - Appellant claims to produce oil by drilling - In process of manufacture/production of oil, plastic barrels in which input chemicals are procured arise as scrap - Further, due to wear and tear, pipes used in production of oil have to be replaced at times - Case of Revenue is that appellant is generating this scrap in process of manufacture of excisable goods namely oil

and therefore, it is chargeable to excise duty - It is true that in case of production of oil, use of pipes is absolutely essential and without using such pipes final product namely oil cannot be produced at all - It is for this reason that pipes suffer considerable wear and tear and require replacing - What needs to be decided is, whether used/broken pipes which are generated as waste in this case arise out of process of manufacture or out of process of maintenance of capital goods - The distinction is subtle but clear - When some waste is generated in process of manufacture of goods it comes out of inputs directly or inputs transform into some form - Input is that substance or material which, after transformation, becomes the output - Pipes do not get consumed and do not get transformed into oil - They are used to manufacture/production of oil - Regardless of the fact that use of pipes is essential for production of oil, the pipes by themselves are capital goods and are not inputs - When such pipes need repair or replacing and waste is generated in process, it is a waste generated during repair or maintenance of capital goods and not during the process of production of oil or any process incidental or ancillary to it - For this reason, no excise duty can be charged on scrap of pipes produced in this manner - Similarly, the empty barrels are only packing material in which inputs are received and these barrels are not generated during process of manufacture - Therefore, no excise duty can be charged even on that scrap - Impugned orders cannot be sustained: CESTAT

- Appeals allowed: DELHI CESTAT

4. 2023-TIOL-144-CESTAT-MAD

DCM Hyundai Ltd Vs CGST & CE

Cus - Appellant earlier was a 100% EOU and De-Bonded as per Ex-Bond Bill of Entry - They are engaged in manufacture and export of 'Marine Freight Container' falling under Heading 8609 of CETA, 1985 - Issue to be decided is whether appellant is liable to pay interest on duty paid on stock of raw material warehoused beyond the period of three years or whether SCN is time barred - CBEC Circular No. 10/2006 intends to give some solace to a 100% EOU by waiving liability of interest - The Chief Commissioner has however rejected this request of appellant - Be that as it may, SCN has been issued under Section 28 of Customs Act, 1962 - It is clear from said provision that SCN has to be issued within a period of six months - Impugned raw materials were imported between 1995 and 2003 - SCN is dated 13.10.2008 - The duty having been paid on date of De-Bonding the relevant date to compute the demand would therefore be the date of debonding, i.e., 31.03.2007 - The section does not speak of any extension of time based on a request for waiver - Further, request for waiver is filed as per Board Circular - Circulars, though binding on Department is not so on the Tribunal - SCN is time barred - Tribunal in case of Electronic Research Ltd. held that in absence of any limitation period for demanding interest in respect of Customs duty payable in term of Section 61(3) of Customs Act, 1962 in case of warehoused goods, limitation period would be the period prescribed in Section 28 ibid - Tribunal relied on the judgment in case of TVS Whirlpool Ltd - Demand of interest cannot sustain as SCN is time barred - Impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

5. 2023-TIOL-07-AAAR-GST

MS Rabia Khanum

GST - Appeal is filed by Asstt. Commissioner of Central Tax aggrieved by the AAR ruling dated 8 September 2022 - AAR, after taking into consideration CBIC Circular 177 dated 3rd August 2022 held that (i) GST is not applicable for the consideration received on sale of site; (ii) GST is not applicable for the advance received towards sale of site and (iii) GST is not applicable on sale of plots/sites even when they are sold after completion of works related to basic necessities. Held: When interpreting a taxing statute and to determine whether an activity is subject to tax, one cannot rely on advertisement and marketing strategy of the owner to hold that a service has been rendered - The owner of the land is developing the land

not at the behest of the buyer and not because the purchaser has requested for any service from him but because it is required of him by law (KTCPA, 1961) to develop the land in order to sell the plots - The development of land undertaken by the owner is an activity incidental to the sale of land - The transaction between the purchaser and the owner of the land is a transaction purely for the sale of land - Any consideration received by the owner, whether during the course of the development or after the completion of the development works and release of sites by the Planning Authority, is received only for the sale of the land and as such there is no service provided by the owner/developer - If the owner of the land engages the services of a third party to carry out the development activity, that transaction between the owner and the third party will undoubtedly be taxable to GST as a service - In the case of plotted development, the law mandates that a certain level of development activity is undertaken - The sites will not be released for sale unless the development activity is completed - There can be no transfer in the title of a plot of land to the purchaser unless and until the same is released by the Planning Authority - This release of sites for transfer of title by registration happens only when the development work is complete and a completion certificate is obtained from the concerned Authority/Agency/Department - Therefore, any sale of a plot which is carved out of a large parcel of land can take place only after the development of the land - It is a well settled law that Circulars are binding on the Department and the Department cannot go against what is already clarified in the Circulars - Held, therefore, that the consideration received from prospective buyers whether as advance or full consideration are only towards obtaining a transfer in the title of the plot of land and hence not taxable under GST in terms of entry 5 of Schedule III of the CGST Act - Authority makes it clear that any service received by the owner from third parties for undertaking the development work is taxable under GST at rates applicable for such service - If the owner is found to be providing any development work over and above what is mandated by the KTCPA and the local authorities, the same will be considered as a service rendered to the buyer and tax on the same will apply - Sale of land developed by the Respondent is covered within the scope of the term 'sale of land' as mentioned in entry 5 of Schedule III - AAR order upheld and Appeal rejected: AAAR

- Appeal rejected: AAAR

6. <u>2023-TIOL-155-CESTAT-DEL</u>

Satyanarayan Bhalot Vs CCE

ST - The appellant, as an individual person, is engaged in supplying labour - On the basis of an audit objection that the appellant had short paid service tax in respect of 'man power supply' and 'rent a cab service', a show cause notice dated 14.07.2010 was issued to the appellant by invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994 the Finance Act - The appellant filed a reply contesting the demand raised both on merits as well as on limitation but the adjudicating authority by order dated 08.10.2012 confirmed the demand raised in the show cause notice dated 14.07.2010 for the period 2005-2006 and 2008-2009 - The appeal filed by the appellant before the Commissioner (Appeals) was dismissed by order dated 21.11.2013. Held - It is clear that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty - In view of the aforesaid decisions of the Supreme Court, the confirmation of demand for the period beyond the normal period of limitation by invoking the proviso to section 73(1) of the Finance Act cannot be sustained: CESTAT + It would be seen from the aforesaid two orders that even though the Additional Commissioner had not dealt with the issue relating to the invocation of the extended period of limitation, the Commissioner (Appeals) observed that the Additional Commissioner had correctly invoked the extended period of limitation. It was absolutely necessary for the Additional Commissioner to form an opinion that the appellant had deliberately suppressed material information with an intention to evade payment of service tax. Unless the

Additional Commissioner had come to a conclusion that the extended period of limitation was rightly invoked in the show cause notice, it could not have confirmed the demand for any period beyond the normal period of limitation. Likewise, it was also necessary for the Commissioner (Appeals) to form an opinion that the appellant had deliberately suppressed material facts with an intention to evade payment of service tax. [Para 11]

- Appeal allowed: DELHI CESTAT

7. 2023-TIOL-253-HC-MUM-GST

Gulf Oil Lubricants India Ltd Vs Joint Commissioner Of State Tax

GST - Petitioners have challenged the Order(s)-in-Appeal passed by the State Tax authorities - Petitioners have filed these Writ Petitions invoking Article 226 of the Constitution of India on the ground that though the statute provides an appeal to the Appellate Tribunal under Section 112, the Appellate Tribunal is not constituted - A challenge is also raised to the validity of statutory provisions.

Held: Circular No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated 26 May 2020 issued by the office of Commissioner of State Tax, Maharashtra State gives clarification in respect of non-constitution of Appellate Tribunal - An identical Circular extending the period of limitation to file an appeal to the GST tribunal, with some modifications, has been issued by the Central Authorities - As clarified in the Circular dated 26 May 2020, the time to file appeals/application to the Appellate Tribunal would be counted from the date the President or the State President enters the office - It is stated in Clause 5 of the Circular that a declaration in Annexure-I has to be filed before the jurisdictional tax officer stating that an appeal is proposed to be filed - If such declaration is not filed, then it would be presumed that taxpayer is not willing to file an appeal and recovery proceedings would be initiated - Therefore, the sequitur is that if such a declaration is filed, recovery proceedings will not be initiated until the prescribed time limit as specified in Clause 4.3 of the Circular - Petitioners have already filed such a declaration under Clause 4.3 of the Circular - If the Petitioners have not filed declarations, Bench permits the Petitioners to submit the same within 15 days - Respondent State will consider two measures to reduce the inflow of writ petitions in this Court due to non-constitution of the GST Tribunal - First, to incorporate a stipulation contained in Clause 4.3 and Clause 5 of the Trade Circular dated 26 May 2020 in the order passed by the First Appellate Authority - This will put the taxpayer to notice that the time limit for filing the appeal is extended and if a declaration is filed in terms of Annexure-I within the stipulated period, the protective measure would automatically come into force - Second, if recovery is being undertaken in terms of Clause 5 for failure to file a declaration within the time limit, by way of indulgence, to give 15 days period to make such a declaration - Petition disposed of: High Court [para 5, 6, 7, 8, 10]

- Petition disposed of: BOMBAY HIGH COURT

8. 2023-TIOL-251-HC-AHM-GST

Jatin Bhagwatlal Shah Vs State Of Gujarat

GST - Show cause notice had been issued on 29.01.2022 proposing to cancel the registration on the ground that petitioner was not found functioning at the principal place of business - The same was replied to by the petitioner pointing out that he has already shifted to a new place and had vacated the old one on 31.12.2021 - The authority did not hear him and his registration was retrospectively cancelled on the ground that he did not appear on the day fixed for hearing - The petitioner applied for revocation of cancellation of registration - Application for revocation of cancellation was rejected by reproducing the contents of the show cause notice dated 13.04.2022 - appeal also dismissed, hence the writ petition.

Held: It is quite apparent from the material, which is placed on the record that the

cancellation of registration certificate is contrary to law - It is a non-speaking order, which cancelled the registration on the ground that he did not remain present even though he did submit the reply - Thus, cancellation of registration without assigning any reason is wholly mechanical and stereotyped - The very order, which is impugned in this petition when is considered, it is very cryptic and hence, following the decision of Agarwal Dying and Printing Works vs. State of Gujarat, 2022-TIOL-504-HC-AHM-GST indulgence is necessary - It needs to be pointed out that the petitioner concerned had shifted to another premises and, hence, he simply cannot be found at the old address - In absence of any intimating during the spot visit, if it was difficult for him to remain present because of the shift in the office, the cancellation of registration with the retrospective date is fully impermissible - Impugned orders are quashed and set aside and registration is restored - Petition is allowed: High Court [para 10, 11]

- Petition allowed: GUJARAT HIGH COURT

9. 2023-TIOL-140-CESTAT-MUM

ICICI Lombard General Insurance Company Ltd Vs CCGST & CE

ST - Appellant, a general insurance company, is engaged in business of providing insurance services in respect of automobiles - Out of the premium collected from buyer of motor car/vehicle, a portion thereof is paid by appellant to automotive dealer as a commission, on which amount, automotive dealer also charged service tax and duly discharged such liabilities on making payment into Central Government Account - Appellant had availed Cenvat credit, which had been sought to be denied and recovered along with interest and penalty - The Original Authority has held that no commission could have been paid by appellant to automotive dealer under Section 40 of Insurance Act, 1938 and that such payment, which is recorded by automotive dealers in their books of account as a commission, is illegal - Such findings are untenable on question of eligibility to avail Cenvat credit, when tax had undisputedly been received by Government from automotive dealers - In addition, regulatory authority namely, Insurance Regulatory Development Authority (IRDA) has also clarified the correct position in letter addressed to Chairman, CBEC - Such clarification furnished by Regulatory Authority regarding procedures followed for outsourcing non-core services of automotive/automobile dealers, is binding on Revenue - Law is well settled that when a competent authority has issued an opinion on a particular matter, same shall be binding and cannot be questioned by other agencies - No merits found in impugned order, insofar as; it has confirmed adjudged demands on appellant - Therefore, impugned order is set aside: CESTAT

- Appeal allowed: MUMBAI CESTAT

10. 2023-TIOL-125-CESTAT-DEL

Parvatiya Plywood Pvt Ltd Vs CC, CE & ST

CX - Issue involved is, whether appellant is entitled to 'Area based exemption' under exemption Notification No. 49/2003-C.E. r/w subsequent Notification No. 50/2003-C.E. (as amended) - Appellant is entitled to benefit of recalculation of demand on cum-duty basis in accordance with explanation to Section 4(1)(b) of Central Excise Act, 1944 - Admittedly appellant have not collected Central Excise duty in addition to sale price in view of their claim of Area based exemption - Thus, appellant shall be entitled to benefit of calculation of duty on cum-duty-price - Appellant shall be entitled to benefit of Cenvat credit on inputs and input services and demand payable shall be re-calculated accordingly in view of clear mandate of Central Excise Act r/w Cenvat Credit Rules - So far, penalty under Section 11AC ibid is concerned, there is no case of mis-representation, misstatement, suppression or fraud on the part of appellant - Appellant was under bona fide belief in claiming Area based exemption from Central Excise duty, as several other manufacturers located in same locality, where also extended the benefit of Area based exemption - Penalty under Section 11AC ibid both on appellant and its Managing

Director Mr. Akhilesh Pratap Singh is set aside: CESTAT

- Appeals partly allowed: DELHI CESTAT

11. 2023-TIOL-114-CESTAT-AHM

USV Pvt Ltd Vs CCE & ST

CX - The issue involved is, whether appellant is entitled for cash refund against accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess - As regards admissibility of Cenvat credit of Education Cess and Secondary and Higher Education Cess, Rule 3 of Cenvat Credit Rules, 2004 clearly provides that Cenvat credit to be allowed in respect of Education Cess and Secondary and Higher Education Cess - From the said Rule, under clause (vi) and (via), credit of Education Cess and Secondary and Higher Education Cess is clearly allowed - Therefore, appellant is legally entitled for Cenvat of Education Cess and Secondary and Higher Education Cess - Hence, on this count refund cannot be denied - As regards limitation, in case of refund of accumulated unutilized credit, limitation shall not apply - Accordingly, appellant is entitled for cash refund of accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess - Impugned order is set-aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

12. 2023-TIOL-03-AAAR-GST

Portescap India Pvt Ltd

GST - Notification No. 13/2017 Central Tax (Rate) read with Notification No. 03/2018-Central Tax (Rate) - Appellants are not required to pay GST under RCM on the impugned services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services - Appellants are not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorized operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services - AAR order set aside: AAAR

- Appeal allowed: AAAR

13. 2023-TIOL-04-AAAR-GST

Precision Camshafts Ltd

GST - Applicant had sought a ruling on the following question - Whether the supply of "assistance in design and development of patterns used for manufacture or camshaft" to a customer is a composite supply of services, the principal supply being supply of services - AAR had held that the activity of design and development of patterns used for manufacturing of camshaft for a customer is a supply of service in the form of 'intermediary service' - Aggrieved, the present appeal has been filed - It is contended that activities undertaken by appellant constitutes a 'composite supply' with supply of services being principal supply.

Held: The appellant first manufactures the tool as per the requirements and specification given by the customer - This tool is retained by the appellant and used for the manufacture and supply of camshafts - The appellant raises the tax invoice for this tool in the name of overseas customer in convertible foreign exchange though the tool is not physically exported to the customer - The ownership of the tools remains with the overseas customers - Thus, it is amply clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications - On careful perusal of the definition of the term "composite supply" and the essential conditions enumerated in the definition, it is seen that the composite supply comprising two or more taxable supplies of goods or services or both, or any combination thereof should be made by a taxable person to a recipient - However, in the instant case,

considering the facts of the case, it is amply clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications - Hence, contentions of the appellant that impugned transaction is composite supply where the principal supply is supply of services is not valid - In view of the above discussion, Appellate Authority holds that the impugned transaction is supply of goods i.e. pattern/tool of specified specifications - Appeal disposed of: AAAR [para 14, 16]

- Appeal disposed of: AAAR

14. 2023-TIOL-111-CESTAT-MUM

Coface India Credit Management Services Pvt Ltd Vs CCGST & CE

ST - Appeal filed against impugned order whereby Commissioner (A) has rejected refund application filed by appellant under Rule 5 of CENVAT Credit Rules, 2004 on the ground that opening balance in CENVAT register should not be taken into consideration for purpose of grant of refund benefit and that certain input services were not considered for refund inasmuch as those services have no nexus with output services provided by appellant - CBE&C vide Circular No. 120/01/2010 has clarified that closing balance of previous quarter can be considered for utilization towards export as opening balance for subsequent quarter - With regard to establishment of nexus between input services and export of services, Department has not initiated any proceedings for recovery of irregular credit of input services under Rule 14 of CENVAT Credit Rules, 2004 r/w Section 73 of Finance Act, 1994 - Since availment of CENVAT credit has not been questioned at material time, subsequent claim of refund under Rule 5 on fulfillment of conditions laid down therein cannot be questioned by Department at a later stage for denying refund benefit - The issue is no more res integra in view of decisions of Tribunal in case of Ness Technologies (I) Pvt. Ltd. and M. Net Partner Technologies Pvt. Ltd. 2019-TIOL-3657-CESTAT-MUM - Ratio laid down in said orders of Tribunal is to the effect that while granting refund benefit under Rule 5 ibid read with notification issued thereunder, Department cannot object to such claim of appellant on the ground that there was no nexus between input services and exportation of output service - No merits found in impugned order, insofar as Commissioner (A) has denied refund benefit to appellant - Accordingly, impugned order is set aside: CESTAT

- Appeal allowed: MUMBAI CESTAT

15. 2023-TIOL-103-CESTAT-DEL

Elan Electronics India Vs CC

Cus - Appeal filed against impugned order vide which order of rejection of refund claim has been upheld by Commissioner (A) being barred by time - Sole issue to be decided is as to whether time bar under section 27(1) of Customs Act, 1962 is invokable with respect to impugned refund claim - Admittedly, amount in question was paid at the time of presentation of Bill of Entry as duty on goods / vehicles imported by appellant - It is also admitted fact on record that those goods since were not allowed to be imported without any requisite certificate - Since Certificate was not available with appellant that they made a request for goods to be re-exported - There was no occasion for appellant to actually pay customs duty - Hence amount in question cannot be called as amount of duty to which section 27 applies - As per Article 265 of Constitution of India, no tax shall be levied from or collected except by authority of law - It becomes abundantly clear that stage of collection of duty was never arrived, there was no need for Customs Department to ask for any amount as duty - The duty of Rs.7,76,205/- which stand deposited since at the stage prior to scrutiny of impugned Bill of Entry, hence remained as deposit made by appellant for which department has no authority to retain - Resultantly, same cannot be called as amount of duty - There had never been challenge by department to order allowing the re-export of impugned goods - Refund application was filed for the amount as was deposited in name of duty but was not the liability of appellant since the goods have

been re-exported and were never cleared for home consumption - Such an amount was out of scope of being called duty, hence section 27 would not be applicable to such refunds - Commissioner (A) has wrongly invoked section 27(1) of Customs Act, 1962 while rejecting the refund claim as barred by time - Section 26A(1) is otherwise not applicable to facts of present case - Appellant is held entitled for said refund along with interest at the rate of 6% from date of payment till sanction arrived: CESTAT

- Appeal allowed: DELHI CESTAT

16. 2023-TIOL-102-CESTAT-KOL

Celex Technologies Pvt Ltd Vs CCGST & CE

CX - Appellant is a manufacturer of high security number plates for motor vehicles - During audit, it was observed that they had availed CENVAT Credit, additional duty of Rs.3,03,722, H.E. Cess and S.H.E. Cess totaling Rs.11,89,958/- on the strength of nine invoices - It was alleged that these invoices were not consigned to registered address of appellant's manufacturing premises - It is the case of Department that CENVAT Credit pertained to a period prior to registration and there is no scope for accepting Cenvatable documents which do not bear the name of their factory premises - Appellant had taken CENVAT Credit on duty paid goods on above-mentioned inputs and utilized the said credit for payment of duty for clearance of their final product - It has been held by Tribunal, High Courts and Supreme Court that substantial benefit should not be denied on the ground of procedural lapses - Impugned orders cannot be sustained and are accordingly set aside: CESTAT

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