



Newsletter - July 2023

Vishnu Daya & Co. LLP
Chartered Accountants



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Direct Tax – Circulars & Notifications

A. Circulars issued by CBDT in the month of June 2023

1. CBDT extends Q1 TDS/TCS statements submission deadline to Sep 30.

Circular no. 9 / 2023, dated 28th June 2023

CBDT extends time limits for submission of TDS/TCS statements i.e. 26Q, 27Q and 27EQ for the first quarter of FY 2023-24 to Sep 30, 2023.

[Click here](#) to read /download the circular.

2. CBDT clarifies on TCS on LRS & overseas tour package with Guidelines.

Circular no. 10/ 2023, dated 30th June 2023

CBDT issues clarification for implementation of changes relating to TCS on Liberalised Remittance Scheme (LRS) and on purchase of overseas tour program package.

[Click here](#) to read /download the circular.

B. Notifications issued by CBDT in the month of June 2023

1. CBDT notifies various 'Advance Rulings' application forms.

Notification no. 37 / 2023, dated 12th June 2023

CBDT amends Rule 44E and notifies new Forms for obtaining advance rulings from the Board for Advance Rulings viz. Form Nos. 34C, 34D, 34DA, 34E and 34EA. Form No. 34C is for a non-resident applicant, Form No. 34D is for a resident in relation to a transaction undertaken or proposed to be

undertaken by him with a non-resident, Form No. 34DA is for resident in relation to a transaction which has been undertaken or is proposed to be undertaken, Form No. 34E is for resident falling within such class or category of persons as notified by Central Government, and Form No. 34EA is for any other person obtaining an advance .

[Click here](#) to read /download the notification.

2. CBDT incorporates 'majority rule' to address split in advance rulings.

Notification no. 38 / 2023, dated 12th June 2023

CBDT amends the e-Advance Rulings Scheme, 2022 to provide for a reference on point of difference between the Members of the Board for Advance Rulings (BAR) and decision by the rule of majority. By insertion of clause (v) in Para 6(C) of the Scheme, CBDT provides that in case the Members of a BAR differ in opinion on any point or points, then (i) such BAR shall make a reference to PCCIT (International Taxation), (ii) the PCCIT (International Taxation) shall nominate one Member from any other BAR and (iii) such point or points shall be decided according to the opinion of the majority of the Members.

[Click here](#) to read /download the notification.

3. CBDT notifies 348 as Cost Inflation Index (CII) for FY 2023-24.

Notification no. 39 / 2023, dated 12th June 2023

CBDT notifies 348 as CII for FY 2023-24. The notification is effective from Apr 1, 2024 and shall, accordingly, apply to AY 2024-25 and subsequent AYs.

[Click here](#) to read /download the notification.

4. CBDT amends IT Rules for new tax regimes, introduces Form 10-IEA.

Notification no. 43 / 2023, dated 21st June 2023

CBDT notifies amendments in Rule 2BB (Allowances) and Rule 3 (Perquisites) in the light of Section 115BAC i.e. new tax regime. Also amends and Rule 5 (Depreciation) for restricting depreciation to 40% of the block of assets for the persons opting to get taxed under Sections 115BAC or 115BAE (applicable to manufacturing co-operative societies). Further introduces Rule 21AGA and Form 10-IEA (applicable AY 2024-25 onwards) to opt for or withdraw from the new tax regime for the persons having income from business or profession. The rule also provides that the persons not having income from business or profession can opt for new regime through the return of income furnished under Section 139(1). DGIT (Systems) is required to specify the digital procedure for furnishing Form 10-IEA.

[Click here](#) to read /download the notification.

5. CBDT modifies Rules & Forms applicable to educational & charitable institutions.

Notification no. 45 / 2023, dated 23rd June 2023

CBDT amends Rules 2C, 11AA and 17A along with the Forms 10A, 10AB, 10AC, 10AD, 10B and 10BB, pertaining to educational and charitable entities. In Forms 10A and 10AB, CBDT inserts a declaration with regard to registration or approval along with section code and status of business commencement of

activities. Also adds more section codes for filling up these two forms. In Forms 10AC and 10AD, CBDT requires the entities to disclose whether the activities of the charitable entities are charitable, religious or religious cum charitable. In Form 10B, CBDT amends Schedule 269ST to include only the details of the payer and the amount of payment.

[Click here](#) to read /download the notification.

6. Central Government notifies the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken.

Notification no. 46 / 2023, dated 26th June 2023

Central Government notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2023-2024.

Wholesale trading means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

- (i) purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities. and
- (ii) average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

[Click here](#) to read /download the notification.

Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of June 2023

1. ITAT: Penalty for late filing return not compensatory in nature, disallowed under Sec.37(1)

Shriram Chits Maharashtra Ltd [TS-306-ITAT-2023(Mum)]

Mumbai ITAT upholds CIT(A) order wherein addition on account of difference between 'foreman commission' considered 5 times of the 'agency commission' paid to the agents was deleted on the premise that there was no definite correlation between the two in case of chit fund entity. Also observes that penalty paid for late filing of profession tax return is penal in nature and cannot be considered as a compensatory to allow deduction under Section 37(1).

Assessee, a chit fund company, for AY 2014-15 claimed: (i) commission of Rs.21 Lac at the rate of 5% of the chit fund as income under the head 'foreman commission' and (ii) penalty of Rs.11,000 on account of late filing of professional tax return. Revenue held that the Assessee has given understatement of income from foreman commission to the extent of Rs.8.92 Cr, accordingly, made addition of Rs.8.96 Cr. being understated foreman commission. Also disallowed expenditure of Rs.11,000 on account of penalty in late filing of professional tax return. CIT(A) partly allowed Assessee's appeal. ITAT relies on Assessee's own case for AY 2010-11 to 2013-14 wherein under the identical facts it was held that the commission earned by the Assessee at the 5% on total chit fund collection were spread month to month basis and the agents were paid a commission of 1% of total chit fund value in respect of each subscriber subject to a condition that subscribers pay at least 4 months instalment and in this way there was no definite correlation between foremen

commission earned and agency commission paid. Accordingly, holds that no illegality or perversity in CIT(A) order. On the issue of disallowance of Rs.11,000 pertaining to late filing fees being penal in nature, ITAT observes that CIT(A) finding is incorrect because when the Assessee has not filed the profession tax return it was charged with late fee which is penal in nature and cannot be considered as compensatory in nature to claim deduction of expenditure under Section 37(1). Accordingly, partly allows Assessee's appeal.

[Click here](#) to read / download the copy of the ruling.

2. ITAT: No technical know-how made available in pre-clinical lab services. Denies taxability as FTS

Charles River Laboratories Inc. [TS-296-ITAT-2023(Bang)]

Bangalore ITAT holds that the income from rendering pre-clinical laboratory services to Indian customers is not taxable in India as FTS/FIS, both under Act as well as India-USA DTAA. States that elements necessary for satisfying the 'make available clause' were absent in the services rendered by the Assessee to its Indian customers/clients, thus the same cannot be taxed in India.

Assessee-Company, a US resident, is engaged in rendering pre-clinical laboratory services to enable the determination of a safe dose and assess the potential toxicity of new drugs prior to human clinical trials by way of conducting in vitro and in vivo tests and trials, which are largely catered towards Indian customers in the pharmaceutical, medical device and biotechnology industries.

For AY 2013-14 (lead case), Assessee received Rs.9.77 Cr from its various Indian customers for services rendered, which was not offered to tax in India nor tax was deducted at source by the customer. Revenue initiated reassessment proceedings and held that the income from pre-clinical lab services were taxable as FTS/FIS both under the Act as well as India-US DTAA, which was confirmed by DRP.

ITAT opines that the Assessee has complete knowledge and know-how and expertise to carry out the research and to issue reports based on the study conducted as per the agreement, remarks that *“The reason for such agreements between the assessee and its Indian clients for carrying out research and to issue reports is merely providing information for enabling the Indian client to use such data to perform its business. The fact that assessee has been called upon for such research time and again establishes the fact that there is no “make available” of such technical knowledge that is held by assessee through its employees to any of its Indian clients.”*

[Click here](#) to read / download the copy of the ruling.

3. ITAT: Expounds on scope of revised return for 'loss carry-forward' & ITAT's fact-finding powers.

RRPR Holding Private Limited [TS-341-ITAT-2023(DEL)]

Delhi ITAT holds that ITAT is under solemn duty to set the facts right and in perspective to determine correct position of taxability and that ITAT can venture into examination of integrally connected critical aspect to determine the character of transactions as well as quantification of loss.

Assessee, an Investment Holding Company set up to acquire and hold shares of NDTV Ltd filed original return of income for AY 2010-11 declaring income of Rs.4.17 Lacs within prescribed due date. In the course of

the scrutiny assessment, Assessee filed revised return after a lapse of 17 months claiming carry forward of LTCL of Rs.206 Cr. arising from sale of shares. Revenue held that belated claim of capital losses in the revised return is not permissible to be carried forward under Section 74. CIT(A) endorsed the action of the AO without any demur.

ITAT notes that Section 80 by a non obstante clause prohibits claim of carry forward of losses unless determined under Section 139(3) which, in turn, mandates, the loss return must be filed within time limit prescribed under Section 139(1). ITAT further notes that the revised return under Section 139(5) is also circumscribed by the expression 'discovers any omission or any wrong statement in the original return'. ITAT upholding the stance of the Revenue finds that the original return filed under Section 139(1) does not make reference to existence of any capital loss at all and the loss has been claimed for the first time in the revised return, which triggers Section 80 leading to denial of carry forward of loss under Section 74. Remarks that the law codified is plain and concrete and does not admit of any ambiguity.

Regarding the sanctity of such losses, ITAT remarks that how an inadvertent omission to account for such whopping losses resulted, is not answered despite specific opportunity. Observes that the propriety of such capital loss itself is, thus, under cloud. Notes that the loss claimed to have resulted but not reported in financials appears incomprehensible from the perspective of rudimentary principles of accounting. Holds that the Assessee failed to furnish any explanation whatsoever on the nature and character of transactions resulting in such capital loss and thus an unsubstantiated and uncorroborated claim is untenable in law.

[Click here](#) to read / download the copy of the ruling.

4. ITAT: Upholds Sec.68 addition for penny stock gain as Assessee fails to discharge onus.

Hemil Subhashbhai Shah [TS-317-ITAT-2023(Ahd)]

Ahmedabad ITAT upholds CIT(A) order confirming addition under Section 68 made by the Revenue in respect of long term capital gain (LTCG) from sale of penny stocks by relying on Investigation Report unearthing manipulation of share prices to provide gain or losses to the beneficiaries including Assessee.

Assessee-Individual reported LTCG of Rs.10.42 Lacs on sale of 1500 shares of 'Kappac Pharma Ltd.' in AY 2014-15 and LTCG of Rs.58.10 Lac on sale of 13500 shares of the said company in AY 2015-16 which was considered as bogus by the Revenue on the basis of the Investigation Report which highlighted that the shares of Kappac Pharma were penny stocks i.e., manipulated by entry operators in collusion with brokers to artificially rig the price resulting into long term capital gain of the investors and the Assessee was also a beneficiary. CIT(A) dismissed Assessee's appeal.

ITAT rejects Assessee's contention that Investigation Reports could not form the basis of holding share transaction as bogus and relies on Calcutta HC ruling in *Swati Bajaj* wherein it was held that reports prepared by an authority such as DDIT on the basis of investigation featuring large scale scam of providing accommodation entries in the guise of long term capital gain can be considered to be an internal report and needed to be given due weightage to commence proceedings against assessee who fall within the ring of suspicion. Rejects Assessee's contention of adverse Investigation Report not being confronted,

ITAT observes that Assessee failed to discharge the onus since the phenomenal and fanciful rise in share was not supported by the

financial statements of the company and the onus could not be said to be discharged by filing mere documentary evidences of sale and purchase of shares. confirms the addition made by CIT(A) on account of bogus long term capital gains claimed by the Assessee.

[Click here](#) to read / download the copy of the ruling.

5. DC: Absent palpable error, legal non-compliance or arbitrariness, Criminal Revision Petition not maintainable

Kamla Rani [TS-313-DC-2023(DEL)]

Court of Additional Sessions Judge (Tis Hazari Courts, Delhi) dismisses Assessee's revision petition against notice of accusation issued by Additional Chief Metropolitan Magistrate (ACMM) as non-maintainable. Observes that revisional jurisdiction of the Court under Section 397 of Code of Criminal Procedure can be exercised only where there is palpable error, non-compliance with the legal provisions, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily, which are completely missing in this revision petition.

During the AY 2014-15, Assessee-Individual sold an immovable property for Rs.2 Cr. on which tax was duly deducted at source but no income tax return under Section 139(1) was filed and accordingly notice under Section 274 read with Section 271F was issued to the Assessee, which remained non-complied by the Assessee resulting in a penalty of Rs.5,000/-. Subsequently, a show cause notice under Section 279(1) for initiation of prosecution under Section 276CC which also remained non-complied and accordingly, a criminal complaint was filed before ACMM.

The ACMM passed order dt. Dec 11, 2018 directing service of notice for trial upon the Assessee, which is challenged in the present revision petition.

The Court rejects Assessee's contention that since CIT(A) had deleted the penalty imposed, criminal proceedings cannot be initiated against the Assessee, observes that the CIT(A) order deleting penalty was a penalty order and not assessment order, which was passed in Dec 2019.

Rejects Assessee's contention that no notice under Section 142(1) was furnished and thus no prosecution could have been initiated by relying on Delhi HC ruling in Vipul Aggarwal, observes that the assessment order mentioned that the notice under Section

142(1) was issued and served, but if the Assessee contends non-service of such notice, she is required to prove during trial. Also rejects Assessee's contention that the criminal complaint is filed by AO and not by PCIT, states that as per sanction letter dt. Mar 2018, PCIT duly authorised the concerned AO to institute the present complaint. Accordingly, disposes of the revision petition.

[Click here](#) to read / download the copy of the ruling.



MCA Updates

1. MCA: Allows companies to file Form DPT-3, till July 31, without paying additional fees - Jun 21, 2023

MCA allows companies to file Form DPT-3 (Return of Deposits) for the FY ended on March 31, 2023, without paying additional fees upto July 31, 2023. Stating that the due date for filing the Form is June 30, 2023, MCA apprises that the move comes in view of the transition of MCA-21 Portal from Version-2 to Version-3: MCA

2. MCA: Publishes FAQs on filing of Form 3 LLP - Jun 07, 2023

MCA, pursuant to amending Limited Liability Partnership (LLP) Form 3 under the LLP Rules, issues Frequently Asked Questions (FAQs) for filing the form for Purpose 1 viz. filing information with regard to initial LLP agreement, and Purpose 2, viz. filing information w.r.t. initial LLP agreement and for information with regard to changes in LLP agreement. States that under Purpose 1, LLP are required to file Form 3 LLP with the Registrar within 30 days of the date of incorporation, indicating that LLPs are required to file Form 3 LLP under Purpose 1 for 1 time post incorporation. MCA clarifies that the downloaded data of Partners / Designated Partners cannot be edited for this Purpose. Further, specifies that LLPs are required to Form 3 LLP under Purpose 2 with the Registrar within 30 days of any changes that are made in the LLP Agreement, for the purposes of change in business activities, change in partners, change in partner's contribution and % of profit sharing and change due to other reasons. Lastly, w.r.t. any data related issue, Ministry requests reaching out to MCA helpdesk or raise a ticket with MCA helpdesk with screenshot of the error /

incorrect data and LLP Identification Number: Ministry of Corporate Affairs.

3. MCA: Substitutes LLP Form no. 3, requires additional disclosures - Jun 05, 2023

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.



MCA Legal Rulings

1. Violation of Section 137 read with Section 2(40) of the Companies Act, 2013 read with rules ROC Ahmedabad dated 10/07/2023

SMP CONSTRUCTIONS PRIVATE LIMITED (CIN: U452O1GJ2002PTC041739)

Company/officer have violated the provisions of Section 2[40] read with Section 129 of the Companies Act, 2013 read with Rules made thereunder. The turnover of the company is exceeding the prescribed limit for filing Cash Flow Statement. However, the company has failed to attach Cash Flow Statement with the aforesaid e-Forms /AOC-4 which was required to be attached.

2. Penalty for violation of Section 92(4) and Section 137(1) ROC Shillong dated 10/07/2023

ROC, Guwahati had a Criminal Complaint against Company and Directors for contravention of Section 92(4) and 137(1) of Companies Act, 2013

The Company and its directors/officers in default filed joint application u/s 454 in GNL-1 for adjudication of offence committed and were held liable for penalty u/s 92(5) and section 137(3) of Companies Act, 2013 for non-filing of Annual return and Financial Statements for the FY 2014-15.

Penalty for AOC-4 calculated for days of delay, levied on Company and All Directors individually.

Penalty for MGT-7 calculated for days of delay, levied on Company and All Directors individually.

3. Penalty for non-compliance of Section 203 of the Companies Act, 2013 – Not appointing Whole-Time Company Secretary.

The Company filed application for adjudication for violation of provision of Section 203 of the Companies Act, 2013 read with Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 for not appointing Whole time Company secretary for a period of 5 years.

No. of days of default (n)	Penalty imposed on Company/ Director(s)	First default Penalty in (Rs.)	Default continues Penalty in (Rs.)	Total Penalty in (Rs.)	Maximum Penalty in (Rs.)
1636	1. UGL ENGINEERING PRIVATE LIMITED	5,00,000	1636 X 1,000	21,36,000	10,00,000
	2. Kamil Erbel, Director	50,000	1636 X 1,000	16,86,000	5,50,000
	3. Vikram Yogesh Shah, Director	50,000	1636 X 1,000	16,86,000	5,50,000
TOTAL PENALTY				21,00,000	

4. Violation of Section 12 of Companies Act, 2013 Registered Office of the Company

Registrar of Companies, Bihar-cum-Official Liquidator, High Court, Patna has issued letter dated 30/03/2023 to the Company and its directors and the letter returned undelivered with postal remarks as "Addressee cannot be located". Which means that the company is not maintaining registered office as required u/s 12(1) of the Act.

Penalty – Rs. 1000/- per day on Company and each Director individually. No. of days calculated from the date of Notice to the Date of Order for penalty (In the present case, the days is 98 days & penalty levied on Company + 3 Directors)

5. Violation of Section 138 of Companies Act, 2013 Not appointed Internal Auditor for the company.

Turnover of the Company exceeded Rs. 200 crore, As per the provisions of Section 138, Internal auditor was to appointed. But the company failed to appoint Internal auditor in the Company. Therefore, the Company and the officers in default have violated the provisions of Section 138 of the Companies Act, 2013 r.w. Rule 13 of Companies (Account) Rules, 2014.

Penalty –

Sr. No.	Name of the Company /Director	Maximum Penalty	Penalty imposed
1.	M/s. Antique Exim Private Limited	Rs. 2,00,000/-	Rs. 2,00,000/-
2.	Pankaj Kumar Babel	Rs. 50,000/-	Rs. 50,000/-
3.	Shantilal Paldecha	Rs. 50,000/-	Rs. 50,000/-

6. Violation of Section 10A – Filing form INC-20A for commencement of business within 180 days of Incorporation of Company

The Company has filed form INC-20A but with a delay of 412 days. Order issued as follows:

Your attention is also invited to Section 454(8)(i) and 454(8) (ii) of the Companies Act, 2013, which state that in case of non-payment of penalty amount, the company shall be punishable with fine which shall not less than Twenty Five Thousand Rupees but which may extend to Five Lakhs Rupees and officer in default shall be punishable with Imprisonment which may extend to Six months or with fine which shall not be less than Twenty Five Thousand Rupees by which may extend to one Lakhs Rupees or with both.

7. Violation of Section 118(10) of Companies Act, 2013 r.w Secretarial Standard 1 & 2 issued from ICSI Board of Director meeting.

Violation of the provisions by the Company for issuing Notice for the meeting and penalty as follows:

Penalty imposed on company/director(s)	Total / maximum penalty (In Rs)
RINGMING HOTELS AND RESTAURANTS PRIVATE LIMITED	25000
RAJNI MANEET JAIN	5000
RAJENDRA PRASAD JAIN	5000
MANEET RAJENDRAPRASAD JAIN	5000

8. HC : Grants bail to mastermind of Chinese shell companies racket - Jun 29,2023

Dortse vs. SFIO. [LSI-578-HC-2023(P & H)]

Punjab and Haryana HC releases Mr. Dortse (the mastermind of Chinese shell companies racket - Petitioner) on regular bail on finding that the investigation of the case is complete, nothing more is to be recovered from Petitioner, Petitioner is not likely to flee from the course of justice and also that the trial is likely to take some time. Opining that "...no fruitful purpose will be served by keeping the petitioner behind bars.", Court highlights the legal principle laid down by the Apex Court in State of Rajasthan vs. Balchand alias Baliya viz. "Bail is rule, jail is an exception", wherein, SC ruled that the basic Rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like. Moreover, elaborating that detention of an individual infringed his right to life and liberty as guaranteed under Article 21 of the Constitution of India and that the main purpose of detention was to ensure easy proceedings by availing the accused for the trials without any inconvenience, HC reiterates SC's observation that the provisions of the Criminal Procedure Code regarding the arrest of an individual must be interpreted in a sense that unless indispensable, detention of a person must be avoided. Lastly, considering Respondent-SFIO's submission that investigation of the case was already complete and that nothing further was to be recovered from Petitioner, who had been in custody since September, 2022, and that 2 other co-accused had been granted bail by the Supreme Court, HC directs the release of Petitioner on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate / Duty Magistrate concerned: Punjab & Haryana HC

9. NCLT : EPF dues a statutory-liability of Corporate Debtor, to be prioritized over all creditors

Employee Provident Fund Organisation vs. Resolution Professional for Zillion Infraprojects Pvt. Ltd. [LSI-616-NCLT-2023(NDEL)]

SEBI imposes a penalty of Rs. 15 lakh on an erstwhile Director (Noticee) of Alchemist Infra Realty Ltd. (Company) for engaging in fund mobilizing activity through investment contracts by floating / sponsoring / launching collective investment schemes (CIS) without obtaining registration from SEBI as mandated u/s 12(1B) of the SEBI Act r.w. Reg. 3 of the CIS Regulations. Notes that – (i) the Company had mobilised funds to the tune of Rs. 54.1 cr. as of 31 March 2009, when Noticee was the Director of

the Company, (ii) Noticee had already been restrained from accessing the securities market till all the CIS was wound up by the Company and all the monies mobilised through such schemes were refunded to its investor with returns which were due to them, (iii) previously, SEBI imposed a penalty of Rs. 1 cr. on the Company and its directors, including Noticee, in the same matter, (iv) however, SAT set aside the adjudication order against Noticee and restored the matter for passing fresh order on merits.

NCLT allows application filed by Employee Provident Fund Organisation (Applicant) u/s 61 of the IBC r/w Rule 11 of NCLT Rules against rejection of Employees' Provident Fund (EPF) dues of the Applicant by the RP (Respondent) of Zillion Infraprojects Pvt. Ltd. (Corporate Debtor), despite CoC's approval of Resolution Plan. Since the EPF dues are not a part of the assets of the Corporate Debtor and are merely in possession of Corporate Debtor, we are of the view that the Applicant was not required to file his claim. Rather, the Resolution Professional was duty bound to release the dues of the Applicant. The EPF dues are to be given priority over all the other creditors during Liquidation.

10. NCLAT : Reiterates, IBC forum not a substitute for money recovery proceedings. Affirms CIRP-petition dismissal

Shivam Agriols Pvt. Ltd. vs. Shree Krishna Vanaspati Industries Pvt. Ltd. [LSI-615-NCLAT-2023(NDEL)]

NCLAT upholds NCLT order dismissing an application filed by Financial Creditor (Appellant) u/s 7 of the IBC against Shree Krishna Vanaspati Industries Pvt. Ltd. (Corporate Debtor) on finding that debt had not actually become due and payable on part of the Corporate Debtor, remarks that "...the primary legislative intent behind the IBC is insolvency resolution so as to bring the corporate debtor to its feet. It would militate against this legislative fiat if we allow the IBC forum to be used as a substitute for money recovery proceedings.". Notes that - (i) Corporate Debtor secured a loan facility from a bank and had mortgaged allotted land, and on defaulting the said loan, lost possession of the said property to the bank, (ii) pursuant to a MoU between Appellant and Corporate Debtor, Appellant disbursed partial amounts of money on behalf of Corporate Debtor to the bank towards loan repayment, (iii) NCLT's impugned order dismissed the application on grounds that the loan was not lent for time value of money and that there was no 'financial debt'.

11. NCLAT : Copy of CoC-approved resolution plan cannot be provided to non-claimant, pending NCLT approval

Rupinder Singh Gill vs. Three C Universal Developers Pvt. Ltd. [LSI-610-NCLAT-2023(NDEL)]

Held that the copy of the Resolution Plan, which was still in the process of approval or rejection by the NCLT, had to be given to a party who was neither a Claimant nor a Creditor or a participant, NCLAT concludes that "Therefore, we do not find any error on the part of the Adjudicating Authority in rejecting the application of the Appellant by way of the impugned order." New Delhi NCLAT

12. HC : DRT, not Civil Court, has exclusive jurisdiction over challenge to SARFAESI notice - Jul 12,2023

Regional Manager & Anr. vs. Punya Coal Road lines & Ors. [LSI-619-HC-2023(BOM)]

Bombay HC holds that once a secured creditor issues demand notice u/s 13(2) of SARFAESI Act, Civil Court's jurisdiction is barred and any challenge to the notice comes within the domain of DRT, sets

aside order passed by the Trial Court dismissing Applicant-Bank's (original Defendants) applications seeking rejection of Respondents' (borrower, original Plaintiff) suits, on finding that it has not considered at all whether there was any pleading of fraud in the whole Plaint and what is the effect of notice u/s 13(2) classifying the loan account as NPA. HC highlights that where civil rights of persons other than the borrowers or guarantors are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed is incapable of being decided by the DRT u/s 17 of the DRT Act r.w.s. 13 and 17 of the SARFAESI Act. Lastly, observing that the Respondents' claim of damages is ancillary relief, Court clarifies that unless there is any decision by the DRT on these reliefs, the said claim cannot be considered, and concludes that "...the Plaintiffs are having remedy and they can raise these grounds in defence in the Application filed by the Bank before the DRT.

13. HC : Grants bail to mastermind of Chinese shell companies racket

Dortse vs. SFIO. [LSI-578-HC-2023(P & H)]

Punjab and Haryana HC releases Mr. Dortse (the mastermind of Chinese shell companies racket - Petitioner) on regular bail on finding that the investigation of the case is complete, nothing more is to be recovered from Petitioner, Petitioner is not likely to flee from the course of justice and also that the trial is likely to take some time. Opining that "...no fruitful purpose will be served by keeping the petitioner behind bars.", Court highlights the legal principle laid down by the Apex Court in State of Rajasthan vs. Balchand alias Baliya viz. "Bail is rule, jail is an exception". Further, considering Respondent-SFIO's submission that investigation of the case was already complete and that nothing further was to be recovered from Petitioner, who had been in custody since September, 2022, and that 2 other co-accused had been granted bail by the Supreme Court, HC directs the release of Petitioner on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate / Duty Magistrate concerned. Punjab & Haryana HC

14. NCLAT : Condone delay of over 3 years in filing Form INC-28, saddles with cost

Ravinder Kumar Magoo vs. AMA India Enterprises Pvt. Ltd. & Anr. [LSI-579-NCLAT-2023(NDEL)]

NCLAT allows application filed by a company (Applicant / Respondent) seeking condonation of delay of 1144 days in filing of Form No. INC-28 (Notice of Court's order). NCLAT notes that – (i) in pursuance of an order dated February 11, 2022 of the NCLAT, Applicant was supposed to make payment of certain consideration to Appellant (deceased), but since the Appellant had already expired on January 19, 2020 and the Applicant was not aware of his legal heirs, payment could not be made, (ii) Applicant was also required to submit Form No. INC-28 provided in the Companies Act with the RoC, within a period of 30 days, (iii) Applicant first filed Form No. INC-28 on October 27, 2022 but inadvertently the date of issue of certified copy was wrongly mentioned as October 21, 2022 because certified copy was not obtained by that time, (iv) Applicant submitted Form No. INC-28 again on February 15, 2023, but the RoC did not accept the same on the ground that NCLAT order was passed on February 11, 2020 and the same is filed now after delay of approx. 3 years. Appellant submitted that he had no objection if the application for condonation of delay is allowed but his rights flowing from the order dated February 11, 2020 shall not be effected. NCLAT acknowledges that the delay has certainly occurred, but states that as per the facts and circumstances of the case, Applicant was under bona fide belief that Form No. INC-28 was to be filed only after the payment is made to the Legal Representatives of the Appellant and there was some inadvertence also on their part. However, opining that there is some lapse on the part of the Applicant, therefore, it deserves to be penalised, NCLAT saddles the Applicant with a cost of Rs.

2 lakh, and directs RoC to accept the Form No. INC-28, to be filed by the Applicant, within a period of 30 days from the date of passing of this order and give effect to the same. New Delhi NCLAT

15. HC : Taking every employment-dispute before Commercial-Court, would "open pandora's box". Allows writ challenging jurisdiction

Sanjay Kumar vs. Elior India Food Services LLP. [LSI-541-HC-2023(KAR)]

HC opines that if every Employment Agreement of the kind that is the subject matter in the case at hand is brought within the ambit of commercial dispute, it would then be opening a pandora's box or will be opening of flood gates of litigation before the Commercial Court that would clog the said Court. Lastly, HC reiterates that issues not related to commercial disputes filed before the Commercial Courts should not be entertained, as it is not intended to bring in every dispute before the Commercial Court by the law makers, thus, concludes that "The obliteration of the proceedings will not come in the way of the parties agitating their respective rights before the competent Civil Court." Karnataka HC

16. HC : Arrest of CA/lawyer without corroborative evidence linking him with alleged offence, untenable

Akhil Krishan Maggu & Anr. Vs. Deputy Director, Directorate General of GST Intelligence & Ors. [LSI-92-HC-2019(P & H)]

P&H HC holds that the arrest of CA or advocate should be avoided where such CA/advocate has filed returns or otherwise assisted in business, but is not beneficiary or part of fraud and arrest is merely based on statement without any corroborative evidence linking such professional with alleged offence. Warns against exercise of power to arrest 'at the whims and caprices of officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear'. Petitioner (an advocate representing the exporters allegedly involved in IGST refund fraud) had filed a writ petition seeking quashing of summons issued by Directorate General of GST Intelligence (DGGI). HC observes that Revenue was unable to produce any evidence showing direct involvement of Petitioners in alleged illegal refund sought by Exporters, points out that the Petitioner was neither a proprietor, nor a partner or shareholder of any Exporter Concern/Firm/Company, who availed IGST refund. Infers that Revenues intention seems only to arrest Petitioner, one way or the other, which is evident from the fact that Petitioner was handed over to DRI without concluding investigation.



FEMA updates

1. Amendment to Foreign Exchange Management (Current Account Transaction) Rules, 2000 (Notification No. G.S.R 369(E) [F.No.1/5/2023-EM] dated 16th May 2023 by Ministry of Finance in the Official Gazette)

The Central Government ("CG") in consultation with RBI amended the Current Account Transaction Rules, 2000 to omit/delete Rule 7 of the said rules:

Rule 7 prior to its omission excluded the use of International Credit Card ("ICC") for making payment by a person towards meeting expenses while such person is on a visit outside India from LRS limits listed under Schedule III of Current Account Transactions Rules, 2000.

Comments:

Changes that will happen due to this amendment:

- a. Use of ICC while outside India will be included in LRS Limits of USD 2,50,000
- b. One of main reason for this amendment is to bring at par the use of ICCs and IDCs. High Networth Individuals who had multiple credit cards and large credit limits on each of them, in many cases exceeded the LRS limits.
- c. Due to this amendment, Tax Collected at Source ("TCS") will be applicable under Section 206C(1G) of Income Tax Act, 1961 on all credit card transactions.

Ministry has also issued FAQs of LTRS and TCS on its twitter handle on 18th May 2023 wherein it was clarified that the amendment does not affect any changes in the use of ICCs by residents while in India (as it was already covered under LRS) and provided background and reasoning behind the need for the amendment and applicability of TCS

on LRS transactions undertaken with the use of IDCs while outside India

Press Release was issued by Ministry of Finance on 19th May 2023 wherein it was further clarified that "Payments by resident individuals using ICC and IDC upto Rs. 7,00,000/- shall be excluded from LRS limits and therefore TCS will not be attracted".

The necessary changes to Foreign Exchange Management (Current Account Transaction) Rules, 2000 will be issued separately to implement the change under the press release.

2. Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

- a. Attention of Authorised Persons is invited to A.P. (DIR Series) Circular No. 11 dated February 16, 2021 and A.P. (DIR Series) Circular No. 03 dated April 26, 2023 on "Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)".
- b. Presently, remittances to IFSCs under LRS can be made only for making investments in securities in terms of A.P. (DIR Series) Circular No. 11 dated February 16, 2021. In view of the gazette notification no. SO 2374(E) dated May 23, 2022 issued by the Central Government, it is directed that Authorised Persons may facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign

institutions in IFSCs for pursuing courses mentioned in the gazette notification ibid.

3. Agency Commission for collection of indirect taxes through ICEGATE payment gateway

- a. Please refer to Para 21 of our Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission dated April 1, 2023 related to claiming of agency commission.
- b. Since certain transactions related to collection of indirect taxes through ICEGATE (CEP) payment gateway are now being reported by agency banks to Mumbai Regional Office (MRO), RBI with effect from April 01, 2023, it has been decided to modify paragraph 21 of the aforesaid Master Circular. The modified paragraph 21 will read as follows:

“Agency banks are required to submit their claims for agency commission in the prescribed format to CAS Nagpur in respect of Central government transactions and the respective Regional Office of Reserve Bank of India for State government transactions. However, agency commission claims pertaining to GST receipt transactions, transactions related to direct tax

collection under TIN 2.0 regime, and transactions pertaining to collection of indirect taxes through ICEGATE payment gateway reported to Mumbai Regional Office, RBI will be settled at Mumbai Regional Office of Reserve Bank of India only and accordingly all agency banks, authorized to collect GST, direct tax collection under TIN 2.0 and indirect taxes through ICEGATE payment gateway, are advised to submit their agency commission claims pertaining to the respective receipt transactions at Mumbai Regional Office only. The agency commission claim for Central Government transactions reported to CAS, Nagpur, RBI will be continued to be settled at CAS, Nagpur, RBI. The formats for claiming agency commission for all agency banks and separate and distinctive set of certificates to be signed by the branch officials and Chartered Accountants or Cost Accountants are given in Annex 2, Annex 2A and Annex 2B respectively. These certificates would be in addition to the usual Certificate from ED / CGM (in charge of government business) to the effect that there are no pension arrears to be credited / delays in crediting regular pension / arrears thereof.”

- c. All other instructions of the said Master Circular remain unchanged.



Indirect Tax Updates - Customs Updates

1. Implementation of the Honorable Supreme Court direction in judgement dated 28.04.2023 in matter of civil Appeal No. 290 of 2023 relating to pre-import condition

The above mentioned circular specifies the procedure that can be adopted at the port of import (POI) in case “pre-import condition” was not met relating to the Advanced authorisation scheme. For the relevant imports that could not meet the pre-import condition and are hence required to pay the IGST and compensation cess to that extent, the importer may approach the concerned assessment group at the POI with the relevant details for purposes of payment of the tax and cess along with the applicable interest.

Hence, if imports under advanced authorisation scheme don't comply the pre-import condition, importers are now required to pay the IGST and Compensation cess for relevant imports.

[Click here to read / download the Circular No.16 /2023 Customs dated 07-06-2023.](#)

2. Mandatory additional qualifiers in imports/ exports declarations in respect of the certain products with effect from 01-07-2023.

Additional qualifiers in respect of the imports of the goods:

In consultation with the Department of Chemicals and Petrochemicals, and in terms of bill of entry regulations, it has been decided to enable the following additional qualifiers as mandatory from the time of filing import declaration itself.

Declaration of IUPAC names and CAS number of the constituent chemicals for the

imports under chapter 28, 29, 32, 38 and 39 of the Customs Tariff Act, 1975.

These additional qualifiers shall be mandatory for imports under the said chapters for all bills of entry filed on or after 01.07.2023, in the manner mentioned in the Annexure-1 to this Circular. These fields shall be in addition to the existing declaration being made by importers

Additional qualifiers in case of exports:

In consultation with the the Ministry of AYUSH and DGFT; and in terms of Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations 2019, it has been decided to enable the following additional qualifiers as mandatory from the beginning, that is, the time of filing export declarations itself :

- a. the declaration of name of medicinal plant, for exports of parts of plants under chapter 12;
- b. the declaration of name of the formulation, for exports of formulations of different streams of medicine under chapter 30;
- c. the declaration of the surface material that comes into contact with the chemical, for exports of various products under chapter 84.

These additional qualifiers shall be mandatory for exports under the specific CTHs of the said chapters for all Shipping bills filed on or after 01.07.2023, in the manner mentioned in the Annexure-2 to this Circular. These fields shall be in addition to the existing declaration being made by exporters. Further, Through Circular No. 18/2023 due date for mandatory declaration of additional qualifiers in import/ export declarations is extended from 01-07-2023 to 01-10-2023.

[Click here to read / download the Circular No.15/2023 Customs dated 07-06-2023.](#)

[Click here to read / download the Circular No. 18 dated 30-06-2023](#)

Indirect Tax - Legal Rulings

1. 2023-TIOL-536-CESTAT-KOL

Lalit Kumar Arya Vs CCE & ST

ST - M/s. Lalit Kumar Arya was providing taxable service (Intellectual Property Rights Service) - The appellants assessee has filed a refund claim for Rs. 1,49,412/- on account of excess deposit of Service Tax on account of unutilized Cenvat Credit as per last return for the period October 2015 to March 2016 - It is stated in the Order-in-Original that the assessee is engaged in providing taxable service under the category of "Intellectual Property Rights Service" other than Copyright (Section (65)(55a) of the Finance Act, 1994) - The amount of Rs. 1,49,412/- was deposited on 05/5/2015 through epayment Challan No. 0005347-05052015-500965 as excess deposit of Service Tax and refund claimed on the ground of unutilized Cenvat Credit - The Assistant Commissioner of Central Excise rejected the refund claim filed on the plea that of the ST-3 Return for the period October 2015 to March 2016, in column 13.1/13.1.4, no opening and closing balance of Cenvat Credit was available with the assessee, as was sought to be claimed by way of refund - In appeal against the order of the Adjudicating Authority filed by the appellants, the Commissioner (Appeals) however, dismissed the said plea of non-reporting of the amount as found to be not correct - He observed that the ST-3 Return (October 2015 to March 2016) clearly showed the opening and closing balance of Cenvat Credit - However, the Commissioner (Appeals) rejected the said refund claim on the ground that the appellants were not eligible for refund under Rule 5B read with Notification 12/2014 - dated 3rd March, 2014 of the cenvat credit Rules, 2004, the Commissioner (Appeals) held the view that the said refund can only be claimed in respect of Cenvat Credit taken on input and input

services during the half year for which the refund is claimed for providing output services. Held - In view of the fact that right to availment of Cenvat Credit is a vested right (Eicher Tractors V. UOI - 1999(106) E.L.T.-3SC, Samtel India Ltd. V. Commissioner -2003-TIOL-40-SC-CX which accrues to a manufacturer, the fact of closure of business leading to non-utilization thereof, cannot deprive the deceased of their accrued interests in law and following judicial discipline and precedent decisions - Appeal allowed with consequential relief, if any, to the appellant's legal heir as per law: CESTAT + This Tribunal had an occasion to consider the two contrary viewpoints in the case of CCE, Hyderabad Vs. Apex Drugs & Intermediates Ltd. 2014(314) E.L.T.729 T., after debating the same, it came to the conclusion that Rule 5 of the Cenvat Credit Rules did not prohibit the grant of such credit refund when for any reason accumulated credit was not utilizable - The assessee in the present case has ceased to be a manufacturer upon surrender of the licence and so the credit available remains unutilizable. Following the judgement of the Karnataka High Court in Slovak India Trading Pvt. Ltd., the Tribunal had dismissed the appeal filed by the department and allowed the refund. + A similar situation of accumulation of credit, however was considered by this Tribunal in the case of Nu Vista Ltd. V. Commissioner (Appeals), CGST, CEX. Raipur - 2022-TIOL-365-CESTAT-DEL. The credit remained unutilized as cesses viz. Education cess & Secondary Higher Education cess were phased out w.e.f. 01.03.2015. It was held therein that the appellants were clearly entitled to the refund of the balance amount of credit and any decision to the contrary was unsustainable. In arriving at the said ratio in law it followed the decisions of the Hon'ble Punjab and Haryana High Court in the case of Commissioner Shree

Krishna Paper Mills & Industries Ltd. - C.E.A. No.36 of 2019 (OPM) decided on 11.12.2019 wherein refund of credit on account of closure of unit and surrender of licence was allowed to be paid in cash. Hon'ble Rajasthan High Court in the following cases also allowed refund of unutilized Cenvat Credit in cash + To similar effect is the Tribunal's decision in the case of Commr. of C.Ex. & Commr.(Appeals),Tirupati V. Kores (India) Ltd-2008-TIOL-2412-CESTAT-BANG allowing refund of Cenvat Credit lying with the assessee upon closure of the factory.

- Appeal allowed: KOLKATA CESTAT

2. 2023-TIOL-719-HC-AHM-CUS

Anupam Port Cranes Corporation Ltd Vs UoI

Cus - It is case of the petitioner that at the time of filing of the EDI shipping bills, the petitioner suffered from problems of "YES/NO clicking" and was not able to avail for the benefits under the MEIS; that, therefore, shipping bills were not electronically transmitted to the respondent no.2 for processing the MEIS scrips and therefore, the petitioner was not able to claim the benefits - It is submitted that as per the Trade Notice 24/2018 dated 21.02.2018 issued by the respondent, the petitioner had submitted necessary details and documents and sent email on 26.02.2018 but the petitioner was not permitted to amend the necessary documents nor any reply was received, therefore, the present petition.

Held : Contentions taken by the respondents is misconceived - It is pertinent to note that in para 12 of the decision rendered [Bombardier Transportation India Pvt. Ltd. 2021-TIOL-478-HC-AHM-CUS] by this Court, this Court has recorded similar type of contentions which is taken in the present case in the Affidavit-in-reply filed by the respondents, more particularly, paras 11(b) as well as 12(a) of the Affidavit-in-reply - In the present case as

observed hereinabove, the respondent himself issued Trade Notice dated 21.02.20218 in pursuance of the representations received from the various exporters, who have faced similar type of difficulty while submitting the shipping bills, who have specifically declared the intent in the affirmative (in wordings) on the shipping bills - In the present case, the petitioner has specifically stated (in wordings) the intention to claim the 'Reward' for MEIS - Therefore, Bench is of the view that the facts of the present case are almost similar to that of the case of the petitioner of Special Civil Application No.11038 of 2020 - Petition is allowed - The respondents concerned are directed to grant the benefit under MEIS to the petitioner within a period of six weeks: High Court [para 13, 14

- Petition allowed: GUJARAT HIGH COURT

3. (2023) 8 Centax 12 (A.A.R. - GST - A.P.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, ANDHRA PRADESH

K. Ravi Sankar and R.V. Pradhamesh Bhanu, member

IN RE : VEDMUTHA ELECTRICALS INDIA PVT. LTD.

AAR No. 05/AP/GST/2023, decided on 26-5-2023

GST : Unless there is a prior agreement or correlation between post supply discount and relevant invoices, transaction value of supply cannot be reduced by value of discounts.

GST : Unless there is a prior agreement or correlation between post supply discount and relevant invoices, assessee is not required to reverse input tax credit provided that assessee pays value of supply as reduced after adjustment of post-sale discount plus original tax charged by supplier.

Valuation - Purchase - Post supply discount - Financial/commercial credit note - Appellants-assessee is a dealer engaged in business of supply various electronic items - Assessee purchases various products from supplier and tax invoices are issued to assessee - Assessee has take ITC on same - Later on, assessee has received various incentives in nature of "discounts" from its supplier and supplier has raised financial/commercial credit note for all discounts provided but without GST - Supplier has not reduced its output tax liability in GST returns in respect of said financial/commercial credit note as section 15 does not permit to exclude "post supply discount" from transaction value - HELD: For applicability of provisions of section 15(3)(b) there should be prior agreement and a link is to be established with relevant invoices and discount given - In instant case, no such correlation between credit notes issued and assessee is found; hence, benefit of lessening value of discount from transaction value as per section 15(3)(b) cannot be allowed - Section 15 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017. [para 7.4]

Input Tax Credit - Reversal of - Post sale discount - Appellants-assessee is engaged in business of supply various electronic items - Applicant purchases various products from supplier and tax invoice is issued to assessee - Assessee has received various incentives in

nature of "discounts" from its supplier - However, for accounting purpose only, supplier has raised financial/commercial credit note for all discounts provided but without GST - Further, supplier has not reduced its output tax liability in GST returns in respect of said financial/commercial credit note as section 15 does not permit to exclude "post supply discount" from transaction value - HELD : As there is no prior agreement or correlation between credit notes and relevant invoices, provisions of section 15(3)(b) are not applicable to reduce transaction value and consequently, there will be no corresponding reduction in assessee is input tax credit as there is no corresponding reduction in outward liability at end of supplier - However, assessee is eligible to claim full GST credit charged in tax invoice - Assessee is also not required to reverse ITC to extent of financial/Commercial credit notes issued by supplier provided that assessee pays value of supply as reduced after adjusting amount of post-sale discount in term of financial/Commercial credit notes received by him from supplier of goods plus amount of original tax charged by supplier - Section 16 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 42 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017. [Para 7.4]

-In favour of assessee



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