Newsletter - June 2023

Vishnu Daya & Co. LLP

Chartered Accountants

Contents

Direct Tax – Circulars & Notifications

Circulars issued by CBDT in the month of May 2023

1. **CBDT issues guidelines on online gaming, clarifies on 'net winnings'.**

   Circular no. 5 / 2023, dated 22nd May 2023

   CBDT issues Guidelines for removal of difficulties under Section 194BA that deals with Winnings from Online Games. The Circular deals with: (i) computation of "net winnings" with respect to multiple wallets of one user, (ii) whether borrowed money would be considered taxable or non-taxable, (iii) treatment of bonus, referral bonus, incentives etc., (iv) point at which amount is considered to be withdrawn, (v) compliance, (vi) valuation, among others.

   Click here to read /download the circular.

2. **CBDT extends Section 10(23C), 12A & 80G registration deadline to Sept 30.**

   Circular no. 6 / 2023, dated 24th May 2023

   CBDT extends the last date for making registration application in Form 10A (re-registration) for charitable trusts or institutions under Section 10(23C)(i)-first proviso, Section 12A(1)(ac)(i) and clause (i) of first proviso to Section 80G(5) from Nov 25, 2022 to **Sep 30, 2023**. Also extends deadline for application in Form 10AB (regular registration) under Section 10(23C)(iii)-first proviso and Section 12A(1)(ac)(iii) from Sep 30, 2022 to **Sep 30, 2023**. Extends due date for Section 80G registration by Form 10BD with respect to donations received during FY 2022-23 to **Jun 30, 2023**. Also provides clarification on: (i) applicability of Section 115TD, (ii) applicability of provisional registration, (iii) regarding denial of exemption in case where the statement of accumulation is not filed by the due date, (iv) furnishing audit report in Form No.10B.

   Click here to read /download the circular.

3. **CBDT revises monetary limits for condoning delay in claiming refunds or loss carry forward.**

   Circular no. 7 / 2023, dated 31st May 2023

   CBDT revises monetary limits for condoning delay in filing return of income claiming refund or carry forward of losses and set-off under Section 119(2)(b) by partially modifying its earlier Circular No.9/2015. PCITs/CITs shall be vested with powers of acceptance or rejection of application where amount of claim is not more than Rs. 50 Lakh for any one AY and where such claim amount exceeds Rs.50 Lakh but is not more than Rs.2 Cr, CCITs shall be vested with the power of acceptance or rejection. PCCITs shall be vested with powers where claim exceeds Rs. 2 Cr but is not more than Rs.3 Cr in any one AY. Claims exceeding Rs.3 Cr shall be considered by CBDT. The revised monetary limits shall apply with respect to applications/claims filed on or after Jun 1, 2023. The other guidelines prescribed in the earlier circular of 2015 shall remain unchanged.

   Click here to read /download the circular.

Notifications issued by CBDT in the month of May 2023

1. **CBDT notifies Rule 133 for computing 'Net Winnings' in Online Gaming.**

   Notification no. 28 / 2023, dated 22nd May 2023.

   CBDT notifies Rule 133 prescribing formulas for computation of Net Winnings in Online Gaming for the purposes of Sections 115BBJ and 194BA. CBDT issued Guidelines on Online Gaming clarifying on various aspects including net winnings and valuation. CBDT also amends Rule 31A (TDS Statement), w.e.f. Jul 1, 2023, to give effect to the newly inserted Section 194BA (TDS on online gaming) and amendment in Section 194N (TDS on cash payments) whereby threshold for TDS was raised to Rs.3 Cr if recipient is a cooperative society. Also notifies new Form 16 for AY 2024-25 and subsequent years apart from the amendments in Forms 24Q, 26Q, 27Q and 27EQ, w.e.f. Jul 1, 2023.

   Click here to read /download the notification.

2. **CBDT issues notifications restricting rigours of Angel Tax.**

   Notification no. 29 / 2023, dated 24th May 2023

   Notification no. 30 / 2023, dated 24th May 2023

   Vide Notification No. 29/2023, CBDT notifies the class or classes of persons for inapplicability of Section 56(2)(viib) which are: (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more, (ii) Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident, (iii) Any of the following entities, which is a resident of any country listed in the Annexure (21 countries), and is subject to regulations in the country where it is established or incorporated or is a resident: (a) SEBI registered Category-I Foreign Portfolio Investors, (b) endowment funds associated with a university, hospitals or charities, (c) pension funds created or established under the law of the foreign country or specified territory, (d) Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies; The countries are notified in the Annexure.

   CBDT issues Notification No. 30/2023 (effective from Apr 1, 2023) deals with startups whereby, CBDT notifies that Section 56(2)(viib) shall not apply to consideration received by a company for issue of shares exceeding the face value if the said consideration has been received from any person, by a company which fulfills the conditions specified in para 4 (Exempt Startups) from of the DPIIT Notification dt. Feb 19, 2019 and files the declaration referred to in para 5 of the said notification.

   Click here to read /download the notification 29.
   Click here to read /download the notification 30.

3. **CBDT notifies Rs.25 Lac for leave encashment exemption under Sec.10(10AA).**

   Notification no. 31 / 2023, dated 24th May 2023

   CBDT notifies Rs. 25 Lac as exemption limit under Section 10(10AA) with regard to leave encashment received by non-government employees on retirement. The notification comes into effect from Apr 1, 2023.

   Click here to read /download the notification.

4. **CBDT releases Draft Rules on Angel Tax for public comments, deadline Jun 5.**

Draft Rule 11UA, dated 26th May 2023

CBDT releases Draft Rule 11UA for implementing the amended provisions of Section 56(2)(viib) whereby the scope of the Angel Tax provision was expanded to, cover foreign investments. The Draft Rules provide: (i) safe harbour of 10%, (ii) valuation of investments in VC undertaking by VC Fund/Company or Specified Fund, (iii) 5 additional valuation methods in cases involving non-resident's investment where merchant banker's report is required viz. (a) Comparable Company Multiple Method, (b) Probability Weighted Expected Return Method, (c) Option Pricing Method, (d) Milestone Analysis Method, and (e) Replacement Cost Methods, and (iv) valuation of investment received from entities notified under clause (ii) of first proviso to Section 56(2)(viib), and (v) option to deem date of merchant banker's valuation report as date of valuation if the same is not more than 90 days prior to share issuance date. The stakeholders as well as the general public may provide suggestions/ comments at ustpI2@nic.in latest by Jun 5, 2023.

Click here to read /download the draft Rule 11UA.

5. **CBDT notifies e-Appeals Scheme, 2023 to operationalise appeals before JCIT(A).**

Notification no. 32 / 2023, dated 29th May 2023

CBDT notifies e-Appeals Scheme, 2023 and amendments in Rules 45 and 46A along with Form No. 35. This is pursuant to the amendments made by the Finance Act, 2023 in Section 246 whereby JCIT(A) has been created and empowered to dispose of the appeals in specified cases.

Click here to read /download the notification.

6. **CBDT notifies amendment in Rule for Sec.80G provisional approval.**

Notification no. 34 / 2023, dated 30th May 2023

CBDT notifies amendment in Rule 11AA. As per the amendment, in case of an application made under clause (iv) of the first proviso to Section 80G(5), the provisional approval shall be effective from the AY relevant to the previous year in which such application is made.

Click here to read /download the notification.

7. **CBDT expands scope of Sec.56(2)(x) inapplicability for strategic disinvestments**.

Notification no. 35 / 2023, dated 31st May 2023

CBDT amends Rule 11UAC(4) w.e.f. Apr 1, 2023 that deals with one of the exceptions to the applicability of Section 56(2)(x). As per the amendment, Section 56(2)(x) shall not apply to "*any movable property, being equity shares, of a public sector company* ***or a company****, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment*".

Click here to read /download the notification.

Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of May 2023

1. **ITAT: Delay in employees' PF remittance 'indicated' in Form-3CD, sufficient for Sec.143(1) adjustment.**

   Siddhi Vinayaka Graphics Private Limited [TS-265-ITAT-2023(Kol)]

   Kolkata ITAT upholds prima facie disallowance of employees PF & ESI contribution while processing return by CPC under Section 143(1) based on information in the Tax Audit Report on delayed payments of the contribution under Section 36(1)(va) read with Section 2(24)(x).

   ITAT relies on SC ruling in *Checkmate Services* wherein it was held that contribution by the employees to the relevant funds is the employer's income under Section 2(24)(x), but the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective law governing the fund.

   Rejects Assessee's contention that interpretation of law as on date of filing of return will prevail, observes that law declared by SC in *Checkmate Services* is applicable retrospectively and the earlier decision of different High Courts favouring the assessee would be treated to have never been existing.

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

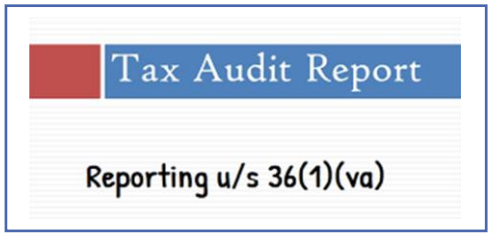
2. **SC: Reiterates law on educational institution's tax exemption, following New Noble judgment**

   Baba Banda Singh Bahadur Education Trust [TS-223-SC-2023]

   SC reverses Punjab & Haryana High Court judgment where Baba Banda Singh Bahadur Education Trust (Assessee) was allowed exemption despite making profit from educational activities. SC observes that the judgments followed by HC were considered by SC's three-judge bench in New Noble Education Society wherein it was held, "*that for claiming the benefit/exemption under Section 10(23C)(iii)(ab) which is para materia to Section 10(23C)(vi) the activity of the assessee must be solely for educational purposes and if ultimately it is found that the activity is for profits the assessee is not entitled to the exemption under Section 10(23C)(vi) of the Act*."

   SC notes that CIT(E)'s finding of fact, that the activity of the Assessee cannot be said to be solely for imparting the education as the Assessee made profit of 67.81% without depreciation and 44.48% with depreciation, was not upset by HC in the impugned judgment. Therefore, sets aside the HC judgment by following the New Noble Education Society ruling and allows Revenue's appeal.

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



3. **ITAT: Sec.56(2)(viia) applicable on shares received pursuant to amalgamation, despite exclusion by Sec.47(vi).**

Vertex Projects LLP [TS-224-ITAT-2023(HYD)]

Hyderabad ITAT upholds applicability of Section 56(2)(viia) on receipt of shares pursuant to scheme of amalgamation, states that the transfer excluded by Section 47(vi) will form part of Section 56(2)(viia) and therefore, transfer / receipt of shares of a company in which public are not substantially interested will be chargeable as income from other sources in the hands of recipient.

Notes that Clause 4.1 of the Scheme of Amalgamation provided that pursuant to the order of the High Court or any other appropriate authority sanctioning the scheme, the assets be transferred and are deemed to be transferred to and vested in the transferee company, thus *"the transfer of shares (assets) have taken place and therefore, it would be wrong to say that on the part of the assessee there were no transfer of shares"*. Therefore, holds that CIT(A)'s finding that Section 56(2)(viia) could be invoked is incorrect, rejects Assessee's contention that mere merger transactions are outside the purview of Section 56(2)(viia).

Further explains that Section 56(2)(viia) makes it abundantly clear that there is no requirement of transfer as the requirement under the provision is the receipt of any property being the share of a company without or inadequate consideration which is less than the Fair Market Value.

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

4. **ITAT: Determines ALP at Nil for Intra Group Services, citing assessee's failure to demonstrate need and receipt of such services.**

International Flavours Fragrances India Pvt Ltd [TS-251-ITAT-2023(CHNY)-TP]

Chennai ITAT upholds Nil ALP for management and marketing service fees citing failure to demonstrate receipt of such services in case of assessee (subsidiary of a US company, engaged in manufacturing of flavours and fragrances for sales in India and overseas) for AY 2014-15.

Notes that the documents filed by assessee were general in nature, did not demonstrate that the actual services were rendered and received by assessee, that assessee availed similar services in the past but did not to pay for those services in earlier years which has substantially impacted the profit of the relevant year absent any change in the nature of its business.

Also affirms NIL adjustment by holding that *'since in the absence of receipt of services, there would be no necessity for the assessee to pay for such services and the question of application of any prescribed method to determine the ALP would not arise at all'.*

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

5. **HC: Sec.45(5A) not remedial or clarificatory, thus, prospective. Rejects Assessee's 'class discrimination' plea.**

Pankaj Kumar [TS-256-HC-2023(PAT)]

Patna HC, in a batch of writ petitions challenging prospective application of Section 45(5A), holds that the same cannot be made applicable retrospectively particularly because the sub-section was expressly inserted w.e.f. April 1, 2018.

Assessees filed the present writ petitions raising the question of law – whether Section 45(5A) inserted by Finance Act, 2017 w.e.f. Apr 1, 2018 was applicable retrospectively.

HC observes that "*The purport of the above declarations is that, in examining the question whether an amendment is prospective or retrospective, the Court should determine whether it is clarificatory or substantive. If it is clarificatory, it is an expression of intent which the legislature always intended to hold the field and if there is substantive change in legal rights and obligations, it would not be curative and hence not retrospective.*".

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

MCA Updates & Legal Rulings

1. MCA: Launches C-PACE to simplify strike off process of companies.

MCA centralises the strike off process of companies with the establishment of the Centre for Processing Accelerated Corporate Exit (C-PACE), which will help in reducing the stress on the Registry along with keeping the registry clean besides availability of more meaningful data to the stakeholders; States that the C-PACE will also benefit the stakeholders by providing a hassle-free filing, timely and process-bound striking off their company's names from the Register; Ministry apprises that the setting up of the C-PACE is part of the several measures taken by MCA in the recent past towards Ease of Doing Business and ease of exit for the Companies, and that the C-PACE institution shall be in operation through the Registrar of Companies (RoC) for the purposes of exercising functional jurisdiction of processing and disposal of applications; Further ,informing that Shri. Harihara Sahoo, ICLS (Indian Corporate Law Service), has been appointed as first Registrar of the office of C-PACE, MCA highlights that the C-PACE office will work under the supervision/administration of Director General of Corporate Affairs.

Rule 4 (1) relating to Application for removal of name of company has been revised which says that an application for removal of name of company under Section 248 (2) will now be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 with a fee amounting to Rs. 10,000. Rule 4 (3-A) relating to Application for removal of name of company has been inserted. The Registrar, Centre for Processing Accelerated Corporate Exit will be established under Section 396 (1) and this Registrar of Companies has the power of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related to Section 248 having territorial jurisdiction all over India. Form No. STK- 2 relating to "Application by company to ROC for removing its name from register of companies" has been revised. Form No. STK- 6 (Public Notice) has been revised. Form No. STK- 7 relating to "Notice of Striking Off and Dissolution" has been revised.

2. MCA: Substitutes LLP Form no. 3, requires additional disclosures

MCA amends Limited Liability Partnership Rules, 2009, substitutes LLP Form No. 3 (information with regard to Limited Liability Partnership Agreement and changes, if any, made therein). Under the substituted LLP Form No. 3, MCA mandates disclosure of details of each partner to contribute money or property or other benefit or to perform services and their profit sharing ratio. Further, MCA specifies disclosures w.r.t. details of Director Identification Number (DIN) / Income Tax PAN / Passport number, Designated Partner Identification Number (DPIN) / Income Tax PAN / Passport number of the partner / nominee etc. Lastly, MCA requires disclosure of the number of amendments / changes made in LLP agreement till date, as well as specific reasons for change in LLP agreement, including *inter alia* change in

partners, change in business activity etc.: Ministry of Corporate Affairs

3. MCA: Allows Companies to file form CSR-2 for FY 2022-23, by March 31, 2024

MCA amends Companies (Accounts) Rules, 2014, inserts a new proviso under sub-rule (1B) of Rule 12 (filing of financial statements and fees to be paid thereon); Provides that, for FY 2022-23, Form CSR-2 shall be filed separately on or before March 31, 2024 after filing Form AOC-4 or Form AOC-4-NBFC (Ind AS) as specified in these rules or Form AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, as the case may be.

4. MCA: Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 vide notification, numbered G.S.R. 367(E), with effect from 15th day of June, 2023

The amendments specifically modify sub-rules (5) and (6) of rule 25 in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The new sub-rules introduce provisions regarding objections, suggestions, and confirmation orders related to schemes of merger or amalgamation under section 233 of the Companies Act, 2013.

Sub-rule (5) states that if no objection or suggestion is received within thirty days from the Registrar of Companies and Official Liquidator, and if the Central Government is of the opinion that the scheme is in the public interest or the interest of creditors, it may issue a confirmation order within fifteen days after the expiry of the thirty-day period. If the Central Government does not issue a confirmation order within sixty days, it is deemed to have no objection to the scheme.

Sub-rule (6) states that if objections or suggestions are received within thirty days from the Registrar of Companies or Official Liquidator or both, the Central Government has two courses of action:

a) If the objections or suggestions are deemed unsustainable and the Central Government is of the opinion that the scheme is in the public interest or the interest of creditors, it may issue a confirmation order within thirty days after the expiry of the initial thirty-day period.

b) If the Central Government is of the opinion that the scheme is not in the public interest or the interest of creditors, it may file an application before the Tribunal within sixty days of the receipt of the scheme, stating the objections or opinion and requesting the Tribunal to consider the scheme under section 232 of the Act.

If the Central Government does not issue a confirmation order or file an application within sixty days, it is deemed to have no objection to the scheme.

5. MCA: the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

The provisions came into force on 10-5-2023. New Provisions have been inserted regarding the same:

- The company cannot file an application unless it has filed overdue financial statements and overdue annual returns up to the end of the financial year in which the company ceased to carry out its business operations.

- Where the Registrar's action has already been initiated against the Company, it can only file the application for removal of names, after filing pending financial statements and annual returns.

- A Company will not be allowed to file an application for removal of names, once the Registrar has issued notice for publication.

6. Govt notifies certain activities to be covered under PMLA.

Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023, has introduced a revised definition of "PEPs" or politically exposed persons. The revised definition clarifies individuals who qualify as PEPs, including foreign PEPs.

PEPs hold significant public positions or have close associations with such individuals. PEPs are categorized as high-risk clients due to their vulnerability to corruption or bribery.

The Ministry of Finance has notified an amendment to Section 2(1)(sa) of the Prevention of Money Laundering Act, 2002 (PMLA).

The Central Government, by using the authority granted u/s 2(1)(sa)(vi) has notified that certain activities, when carried out on behalf of or for another person in the course of business, will be regarded as activities for the purpose of this sub-clause. These activities are as follows

(a) Acting as a formation agent of companies and LLPs;

The professionals - advocates, chartered accountants, cost accountants and company secretaries in practice, who are engaged in the formation of the company to the extent of only filing a declaration form are exempted from the purview of PMLA.

(b) Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs;

The provisions of PMLA will now apply to a person acting as a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs, necessitating their compliance with various obligations such as maintaining records of financial transactions, identifying and verifying clients, and reporting suspicious transactions to the financial intelligence unit.

(c) Providing a registered office, business address or accommodation, correspondence or administrative address for a company or a LLP or a trust;

A person providing a registered office, business address, accommodation, correspondence or administrative address for a company, LLPs or a trust has been included in the reporting entity under the Prevention of Money Laundering Act (PMLA).

This means that any person that provides such services to a company, LLPs or trust will have to comply with the reporting requirements as outlined under PMLA.

However, any activity carried out as part of an agreement of lease, sub-lease, tenancy or

any other agreement or arrangement for the use of land or building or any space and where the consideration is subject to deduction of income tax would be exempt from the purview of PMLA.

(d) Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and

Trustees will need to ensure that they have adequate systems in place to monitor and report on their activities, including any transactions that may be considered suspicious. This could result in increased compliance costs for trustees and potential reputational damage if they fail to comply with reporting requirements.

(e) Acting as (or arranging for another person to act as) a nominee shareholder for another person.

The reporting requirements under PMLA require companies to disclose the identity of the ultimate beneficial owner (UBO) of the shares held by a nominee shareholder. This means that companies must identify the person who actually owns or controls the shares, even if they are not listed as registered shareholders.

7. 'Activities' not to be covered u/s 2 of the PMLA

The following activities shall not be regarded as an activity for the purpose of section 2(1)(sa)(vi) of the PMLA –

(a) any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax;

(b) any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment;

(c) any activity carried out by an advocate, chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company to the extent of filing only a declaration form;

(d) any activity which falls within the meaning of an intermediary.

Caselaws

1. Failure to report Sun Pharma's RPTs lands Deloitte, Secretarial Auditor in trouble, ROC slaps penalties.

In the matter of Sun Pharmaceutical Industries Ltd.

Registrar of Companies (Gujarat) slaps a penalty of Rs. 1,50,000 each on Audit firm Deloitte Haskins & Sells LLP, and the Secretarial Auditor of Sun Pharmaceutical Industries Ltd. for not reporting related party transactions of Sun Pharma, with its sole distributor and promoter entity Aditya Medisales Ltd.; MCA had ordered an inquiry u/s 206(4) of the Companies Act, 2013, into the affairs of Sun Pharma covering FYs 2014-15 to 2017-18, which revealed that the statutory auditor had not reported Aditya Medisales Ltd. as related party of the company, as per Ind AS 24/AS-18 in the Financial Statement and hence, a Show Cause Notice was issued; Deloitte submitted that the Company's Board of Directors is responsible for the matters stated u/s 134(5) [Directors' Responsibility Statement] of the Companies Act w.r.t. the preparation of the financial statements that give a true and fair view of the company's affairs, in accordance with the Ind AS/Accounting Standardrs and other accounting principles generally accepted in India, and the Auditor's responsibility is to conduct the audit in accordance with Accounting Standards specified u/s 143(10), for forming and expressing opinion on the financial statements that have been prepared by the management with oversight of those

charged with governance; On the other hand, the Presenting Officer stated that although the shareholders of Aditya Medisales are Body Corporates, but the main control person of all these body corporates is Managing Director of Sun Pharma, and that Sun Pharma's RPTs with Aditya Medisales exceeded Rs. 100 Cr. which formed material and significant transactions, and it is the Statutory Auditor's duty to check significant transactions; Further, as regards the Company's secretarial Auditor, the Presenting Officer submitted that as per the provisions of Sec. 204 of the Companies Act, the Secretarial Auditor plays a crucial role in effective compliance, inasmuch as the objective of Secretarial Audit, which is a mechanism connected with the audit of evaluation of the non-financial aspects of the company, is evaluation and forming an opinion and reporting to shareholders as to whether the company has complied with all applicable laws; The Officer also averred that instead of performing his duty as per the Guidance Note in respect of Related Party Transactions u/s 188 of the Act, the Secretarial Auditor merely relied on the Statutory Auditor's report; Presenting Officer added that the Forensic Audit conducted by SEBI, based on several Whistleblower complaints against Sun Pharma, is an additional confirmation regarding RPTs between the two companies; The Presenting Officer further stated that as Aditya Medisales is the sole distributor of Sun Pharma, and Deloitte has been Sun Pharma's statutory auditor for more than 20 years, the auditor's statement they are not aware of the fact, is not acceptable; In light of the facts and submissions, ROC states that it has reasonable cause to believe that the Statutory Auditor has failed to discharge its duty as per the provisions of Sec. 143(3) of the Companies Act read with the relevant Accounting Standards, and hence the auditor is liable for penalty as per Sec. 450 of the Act; Similarly, ROC specifies that the Secretarial Auditor is liable for penalty u/s 143(14) r.w.s. 188 and 204 of the Companies Act: ROC Gujarat

2. SC: Key Excerpts from SC judgment setting-aside HC-order quashing prosecution against IL&FS ex-auditors

The auditor is prohibited from providing any management service to the company. *"Thus, the prohibition and restriction created under Section 144 of the Act is primarily to protect the interest of the company in question and other stakeholders such as lenders and investors and the public at large. Keeping in mind the aforesaid provisions and the underlying public policy in the backdrop, Section 140(5) of the Act, 2013 is required to be interpreted and/or considered."*

FEMA updates

1. **Remittances to International Financial Services Centres (IFSCs) under Liberalised Remittance Scheme (LRS)**

   A.P. (DIR Series) Circular No. 03 dated April 26, 2023 With an objective to align the LRS to IFSCs set up under the International Financial Services Centres Authority Act, 2019 vis-à-vis other foreign jurisdictions, it has been decided to amend the directions under para 2(ii) of A.P. (DIR Series) Circular No. 11 dated February 06, 2021 as

   "Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS" the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

   With this change now if a resident individual opens a FCA in IFSC, he or she will not be required to withdraw the funds which remained idle in the account for a period upto 15 days from date of its receipt. Now the prevalent LRS provisions will be applicable for repatriation of unutilized or idle funds.

2. **Levy of charges on forex prepaid cards/store value cards/travel cards, etc.**

   A.P. (DIR Series) Circular No. 04 dated May 09, 2023

   International Debit Cards/Store Value Cards/Charge Cards/Smart Cards or any other instrument that can be used to create a financial liability, as 'currency. In this regard, a few Authorized Persons are levying certain fees/charges, which are payable in India on such instruments, in foreign currency. Such fees / charges payable in India will now have to be denominated and settled in Rupees only.

3. **LIBOR Transition**

   i. Attention of banks/financial institutions (FIs) is drawn to the Reserve Bank advisory on "Roadmap for LIBOR Transition" dated July 08, 2021 wherein banks/FIs, inter-alia, were (i) encouraged to cease, and also encourage their customers to cease, entering into new financial contracts that reference London Interbank Offered Rate (LIBOR) as a benchmark and instead use any widely accepted Alternative Reference Rate (ARR), as soon as practicable and in any case by December 31, 2021 and (ii) urged to incorporate robust fallback clauses in all financial contracts that reference LIBOR and the maturity of which was after the announced cessation date of the LIBOR settings.

   ii. With the concerted efforts of banks/FIs as well as industry associations like the Indian Banks' Association, a smooth transition with respect to LIBOR settings that have ceased to be published/become non-representative after December 31, 2021 has been achieved. The transition away from LIBOR was also facilitated by the continuing publication of US$ LIBOR settings in five tenors which provided a longer transition period particularly for the insertion of the fallback clauses in legacy financial contracts that reference LIBOR. New transactions are now predominantly undertaken using ARRs such as the Secured Overnight Financing Rate (SOFR) and the Modified Mumbai Interbank Forward Outright Rate (MMIFOR). At the same time, there have been instances of a few US$ LIBOR linked

financial contracts undertaken/facilitated by banks/FIs after January 1, 2022. Also, while banks have reported that substantial progress has been made towards insertion of fallback clauses, the process is yet to be completed for all contracts where such fallbacks are required to be inserted.

iii. After June 30, 2023, the publication of the remaining five US$ LIBOR settings will cease permanently. While certain synthetic LIBOR settings will continue to be published after June 30, 2023, the Financial Conduct Authority (FCA), UK, which regulates the LIBOR, has made it clear that these settings are not meant to be used in new financial contracts. The MIFOR, a domestic interest rate benchmark reliant on US$ LIBOR, will also cease to be published by Financial Benchmarks India Pvt. Ltd. (FBIL) after June 30, 2023.

iv. Banks/FIs are advised to ensure that no new transaction undertaken by them or their customers rely on or are priced using the US$ LIBOR or the MIFOR. Banks/FIs are also advised to take all necessary steps to ensure insertion of fallbacks in all remaining legacy financial contracts that reference US$ LIBOR (including transactions that reference MIFOR). Fallbacks in such contracts should be inserted at the earliest so as to ensure that transition of any remaining US$ LIBOR-linked contracts is completed well before the deadline of end June 2023 and any disruptions due to a last-minute rush to insert fallbacks is avoided. Banks/FIs are advised not to rely on the availability of synthetic LIBOR rates as a substitute for fallbacks in legacy contracts.

v. Banks/FIs are expected to have developed the systems and processes to manage the complete transition away from LIBOR from July 1, 2023. Continued efforts in sensitising customers on the steps to be taken to manage the associated risks will enable a smooth completion of the final leg of the transition.

vi. The Reserve Bank will continue to monitor the efforts of banks/FIs for ensuring a smooth transition from LIBOR.

4. ₹2000 Denomination Banknotes – Withdrawal from Circulation; Will continue as Legal Tender

i. ₹2000 denomination banknote was introduced in November 2016 under Section 24(1) of RBI Act, 1934 primarily to meet the immediate currency requirement of the economy after withdrawal of the legal tender status of all ₹500 and ₹1000 banknotes in circulation at that time. With fulfilment of the objective of introduction of ₹2000 denomination and availability of banknotes in other denominations in adequate quantity, printing of ₹2000 banknotes was stopped in 2018-19.

ii. Further, majority of the ₹2000 denomination notes were issued prior to March 2017, have completed their estimated lifespan and are not observed to be commonly used for transactions anymore. Therefore, it has been decided that, in pursuance of the "Clean Note Policy" of the Reserve Bank of India, the ₹2000 denomination banknotes shall be withdrawn from circulation. The ₹2000 banknotes will continue to be legal tender.

iii. Accordingly, to implement the decision stated above, the following plan of action has been formulated which, the banks shall follow meticulously:

A. Handling of existing stock and receipts

i. All banks shall discontinue issue of ₹2000 denomination banknotes with immediate effect. ATMs/Cash Recyclers may also be reconfigured accordingly.

ii. Banks holding Currency Chests (CCs) shall ensure that no withdrawal of ₹2000 denomination is allowed from the CCs. All balances

held in the CCs shall be classified as unfit and kept ready for dispatch to respective RBI offices.

iii. All banknotes in this denomination received by the banks shall be sorted immediately through Note Sorting Machines (NSMs) for accuracy and genuineness and deposited in the currency chests under the Linkage Scheme or kept ready for dispatch to the nearest Issue Office of RBI.

iv. The instructions contained in our Master Direction dated April 03, 2023 on detection, reporting and monitoring of counterfeit notes shall be meticulously followed.

B. Facility for Deposit and Exchange

i. The facility for deposit and/or exchange of ₹2000 banknotes shall be available for members of the public up to September 30, 2023.

ii. Deposit of ₹2000 banknotes into accounts maintained with all banks can be made in the usual manner, that is, without restrictions and subject to compliance with extant Know Your Customer (KYC) norms and other applicable Statutory requirements. The banks shall also be required to comply with Cash Transaction Reporting (CTR) and Suspicious Transaction Reporting (STR) requirements, where applicable.

iii. The facility for exchange of ₹2000 banknotes shall be provided to all members of the public by all banks through their branches.

iv. With a view to minimise inconvenience to the public, to ensure operational convenience and avoid disruption of the regular activities of bank branches, all banks may exchange ₹2000 banknotes upto a limit of ₹20,000/- at a time.

v. Business Correspondents (BCs) may also be allowed to exchange ₹2000 banknotes upto a limit of ₹4000/- per day for an account holder. For this purpose, banks may, at their discretion, enhance the cash holding limits of BCs.

vi. To give time to the banks for preparatory arrangements, members of the public have been requested to approach the banks/branches from May 23, 2023 for availing exchange facility. Deposit of ₹2000 banknotes may continue as per the normal banking practice.

vii. For providing deposit / exchange facility to people residing in remote/ unbanked areas, banks may consider using mobile vans, if necessary.

viii. While crediting the value of ₹2000 notes to Jan Dhan Yojna Accounts / Basic Savings Bank Deposit (BSBD) Accounts, the usual limits will apply mutatis mutandis.

ix. The banks shall to the extent feasible make special arrangements to reduce inconvenience to the senior citizens, persons with disabilities and women seeking to exchange/deposit ₹2000 notes.

C. Replenishment of Stock of Other Denominations for Exchange

i. Branches / CCs should estimate their cash requirement and obtain banknotes of other denominations from the linked / nearby currency chest / RBI well in time.

ii. CC holding branches shall extend required support to the linked / non-linked branches in accepting ₹2000 notes and distribution of banknotes in other denominations. In case of any difficulty in obtaining cash, the banks may contact the concerned Issue Office of RBI.

D. Dissemination of Information

i. The banknotes in ₹2000 denomination will continue to be legal tender.

ii. A document on Frequently Asked Questions (FAQs) in the matter has been prepared and given in the Annex. A copy of the same may be provided to the staff manning the exchange counters as well as displayed in the banking hall, ATM kiosks, etc.

iii. A Press Release informing the public of the exercise and soliciting their co-operation is being issued separately. A copy of the same is enclosed for ready reference which may also be displayed in the banking hall, ATM kiosks, etc.

iv. Banks may also consider advising their customers suitably in the matter.

v. The above instructions will be effective until September 30, 2023.

Indirect Tax Updates

1. Amendment to the Notification No. 13/2020 dated 21-03-2020

The above mentioned notification mandates the issue of e-invoice whose turnover in a financial year exceeds Rs.10 Cr. But, Government amended said notification vide Notification No.10/2023 and notifies **Rs.5 Cr** as the turnover limit for issuance of e-invoice with effect from 01-08-2023. Hence, the registered persons whose turnover in a financial year exceeds Rs.5 Cr are bound to issue e-invoice with effect from 01-08-2023.

Click here ***to read / download the Notification No.10 /2023 Central Tax dated 10-05-2023.***

2. Amendment to the Notification No.11/2017 dated 28-06-2017.

In the said notification, in the Table, against serial number 9, in item (iii), in sub-item (b), in the entries under column (5), in condition (2), after the second proviso, the following provisos shall be inserted, namely: - "

Provided also that the option for the Financial Year 2023-2024 shall be exercised on or before the 31st May, 2023:

Provided also that a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of **forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later."**.

Click here ***to read / download the Notification No.05 /2023 Central Tax (Rate) dated 09-05-2023.***

3. Standard operating procedure for the scrutiny of returns for FY 2019-20 onwards

The standard Operating Procedure for the scrutiny of returns provided in the Instruction No. 02/2022-GST dated 22-03-2022 stands modified to the following extent in respect of scrutiny of returns for FY: 2019-20 onwards:

a) Selection of returns for the scrutiny and communication of the same to the field formations:

- Selection of returns for scrutiny will be done by the Directorate General of Analytics and Risk Management (DGARM) based on various risk parameters identified by them.

- The details of GSTINs selected for scrutiny for a financial year will be made available by DGARM through DG Systems on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application.

- The details of the risk parameters, in respect of which risk has been identified for a particular GSTIN, and the amount of tax/ discrepancy involved in respect of the concerned risk parameters (i.e. likely revenue implication), will also be shown on the scrutiny dashboard.

- As the data made available on the dashboard has been generated at a particular point of time for calculation of risk parameters, this data may undergo change at the time of scrutiny of returns, due to subsequent compliances carried out by the taxpayer or by the suppliers of the taxpayer. The proper officer shall, therefore, rely upon the latest available data.

b) Scrutiny Schedule:

- Once the details of GSTINs selected for scrutiny for a financial year are made available on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application, the proper officer, with the approval of the divisional Assistant/ Deputy Commissioner, shall finalize a scrutiny schedule in the format specified in Annexure A of Instruction 02/2022- GST dated 22nd March 2022. Such scrutiny schedule will specify month wise schedule for scrutiny in respect of all the GSTINs selected for scrutiny. While preparing the scrutiny schedule, the scrutiny of the GSTINs, which appear to be riskier based on the likely higher revenue implication indicated on the dashboard, may be prioritized. The Principal Commissioner/ Commissioner of the concerned Commissionerate will monitor and ensure that the schedule identified in Scrutiny Schedule is adhered to by the officers under his jurisdiction.

- The proper officer shall conduct scrutiny of returns pertaining to minimum of 4 GSTINs per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been selected for scrutiny.

c) Process of scrutiny by the Proper Officer:

- The proper officer shall issue a notice to the registered person in FORM GST ASMT-10 through the scrutiny functionality on ACES-GST application, informing him of the discrepancies noticed and seeking his explanation thereto**.**

- The notice in FORM GST ASMT-10, issued by the proper officer through scrutiny functionality on ACES-GST application, shall be communicated by the system to the concerned registered person on the common portal and therefore, there will be no need for sending any manual communication of notice in FORM GST ASMT-10 by the proper officer to the registered person separately.

- On receipt of such notice in FORM GST ASMT-10 on common portal, the registered person may accept the discrepancy mentioned in the said notice, and pay the tax, interest and any other amount arising from such discrepancy and inform the same or may furnish an explanation for the discrepancy in FORM GST ASMT-11, through the common portal, to the proper officer within the time period prescribed under rule 99 of CGST Rules.

- The reply furnished by the registered person in FORM GST ASMT-11 on the common portal shall be made available to the concerned proper officer in the scrutiny dashboard on ACES-GST application. Where the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the proper officer, he shall conclude the proceedings by informing the registered person in FORM GST ASMT-12 through the scrutiny functionality on ACES-GST application.

- In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74 of CGST Act.

- However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may take the approval of the jurisdictional Principal Commissioner / Commissioner through the divisional Assistant/ Deputy Commissioner, through e-file or other suitable mode, for referring the matter to the Audit Commissionerate or anti-evasion wing of the Commissionerate, as the case may be. The copy of the said approval needs to be uploaded while referring the matter to the concerned formation through the scrutiny functionality, as per the procedure detailed in the user manual issued by DG Systems.

d) Time limit for Scrutiny of Returns:

S.NO	Process/ Event	Timeline/ Frequency
1	Communication of GSTINs selected for scrutiny by DGARM on ACES GST Application for a financial year	From time to time.
2	Finalization of scrutiny schedule with the approval of the concerned Assistant/ Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs on ACESGST application
3	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required	Within the month, as mentioned in scrutiny schedule for scrutiny for the said GSTIN.
4	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer

5	Issuance of order in FORM GST ASMT12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from the registered person in FORM GST ASMT11
6	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer
7	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT11
8	Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action, under section 65 or section 66 or section 67, as the case may be.	Within thirty days from receipt of reply from the registered person in FORM GST ASMT11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person.

e) Reporting and Monitoring:

- The details of action taken by the proper officer in respect of GSTINs allocated to him for scrutiny will be available in the form of two MIS reports in the scrutiny dashboard on the ACESGST application. MIS report 'Monthly Scrutiny Progress Report' (in the format specified in Annexure-D of Instruction No.02/2022 dated 22.03.2022) displays summary information of the status of scrutiny of returns for the selected month of a financial year for the selected formation. Besides, the GSTIN-wise details of action taken in respect of scrutiny of returns in respect of allotted GSTINs is made available in the MIS report 'Scrutiny Register' (in the format specified in Annexure-C of Instruction No.02/2022 dated 22.03.2022) on the scrutiny dashboard.

- The progress of the scrutiny exercise as per the scrutiny schedule shall be monitored by the jurisdictional Principal Commissioner/ Commissioner on regular basis.

f) It is clarified that since the scrutiny functionality has been provided on ACES-GST application only for the Financial Year 2019-20 onwards, the procedure specified in Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19.

Click here ***to read / download the Instruction No.02/2023-GST dated 26-05-2023.***

Indirect Tax – Legal Rulings

1. 2023-TIOL-412-CESTAT-MAD

Namakkal Agricultural Producers Cooperative Marketing Society Ltd Vs CCE

ST - the appellant herein is a society formed by Agriculturists and as the name suggests is registered as a Co-operative Society under the Tamil Nadu Co-operative Societies Act, 1983 - The main aim of the society is to provide services to the agriculturists who are members of the society for marketing of the agriculture produce at remunerative prices, distribution of farm inputs, provision of produce pledge loans and processing and other value addition measures as possible - The society is involved in arranging facilities for storing, processing and marketing of the agricultural products like cotton, groundnuts, banana and turmeric - Besides, the society is providing marketing facilities such as auction yards, Drying place and short term storage facilities in the open yard and also rendering jewel loans to its members - The contention of the Department is that the society is engaged in conducting auction of goods for monetary consideration, collecting appraising charges for sanction of jewel loans to its members and also making payment of freight for transport of goods - As the society is involved in rendering taxable services for consideration falling under (i) Auctioneer's service, ii) GTA service and iii) Business Support Service of the Finance Act, 1994, without obtaining registration, without payment of appropriate service tax and without filing ST-3 returns as mandated, a Show Cause Notice dated 21.10.2011 for the period from 2006-2007 to 2010-2011 for demanding service tax of an amount of Rs. 17,12,985/- under Auctioneer's Service, an amount of Rs. 40,530/- under BSS and an amount of Rs. 7,26,770/- under GTA service invoking extended period, apart from demanding interest under Section 75 of the Finance Act, 1994 and proposing levy of penalties under Section 76, 77 and 78 of the Finance Act, 1994 was issued to the appellants and a statement of Demand No. 4/2013 dated 03.04.2013 had followed on similar charges demanding service tax of Rs. 7,11,066/- under Auctioneer's service and BSS along with interest and also proposing penal action for non-payment of tax and for contravention of various provisions of the Finance Act, 1994, for the period from April, 2011 to June, 2012 - After due process of law, these were adjudicated confirming the demand of tax plus interest and imposing penalties vide OIO No. 31/2012-ST dated 28.09.2012 and OIO No. 31/2012-ST dated 28.04.2014 - On filing appeals to the Commissioner (Appeals), Salem, impugned Order-in-Appeal No.61/2013-ST dated 23.03.2013 and OIA No. 187/2014-ST dated 08.10.2014 came to be passed rejecting the appeals and hence the appellants came before this forum. Held - The main issue which requires consideration in the instant case is as to whether the appellants are rendering "Auctioneer's Service" in respect of marketing and other services rendered for selling agricultural produce of its farmer members - The other issues are demand of service tax under BSS and GTA services - Regarding the taxability of appellant's services under "Auctioneer's Service", a numerous judicial decisions have already gone into the differences between Auction and Tender - The facts for our consideration in these two appeals are identical - The marketing and other services rendered by the appellant to their farmer members in selling their agricultural produce through tender process would not be coming under

"Auctioneer's Service under Section 65 (105)(zzzr) of the Finance Act, 1994: CESTAT Held - On the issue of BSS, the facts indicate that the appellants are taking loans from M/s. Salem District Central Co-operative Finance Bank and utilizing this money in providing jewel loans to their farmer members - Thus, the appellant is borrowing the money from the bank on its account and in turn lending it to their farmer members on interest - The services rendered by the appellant are relatable only to its members and not to the bank and the charges collected for appraising jewels before sanctioning of loans are in the nature of cost incurred by the appellant for sanctioning of loans - As such, there is no BSS rendered in the instant case - As such, we hold that the demands raised under the impugned orders demanding service tax under "Auctioneer Service" and BAS are not maintainable: CESTAT Held - Regarding non-payment of service tax on transport of goods by road, the appellants have undertaken the work of lifting and delivering of goods to the ration shops under the Public Distribution System - The service is covered under GTA and in terms of Rule 2(1)(d)(v) of STR,1994, read with Notification No. 36/2004-ST dated 31.12.2004, the liability to pay service tax is on the person who pays the freight where the consignor or consignee of goods is any co-operative society - As such, the appellant is covered under the provisions of Section 65 (50b) of the Finance Act, 1994 - The period of dispute in this appeal is from April,2006 to March,2011 and reportedly the appellant has undertaken transportation of not only food grains and pulses but also sugar and other articles - The exemption for transport of food grains and pulses is available only with effect from 29th February, 2010 - We note that there is a finding in the Order-in-Original that the appellant has failed to give any evidence in order to claim exemption under Notification No. 32/2004-ST which provides for 75% abatement if the transporter has certified as to non-availment of cenvat benefit and also the benefit of Notification No. 34/2004-ST where freight paid on individual consignment upto Rs. 750/- and multi-consignment freight upto Rs. 1500/- exempted from payment of tax - The appellants have failed to submit consignment notes, freight vouchers, ledger account details etc. in order to substantiate their claim for these exemptions: CESTAT

- Appeals partly allowed: CHENNAI CESTAT

2. 2023-TIOL-502-HC-P&H-GST

Modern Insecticides Ltd Vs CCGST

GST - Petitioners are seeking a direction to the respondents to refund an amount of Rs.2.54 crores and supply copy of Panchnama dated 05.03.2020 and 15.01.2021 along with other electronic gadgets, including mobiles, resumed from the premises of the petitioner.

Held : In the present case, from the date when the search was conducted and amount was deposited, no summons under Section 74 (1) of the CGST Act have been issued till date - Though the respondents can initiate proceedings under Section 74 (1) by issuing notice within the period of limitation, they cannot retain the amount of Rs.2.54 crore deposited by the petitioner, which as per respondent-department was voluntary - The amount was deposited during search and as per judgment passed in Vallabh Textiles' case (2022-TIOL-1591-HC-DEL-GST), this deposit cannot be taken to be voluntary - Since no proceedings under Section 74 (1) of the CGST Act have been initiated till date, as per Rule 142(1A) of CGST Rules, 2017 , the department cannot even issue Form GST DRC-01A to ask the petitioner to make payment of tax, interest and penalty due - The very fact that in two years' time, no notice has been issued, the deposit of tax during search cannot be retained by the department till the adjudication of notice, which can take more time in future - Respondent is directed to refund the amount

to the petitioner(s) along with simple interest at the rate of 6% per annum from the date of deposit till the payment is made - Refund to be made within ten days - Petition allowed: High Court

- Petition allowed: PUNJAB AND HARYANA HIGH COURT

3. 2023-TIOL-491-HC-AHM-CUS

Shree Renuka Sugars Ltd Vs UoI

Cus - Petitioner was sanctioned and paid under the said Remission of Duties and Taxes on Exported Products Scheme for exports of sugar made from 1.6.2022 to 30.11.2022 - It appears that certain letters came to be issued by the officers of Kandla customs and Mundra customs providing that the export of sugar made from 1.6.2022 would be treated as restricted export and that the RoDTEP benefit would not be admissible to the goods where the export was restricted under the foreign trade policy - Petitioner is seeking protection against the coercive recovery and further seeking the entitlement to the export benefit under the RoDTEP Scheme.

Held : Court is of the view that the following directions would serve the ends of justice viz. Petitioner shall be entitled to claim the RoDTEP Scheme benefit in respect of the exports of white refined sugar at the rate permissible - Even if such benefit is not claimed or mentioned in the shipping bills, the petitioner is permitted to make necessary application seeking such benefit in respect of the consignments concerned - Passage of time in making such applications which would occur as amount would not be mentioned in the shipping bills, would not render the claim of the petitioner time barred - Non-mentioning of the claim of the benefit in the shipping bill by the petitioner shall also not be treated as waiver on part of the petitioner - Petition disposed of: High Court [para 5, 7]

- Petition disposed of: GUJARAT HIGH COURT

4. 2023-TIOL-324-CESTAT-DEL

Pr.CC Vs Rajesh Plastics

Cus - Demand in dispute is regarding past consignments which were already cleared as per declared values by assessee - The assessment, therefore, attained finality - Once the assessment attained finality, it can be either appealed against to Commissioner (A) by either side or a notice under section 28 can be issued by Revenue - While appeal to Commissioner (A) can be for any aspect of assessment, a notice under section 28 can be issued only to recover duty not paid, short paid or erroneously refunded or not levied and it can be issued only by "the proper officer" - SCN was issued invoking extended period of limitation and there is not even any allegation of collusion or suppression of facts and only allegation is of willful mis-statement of value by assessee, which was inferred from his statement - If SCN is issued alleging non-payment or short payment of duty, the basis of such an allegation must be on sound footing, backed by evidence - There is nothing in SCN and in grounds of appeal which shows that declared value was incorrect apart from statements - The statements only show that assessee was ignorant of many factors, but it does not establish that assessee had mis-declared the value - It is also evident that there was no chemical analysis report nor was any sample drawn to allege mis-declaration of nature of goods - Tribunal do not find even a shred of evidence in this case to confirm the demand as proposed in SCN - Therefore, Joint Commissioner was correct in dropping SCN and Commissioner (A) was correct in upholding decision in impugned order - As far as deposit of Rs. 10 lakhs by assessee

during investigation is concerned, it can only be called as deposit - The mere fact that some amount has been deposited during investigation does not establish in any way the case of Department - Since the assessee has succeeded, amount so deposited should have been refunded to him, if it has not already been refunded - Impugned order is upheld: CESTAT

- Revenue's appeal dismissed: DELHI CESTAT

5. 2023-TIOL-405-CESTAT-DEL

Cords Cable Industries Ltd Vs CCE

ST - Appellant is engaged in manufacture of instrumentation/power cable and paid an amount towards rent to Naveen Sawhney and D.K. Prashar for the premises let out by them to the appellant - A SCN was issued to appellant invoking extended period of limitation - The premises which were let out to appellant are owned by Naveen Sawhney and D.K. Prashar in their individual capacity and it is not the case of department that properties were owned by them as Directors of appellant - Rent was collected by them in their individual capacity and merely because they also happen to be the Directors of appellant would not mean that they had collected rent as Directors of appellant - The person liable to pay service tax under reverse charge mechanism has also been stipulated under rule 2(1)(d) of Service Tax Rules, 1994 - Commissioner (A) assumed that Naveen Sawhney and D.K. Prashar are providing service of renting of immovable property as Directors of appellant, whereas they are providing said service in their individual capacity as owners of premises and not as Directors of appellant - Appellant, in such a situation, could not have been asked to pay service tax on a reverse charge mechanism - What needs to be further noticed is that service tax had been deposited on the rent received by Naveen Sawhney and D.K. Prashar from appellant - Thus, impugned order cannot be sustained and is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

About Us:

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

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