



Newsletter - May 2024

**Vishnu Daya & Co. LLP**  
**Chartered Accountants**



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## Direct Tax – Circulars and Notifications

### Circulars issued by CBDT in April 2024

#### 1. **CBDT extends PAN-Aadhaar linkage deadline to May'24, saves transactions upto Mar'24**

##### **Circular no. 6 / 2024, dated 23<sup>rd</sup> April 2024**

CBDT issues Circular to modify Circular No. 3/2023 dated Mar 28, 2023 concerning consequences of PAN becoming inoperative due to failure to intimate the Aadhaar number as per Section 139AA read with Rule 114AAA. CBDT modifies the prior Circular by allowing the linking of PAN and Aadhaar on or before May 31, 2024. The Circular supersedes Circular No. 3/2023 wherein it was provided that consequences of non-intimation of Aadhaar shall apply from Jul 1, 2023.

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

#### 2. **CBDT Circular extends Form 10A & 10AB due date, saves rejected applications.**

##### **Circular no. 7 / 2024, dated 25<sup>th</sup> April 2024**

CBDT extends due date to Jun 30, 2024 for Forms 10A and 10AB. The extension applies to: (A) Form No. 10A applications under clause (i) of the first proviso to Section 10(23C) or under Section 12A(1)(ac)(i) or under clause (i) of the first proviso to Section 80G(5) or in case of an intimation under fifth proviso of Section 35(1) and (B) Form No. 10AB applications under clause (iii) of the first proviso to Section 10(23C) or Section 12A(1)(ac)(iii) or under clause (iii) of the first proviso to Section 80G(5). The extension also applies to pending applications under clause (iii) of the first proviso to Section 10(23C) or under Section 12A(1)(ac)(iii) or under clause (iii) of the first proviso to Section 80G(5). Clarifies that where such application is

already filed in Form 10AB and PCIT or CIT has not passed an order before the issuance of this Circular, the pending application may be treated as a valid application. Emphasises that where PCIT or CIT has rejected such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time.

Further clarifies that if any existing trust, institution or fund who failed to file Form No. 10A for AY 2022-23 within the due date as extended by the CBDT Circular No. 6/2023 dt. May 24, 2023 which was Sep 30, 2023 and subsequently applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form and apply for registration for AY 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time period that ends on Jun 30, 2024.

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

### B. **Press Release in the month of April 2024**

#### 1. **CBDT enables e-filing for ITR-1, 2, 4 & 6 for AY 2024-25.**

##### **Press release dated 4<sup>th</sup> April 2024**

CBDT, vide Press Release dt. Apr 4, 2024, informs that the Income Tax Returns (ITRs) i.e. ITR-1, ITR-2, ITR-4 and ITR-6 are available on the e-filing portal, for the AY 2024-25 from Apr 1, 2024 onwards, thereby facilitating the taxpayers to file their returns.

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

## Direct Tax – Legal Rulings

### 1. SC: Dismisses Assessee's review petition against Checkmate Services judgment due to delay

#### **Kerala State Warehousing Corporation [TS-258-SC-2024]**

SC dismisses review petition preferred by Kerala State Warehousing Corporation against the Checkmate Services judgment due to delay. SC observes that the delay of 152 days in filing the review petition has not been satisfactorily explained and dismisses it on the ground of delay. In the judgment sought to be reviewed, SC had held that depositing employees' PF and ESI contribution on or before the due date stipulated in respective statutes to be an essential pre-condition for claiming deduction under Section 36(1)(va) of the Income-tax Act. SC had decided the batch of appeals in favour of the Revenue that also included the appeal of Kerala State Warehousing Corporation against the Kerala HC judgment.

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

### 2. HC: Upholds 'round tripping' of funds basis preponderance of probability, investors' lacking genuineness & creditworthiness.

#### **BST Infratech Limited [TS-277-HC-2024(CAL)]**

Calcutta HC sets aside the ITAT order and upholds the addition made by the Revenue towards share application money received by the Assessee, as undisclosed cash credit under Section 68. Holds, the assessee has failed to discharge legal obligation to prove the genuineness of the transaction and the creditworthiness of the investors.

Further observes that though the investors did not have any business operations, yet they managed to raise huge capital through issue of shares at a high premium and also made investments in other companies where the other companies also did not have any promising business activities and thus, investors were not bothered about the protection of their investment which defies logic.

Observes that the premium has been fixed in an arbitrary manner without any financial or accounting rationale as neither the Assessee nor its investors had followed the guidelines of RBI or ICAI or any other guidelines for determining the rate of premium on their shares. Rejects Assessee's argument that the amount was credited through proper banking channels and the investing companies are body corporate registered with the Registrar of Companies and individually assessed to income tax and therefore, the genuineness of the parties is beyond doubt and points out that it is not the litmus test to discharge the burden on the Assessee to establish creditworthiness of the investing companies as well as the genuineness of the transaction.

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

### 3. ITAT: Unexplained cash attracts 69A & Sec. 115BBE de hors Assessee's income disclosure & categorization

#### **Uma Maheshwara Rao Chinni [TS-259-ITAT-2024(COCH)]**

Cochin ITAT holds that once the Assessee is unable to substantiate the source of the seized cash or admits being sourced from unspecified persons, Section 69A would automatically apply. Holds that offering such income under the head 'Income from Other Sources' is inconsequential as for

attracting deeming provision of Section 69A and higher tax-rate under Section 115BBE.

ITAT rejects the additional evidence filed by the Assessee in the form of 33 affidavits from his employer, friends and relatives claiming to be owners of seized cash due to delay in furnishing the evidence & contradiction with Assessee's ITR. Holds that the only manner in law in which the Assessee could amend his ITR, is by filing a revised ITR, which is

impermissible in reassessment proceedings. Further observes that the Assessee having admitted the income, "*the only issue that arises is of it being assessable u/s 56, i.e., as returned, or u/s. 69A, as assessed, with the tax rate being consequential. The plea for admission of additional evidence is not maintainable, both on facts and in law.*". Thus, dismisses the Assessee's appeal.

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



## MCA Updates

G.S.R. 107(E).—In exercise of the powers conferred by sections 396,398,399, 403 and 404 read with subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:— 1.

(1) These rules may be called the Companies (Registration Offices and Fees) Amendment Rules, 2024.

(2) They shall come into force with effect from 16th day of February, 2024.



2. In the Companies (Registration Offices and Fees) Rules, 2014, after rule 10, the following rule shall be inserted, namely:-

“10A. Central Processing Center.-

(1) The Registrar of the Central Processing Center established under sub-section (1) of section 396 shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered as provided under sub-rule (3), for approval, registration or taking on record by the Registrar.

(2) The Registrar shall take a decision on the application, e-forms or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.

(3) The provisions of sub-rule (2) to (5) of rule 10 shall apply mutatis mutandis in relation to the examination of application, e-Forms or documents under this rule.

(4) The Registrar of the Central Processing Center shall exercise jurisdiction all over India in respect of the examination of following application, e-Forms or documents, namely:-

Sl.No.	Details of application, e-Form or documents
(i)	Filing of Resolutions and agreements to the Registrar under section 117 of the Act in e-Form no. MGT-14
(ii)	Notice to Registrar of any alteration of share capital under section 64 of the Act in e-Form no. SH-7
(iii)	Application for approval of Central Government for change of name under section 13 of the Act in e-Form no. INC-24
(iv)	One Person Company- Application for Conversion under section 18 of the Act in e-Form no. INC-6
(v)	Conversion of public company into private company or private company into public company under sections 14 and 18 of the Act in e-Form no. INC-27
(vi)	Intimation to Registrar of revocation/surrender of license issued under section 8 of the Act in e-Form no. INC-20
(vii)	Return of deposits under sections 73 and 76 of the Act in e-Form no. DPT-3
(viii)	Application to ROC for obtaining the status of dormant company under sub-section (1) of section 455 of the Act in e-Form no. MSC-1
(ix)	Application for seeking status of active company under sub-section (5) of section 455 of the Act in e-Form no. MSC-4
(x)	Letter of Offer under section 68 of the Act in form e-Form no. SH-8
(xi)	Declaration of Solvency under sub-section (6) section 68 of the Act in e-Form no. SH-9
(xii)	Return in respect of buy-back of Securities under sub-section 10 of section 68 of the Act in e-Form no. SH-11

(5) In case multiple applications, e-Forms or documents are filed at a time under sub-rule (4), then all the applications, e-Forms or documents shall be examined and decided by the Registrar of the Central Processing Center.

(6) Nothing in this rule shall confer any power on the Registrar of the Central Processing Center under section 399 of the Act in case of applications, e-Forms or documents filed under sub-rule (4), and the Registrar having territorial jurisdiction shall continue to exercise his powers under the said section.”.



## Company Law - Legal Rulings

### ORDERS PASSED BY ADJUDICATING AUTHORITIES

#### REGISTRAR OF COMPANIES (ROCs):

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION/ CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
Section 92 (Form MGT-7 / MGT-7A)	<b>Filing of Annual Return:</b>  As per Section 92 - Every Company shall prepare and file Annual Return of the Company within 60 Days from the Date on which the Annual General Meeting (AGM) is held or is supposed to be held.	<b>On Company:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure. <b>Maximum Amount for -</b> Small Company is Rs. 1,00,000/-; Other than Small Company is Rs. 2,00,000/-  <b>On each Director:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure. <b>Maximum Amount for each Director of -</b> Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-  <b>Calculation of Default Days:</b> From the Date of Default till the Date of Filing.	AKHANDJYOTI FLEXIBLE PACKAGING PRIVATE LIMITED [Section 92 (4)]	Gwalior	05/04/2024
			ALORA TRADING CO LTD [Section 92 (4)]	Mumbai	25/04/2024
			SNAP FITNESS (INDIA) PRIVATE LIMITED [Section 92 (4)]	Mumbai	25/04/2024
			SHYAMAL HOLDINGS & TRADING LIMITED [Section 92 (4)]	Mumbai	25/04/2024
			PETRON MINERALS & METALS LIMITED [Section 92 (4)]	Kanpur	29/04/2024
			EUEB INDIA PRIVATE LIMITED [Section 92 (4)]	Kanpur	29/04/2024
			SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 92 (4)]	Chennai	29/04/2024
			ANMOL FERRO IMPEX PRIVATE LIMITED [Section 92 (4)]	Chennai	29/04/2024
			AALAMARA NIDHI LIMITED [Section 92 (4)]	Chennai	29/04/2024
			HOLITECH INDIA PRIVATE LIMITED [Section 92 (4)]	Kanpur	29/04/2024
Section 137 (Form AOC-4 / AOC-4 CFS / AOC-4)	<b>Filing of Financial Statements:</b>	<b>On Company:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure.	AKHANDJYOTI FLEXIBLE PACKAGING PRIVATE LIMITED [Section 137 (1)]	Gwalior	05/04/2024



VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
XBRL / AOC-4 NBFC)	As per Section 137 - Every Company shall prepare and file Financial Statements, including Consolidated Financial Statements, if any of the Company within 30 days from the Date on which the Annual General Meeting (AGM) is held or is supposed to be held.	<p><b>Maximum Amount for -</b> Small Company is Rs. 1,00,000/-; Other than Small Company is Rs. 2,00,000/-</p> <p><b>On each Director:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-.</p> <p><b>Calculation of Default Days:</b> From the Date of Default till the Date of Filing.</p>	DALIT INDUSTRIES ASSOCIATION OF BIHAR [Section 137 (1)]	Patna	18/04/2024
			SHYAMAL HOLDINGS & TRADING LIMITED [Section 137 (1)]	Mumbai	25/04/2024
			SNAP FITNESS (INDIA) PRIVATE LIMITED [Section 137 (1)]	Mumbai	25/04/2024
			HOLITECH INDIA PRIVATE LIMITED [Section 137 (1)]	Kanpur	29/04/2024
			AALAMARA NIDHI LIMITED [Section 137 (1)]	Chennai	29/04/2024
			TONGFANG TECHNOLOGY INDIA PRIVATE LIMITED [Section 137 (1)]	Kanpur	29/04/2024
			PETRON MINERALS & METALS PRIVATE LIMITED [Section 137 (1)]	Kanpur	29/04/2024
			ANMOL FERRO IMPEX PRIVATE LIMITED [Section 137 (1)]	Chennai	29/04/2024
			EUEB INDIA PRIVATE LIMITED [Section 137 (1)]	Kanpur	29/04/2024
			SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 137 (1)]	Chennai	29/04/2024
Section 12 (e-Form INC-22)	<p><b>Filing of Changes in Registered Office of the Company:</b></p> <p>As per Section 12 - Every Company (including newly incorporated) shall notify the ROC within 30 Days of its Incorporation or its</p>	<p><b>On Company:</b> Rs. 1000/- per day of continuing failure.</p> <p><b>Maximum Amount for -</b> Small Company is Rs. 50,000/-; Other than Small Company is Rs. 1,00,000/-</p>	JANSANSAR NIDHI LIMITED [Section 12 (1) & (4)]	Patna	16/04/2024
			SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 12 (1) & (4)]	Chennai	29/04/2024
			SANDAL NIDHI LIMITED [Section 12 (3) (c)]	Kanpur	29/04/2024

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
	Changes and thereafter have a Registered Office capable of receiving and acknowledging all Communications and Notices.	<p><b>On each Director:</b> Rs. 1000/- per day of continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 50,000/-; Other than Small Company is Rs. 1,00,000/-.</p> <p><b>Calculation of Default Days:</b> From the Date of Return of the 1<sup>st</sup> Notice till the Date of Order.</p>	<p>TONGFANG TECHNOLOGY INDIA PRIVATE LIMITED [Section 12 (1) &amp; (4)]</p> <p>BLUESEED FINTECH PRIVATE LIMITED [Section 12 (1) &amp; (4)]</p> <p>RICHENG OPTICAL ELECTRONICS PRIVATE LIMITED [Section 12 (1) &amp; (4)]</p> <p>EUEB INDIA PRIVATE LIMITED [Section 12 (1) &amp; (4)]</p> <p>VUPLA TECHNOLOGIES PRIVATE LIMITED [Section 12 (1) &amp; (4)]</p>	Kanpur	29/04/2024
Section 117 (e-Form MGT-14)	<p><b>Filing of Resolutions and Agreements:</b></p> <p>As per Section 117 - Every Company shall notify the ROC, the required Board, Ordinary &amp; Special Resolution within 30 Days from the Date on which the Board Meeting or Annual General Meeting (AGM) is held.</p>	<p><b>On Company:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure.</p> <p><b>Maximum Amount for -</b> Small Company is Rs. 1,00,000/-; Other than Small Company is Rs. 2,00,000/-</p> <p><b>On each Director:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-.</p> <p><b>Calculation of Default Days:</b></p>	<p>SOCIAL GROWTH NIDHI LIMITED [Section 117 (1)]</p> <p>DICE ENTERPRISES PRIVATE LIMITED [Section 117 (1)]</p> <p>AALAMARA NIDHI LIMITED [Section 117 (1)]</p> <p>AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED [Section 117(1)]</p>	Patna	01/04/2024
				Gwalior	10/04/2024
				Chennai	29/04/2024
				Kanpur	29/04/2024

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
		From the Date of Default till the Date of Filing.			
Section 42 (e-Form PAS-3)	<p><b>Filing of Return of Allotment:</b></p> <p>As per Section 42 - Every Company making any Allotment of Securities shall file with the Registrar a Return of Allotment within 15 Days from the Date of the Allotment, including a complete List of all Allottees, with their Full Names, Addresses, Number of Securities allotted and such other relevant information as may be prescribed.</p> <p><b>Note:</b> Every Company making an Offer or Accept Monies in contravention of this Section, the Company, its Promoters and Directors shall be liable for a Penalty.</p>	<p><b>NON - COMPLIANCE On Company:</b></p> <p>Rs. 1000/- per day of continuing failure.</p> <p><b>Maximum Amount for -</b></p> <p>Small Company is Rs. 12,50,000/-;</p> <p>Other than Small Company is Rs. 25,00,000/-</p> <p><b>On each Promoter and Director:</b></p> <p>Rs. 1000/- per day of continuing failure.</p> <p><b>Maximum Amount for each Director of -</b></p> <p>Small Company is Rs. 12,50,000/-;</p> <p>Other than Small Company is Rs. 25,00,000/-</p> <p><b>Calculation of Default Days:</b></p> <p>From the Date of Default till the Date of Filing.</p> <p><b>VIOLATION On Company, Promoters and Directors each:</b></p> <p>Penalty which may extend to the Amount raised through the Private Placement or Rs.</p>	<p>MAYASHEEL RETAIL INDIA LIMITED [Section 42 (2) &amp; (7)]</p> <p>PLANIFY CAPITAL LIMITED [Section 42 (2) &amp; (7)]</p>	<p>Delhi</p> <p>Delhi</p>	<p>02/04/2024</p> <p>02/04/2024</p>

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		<p>2,00,00,000/-, whichever is lower. The Company shall also Refund all Monies with Interest 12% p.a. to Subscribers within a period of 30 Days of the Order imposing the Penalty.</p>			
<p>Section 134</p>	<p><b>Financial Reporting Requirements:</b>  Section 134 mandates that every Company, including its Board of Directors, must prepare a Financial Statement, including the Profit and Loss Account, Balance Sheet, and Cash Flow Statement, to be presented at the Annual General Meeting. Additionally, the Board must also prepare a Director's Report, which includes various details about the Company's Affairs, Financial Performance, and other specified matters.</p>	<p><b>On Company:</b> Penalty Amount for - Small Company is Rs. 1,50,000/-; Other than Small Company is Rs. 3,00,000/-  <b>On each Director:</b> Penalty Amount for each Director of - Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p>	<p>DAISON LAND &amp; DEVELOPMENT PRIVATE LIMITED [Section 134 (3) (h)] MARTIN WINDFARMS PRIVATE LIMITED [Section 134 (3) (h)] MARTIN MULTI PROJECTS PRIVATE LIMITED [Section 134 (3) (h)] D P F TEXTILES PRIVATE LIMITED [Section 134 (3) (h)] ARISE INDUSTRIES &amp; AGENCY PRIVATE LIMITED [Section 134 (3) (h)] HOLITECH INDIA PRIVATE LIMITED [Section 134 (3) (f)] ANMOL FERRO IMPEX PRIVATE LIMITED [Section 134 (5) (c)] PETRON MINERALS &amp; METALS PRIVATE LIMITED [Section 134 (1) &amp; (4)] HERMES I TICKETS PRIVATE LIMITED [Section 134 (5) (a) &amp; (b)] FY 2013-14, 2014-15, 2015-16 &amp; 2018-19</p>	<p>Coimbatore Coimbatore Coimbatore Coimbatore Coimbatore Kanpur Chennai Kanpur Chennai</p>	<p>09/04/2024 09/04/2024 09/04/2024 09/04/2024 09/04/2024 29/04/2024 29/04/2024 29/04/2024 29/04/2024</p>

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			AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED [Section 134 (3) (f)]	Kanpur	29/04/2024
Section 179	<p><b>Delegation Powers of Board:</b></p> <p>Section 179 empowers the Board of Directors of a Company to delegate certain powers to Committees, Managing Directors, Directors, Officers, or Employees. The Section specifies the Powers that can be delegated, the conditions for delegation, and the accountability of those to whom powers are delegated.</p> <p><b>Note:</b> Certain Powers such as approving the Annual Financial Statements, the Board's Report, and the Audit Committee Report cannot be delegated.</p>	<p><b>On Company:</b> Penalty Amount for - Small Company is Rs. 1,50,000/-; Other than Small Company is Rs. 3,00,000/-</p> <p><b>On each Director:</b> Penalty Amount for each Director of - Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p>	<p>MARTIN REALTY PRIVATE LIMITED [Section 179 (3) (f)]</p> <p>SHRI MAHALAKSHMI METAL AND SCRAP PROCESSING PRIVATE LIMITED [Section 179 (3) (f)]</p>	Coimbatore  Chennai	09/04/2024  29/04/2024
Section 29	<p><b>Dematerialization of Public Securities:</b></p> <p>Section 29 mandates that every Company making a Public Offer of Securities must ensure that such Securities are in Dematerialized form, meaning they must be electronically stored and traded,</p>	<p>Penalty for Non-Compliance and Violation of this Section is not specified in the Companies Act, 2013.</p> <p>The Penalty for this Section may be tailored for</p>	PREMIER ENERGIES LIMITED [Section 29 (1A)]	Hyderabad	10/04/2024

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	rather than in Physical Certificates. This requirement aims to enhance transparency, efficiency, and security in Securities trading. It applies to both existing and new Securities issued by Companies, ensuring uniformity and standardization in the Market.	each type of offense.			
CHAPTER VI	<p><b>Registration of Charges:</b></p> <p>Chapter VI outlines the provisions related to the Creation, Modification, and Satisfaction of Charges on a Company's Assets. The Chapter specifies the Registration process, the Duties of the Company regarding Disclosure of Charges, and the consequences of Non-Compliance. It aims to safeguard the Interests of Creditors and Investors by ensuring transparency and accountability in the creation and enforcement of Charges.</p>	<p><b>On Company:</b> Penalty Amount for - Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>On each Director:</b> Penalty Amount for each Director of - Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p> <p><b>Note:</b> Penalty Amount is imposed as per Section 86 of the Companies Act, 2013.</p>	<p>HOLITECH INDIA PRIVATE LIMITED [Section 85 (1)]</p> <p>SHINAGO INTERNATIONAL (INDIA) PRIVATE LIMITED [Section 77 (1)]</p>	<p>Kanpur</p> <p>Chennai</p>	<p>29/04/2024</p> <p>29/04/2024</p>
CHAPTER XI		<p><b>On Company:</b></p>	<p>INFO-DRIVE SOFTWARE LIMITED [Section 149 (4)]</p>	<p>Chennai</p>	<p>29/04/2024</p>

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	<p><b>Appointment and Qualifications of Directors:</b></p> <p>Chapter XI covers the Appointment, Qualification, Disqualification, and Removal of Directors in a Company. It outlines the procedures for Appointment, including the role of Shareholders, Board Resolutions, and Compliance with Regulatory requirements. It also specifies the qualifications necessary for Individuals to become Directors and lists the circumstances under which a Person may be disqualified from holding the position. Additionally, the Chapter details the procedures for the Resignation or Removal of Directors, along with the Legal obligations and liabilities associated with Directorship.</p>	<p>Rs. 50,000 + Rs. 500/- per day of continuing failure.</p> <p><b>Maximum Amount for -</b> Small Company is Rs. 1,50,000/-; Other than Small Company is Rs. 3,00,000/-</p> <p><b>On each Director:</b> Rs. 50,000 + Rs. 500/- per day of continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 50,000/-; Other than Small Company is Rs. 1,00,000/-</p> <p><b>Note:</b> Penalty Amount is imposed as per Section 172 of the Companies Act, 2013.</p>	AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED [Section 158]	Kanpur	29/04/2024
			INFO-DRIVE SOFTWARE LIMITED [Section 168]	Chennai	29/04/2024
			INCHOI TECHNOLOGY ELECTRONIC MATERIALS PRIVATE LIMITED [Section 152 (2)]	Kanpur	29/04/2024
			HERMES I TICKETS PRIVATE LIMITED [Section 170]	Chennai	29/04/2024
			HERMES I TICKETS PRIVATE LIMITED [Section 171]	Chennai	29/04/2024
			SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 170]	Chennai	29/04/2024
			RICHENG OPTICAL ELECTRONICS PRIVATE LIMITED [Section 168]	Kanpur	29/04/2024
			EUEB INDIA PRIVATE LIMITED [Section 149 (1)]	Kanpur	29/04/2024
			INFO-DRIVE SOFTWARE LIMITED [Section 149 (1)]	Chennai	29/04/2024
INCHOI TECHNOLOGY ELECTRONIC MATERIALS PRIVATE LIMITED [Section 161(1)]	Kanpur	29/04/2024			
Section 88	<p><b>Register of Members:</b></p> <p>Section 88 mandates every Company to maintain a Register of its Members, including details</p>	<p><b>On Company:</b> Penalty Amount for - Small Company is Rs. 1,50,000/-; Other than Small Company is Rs. 3,00,000/-</p>	SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 88 (1) & (2)]	Chennai	29/04/2024
			HERMES I TICKETS PRIVATE LIMITED [Section 88 (1) & (2)]	Chennai	29/04/2024

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION/ CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
	<p>such as their Names, Addresses, and the Number of Shares held by each Member. The Section outlines the requirements for maintaining and updating this Register, including provisions for inspection by Members and other Stakeholders. Compliance with Section 88 ensures transparency and accountability in the Ownership Structure of Companies, facilitating effective communication and governance.</p>	<p><b>On each Director:</b> Penalty Amount for each Director of - Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p>			
<p>RULE 12A (e-Form DIR-3 KYC)</p>	<p><b>Filing of latest Personal Information of DIN Holders with MCA:</b></p> <p>As per Rule 12A. - Every Individual who holds a DIN as on 31<sup>st</sup> March of a Financial Year as per these Rules shall notify the MCA for the said Financial Year on or before 30<sup>th</sup> September of immediate next Financial Year.</p>	<p><b>On Company:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure. <b>Maximum Amount for -</b> Small Company is Rs. 1,00,000/-; Other than Small Company is Rs. 2,00,000/-</p> <p><b>On each Director:</b> Rs. 10,000/- + Rs. 100/- per day for continuing failure. <b>Maximum Amount for each Director of -</b> Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p>	<p>TONGFANG TECHNOLOGY INDIA PRIVATE LIMITED</p>	<p>Kanpur</p>	<p>29/04/2024</p>
			<p>AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED</p>	<p>Kanpur</p>	<p>29/04/2024</p>
			<p>INCHOI TECHNOLOGY ELECTRONIC MATERIALS PRIVATE LIMITED</p>	<p>Kanpur</p>	<p>29/04/2024</p>
			<p>EUEB INDIA PRIVATE LIMITED</p>	<p>Kanpur</p>	<p>29/04/2024</p>



VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
		<p><b>Calculation of Default Days:</b> From the Date of Default till the Date of Filing.</p>			
Section 203	<p><b>Key Managerial Personnel Appointment:</b></p> <p>Section 203 mandates certain Classes of Companies to appoint KMP, including a Managing Director, Whole-Time Director, Company Secretary and Chief Financial Officer. The Section specifies the criteria for eligibility, the process of appointment, and the Roles and Responsibilities of KMPs.</p> <p>Compliance with Section 203 ensures effective Corporate Governance and accountability by establishing key leadership positions within the Company.</p>	<p><b>On Company:</b> Penalty Amount for - Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>On each Director:</b> Rs. 50,000/- + Rs. 100/- per day for continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>Calculation of Default Days:</b> From the Date of Default till the Date of Compliance.</p>	<p>CRRC INDIA PRIVATE LIMITED [Section 203 (1) &amp; (4)]</p> <p>SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 203 (1)]</p> <p>SOFTGEL HEALTHCARE PRIVATE LIMITED [Section 203 (1) &amp; (4)]</p>	<p>Kanpur</p> <p>Chennai</p> <p>Chennai</p>	<p>29/04/2024</p> <p>29/04/2024</p> <p>29/04/2024</p>
CHAPTER X	<p><b>Audit and Auditors:</b></p> <p>Chapter X outlines provisions related to the Appointment, Qualifications, Duties, and Powers of Auditors, as well as their Remuneration and Resignation. The Chapter also</p>	<p><b>The Penalties for Violation of any Section in Chapter X of the Companies Act, 2013 is imposed as per Section 147.</b></p>	<p>SHINAGO INTERNATIONAL (INDIA)PRIVATE LIMITED [Section 143 (2)]</p> <p>AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED [Section 139 (1)]</p>	<p>Chennai</p> <p>Kanpur</p>	<p>29/04/2024</p> <p>29/04/2024</p>

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
	<p>specifies the requirements for conducting Audits, including the preparation and submission of Audit Reports, and the Penalties for Non-Compliance. Additionally, it mandates the rotation of Auditors and establishes guidelines for the Selection and Appointment of Auditors to ensure transparency and independence in the Audit process.</p>				
<p>Section 94</p>	<p><b>Record Keeping and Inspection:</b></p> <p>Section 94 mandates Every Company to maintain various Registers, Books, and documents at their Registered Office or any other place where they conduct business. The Section also allows for Inspection of these records by Members, Debenture Holders, and other Stakeholders during specified Business hours. Compliance with Section 94 ensures transparency and accessibility of Company Records, facilitating effective</p>	<p><b>On Company:</b> Rs. 1000/- per day for continuing failure. <b>Maximum Amount for -</b> Small Company is Rs. 50,000/-; Other than Small Company is Rs. 1,00,000/-</p> <p><b>On each Director:</b> Rs. 1000/- per day for continuing failure. <b>Maximum Amount for each Director of -</b> Small Company is Rs. 50,000/-; Other than Small Company is Rs. 1,00,000/-</p> <p><b>Calculation of Default Days:</b></p>	<p>HERMES I TICKETS PRIVATE LIMITED [Section 94 (1) &amp; (4)]</p>	<p>Chennai</p>	<p>29/04/2024</p>

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION/ CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
	oversight and governance.	From the Date of Default / Refusal till the Date of Compliance.			
Section 89 (Form MGT-6)	<p><b>Filing of Beneficial Interest in Shares of a Company:</b></p> <p>Section 89 mandates Individuals holding Beneficial Interest in Shares to make a Declaration to the Company specifying the Nature of their Interest within such period as maybe prescribed.</p> <p>Thereafter, the Company is required to file with MCA the Declaration within 30 Days from the Date of Receipt.</p> <p>Compliance with Section 89 helps prevent Hidden Ownership and promotes accountability in Corporate Governance.</p>	<p><b>CASE 1 - On Beneficial Owner:</b> Rs. 50,000 + Rs. 200/- per day for continuing failure.</p> <p><b>Maximum Amount for -</b> Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>CASE 2 - On Company:</b> Rs. 1000/- per day for continuing failure.</p> <p><b>Maximum Amount for -</b> Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>On each Director:</b> Rs. 1000/- per day for continuing failure.</p> <p><b>Maximum Amount for each Director of -</b> Small Company is Rs. 1,00,000/-; Other than Small Company is Rs. 2,00,000/-</p> <p><b>Calculation of Default Days:</b></p>	<p>HERMES I TICKETS PRIVATE LIMITED [Section 89 (1) &amp; (2)]</p> <hr/> <p>DORNIER GROUP (INDIA) PRIVATE LIMITED [Section 89 (1) &amp; (2)]</p>	<p>Chennai</p> <hr/> <p>Delhi</p>	<p>29/04/2024</p> <hr/> <p>30/04/2024</p>

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION/ CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
		From the Date of Default / Refusal till the Date of filing.			
Section 56	<p><b>Transfer and Transmission of Securities:</b></p> <p>Section 56 outlines the procedures and requirements for the Transfer of Securities (Shares, Debentures, etc.) of a Company. The Section specifies the process for Transfer, including the execution of Transfer Deeds, Stamping, and Registration with the Company. It also covers the Transmission of Securities in cases of Inheritance, Succession, or other Legal Transfers due to the Death or Insolvency of a Shareholder. Compliance with Section 56 ensures transparency and legality in the Transfer and Transmission of Securities, safeguarding the Interests of</p>	<p><b>On Company and each Directors:</b></p> <p>Maximum Amount for - Small Company is Rs. 25,000/-; Other than Small Company is Rs. 50,000/-</p>	SPENDFLO INDIA PRIVATE LIMITED [Section 56 (1)]	Chennai	29/04/2024

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
	Shareholders and Stakeholders.				
Section 173	<p><b>Meetings of Board:</b></p> <p>Section 173 outlines the requirements and procedures for convening and conducting Board Meetings in a Company. The Section specifies the frequency of Meetings, Notice requirements, Quorum, and Voting procedures. It also allows for participation in Meetings through electronic means, ensuring flexibility and efficiency in Board proceedings.</p>	<p><b>On each Directors:</b></p> <p>Maximum Amount for - Small Company is Rs. 12,500/-; Other than Small Company is Rs. 25,000/-</p>	EUEB INDIA PRIVATE LIMITED [Section 173]	Kanpur	29/04/2024
Section 64 (e-Form PAS-3)	<p><b>Filing of Alteration of Share Capital of a Company:</b></p> <p>As per Section 64 - Every Company shall notify the ROC within a period of 30 Days of such Alteration or Increase or Redemption of Share Capital, as the case may be, along with an altered Memorandum of Association.</p>	<p><b>On Company:</b></p> <p>Rs. 500/- per day for continuing failure.</p> <p><b>Maximum Amount for -</b></p> <p>Small Company is Rs. 2,50,000/-; Other than Small Company is Rs. 5,00,000/-</p> <p><b>On each Director:</b></p> <p>Rs. 500/- per day for continuing failure.</p> <p><b>Maximum Amount for each Director of -</b></p> <p>Small Company is Rs. 50,000/-;</p>	AL-AMEEN MUTUAL BENEFIT NIDHI LIMITED [Section 64 (1) (a)]	Kanpur	29/04/2024

VIOLATION AS PER THE ACT	SUMMARY OF THE SECTION / CHAPTER	PENALTY IMPOSED	COMPANY NAME & ITS VIOLATION OF SPECIFIC SUB-SECTIONS	ROC	DATE
		Other than Small Company is Rs. 1,00,000/-  <b>Calculation of Default Days:</b> From the Date of Default till the Date of filing.			



## Indirect Tax Updates

### GST & Customs Updates

#### Notifications:

**1. The Government has provided waiver of interest for specified registered persons for specified tax periods**

- Registered person having the following Goods and Services Tax Identification Numbers who are liable to furnish the return as specified under sub-section (1) of section 39 of the Act
- but could not file the return for the month as mentioned in the corresponding column (2), by the due date, because of technical glitch on the portal but had sufficient balance in their electronic cash ledger or electronic credit ledger, or had deposited the required amount through challan, namely: -
- From the due date of filling return in Form GSTR 3B to the actual date of furnishing such return.
  - 19AAACI1681G1ZM
  - 19AAACW2192G1Z8
  - 19AABCD7720L1ZF
  - 19AAECS6573R1ZC

#### **Notification No. 07/2024-Central Tax**

**2. The Government has extended the timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April 2024 to 15th May, 2024 vide Notification No. 08/2024-Central Tax.**

**3. The Government has extended the due date for filing of FORM GSTR-1, for the month of March 2024 to 12<sup>th</sup> of April, 2024.**

- GSTN has recommended to the Central Board of Indirect Taxes and Customs

(CBIC) that the deadline to file GSTR-1 be extended by one day to April 12, 2024

- which was extended for the month of Mar 2024 because of technical glitches on GST Portal on last days faced by several users while filing GSTR 1.
- Avoiding any further delayed filings and payments due to the same.

#### **Notification No. 09/2024-Central Tax**

### Customs Duty

#### Notifications

#### Tariff

**1. The Government has exempted the applicable export duty on exports of Kalanamak rice not exceeding 1000 MTs subject to the specified conditions.**

- Goods are exported through the customs station, namely, Varanasi Air Cargo, JNCH, CH Kandla, LCS Nepalgunj Road, LCS Sonauli or LCS Barhni;
- the total quantity of such goods exported through the afore-mentioned customs stations taken collectively, shall not exceed one thousand metric tonnes; and
- the exporter furnishes a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from the Director, Agriculture Marketing & Foreign Trade, Lucknow, Uttar Pradesh, certifying the item and quantity of Kala namak rice to be exported.

#### **Notification No. 22/2024-Customs**

**2. The Government has amended notification No. 64/2023-Customs, dated the 7th December, 2023 in order to allow duty free imports of yellow peas with bill of lading issued on or before 30.06.2024 vide Notification No. 23/2024-Customs**

**3. The Government has amended specified customs tariff notifications to exempt applicable import duty on imports of desi chana (HS 0713 20 20) up to 31.03.2025; to impose export duty of 40% on exports of Onions (HS 0703 10); to extend the specified condition of exemption to imports of Yellow Peas (HS 0713 10 10) to bill of lading issued on or before 31.10.2024.**

**Notification No. 24/2024-Customs**

- It is hereby clarified that in pursuance of the implementation of India – Korea EODES, the electronic certificates of Origin shall be considered acceptable for the purpose of claiming preferential benefit under India – Korea CEPA.
- Provided that e – CoO shall have the same legitimacy as the original copy of its manually issued counterpart.
- e – CoO shall be continuing to be uploaded on e – Sanchit.
- For further clarifications, it is requested that above procedure for accepting e – CoO may be suitably implemented in Customs formation under your Jurisdiction.

**Circulars**

**1. Amendments to the All Industry Rates of Duty Drawback effective from 03.05.2024.**

AIRs/Caps for the following items have been enhanced for the following items :

- Certain Marine products under Chapter 3 and 16:
- Certain Goods Bags, handbags, trunks, suit – cases, under chapter 42.
- Articles of bed linen, table line, toilet linen under chapter – 63.
- Radar Apparatus.
- Radio Navigational, Radio Remote Control Apparatus Covered under Chapter – 85.
- Unmanned aircraft under chapter 88.

**Instruction No.10/2024-Customs**

**2. Verification of authenticity and genuineness of Certificate of Origin (CoO) issued by UAE Authority.**

**For verification of Origin, UAE has informed the following:**

- The format of both the old and new systems will remain identical, with the only difference being the inclusion of a QR code and a specified password in new system’s Certificate of Origin.
- Such Certificate shall also bear a unique serial Number.
- These changes aligns with Operational Certificate Procedures (OCPs) and India – UAE Comprehensive Economic Partnership Agreement (CEPA).

**Instruction No.11/2024-Customs**

**3. Instruction on review of requirement of G-Card holders at a Customs Station and conduct of G-Card examination in terms of Regulation 13 of CBLR, 2018**

- References have been received from field formations and stakeholders requesting to prescribe periodicity of G-Card

**Instructions / Guideline:**

**1. Acceptance of Electronic Certificate of Origin (e-CoO) issued by the issuing Authority of Korea under India-Korea Comprehensive Economic Partnership Agreement after implementation of India-Korea Electronic Origin Data Exchange System (EODES).**



- examination so as to bring uniformity in practice being followed in the process of review of requirement of G-Card holders and conduct of G-Card examination across the field formations.
- The matter has been examined. It has been decided that the Principal Chief Commissioner or Chief Commissioner of Customs shall conduct annual review of the requirement of G-Card holders at every Customs station under his jurisdiction in Customs Clearance Facilitation Committee (CCFC) meetings with the stakeholders.
  - Outcome of such review should also be discussed in the meeting of Customs Consultative Group (CCG). This will facilitate planning of conduct of G-Card examination and lead to sufficient availability of trained.
  - Difficulty, if any, in the implementation of this instruction may be brought to the notice of the Board.

**Instruction No.12/2024-Customs**



## Indirect Tax - Legal Rulings

### 1. 2024-TIOL-390-CESTAT-CHD

#### **Allied Poles India Ltd Vs CCE**

CX - Appellants are engaged in manufacture of Steel Tubes and availing Cenvat Credit in respect of duty paid on inputs used in manufacture of finished goods as envisaged under CCR, 2004 - During investigation, certain cenvatable invoices were recovered from appellant's premises - These invoices were received by appellants from M/s Steel Mongers - In said invoices, manufacturer of goods were shown as M/s Khemka Ispat Ltd. and M/s Pasondia Steel Profiles through M/s Ayushi Steel during period 2003-2004 and 2004-2005 - Sh KR Khemka, Director of M/s Khemka Ispat Ltd., Sh. Yashpal Sharma, DGM of M/s Pasondia Steel Profiles Ltd. in their statements admitted that no material was manufactured and dispatched to appellant - Moreover, Sh. Rupesh Bansal, Director of M/s Ayushi Steel Co., has also admitted that he received only invoices from M/s Khemka Ispat Ltd. and M/s Pasondia Steel Profiles Ltd.

On these allegations, a SCN was issued to appellant - Impugned order is bad in law because the whole case was built only on statement of Mr. K.P. Khemka and Mr. Rupesh Bansal and Mr. Yashpal Sharma and no opportunity of cross examination was provided to the appellant despite specific request - The Commissioner (A) has not considered the evidence namely RG-23C part I and bank statements showing payment to transporter and supplier - Further, department has not been able to bring any independent evidence to prove the allegations of non-receipt of goods against the appellant - Besides this, statement of Shri Sushil Jain and Shri Suresh Sharma, the authorized representative of transporter has been rejected without any basis - Appellant has regularly filed statutory returns on monthly basis and the fact of clearance of goods and availment of credit was duly reflected in returns but the same has not been examined by

authorities below - Impugned order is not sustainable in law: CESTAT

- Appeals allowed: ALLAHABAD CESTAT

### 2. 2024-TIOL-692-HC-DEL-GST

#### **DP Abhushan Vs CCGST**

GST - Petitioner impugns order dated 11.10.2023 whereby the appeal of the Petitioner seeking restoration of GST registration has been dismissed - Petitioner also impugns order whereby their registration was cancelled retrospectively.

Held: Show Cause Notice dated 29.09.2022 was issued to the petitioner seeking to cancel its registration - Though the notice does not specify any cogent reason, it merely states "Others" - Impugned order dated 13.10.2022 does not qualify as an order of cancellation of registration - Show Cause Notice and the impugned orders are bereft of any details and accordingly the same cannot be sustained - Petitioner had no opportunity to even object to the retrospective cancellation of the registration - A taxpayer's registration can be cancelled with retrospective effect only where such consequences [viz. customers are denied the input tax credit availed in respect of the supplies made by the taxpayer during such period] are intended and are warranted - Show Cause Notice dated 29.09.2022 and impugned orders dated 13.10.2022 and 11.10.2023 cannot be sustained and are accordingly set aside - The GST registration of the petitioner is restored - Petition disposed of: High Court [para 7, 8, 10, 11]

- Petition disposed of: DELHI HIGH COURT

**3. 2024-TIOL-658-HC-DEL-GST****Ethos Ltd Vs Assistant Commissioner  
Department of Trade And Taxes**

GST - Petitioner impugns order dated 23.12.2023, whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand of Rs. 1,36,98,144.00 including penalty has been raised - Petitioner submits that a detailed reply dated 08.11.2023 was filed, however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order - The adjudicating authority observed - On the basis of reply uploaded by the taxpayer, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue; that since the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed. Held : Observation in the impugned order is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply - Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was unsatisfactory, incomplete and not duly supported by adequate documents - He merely held that the reply is not clear and unsatisfactory which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner - Further, if the Proper Officer was of the view that the reply is unsatisfactory and if any further details were required, the same could have been specifically sought from the petitioner - However, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details - Impugned order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication - Petition disposed of: High Court [para 5, 6, 7]

- Petition disposed of: DELHI HIGH COURT

**4. 2024-TIOL-635-HC-KERALA-GST****Modern Food Enterprises Pvt Ltd Vs UoI**

Whether Malabar 'Parota' and Whole Wheat Malabar Parota are akin to beard and liable to

be taxed under GST Acts and rules made under GST at rate of 5% on their supply - YES: HC

- Partly in favour of Petitioner: KERALA HIGH COURT

**5. 2024-TIOL-372-CESTAT-MAD****International Flavours And Fragrances India  
Pvt Ltd Vs CGST & CE**

ST - Issue involved is regarding liability of service tax on TDS portion of foreign currency remittance made by appellant for services received - Appellant has imported services from foreign service provider and paid consideration as indicated in invoice - No TDS has been deducted by them from invoice value - The TDS paid by them was to comply with provisions of Income Tax Act - Appellant submits that service tax was paid on gross value as per section 67 without making any deductions towards "withholding of tax" - The amount would not be part of consideration for taxable services received by them as per Section 67(1)(a) of Finance Act, 1994 - Accordingly, service tax is not payable on TDS paid by appellant on behalf of foreign service provider - Issue is no longer 'res integra' as same issue has already been decided by Tribunal in case of Adani Bunkering Pvt. Ltd. wherein the Tribunal has held that TDS deposited to Income Tax Department in relation to the payment made to foreign service provider over and above the invoice value of services, is not liable to service tax - By following the ratio of said decision, it is held that appellant is not liable to pay service tax on TDS paid by them on behalf of foreign service provider - Accordingly, demand confirmed in impugned order is not sustainable and same is set aside : CESTAT

- Appeal allowed: CHENNAI CESTAT

**6. 2024-TIOL-599-HC-MUM-GST****Venus Jewel Vs UoI**

GST - Refund of IGST - Period of July, 2017 to December, 2018 - Petitioner assails the refusal of

the respondents-GST authorities to grant to the petitioner refund of Integrated Goods and Service Tax - It is the case of the petitioner that the IGST amount has been wrongly withheld by the respondent due to non-alignment of export data between the ICEGATE Portal maintained by the Customs Department and the Common Portal (the Goods and Services Tax Electronic Portal) - The petitioner, in these circumstances, also assails the legality of Circular dated 18 July, 2019 titled "Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion" - The petitioner contends that once the re-imported goods entered the territory of India, the same were declared and examined by the Customs Department and the relevant Bills of Entry were prepared of such re-imported goods. The petitioner states that it had diligently ensured all the compliances with all the relevant provisions - It is the petitioner's case that as per the provisions of the IGST Act read with Rules 96 and 96A of the CGST Rules, the petitioner was entitled to seek a refund of the IGST paid by the petitioner - Petitioner accordingly approached the Customs department with copies of the shipping bills and the corresponding bills of entry, which would clearly indicate the actual exports - The petitioner has contended that the petitioner was lawfully and reasonably awaiting its refund as the shipping bills were appropriately transmitted - Petitioner had made representations, however, no response was received - Petitioner was informed that on 18 July, 2019, the GST policy wing of respondent no.2 had issued a Circular 108/27/2019-GST dated July 18, 2019 (reference No. CBEC-20/06/03/2019-GST) titled as "Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion - reg."; that such circular provided that the goods sent by exporters on 'exhibition/consignment' basis would not be considered as 'zero rated supply' as the tax was paid on such goods, after the issuance of the shipping bills and, hence, the IGST paid by the petitioner would not be eligible for refund - Petitioner contends that the circular is illegal as it narrowed down and limited the scope of Section 16 and the provisions of the Act and the rules made thereunder; that even the Act does not contemplate or provide any such limitations.

Held: When appropriate compliances were already made by the petitioner, merely because of non-compatibility of the data between the two authorities, namely, Customs Department and the GST Department, as also for the reason of non-compatibility with the electronic portals as prevalent under the GST regime, cannot be a ground for the petitioner being denied the refund - Even assuming that the petitioner de hors the requirement of Rule 96 and Rule 96-A of the GST Rules was made to file a fresh refund application, the same could not have been rendered being barred by limitation, as the filing of the shipping bills, which were filed at the appropriate time and which has not been disputed, could not have been overlooked to be valid refund applications - Thus, mere filing of supporting applications, only to make the same compatible with the subsequent clarifications/circulars issued, would not take away the entitlement of the petitioner for the refund claim as per the provisions of the said Rules - It is clear that as the GST Common Portal and ICEGATE Portal did not make a provision to cater to the situation, as in the case of the petitioner, namely of exports on consignment / exhibit basis, the petitioner cannot be made to suffer by denial of the refund of the IGST amounts, which the department had no authority to retain, as the sales in respect of such goods stood confirmed as also verified and certified by the Customs department - This was no fault of the petitioner as the denial of refund was wholly attributable to the non-compatibility of the electronic portals/system to confer to such specific requirements - Further, it also cannot be expected that merely because the electronic portals did not make appropriate provisions, the entitlement of the petitioner to receive the refund being an entitlement under the IGST Act, (considering that the transaction undertaken by the petitioner were "zero rated supplies" within the meaning of Section 16 of IGST Act) could be defeated - Petitioner would also be correct in its contention that the impugned circular could not have been foisted in the petitioner's case, inasmuch as the same was not in existence in regard to the period in which the petitioner had undertaken exports, i.e. the period from July, 2017 to December, 2018 - Even otherwise, it could not be that the circular would override the provisions of the substantive rules framed under the CGST Act - In the reply affidavit filed

on behalf of respondent nos.1 to 4, Deputy Commissioner of Central Goods and Services Tax, Mumbai East Commissionerate, there is a clear contention that the petitioner having exported the goods on payment of duty, the refund cannot be processed under Section 54 the CGST Act but would be covered under Rule 96A of the CGST Rules, 2017 which is required to be dealt with by the Customs authorities - What is astonishing is that respondent nos.5 and 6 (customs authorities) in the reply affidavit filed by Assistant Commissioner of Customs have taken a contrary stand and stated that respondent no.6-Deputy Commissioner has no role to play in the sanctioning or rejecting of the IGST refund - It is stated that respondent no. 6 is not the competent authority to sanction or reject the IGST claim - It is, hence, clear that both the authorities are disowning their obligation and/or authority to refund the IGST as paid by the petitioner while not denying that the petitioner was entitled to the refund - The position is something which is not only disturbing but a shocking state of affairs in the authorities inter se not resolving such issues - Any internal or departmental conflicts cannot cause prejudice to the assessee - Such approach on the part of the authorities is certainly not conducive to international trade and commerce - In cases where exports involving payment of IGST are concerned, in which refund applications are made, a special mechanism is required to be devised so that both electronic portals are compatible, and refund of duties, which could not be retained, are processed expeditiously and the assessee does not suffer on account of ineffective systems being followed by the CGST as also the Customs Authorities - In the present case, IGST was not payable on such goods and, therefore, legitimately it was required to be refunded - In these circumstances, it was a patent error on the part of the respondents to drag the petitioner into the proceedings of refund application under Section 54 of the CGST Act, which itself, in the present circumstances, was not applicable - Once IGST itself was not leviable, there was no question of the same being retained by the respondent - Any retention of such amounts would be without authority in law [Article 265] - Insofar as the petitioner's prayer on interest are concerned, in facts of the case, certainly the petitioner would be entitled to interest as the amount has been illegally retained by the

respondents without authority in law - Impugned Circular 108/27/2019-GST dated 18 July, 2019 is declared to be not applicable to the petitioner's refund applications / claim - Rejection of the refund applications by the impugned orders dated 5 August 2022 is declared to be illegal - Amounts be refunded to the petitioner within a period of three weeks along with simple interest at the rate of 9% p.a., failing which the petitioner shall be entitled for realization of further interest at the rate of 9% till its actual payment - Petition allowed: High Court [para 47, 48, 49, 53, 54, 55, 57, 60]

- Petition allowed: BOMBAY HIGH COURT

## 7. 2024-TIOL-588-HC-MAD-GST

### **Thai Mookambikaa Ladies Hostel Vs UoI**

GST - The petitioners, having obtained licence, are running private ladies hostels by providing residential accommodation and food to the college students and working women on monthly basis with reasonable tariffs - According to the petitioners, they are carrying on ladies hostels with a philanthropic motive and purpose for providing safe and secure environment for the student girls and working women who hail from far-away places and remote villages and who are not in a position to secure independent residential accommodation by paying huge rents and advance in the city - The monthly tariff per student or per inmate ranges between Rs.1200/- to 6,500/- per month - Petitioners herein claimed that since they are providing the residential accommodation to the girl students and working women, which can be termed as 'residential dwelling' used as residence by the inmates of the hostels and thereby, the charges/rent/tariff collected by them from the inmates on such accommodation, qualifies for GST exemption [Entry No.12 of the Exemption Notification No. 12/2017 -Central Tax (Rate)] and, therefore, they are entitled to the exemption from levy of GST tax - Tamil Nadu State Authority for Advance Ruling disallowed the exemption claim, therefore, the petition. Held: Purposive interpretation - Court finds that the purport and object of the legislation in issuing the present Notification is only to give exemption towards the services which are residential in nature and

not towards commercial nature and the premises should be of residential dwelling for use as residence - The purpose of exemption given in the Notification is only to lessen the burden of tax on the dwellers, who are the tenants/occupants of the residential premises taken on rent - In the present case, the imposition of GST on the Hostel accommodation should be viewed from the perspective of the recipient of service and not from the perspective of service provider - However, the 2nd respondent (AAR) has dealt with the entire issue as if GST is going to be imposed on the revenue of the service provider and he is going to pay the same from and out of his pocket - On the other hand, the imposition of GST is only on the recipient of service and the GST is going to be collected only from the recipient of the service and not from the service provider - As far as service provider is concerned, he is collecting the GST from the recipient of the service and making deposit with the Central Government - While advertng to the imposition of GST on hostel accommodation, it has to be looked into as to whether the inmates of the hostel rooms, are using the premises as their residential dwelling or commercial purpose since renting of residential unit attracts GST only when it is rented for commercial purpose - So, in order to claim exemption of GST, the nature of the end-use should be 'residential' and it cannot be decided by the nature of the property or the nature of the business of the service provider, but by the purpose for which it is used i.e. 'resident dwelling' which is exempted from GST - Therefore, this Court is of the considered view that the issue of levy of GST on residential accommodation should be viewed from the perspective of recipient of service and not from the perspective of service provider, who offers the premises on rental basis - It is clear that the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for residential purpose - This Court is, therefore, of the considered view that the condition prescribed in the Notification in order to claim exemption, viz., 'residential dwelling for use as residence' has been fulfilled by the petitioners and thus the said services are covered under Entry Nos.12 and 14 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, the petitioners are entitled to be exempted from levy of GST - Writ

Petitions are allowed and the impugned orders passed by the 2nd respondent are hereby set aside [para 61 to 64, 66] Maintainability - s.100 - As far as maintainability is concerned, both the parties have admitted the fact that as against the order passed by the 2nd respondent, a statutory appeal provision is very much available - However, this Court is of the view that the availability of alternate remedy will not take away the right of the petitioner to approach the High Court since filing appeal before the Appellate Authority would only be an empty formality, particularly, when the 2nd respondent failed to follow the orders passed by the Karnataka High Court in Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling reported in MANU/KA/0327/2022 = 2022-TIOL-242-HC-KAR-GST wherein Division Bench of Karnataka High Court has categorically held that the services provided by leasing out the residential premises as hostel to the students and working professionals are exempted in Entry No.13 of Exemption Notification No.9 of 2017: High Court [para 13]

- Petitions allowed: MADRAS HIGH COURT

## 8. 2024-TIOL-359-CESTAT-KOL

### CC Vs Joy International

Cus - The assessee-company imported Christmas Lights and other electrical items from China PR - The consignment underwent investigation by the DRI, who opined that the value of the goods had to be enhanced - For this purpose, the Department adopted NIDB data to enhance the value and revise the Customs duty payable - On appeal by the assessee, the Commissioner (Appeals) held that the enhancement of value was not sustainable as the Assessing Officer had rejected the transaction value without giving valid reasons therefor and without following the procedure laid down in Section 14 of the Customs Act - Hence the Department's appeal.

Held - The Department has not made any attempt to follow the procedure given under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and has simply

adopted the NIDB data and selectively enhanced value - As discussed above, the Commissioner (Appeals), has given a detailed finding along with reasons while setting aside the Order-in-Original. We do not find any reason to interfere with the same: CESTAT

- Appeal dismissed: KOLKATA CESTAT

#### 9. 2024-TIOL-579-HC-AHM-GST

##### **Otsuka Pharmaceutical India Pvt Ltd Vs UoI**

GST - Appellate authority, relying upon sub-rule (3) of the Rule 108, calculated the period of delay by observing that the petitioner failed to submit certified copy of the decisions or orders within the period as stipulated under Rule 108 of the Rules and considered the same delay as an inordinate delay ranging from 71 days to 106 days and declined to entertain the appeals on the ground of delay - Aggrieved, the present petition - Petitioner has referred to and relied upon Minutes of 48th Meeting of GST Council held on 17th December, 2022, wherein in Item VII, amendment in Rules 108 and 109 is discussed - Notification 26/2022-CT dated 26 December 2022.

Held: As the GST Council has agreed to recommendations of the Law Committee which provides that when an order which is appealed against is issued or uploaded on the common portal and the same can be viewed by the appellate authority, requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity would be insignificant in view of availability of the order online - Therefore, considering such recommendation, amendment which is clarificatory in nature, has come into effect from 26th December, 2022 on the statute - Amendment would have a retrospective effect as the same is a clarificatory in nature and, therefore, the impugned order passed by the appellate authority rejecting the appeal on the ground of delay would not survive - The impugned order is, accordingly, quashed and set aside and the matter is remanded back to the appellate authority to pass a fresh de novo order on merits after giving opportunity of

hearing to the petitioner - Petition disposed of: High Court [para 5.2, 6]

- Petition disposed of: GUJARAT HIGH COURT

#### 10. 2024-TIOL-347-CESTAT-DEL

##### **IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI**

##### **CUSTOMS APPEAL NO. 52892 OF 2019**

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Prev/NCH/555-560/2019-20 dated 03.07.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

**Date of Hearing: 12.01.2024**

**Date of Decision: 02.04.2024**

**HIND AGRO INDUSTRIES LTD  
A-1, OKHLA INDUSTRIAL AREA, PHASE-I  
NEW DELHI - 110020**

**Vs**

**COMMISSIONER OF CUSTOMS  
(PREVENTIVE)  
NEW CUSTOMS HOUSE, NEW DELHI  
110037**

**WITH  
CUSTOMS APPEAL NO. 52887 OF 2019**

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Prev/NCH/555-560/2019-20 dated 03.07.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

**Appellant Rep by:** Shri Bipin Garg, Adv.  
**Respondent Rep by:** Shri S.K. Rahman, AR

**CORAM:** Dilip Gupta, President  
P.V. Subba Rao, Member (T)

**Cus - Appeal seeks quashing of the order-in-appeal upholding the order dated 26.10.2016**

passed by the Additional Commissioner confiscating the goods exported and confirming the demand of customs duty with interest and penalty - Counsel for the appellant raised a preliminary objection that in view of the provisions of section 14 of the Insolvency and Bankruptcy Code, 2016, 2016 Code, the Tribunal would now not have the jurisdiction to hear the appeals - Counsel for Revenue submitted that mere pendency of the proceedings before the NCLT would not come in the way of the Tribunal from hearing the appeals on merits.

**Held:** In the present case, it is the corporate debtor that has filed the main appeal against the order of the Commissioner by which the

exported goods were confiscated and the demand of customs duty was confirmed with interest and penalty - The proceedings are also not in relation to the execution of any judgment decree or order - This apart, appellant has not placed any order of the NCLT declaring moratorium - Reliance upon section 14 of the 2016 Code to contend that the Tribunal should not continue with hearing of the appeal on merits is, therefore, mis-conceived - Preliminary objection raised by the learned counsel for the appellant that the Tribunal should not continue with the hearing of the appeals is without any merit - Matter to be heard on 07.05.2024: High Court [para 8, 10]

**Matter listed**





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In case of any clarification please reach us:

Name	Particulars	Mail ID	Mobile Number
Vishnu Moorthi H	Managing Partner	vishnu@vishnudaya.com	+91 9880 715 961
Dayananda K	Indirect Taxes / DGFT	daya@vishnudaya.com	+91 9845 025 682
Vinayak Hegde	Indirect Taxes	vinayaka@vishnudaya.com	+91 9902 586 492
Shankar D	Direct Taxes	shankar@vishnudaya.com	+91 9880 715 963
Anju Eldhose	Direct Taxes	anju.eldhose@vishnudaya.com	+91 9496 148 918
Manjula A	Direct Taxes	manjula@vishnudaya.com	+91 9740 854 009
Rakesh K	FEMA	rakesh@vishnudaya.com	+91 9008 047 675

## Our Offices

Bangalore	Chennai
GF No. 7 & 3rd Floor, Karuna Complex, No. 337 Sampige Road, Malleshwaram Bangalore - 560 003 Tel +91 80 2331 2779 Fax +91 80 2331 3725	No. 3A, 3rd Floor Amber Crest Apartment (Next to Egmore Ashoka Hotel) Pantheon Road, Egmore Chennai - 600 008 Tel +91 44 2855 4447 Fax +91 44 2855 3521

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