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EDITORIAL

Vision 360: A glimpse of good times to come...

2021 began with a lot of expectations and hopes to bring back pre-COVID times, but to everyone's dismay it was hit yet again by second wave of COVID-19. Although this was a much stronger waver, it couldn't break the spirit of '1 wave older' mankind. Globally, governments responded much effectively and with the development of vaccine the world also witnessed biggest ever vaccination drive in the history. Although many felt India could have better prepared for this contingency, one must not forget that it did fight back despite all its diverse social stratification and numerous issues it brings with it.

These days there is a murmur about Omicron virus but it seems not leading to any material impact. As a matter of fact in the COVID -19 era, discovery of a new variant is going to be 'new normal'. Besides, everyone is prepared better than ever.

From India's economic standpoint, global rating agency S&P noted that impact of the new variant on India's economic outlook would be contained. It expects India's economy to grow 9.5% in FY22 and 7.8% in FY23. "We are seeing a healthy recovery," its Director of Sovereign Credit ratings was quoted as saying in a virtual meeting. The statement was also backed by the recovery seen in Indian stock exchanges in second week of December.

This past month was also important for a key issue that directly impacts India's Socio-economic-political standpoints. The Farm Laws i.e. the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; Essential Commodities (Amendment) Act, 2020; and Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. These were enacted last September and have seen nationwide protest from farmers, especially Punjab and Haryana, triggered by the fear of loosing minimum support price guaranteed by the government on select crops, and being left at the mercy of big corporations. These laws stand repealed with an appeal from the Government for farmers to call off the agitation and return to their homes.

As far as, international developments are concerned, the OECD/G20 Inclusive Framework on BEPS was joined by Mauritania which brought the total number of participating jurisdictions to 137 and total membership of the Inclusive Framework to 141. This aside, Global Alliance for Tax Justice reported loss of USD 483 Bn in tax havens. The report thus recommends Introduction of pandemic excess profits taxes, wealth taxes, Immediate national measures to be accompanied with a global and architectural shift to recoup such loss. The report also suggests that governments of the OECD member countries should begin negotiations on an UN Framework Convention on Tax, to establish a transparent and globally inclusive alternative.

To sum up, with a lot more experience and learnings along the way, the year is coming to an end and like they say, 'all is well that ends well' - it seems the worst is behind us and its time to rebuild ourselves. As we all embark on this new year with new challenges in true sense, the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GST Legal Services LLP** and **VMG & Associates**, wish you all a very happy new year and all the very best for a fresh start!

Happy Reading!

P.S.: This document is designed to begin with couple of articles peeking into recent tax/regulatory issues followed by stimulating perspective of a leading industry professional. It then goes on to bring to you latest key developments, judicial and legislative, from Direct tax, Indirect tax and Regulatory space. Don't forget to check out our international desk for some global trivia.

CONTENTS

ARTICLE

Article: Cash refund of Pre-GST duties paid Post GST - Unnecessary hardship! 5
The author discusses practical nuances of discharging the erstwhile tax liability after introduction of GST, inability to avail credit due to absence of any mechanism and the necessity to claim refund of these. A long-way home to ensure fungibility...

Article: No interest on inadmissible ITC availed, until utilised - Back to Square One! 7
Author analyses the amendment to Section 50 of Central Goods and Services Tax Act, 2017 and draws a parallel from the Cenvat Credit Rules. While doing so deliberates key jurisprudences that have stood tests of time and lend clarity to taxpayers as well as legislators...

INDUSTRY PERSPECTIVE

Mr. Shalabh Goel - Finance Director - Centrient Pharmaceuticals 9
Mr. Goel shares his thoughts and perspective on tax reforms in India, faceless assessment, PLI Scheme and the threat of Omnicron virus...

DIRECT TAX - FROM THE JUDICIARY

- ITAT allows depreciation at 60% on computer software, whether canned or uncanned 11
- HC holds issue raised and responded during assessment proceeding but not partof assessment order, not amenable to reassessment 12
- High Court allows delayed revised return filed pursuant to NCLT approved scheme, Appeals for improvising filing software 14

...and other judicial developments from November 2021

TRANSFER PRICING - FROM THE JUDICIARY

- ITAT deletes TP-adjustment on interest on AE receivables treating forex gain as operating in nature 15
- ITAT deletes royalty-adjustment under CUP basis another controlled transaction, rejects method not covered u/s 92CA for sales-commission 16
- ITAT rules on comparables for SWD segment, remits grant of negative working capital adjustment back to file of AO for fresh consideration 16

...and other judicial developments from November 2021

DIRECT TAX - FROM THE LEGISLATURE

- CBDT notifies e-Settlement Scheme, 2021 for pending settlement applications 18
- CBDT issues Guidelines on scope of Sections 194-O, 194Q & 206C 18

...and other Notifications, Circular, Trade Notice, etc. issued in November 2021

GST - FROM THE JUDICIARY

- HC quashes SCN denying transitional credit 19
- ITC cannot be denied basis technicalities 21
- HC allows de-blocking of credit ledger post 1 year blocking Order 22

. . . and other judicial developments from November 2021

CONTENTS

GST - FROM THE LEGISLATURE

- CBIC issues Instructions in respect to the SCN issuance and disposal of adjudication matters related to IDT — 26
- CBIC issues clarification on various refund related issues — 26
- CBIC clarifies no dynamic 'QR' code on B2C invoices — 27

...and other Notifications, Circular, Trade Notice, etc. issued in November 2021

CUSTOMS & TRADE LAWS - FROM THE JUDICIARY

- Tribunal directs Registry to accept Sony's appeals in BoE reassessment matter not involving additional duty payment — 29
- HC directs release of seized goods on non-issuance of notice beyond 12 months during investigation — 29
- Benefit of Advance Authorization not deniable upon change of import Tariff-Heading — 30

...and other judicial developments from November 2021

CUSTOMS & TRADE LAWS - FROM THE LEGISLATURE

- Date for mandatory e-filling of non-preferential certificate of origin — 31
- Last date for online application filing under MEIS/SEIS/ROSL/ROSCTL — 31
- Representations to be submitted directly to the RODTEP committee — 31

...and other Notifications, Circular, Trade Notice, etc. issued in November 2021

REGULATORY - FROM THE JUDICIARY

- SC holds arbitrator cannot award interest given specific bar under contract governing parties — 32
- SC holds NCLT has no jurisdiction over contractual disputes unrelated to Corporate Debtor's insolvency — 32
- SC holds Company can sue for cheque dishonour, through authorised Managing Director — 34
- SC quashes summoning-order under Minimum Wages Act, holds person can't be prosecuted merely due to status as Director — 36

...and other judicial developments from November 2021

REGULATORY - FROM THE LEGISLATURE

- Disclosure obligations of listed entities in relation to related party transactions — 38
- Issuance of updated Master circular on Guarantees and co Acceptances by RBI — 39
- Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advances — 42

...and other Notifications, Circular, Trade Notice, etc. issued in November 2021

INTERNATIONAL DESK

With numerous modifications and amendments happening in the field of taxation across the globe, the authors shed light on few of the relevant and interesting recent global tax updates relating to G20 Finance Ministers & Central Bank Governor endorsing two-pillar solution, UAE-amendment in VAT, KSA- implementation of e-invoicing... — 43

Cash Refund of pre-GST duties paid post GST – Unnecessary Hardships!

Background

Back in 2017, during the revolutionary transition of the indirect tax regime from the Excise and Service Tax to GST, there had been a lot of chaos in respect to the transition of credit. However, this had well been taken of by the transition provisions under the CGST Act. The GST law provided the taxpayers an option to file Form TRAN-1 for availing their previous ITC accumulated from earlier purchased stock before the implementation of the GST. While the said Form and the time-limit to file the same were itself, subject matters of considerable litigation, it has more or less been resolved.

However, as for the transition of those pre-GST taxes and duties which had to be paid post the introduction of GST, remained a problem at large. In many cases, the liability to pay the pre-GST taxes and duties itself arises post GST. For instance, payment of CVD/SAD for unfulfilled export obligation under Advance Authorisation / EPCG, Service Tax under RCM, etc. In such cases, the taxpayers had been paying the applicable taxes and claiming the refund of the same under the erstwhile laws (mainly u/s. 11B of the Excise Act), as the credit thereto would be redundant.

Revenue's Contention and its viability

Majorly, the issue in the above-mentioned scenarios arose when the Revenue authorities began to outrightly reject the refund claims on the premise that Section 11B did not explicitly allow cash-refund in such scenarios. In certain cases, the Revenue authorities even went on to argue that the refund claims filed u/s. 11B post the GST enactment were now a part of the GST regime and therefore not maintainable under Excise. However, such arguments were grossly out of place.

It shall be noted that Section 142(3) of the CGST Act provides that any claim filed under the GST regime for refund of the erstwhile credits, the same shall be disposed off in accordance with the erstwhile law, and the refund if granted, shall be paid in cash. Further, the sub-section (6) inter alia provides that every reference to a refund of CENVAT Credit under the erstwhile law is eligible to be refunded in terms of Section 11(B)(2) of the Excise Act. As the CGST Act provides for settlement of erstwhile refund claim in accordance with the respective provisions, Section 11B of the Excise Act would become applicable in the such cases.

It shall be noted that clause (c) of Section 11B of the Excise Act allows the refund of duty paid on excisable goods used as inputs in accordance with the provisions of CCR. Accordingly, where an assessee had been eligible to avail the CENVAT Credit under the erstwhile regime, who could not avail the credit, would be left only with the option to avail cash refund u/s. 11B of the Excise Act read with Section 142(3) of the GST Act.

Judicial Development

In the midst of all the chaos The first well known break-through on this front came with the judgement of Commissioner (A) Raigad, in RE: Sudarshan Chemicals Industries Limited **[Order-In-Appeal No. MKK/397-398/RGD APP/2018-19 dated 21 December 2018]**. In this case, the Appellant had imported raw material under various advance authorizations, however, failing to fulfil the export obligation, the goods were clear by paying the applicable CVD and SAD. Subsequently, the refund application was rejected. Thereafter, the Commissioner (A) allowed the refund application by stating the Appellant were eligible to avail the CENVAT Credit under the erstwhile regime and the refund application was filed in order u/s. 11B of the Act r/w Section 142(3) of the GST Act. It was further observed that Section 174(2)(c) of the GST Act states that the repeal of the Excise Act shall not affect any right of the Appellant under the said law.

Similarly, the Assistant Commissioner of Customs,

Vadodara – I in RE: Panasonic Energy India Limited **[Order-In-Original No. DIV-V/CGST/AC/Ref-Panasonic/44/2018-19 dated 09 January 2019]** had allowed the cash refund of Service Tax and Krishi Kalyan Cess, observing that the Appellant was eligible to avail the CENVAT Credit of the said taxes paid under the erstwhile regime, however, the Appellant could not avail the transitional credit of the same. Accordingly, the refund application was eligible to be granted u/s. 11B of the Excise Act read with Section 142(3) of the CGST Act.

As for a higher judicial forum, the Gujarat HC in RE: Thermax Limited **[2019-TIOL-1952-HC-AHM-CX]** had held that amount of duty so paid refundable to the petitioner in cash in terms of Section 142(3) of CGST Act, instead of credit in CENVAT account, which has become redundant after advent of GST regime.

As for the latest development, the New Delhi Tribunal in RE: Flexi Caps and Polymers Private Limited **[2021-TIOL-611-CESTAT-DEL]** allowed cash refund of CVD/SAD which had been paid post introduction of GST for non-fulfilment of Export obligation. In this case, the assessee had failed to fulfil his export obligation under an advance license and therefore had discharged the applicable CVD along with applicable interest and penalty, post the GST enactment. Thereafter, the assessee had filed for cash refund of the said duties in terms of Section 11B of the Excise Act, which had been duly granted. However, the Department had filed an Appeal against the refund order, which had been allowed. Aggrieved, the assessee preferred an Appeal before the Delhi Tribunal.

WHILE THE JUDICIAL FORUMS HAVE JUDICIOUSLY INTERPRETED THE LAWS AND ALLOWED THE CASH REFUND OF PRE-GST DUTIES PAID POST GST ENACTMENT, THE REVENUE AUTHORITIES STILL SEEM TO BE ACTING IN CONTRAVENTION!

The Delhi Tribunal observed that credit of duty paid by the assessee could not be availed due to the Excise Act being taken over by the new GST law. It was further observed that the GST law provides that the refund claim filed before on or after the introduction of GST law for any amount paid under the existing law, shall be disposed in accordance with the existing law and any amount eventually accruing shall be paid in cash. Accordingly, it was held that as the requisite duty stood paid in full by the assessee, it entitles them to have credit thereof though in the form of cash in terms of the provisions of the new law.

Parting thoughts

Taking the above provisions, judgements and analysis into consideration, one may draw a conclusion that law in place is settled, which has been formulated in a way which ensures that a taxpayer shall not be deprived of his rightful credit. Collection of tax, which is not otherwise collectable by the Government goes beyond the Art. 265 of the Constition which mandates that no tax be impaled / collected without the authority of law. It shall be noted that it is incumbent upon the Revenue to justify even retention, when there is bona fide payment/credit.

Thus, it can be seen that while the judicial forums have judiciously interpreted the laws and allowed the cash refund of pre-GST duties paid post GST enactment, the Revenue authorities still seem to be acting in contravention. We believe that a clarification in respect of cash refund applications filed u/s. 11B of the Excise Act r/w. Section 142 of the CGST Act would go a long way in avoiding unnecessary hardships and litigation.

'No interest on inadmissible ITC availed, until utilised' – Back to square one!

Input Tax Credit ('ITC' / 'credit') and applicability of interest thereon have had a chequered history for long, and although courts have settled the issue time and again, the dispute seem to take new avatar every now and then. This time the GST Council seems to have taken its cues from some of the recent Judicial developments to plug this issue with its recommendation to amend Section 50(3) of the Central Goods and Service Tax Act, 2017 ('CGST Act') to charge interest on wrongfully availed ITC - only if it is utilised. The recommendations were made during the GST Council's 45th meeting held on September 17, 2021.

Despite subsistence of Section 50(3) right since July 01, 2017, the whys, and wherefores of GST Council's aforesaid recommendations in 2021 warrants a closer look at recent judicial precedents. Hon'ble Madras High Court recently in the case of **F1 Auto Components** relieved the taxpayer yet again from alleged interest liability for delay in discharging GST liability by utilisation of ITC as per provisions of Section 50(1) of the CGST Act.

As a matter of fact, said Section 50(1) is amended to insert a proviso which restricts computation of interest only on the net cash liability. Despite GST Council's intent to effectuate such amendment right from July 2017, the amendment was given prospective effect from September, 2020 due to technical difficulties. The amendment was followed by a Press Release clarifying that no recovery shall be made for the period prior to September 2020. This being the case, plethora of recovery proceedings were initiated along-with ongoing proceedings at that time for the period prior to September, 2020.

Decision in F1 Auto components follows decision of Madras High Court itself in the case of **Maansarovar Motors Private Limited** where it took cognizance of the Minutes of GST Council's meeting held on 21.06.2019 and 14.03.2020; accordingly, Press release of the Council dated 14.03.2020 and CBIC's clarification set-out that prospective application of the amendment was meant only due to technical issues to decide the issue in favour of assessee and giving retrospective effect to insertion of proviso to Section 50. Resultantly, all interest demands relating to delayed utilisation of ITC towards payment of tax were dropped by Hon'ble Dr. Justice Anitha Sumanth of Madras High Court.

As a matter of fact, Hon'ble Dr. Justice Anitha Sumanth herself, much prior to operationalisation of proviso w.e.f. September 2020, in the matter of **'Refix Industry'** drew similar analogy for retrospective operation of the said proviso where she noted: The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively.

Interestingly, the Court also touched upon the nature of 'imposition of interest' where Hon'ble Dr. Justice Anitha Sumanth quoted rich and relevant references. It referred to decision of Hon'ble Supreme Court in the case of **Pratibha Processors** which at paragraph 13 of its Order famously held that Interest is compensatory in character and is imposed on an Assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to the actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from a penalty — which is penal in character.

Hon'ble Dr. Justice Anitha Sumanth then goes on to quote various decision of Hon'ble Supreme Court such as Allies Motors (P) Ltd.; CIT vs. Alom Extrusions Limited; CIT vs. J.H. Gotla; CIT vs. Anjum H Ghaswala; all of which further cement the proposition that **interest is compensatory in nature**!

These discussions around nature of imposition of interest are indeed carried on from erstwhile regime, when the CENVAT Credit Rules, 2004 (vide its Rule 14) provided for recovery of interest if credit was wrongly availed. The vires of this provision charging interest was challenged before the Hon'ble High Court of Punjab & Haryana in the case of **M/s Ind-Swift Laboratories Ltd.** which interpreted Rule 14 by noting that interest has compensatory character and liability to pay duty does not arise when credit is availed but arises in circumstances when the same is utilized. It thus held that, interest liability commences only in circumstances when the credit is utilized wrongly.

Even though the decision was later reversed by Hon'ble Supreme Court (to the surprise of tax community), the better sense prevailed amongst the legislators who owing to far-reaching impact of Hon'ble Supreme Court's decision in the case of Pratibha Processors on the tax credit mechanism, amended Rule 14 itself to charge interest only when the credit is wrongly 'availed and utilised'. This change in law was also in line with Hon'ble Supreme Court's decision in the case of Bombay Dyeing Manufacturing Company and Hon'ble High Court of Karnataka in the case of **Bill Forge Pvt. Ltd.** in which it held that if the credit is reversed before its utilisation, it does amount to credit not availed at all.

This being the position of law, CGST Act carried on the anomaly in its Section 50 sub-clause (3), where it continues to charge interest for wrongful availment of credit, irrespective of whether the same has been utilised or not, in a way using the interest as a penal tool! The taxpayers also became wary of this provision when interest demands were raised for alleged wrongful transition of ITC through GST TRAN 1. This however seems to have been addressed by Hon'ble Patna High Court in the case of **Commercial Steel Engineering** where it distinguished 'availment' from 'transition' of credit and circumvented applicability of Section 50 as provided under Section 73 for recovery of wrongful availment of credit.

However, with decision of Madras High Court together with decision of Hon'ble Supreme Court in the case of Pratibha Processors the stage was all set for a legal battle that could have challenged the very vires of charging interest on mere wrongful availment of ITC. It was about time that GST Council took cognizance of this situation and restricted 'interest' to its 'compensatory' character and not use it as a penal tool.

Like they say, 'all is well that ends well!', with the recommendation to charge interest on wrongful availment of ITC only if it is utilised places the issue of constitutional validity of charging interest to rest. The recommendation is also in line with judicial precedents referred above.

It is however still left to see how effectively the recommendation is implemented? Whether a retrospective amendment is introduced or the taxpayers are left to fight bitter battles to safeguard their 'interest' just because amendment could not be implemented for technical reasons - time only will unfold!

While refreshing the memories of this very issue, one thought is reinforced. The legislators seldom realise the practical nuances of a provision, and until this lacuna persists the taxpayers would continue to suffer. It may therefore be a good idea to involve eminent law/tax practitioners, industry experts and economists alongside bureaucrats, etc. whilst formulating the law itself. This would substantially ease evolution of a 'pragmatic' law instead of one being only theoretical in nature. Perhaps a thought to ponder on!

Shalabh Goel
Finance Director, Global API Commercial
Centrient Pharmaceuticals

Mr. Goel shares his thoughts and perspective on tax reforms in India, faceless assessment, PLI Scheme and the threat of Omnicron virus...

What do you think of recent tax reforms in India?

Aligning Income tax in India with global taxation is a significant step for attracting global investment as well as supporting Indian business. The effective tax rate for domestic companies is now ~25% which was brought down from ~33 - 35% in 2019. Although, it is still on higher side compared to many other jurisdictions, nonetheless it's a welcome move that aids Indian business houses to gain competitive advantage globally as well as locally.

About Indirect tax, introduction of GST was a mammoth task. The pace at which the GST issues are getting settled at regulatory level is certainly faster than erstwhile law. It is now important to see how the litigation pans out. Hopefully it serves one of the key purposes of introducing GST - 'to reduce litigation'.

It is however pleasing to note increasing use of technology in many facets of tax administration, litigation, compliance, data processing, communication, etc. Use of technology will bring great efficiency, transparency as well as accountability in tax administration.

What are your views on introduction of faceless assessment?

Faceless assessment is another step by the Indian government towards digitalisation as well as eliminating corruption by making the entire process seamless and painless for the taxpayers. Faceless assessment, faceless litigation at ITAT level are some of the bold moves to reduce litigation and settle disputes in a timely manner. However, it lacks the comfort of personal interaction to explain a complex transaction before tax officer make up his mind and is a much narrower channel of communication as compared to personal hearing. It is experienced many times that communication is limited to audio only, further narrowing the communication window. These changes would give fruitful result if accompanied with change in behaviour of tax officer specially when officials have been tasked with revenue collection targets.

FACELESS ASSESSMENT IS ANOTHER STEP BY THE INDIAN GOVERNMENT TOWARDS DIGITALISATION AS WELL AS ELIMINATING CORRUPTION BY MAKING THE ENTIRE PROCESS SEAMLESS AND PAINLESS FOR THE TAXPAYERS!

Eliminating the system of personal hearing entirely have certainly limited assesses opportunity to effectively represent its case. Untill the 'faceless' mechanism settles and becomes effective, a hybrid system of faceless and personal hearing is needed. In general scenario, the communication gaps should be resolved and a certain threshold should be introduced for personal hearings on case-to-case basis.

The government has recently announced a Production Linked Incentive ('PLI ') scheme for pharma Industry in Order to boost the domestic production. How do you intent to take advantage of the PLI scheme?

The PLI scheme was much welcomed and appreciated by companies and believes it will help in giving the required boost to Indian manufacturing sector and will go a long way to develop manufacturing capabilities in India.

The PLI scheme has offered eligible manufacturing companies and sectors a 4-10% incentive on incremental sales over the base year of 2019-20 for a five-year period. With massive production capacities, India is already one of world's largest manufacturer of generic drugs and has grabbed the limelight post COVID.

However, the global supply chain is still largely dependent on China for supply of raw materials for APIs. Presently, Indian pharma sector is engaged in building capacity and is being seen as a prospective alternative to China. With the aid of PLI, the capacity building will see light of the day in 2-3 years, that's when the global supply chain for API is likely to see some shift. Initiatives like these will help India create a truly global Industry in terms of stature and size.

The government has excluded Pharma Industry from RoDTEP radius. How has the Industry as a whole reacted on it?

Disappointed! Pharma Industry were one of the major beneficiaries of the MEIS Scheme and therefore being left out from the RoDTEP Scheme was indeed a major setback for the entire industry.

PHARMA INDUSTRY WERE ONE OF THE MAJOR BENEFICIARIES OF THE MEIS SCHEME AND THEREFORE BEING LEFT OUT FROM THE RODTEP SCHEME WAS INDEED A MAJOR SETBACK FOR THE ENTIRE INDUSTRY!

It is understood that this decision comes from the Government upon considering the sector has done rather well even without incentives. However, such a consideration is beyond our understanding as why such an important and thriving Industry has been left out of the ambit of RoDTEP and making it non-competitive compared to other Industry. The pharma Industry can't be made to suffer taxes and expected to export these taxes as part of their cost structure. As a matter of fact these are just the opportune times to strengthen the Indian pharma sector as much as possible to have a strong global footprint.

Accordingly, the Industry has collectively submitted its representation before the authorities and results are awaited. However, it would also be worthwhile to note that the quantum of the benefit has been drastically reduced compared to what was available under the MEIS Scheme. Accordingly, even if the benefit is extended to the Pharma Industry under the RoDTEP, we cannot really be dependent on the same.

Moreover, as an organisation we also use Advance Authorisation scheme frequently to import raw material due to its domestic unavailability. It's a pattern for entire pharma sector. So even if RoDTEP rates are announced are Pharma sector they are likely to be negligible given the kind of RoDTEP framework meant for Advance Authorisation holders.

Any views on the current Omicron virus?

Well, it would be difficult to provide any comment on the virus as of now since there really isn't much information on this variant. However, given the aftermath of the first two waves of the COVID-19 pandemic, it would be advisable to continue following the safety norms and guidelines put in place by the Central and the State Governments. In such times, I remember the words of Winston Churchill who once remarked "Those who cannot remember the past are condemned to repeat it!".

Note: *The views/opinions expressed in this section are personal views of the Author and do not necessarily reflect the views/opinions of the organization and/or the Publishers.*

ITAT allows depreciation at 60% on computer software, whether canned or uncanned

Plintron Mobility Solutions Pvt. Ltd.
ITA No.104/Chny/2018

The Assessee was a software solutions provider and had filed its return of income which was subjected to scrutiny assessment. During the scrutiny assessment, the AO made additions towards excess depreciation on computer software and payment to non-resident for purchase of software without deduction of tax at source.

Aggrieved, the Assessee approached the CIT(A) which confirmed the order of the AO. Accordingly, the Assessee preferred an appeal before the ITAT.

The ITAT observed that the Assessee purchased software being operating system for Windows for INR 1.92 Crores and claimed depreciation @ 60%, which was restricted to 25% by the Revenue on the grounds that software was nothing but an intangible asset.

The ITAT further observed that that prescribed rate of depreciation for assets including computer and computer software was 60% and that even though computer software was not defined in the IT Act, it was explained to include computer program recorded on any disc, tape, perforated media or other information storage device, and thus, computer software, whether canned or uncanned was goods and therefore, a tangible asset.

The ITAT also remarked that as Assessee purchased software like Windows, MS Office and other operating system which was embedded in computer system and considered as an integrated part of computer system, it was eligible for 60% depreciation and found the Revenue to have erred in restricting depreciation on software to 25%, directing it to allow depreciation at 60%.

With regard to payment made for purchase of software, the ITAT observed that the Revenue had disallowed the amount on the grounds that it constituted Royalty u/s 9(1)(vi) of the IT Act. However, what was purchased by the Assessee was a copyrighted article but not a copyright itself. Thereby, placing reliance on umpteen judicial precedents, the ITAT observed that payment made by the Assessee for purchase of software to non-resident supplier was outside the scope of definition of royalty as defined under Section 9(1)(vi) of the IT Act. Accordingly, the ITAT concluded that there was no liability for deduction of tax at source under Section 195 of the IT Act.

The ITAT accordingly held that the Assessee was eligible for depreciation at 60% on software and payment made to non-resident for purchase of software was not liable for tax deduction under Section 195, thereby, deleting the disallowance made for such payment.

ITAT holds revision based on new record without allowing cross-examination to Assessee, illegal

Sun and Sun Inframetric Pvt. Ltd.
2021-TIOL-1851-ITAT-RAIPUR

The Assessee was assessed under Section 143(3) for AY 2015-16 at a loss of INR 34.90 Lakhs and was subjected to revisionary proceeding under Section 263 of the IT Act. The notice under Section 263 was sent to the Assessee by an email more than 2 weeks before formally issuing it on the basis of various counts.

The PCIT granted hearing to the Assessee within 48 hours from the date of signing the notice and passed the order setting aside the assessment.

Aggrieved by the revisional order of the PCIT, the Assessee approached the ITAT contending that the directions were given summarily and the revision was based on information on shell companies published by the SEBI and an adverse statement by a third party which was not furnished to the Assessee for cross examination.

The ITAT observed the interplay of the two explanations to Section 263. It found that Explanation (2)(a) conferred powers upon PCIT where the order was passed without making inquiries or verifications which should have been made in absence of incriminating material gathered from third parties at the time of assessment, there was no occasion for the AO to embark upon the requisite inquiries and the AO could not be expected to conduct roving enquiry in absence of specific inputs which purportedly came into the possession of the PCIT subsequent to the assessment.

Further, expounding on revisionary powers under Explanation 1(b) to Section 263, the ITAT observed that the order passed without confronting the Assessee with the material in PCIT's possession post completion of assessment proceedings was bad in law.

Thus, allowing Assessee's appeal, the ITAT ruled revision based on new record without allowing cross-examination to the Assessee to be illegal from the perspective of both Explanations to Section 263.

HC holds issue raised and responded during assessment proceeding but not part of assessment order, not amenable to reassessment

Pfizer Ltd.
2021-TIOL-2214-HC-MUM-IT

The Assessee, engaged in manufacturing/distribution of medicines, was assessed under Section 143(3) of the IT Act. In the course of assessment proceedings, the Assessee was questioned as to why the margins earned by the stockiest should not be disallowed under Section 40(a)(ia) of the IT Act for non-deduction of tax at source under Section 194H of the IT Act - to which Assessee submitted a detailed response. Later, the assessment order under Section 143(3) was passed without dealing with this issue.

Subsequently, the Revenue issued notice under Section 148 for reassessment with reasons referring to applicability of Section 40(a)(ia) over payment of INR 20.34 Crores paid to stockists, which the Assessee challenged by a writ petition.

The HC, placing suitable reliance on a plethora of judgements, observed that once a query was raised during the assessment proceedings and the Assessee had replied to it, it followed that the query raised was a subject of consideration for completing the assessment. The basis for reopening assessment that the original assessment records/order/office note did not bring forth any material substance to suggest that the aspect of TDS default was considered in the original assessment proceedings and it required fresh consideration for non-disclosure of material facts during the original assessment proceedings was an incorrect view.

Thus, HC observed that the Assessee had given detailed explanations to queries raised by the Revenue and that there was nothing on record to indicate that there was any tangible material for reopening the assessment. Accordingly, the HC allowing the Assessee's writ petition observed that as no income escaped by reasons of omission/failure on Assessee's part to disclose all material facts necessary for assessment of relevant year, an issue raised as query and addressed by the Assessee during assessment proceedings could not be subjected to reassessment merely because such issue was not referred to in the assessment order.

ITAT holds mutual funds with growth option generating capital gains, not exempt income, to be excluded for disallowance under Rule 8D(2)(ii)

Acquire Services Pvt. Ltd.
ITA No. 3192/Del/2015

The Assessee was engaged in the business of providing contact center services and renting of immovable properties and had invested in mutual funds and earned exempt dividend income of INR 11.97 Crores for AY 2011-12. However, it did not offer any disallowance of expenses under Section 14A of the IT Act with reference to expenditure incurred for earning exempt dividend income. This caused the Revenue to work out the disallowance under Section 14A to the tune of INR 1.54 Crores.

Aggrieved, the Assessee approached the CIT(A) which observed that the Revenue had considered the entire investments in mutual funds to work out the average value of investments. Since the investments in mutual funds with growth option did not result in generation of any exempt dividend income but resulted in taxable capital gains on redemption, it had to be excluded for making disallowance under Rule 8D(2)(iii) of the IT Rules.

Aggrieved, the Revenue approached the ITAT which placing reliance on the HC ruling in Joint Investments **[2015-TIOL-574-HC-DEL-IT]** observed that Section 14A read with Rule 8D could not be interpreted so as to mean that the entire tax-exempt income is to be disallowed. It observed that the window for disallowance was indicated in Section 14A, and was only to the extent of disallowing expenditure incurred by the Assessee in relation to the tax-exempt income.

Thus, dismissing the Revenue's appeal, the Hon'ble ITAT, upheld CIT(A)'s order restricting disallowance under Section 14A by excluding the debt-oriented growth funds for working of disallowance in accordance with Rule 8D of the IT Rules.

HC allows delayed revised return filed pursuant to NCLT approved scheme, Appeals for improvising filing software

Deep Industries Ltd.
2021-TIOL-2219-HC-AHM-IT

The Assessee was engaged in the business of oil and gas exploration, and oil and gas services, and had decided to demerge its oil and gas services business.

Thus, a scheme of arrangement was formulated for the purpose of demerger and a company application was moved before the NCLT. The scheme of arrangement was sanctioned on March 17, 2020 with appointed date as April 1, 2017.

The Assessee had filed its return of income for AY 2018-19 for INR 97.78 Crores on March 30, 2019, the point at which the scheme was not sanctioned. The scheme being effective from April 1, 2017, the assets, liabilities, incomes, etc. of erstwhile Deep Industries Ltd. were deemed to be that of Deep CH4 Ltd. later named as Deep Industries Ltd. (Assessee).

The Assessee sought to file the revised return for AY 2018-19, however, the time for which had elapsed and there was no mechanism to file it online. The Assessee raised grievance on income tax portal on June 26, 2020 via e-Nivaran facility where after the Assessee filed the revised return physically along with the letter dated July 28, 2020 explaining the cause for revision.

The Revenue assessed the income of the Assessee without processing the revised return of income filed.

Aggrieved, the Assessee preferred a writ petition before the HC contending that by the time NCLT passed the order, the time-limit to file the revised return under Section 139(5) had expired and it was not possible for the Assessee to file the revised return online and though it had attempted to do so, it was not permitted.

The HC, placing reliance on SC ruling in Dalmia Power [2019-TIOL-539-SC-IT], observed that as the delay was not caused due to omission or wrong statement, the provision of Section 139(5) of the IT Act did not apply. Thus, allowing Assessee's writ petition, HC held that the revised return filed physically pursuant to NCLT approved scheme of arrangement beyond the time-limit stipulated under Section 139(5) shall be considered for the purpose of assessment even though return was filed physically and not electronically.

Further, HC quashing the assessment order passed, ordered an afresh assessment after considering the revised return and if need be, the Assessee might also be permitted to file the return electronically in a week's time. The Hon'ble HC further ruled that the Assessee could have been saved from its ordeal, if it was permitted to revise the return in an electronic mode even after NCLT passed its order approving the scheme of arrangement.

In addition, the HC stated that if the Revenue was desirous of operating in the regime of electronic mode and faceless assessment, it should improvise the software and allow the revised return more particularly, when the law had been made quite clear by virtue of the direction of the Hon'ble SC. The HC further noted that the limitations of the software had a tendency to swell the Court with litigation.

ITAT deletes TP-adjustment on interest on AE receivables treating forex gain as operating in nature

Convergys India Services Pvt. Ltd.
ITA No. 4370/Del/2019

The Assessee was a wholly owned subsidiary of its AE based in the US and was primarily engaged in provision of IT enabled customer care back-office support services for which it had entered into a service agreement with its US based AE.

During the year under consideration, the Assessee recorded a foreign exchange gain of INR 10.17 Crores and treated the same as operating in nature stating that foreign exchange gain had arisen on account of revenue receivables and export of service provided by the Assessee.

Assessee further argued that as per the service agreement between the Assessee and its AE, the forex fluctuations would be compensated by the AE in case of any loss due to exchange rate fluctuation occurring between date of invoice and date of payment i.e. foreign exchange risk was borne by AE and not Assessee.

During the course of the TP proceedings, the TPO rejected the economic analysis undertaken by the Assessee and proposed a TP adjustment on account of the provision of IT Act by the Assessee.

Further, the TPO reclassified the outstanding receivables beyond the credit period of 30 days as deemed loans to the AE and treated them as separate international transaction. The TPO further imputed an interest on the same by applying a markup of 400 basis points on LIBOR, thereby making an addition.

Aggrieved, the Assessee approached the CIT which upheld the TP adjustment made by the TPO.

Aggrieved, the Assessee knocked the doors of the Hon'ble ITAT which observed that forex fluctuation was an integral part of the sale and purchase transactions and in essence, an integral part of the 'transfer price' for any transaction and hence by default it was an operating item.

The ITAT further stated that since forex gain/loss was a direct outcome of the 'international transaction' with an AE, it therefore partakes the same character as that of the international transaction. Accordingly, placing reliance on a plethora of judgments ITAT observed that the Assessee had correctly treated it under the operating income.

Qua TP adjustment on account of interest on receivables made by the TPO, the ITAT stated that it was a settled principle, that there was no need to benchmark the interest on receivables wherein the interest had not been charged from either of the parties i.e., payables and receivables. Further, every item of 'receivables' appearing in the accounts of an entity which may have dealings with the foreign AEs, could not be automatically characterized as an 'international transaction'. Therefore, the ITAT observed that in absence of any fact to prove that the Assessee was liable to payment of interest, no adjustment was warranted.

Accordingly, treating forex fluctuations as operating in nature, the ITAT deleted TP adjustment made by the TPO on account of interest on receivables.

ITAT deletes royalty-adjustment under CUP basis another controlled transaction, rejects method not covered u/s 92CA for sales-commission

Atlas Copco (India) Ltd.
ITA No.938/PUN/2017

The Assessee was a Public Limited Company and a part of Swedish Multinational Group of Companies, engaged in the business of manufacturing and sale of air & gas compressors, construction and mining equipment & industrial tools.

During the year under consideration, the Assessee had paid royalty @ 5% of domestic sales and 8% on export sales to its AE in consideration of receipt of technology in the form of know-how, technical training etc. for the purpose of manufacturing compressors.

The return of income filed by the Assessee was selected for scrutiny assessment and the AO made a reference to the TPO for the purpose of determination of ALP of its international transactions.

The TPO made a TP adjustment with respect to the payment of royalty under CUP by adopting reference royalty rate paid by AE @ 3% on the net sales price by the Assessee. Further, the TPO had rejected the Assessee's benchmarking under TNMM by aggregating the said payment with the other international transactions and also made a TP adjustment with reference to receipt of sales commission.

Aggrieved, the Assessee approached the CIT(A) who deleted the TP adjustments made by the TPO placing reliance on Assessee's own cases in previous years considering the TPO's methodology of comparing controlled transaction with another controlled transaction to be flawed.

Aggrieved, the Revenue approached the ITAT which noted payment of royalty made by the Assessee to be at ALP and thereby, rejected Revenue's appeal with reference to royalty adjustment basis the controlled royalty reference rate under CUP. The ITAT further deleted adjustment towards sales commission noting that the TPO had not adopted any of the methods prescribed under Section 92CA of the IT Act.

ITAT rules on comparables for SWD segment, remits grant of negative working capital adjustment back to file of AO for fresh consideration

Aptean India Pvt. Ltd.
IT(TP)A No.2638/Bang/2017

The Assessee was engaged in the business of provision of Software Development Services (SWD services), to its wholly owned holding company that had filed a Transfer Pricing Study to justify the price paid in the international transaction at ALP by adopting TNMM as MAM.

The TPO accepted TNMM as MAM. However, he identified some other companies as comparable with the Assessee company and arrived at a set of 7 comparable companies and further, made a negative capital adjustment and the AO passed the draft assessment order.

Aggrieved by the draft assessment order, the Assessee approached the DRP which upheld the findings of the TPO with regards to the comparables which caused the Assessee to approach the ITAT.

The ITAT observed that 5 comparables out of the 7

comparables selected by the TPO had a turnover above INR 200 Crores as against Assessee's turnover of INR 21.93 Crores. Thus, excluded the 5 comparables selected by the TPO for having a high turnover.

Further, the ITAT placing reliance on several coordinate bench rulings observed that negative working capital adjustment could not be made in case of a captive service provider as there was no risk and it was compensated on a total cost-plus basis. Given that the Assessee had not raised any grounds qua making of the negative working capital adjustment before the DRP, the ITAT remanded the issue back to the file of the AO/TPO for fresh consideration.

ITAT restores ALP determination for export of rice to AEs, follows precedent

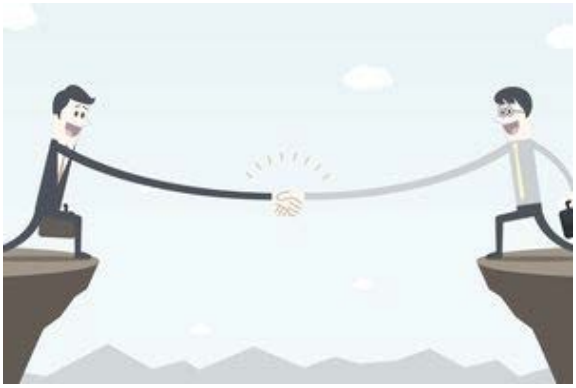
TRL Riceland Pvt. Ltd.
ITA No. 7366/Del/2018

The Assessee was engaged in the business of paddy purchase, rice milling and export of rice who had filed its return of income which had been selected for scrutiny assessment.

The AO observed that the Assessee had entered into international transactions with its AE and therefore, made a reference to the TPO for determination of ALP of the international transaction involving sale of basmati and non- basmati rice.

The Assessee had selected the CUP method as MAM for determination of ALP which was rejected by the TPO who pinpointed various lacunas in CUP benchmarking by the Assessee. The TPO observed that the Assessee had relied on the TIPS database which was taken from customs data relating to rice belonging to broad generic category of rice. Further, it observed that use of average uncontrolled export price and exclusion of exceptionally high prices was not in accordance of CUP method.

Aggrieved, the Assessee approached the ITAT which placing reliance on Assessee's own case in previous years restored the issue of determination of ALP back to the file of the AO/TPO for being identical and directed the TPO to follow the direction of the coordinate bench in previous years.



CBDT notifies e-Settlement Scheme, 2021 for pending settlement applications

Notification No. 129/2021
November 1, 2021

The CBDT notifies e-Settlement Scheme, 2021 framed by the Central Government. The Scheme is meant to deal with pending applications of which the option under Section 245M of the IT Act has not been exercised and have been allotted or transferred by CBDT to the Interim Board. The Interim Board shall conduct e-settlement in accordance with the procedure envisaged under the Scheme.

According to the Scheme, PGDIT (Systems) or DGIT (Systems) shall devise a process to randomly allocate or transfer the pending applications to the Interim Boards as per CBDT's approval. The proceedings under the Scheme shall not be made public and opportunity for hearing would be provided through video conferencing or video telephony as the Scheme does not provide for an appearance either personally or through an authorised representative before the Interim Board.

Accordingly, the CBDT shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony for extending the benefit of the Scheme so that no applicant is denied the benefit merely due to lack of access to technology.

CBDT issues Guidelines on scope of Sections 194-O, 194Q & 206C

Circular No. 20/2021
November 25, 2021

The CBDT issues set of guidelines for removing certain difficulties in implementation of the provisions of TDS and TCS under Sections 194-O, 194Q & 206C(1H) of the IT Act.

Accordingly, the CBDT inter-alia clarifies that TDS under Section 194-O ought not to be deducted on e-auction services. Similar to the treatment of GST, it is further clarified that TDS under Section 194Q shall not be deducted on the component of VAT, Excise duty, etc., if tax is indicated separately in the invoice.

Further, where tax is deducted on payment, the CBDT clarifies that tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component.

In addition, the provisions of Section 194Q do not apply to the transactions where tax is collectible under Section 206C. However, if tax is not required to be collected under Section 206C (1A), the CBDT has clarified that provisions of Section 194Q will apply and the buyer shall be liable for TDS if the requisite conditions are met.

Furthermore, CBDT clarifies that for the purposes of Section 194Q, Central Government or State Government shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods. Also, any other person, such as a PSU or Corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of Section 194Q and tax shall accordingly be deducted.

HC quashes SCN denying transitional credit

Godrej & Boyce Mfg. Co. Limited
2021-TIOL-2112-HC-MUM-GST

The Petitioner had availed transitional credit of pre-GST cesses during the transition to GST law. The Revenue had issued an SCN alleging that the Petitioner had availed inadmissible credit in Form TRAN-1. The Revenue had relied upon the then newly inserted explanation 3 to Section 140 of the CGST Act which retrospectively provided cess is not an eligible duty. Aggrieved, the Petitioner preferred a Writ before the Bombay HC challenging that the suffers from a gross jurisdictional error, as the same could not have been issued merely on the basis of Explanation 3 to Section 140 of the CGST Act.

The HC observed that had it not been for the introduction of Explanation 3 to Section 140 of the CGST Act, the SCN may not have seen the light of the day. It was further observed that the Explanation 3 sought to clarify that the expression 'eligible duties and taxes', as distinguished from 'eligible duties', and exclude any cess not specified in Explanations 1 and 2 and any cess collected as additional duty of customs. The expression 'eligible duties and taxes' appears in sub-section (5), whereas the expression used in subsection (1) thereof is 'of eligible duties.' In view of the above, it had been held that the SCN suffered from an error going to the root of the jurisdiction of the Revenue in assuming jurisdiction and accordingly the SCN had been set aside.

Authors' Note

It shall be noted that in order to clarify the issues relating to transitional credit of cesses, the CBIC had issued Circular No. 87/06/2019 dated 02 January 2019. It had been clarified that Explanation 1 and 2 of Section 140 are not required to be implemented and transition of credit of cesses would be limited by Explanation 3 itself. However, post the issuance of this Circular, the Madras HC in RE: Sutherland Global Services Private Limited **[2020-TIOL-1739-HC-MAD-GST]**, it had been held that cesses in the pre-GST regime were stand-alone levies and did not subsume into GST and therefore, the transitional credit thereof could not be allowed.

Repair Services classifiable under SAC 9987 chargeable to 18% GST

S. B. Reshellers Private Limited
NO.GST-ARA- 73/2019-20/B- 78

The Applicant, engaged in the activity of re-shelling of old sugar mill rollers had sought an advance ruling before the Maharashtra AAR to ascertain whether the activity undertaken by them is classifiable as job-work activity under SAC 9988 chargeable to 12% GST or as repair services under SAC 9987 chargeable to 18% GST.

The AAR observed that job-work is a process on raw materials or semi-finished goods belonging to another person, which results into manufacturing of a new article. In the instant case, the it was observed that activity of re-shelling of old rollers did not bring out any new commodity having distinctive features. Therefore, the same cannot be classified as manufacturing activity or job-work. In view of the above, it had been held that Applicant's activity of re-shelling of old sugar mill rollers classified as 'repair services' under SAC 9987 chargeable to 18% GST.

Authors' Note

The activities covered under SAC 9988 are limited to manufacturing activities on goods owned by others. Where the activity does not bring out any distinctive

feature from the original processed product, the same cannot be classified as job-work. The GST Council in its Explanatory Notes to SACs under GST had clarified that services under SAC 9988 are characterized as outsourced portions of a manufacturing process or a complete outsourced manufacturing process. It has been further clarified that as the Heading covers manufacturing services, the outputs not owned by the unit providing this service.

AAAR upholds subordinate authority's decision holding GST to be applicable on intermediary service

Airbus Group India Private Limited
2021-TIOL-33-AAAR-GST

The Appellant had entered into an intra-group service agreement with its holding company, undertaking procurement operations and procurement transformation, etc. The Appellant is remunerated for the services which is equal to cost and service markup as per the agreement. In connection thereto, the Appellant had filed an AAR seeking clarification of the classification of the services provided. The AAR held that the services are classifiable as intermediary under SAC 9985 chargeable to 18% GST. Aggrieved, the Appellant preferred an Appeal before the AAAR.

Further referring to 13(8)(b) of the IGST Act, the AAAR observed that the place of supply in the case of intermediary services as defined u/s 2(13) of the IGST will be the location of the supplier of service. It was observed that in the instant case, the activity of the Appellant, who is the supplier of intermediary service i.e., collection of information of parties in India, analysis of potential suppliers and skill development of existing suppliers, are all very much done in India, which is the location of the supplier of intermediary service. Accordingly, by virtue of Sect 13(8)(b) of the IGST Act, it automatically flows that the place of supply of the intermediary service provided by the Appellant is in India. Further, being place of supply in India it does not satisfy one of the conditions of export of service. Accordingly, the Appeal had been dismissed and the AAR decision was upheld.

Authors' Note

The chargeability of tax on supply of intermediary services has perpetually been litigative right from the Service Tax era. It is generally understood that where a taxable person in India facilitates transactions between two or more persons, such a person would be classified as an 'intermediary'. Further, it is important to analyse the actual role and functions as the intermediary is not supposed to provide any services of his own account. Pursuant to a division bench of the Bombay HC in the case of Dharmendra M Jani **[2021-TIOL-1326-HC-MUM-GST]** wherein dissenting judgements had been passed, the CBIC vide Circular No. 159/15/2021 – GST dated 20 September 2021 has inter alia clarified that any person, by whatever name called, who arranges or facilitate some other supply, which is the main supply, and does not himself provides the main supply, is an intermediary.

Amount recovered from employees towards top-up, parental Insurance premium, not supply of service

Tata Power Company Limited
2021-TIOL-258-AAR-GST

The Applicant had entered an agreement with an Insurance Company whereby additional insurance cover was provided to its employees for parent's medical treatment under top-up insurance premium. The said insurance cover was recovered from employees from their salary. In connection thereto, the Applicant had sought an Advance Ruling to ascertain whether the recovery of amount on top-up insurance premium amounts to supply of any service u/s. 7 of CGST Act.

Referring to sec 7 and sec 2(17) of the CGST Act, the Maharashtra AAR observed that any activity undertaken against consideration is treated as supply. However, such an activity must be in the course of business or for the furtherance of business. It was observed that in the instant case, providing of employee insurance or parental insurance cover is not a mandatory requirement (under any law) and such recovery of insurance coverage would not affect its business by any means. Accordingly, it was held that the activity of recovery of an amount towards insurance premium from the employees cannot be treated as an activity done in the course of business.

In view of the above, the Maharashtra AAR further observed that the activity undertaken by the Applicant in respect to the insurance policy for the employees and their parents neither satisfies conditions of supply of service nor is it covered under the term business. Accordingly, it had been held that the Applicant is not rendering any services of health insurance to their employees' parent basis which there is no supply of insurance services.

ITC cannot be denied basis technicalities, if substantial compliance is complied with

Bharat Electronics Limited
2021-TIOL-2203-HC-MAD-GST

The Respondent, engaged in the manufacture of Electrical and Mechanical Equipment and transmission, had lodged a claim for CENVAT Credit by filing form TRAN-1 admittedly, within time. The claim had been denied by the Revenue on the premise that the TRAN-1 form had been filed done under wrong figure, being fatal to the claim transition of credit earned under the erstwhile regime to GST. Aggrieved, the Respondent had filed a Writ petition seeking opening of TRAN-1 for rectification. The HC had directed the Revenue to enable the Respondent to file a revised Form TRAN-1. Aggrieved, the Revenue preferred an intra Court Appeal.

The HC observed that the Respondent had filed the Form TRAN-1 in time. The only error was a clerical mistake in Column 6 of the Form. It was observed that the Respondent had complied with substantial requirements of sec 140 of the CGST Act which provides for transition of credit under the erstwhile regime to GST. It was further observed that even though, that ITC is a concession, and conditions attached thereto ought to be strictly complied, it is equally true that the ITC is a beneficial scheme which is framed in larger public interest to bring down the cascading effect of multiple taxes. In view of the above, the HC dismissed the Appeal and directed the Revenue to enable the Respondent to file a revised Form TRAN-1.

AAR: ITC not available on goods and services distributed for promotional scheme

GRB Dairy Foods Private Limited
Order No. 36/ARA/2021

The Applicant, engaged in manufacture and supply of ghee, had undertaken a promotional scheme, rewarding the retailers with trips to Dubai, air coolers, etc. subject to purchase of specified quantities of various products. In this regard, the Applicant had sought an advance ruling before the TN AAR to ascertain whether ITC would be eligible on goods and services procured for such promotional schemes.

The AAR observed that goods and services procured by the Applicant fulfilled the condition of being in furtherance of business. However, the ITC would be restricted u/s. 17(5)(g) of the CGST Act which provides for goods used for personal consumption. It was observed that goods such as air coolers, televisions, etc. had been purchased for the personal use of the retailers.

It was further observed that Section 17(5)(h) of the CGST Act restricts ITC on goods distributed as gifts. It was observed that providing air coolers, etc. to the retailers would amount as gifts. In view of the above, the AAR held that Applicant is not entitled to avail ITC on goods and services distributed under the promotional scheme.

Authors' Note

In the instant case, the Applicant only provided the goods to the retailers upon fulfilment of criteria i.e., purchase of a certain quantity of goods. Therefore, the same cannot be equated as 'gifts.' It would be pertinent to note that in terms of a press release issued by the CBIC, gift is something that cannot be demanded as matter of right. In the instant case however, the retailers could demand for the promises by the Applicant, subject to the fulfilment of the criteria.

The West Bengal AAR in a recent ruling in RE: Kanhiya Realty Private Limited **[2021-TIOL-230-AAR-GST]** had held that ITC shall be available on promotional schemes given on notional value as it would not qualify as gifts.

HC allows de-blocking of Credit Ledger post 1 year blocking Order

PSN Automotive Marketing Private Limited
Writ Petition No. 16727/2021

The Petitioner's Electronic Credit Ledger had been blocked u/r. 86A of the CGST Rules on the allegation of wrong availment of credit. The exercise of the power of the said Rule to block the credit had been active as on 03 May 2020. Further, the same had been blocked as on 03 September 2021 as well. Aggrieved, the Petitioner preferred a Writ before the Karnataka HC seeking un-blocking of the credit ledger.

Referring to the Rule 86A(3) of the CGST Rules, the Karnataka HC observed that the period upto which the Credit Ledger can be blocked is one year and such restriction shall be ceased if continued beyond one year's time. In the instant case, the Credit Ledger had been blocked beyond a period of one year. Therefore, the HC set-aside the blocking of the credit ledger of the Petitioner.

Authors' Note

Rule 86A had been inserted into the CGST Rules so as to empower the Revenue authorities to block credits for specified allegations, for a specific time period. However, the mis-use of the power had been apparent as the said Rule was being exercised beyond jurisdiction of specified

conditions and beyond the time-period prescribed. Accordingly, in order to clarify the scope of Rule 86A and ensure judicious exercise of the Rule, the CBIC has recently issued a Guideline CBEC-20/16/05/2021-GST/1552 dated 02 November 2021. The said guideline categorically clarifies that restriction imposed u/r. 86A(1) shall cease to have effect after expiry of 1 year from the date of imposing such restriction. It is hoped that basis the said Guideline, the non-judicial exercise of Rule 86A can be kept in check.

AAR rules on GST applicability for services rendered under pre-GST regime

Continental Engineering Corporation
TSAAR Order No. 13/2021

The Applicant had executed a works contract, for which, the work had been completed in the pre-GST regime. Post the execution of the work, the Applicant had raised certain claims under Arbitration proceedings. The arbitration award was passed in 2019 for certain sum of money to be paid to the Applicant. In view of the above, the Applicant had sought an Advance Ruling before the Telangana AAR to ascertain whether GST is applicable on the proposed receipt of money in case of Arbitration claims awarded for works contract completed in the Pre-GST regime.

Referring to the provisions of Section 13(2) r/w. sec 31 of GST, the AAR observed that the time of supply of service is the earliest of the date on which the invoice was issued or date of provision of service or date of receipt of payment or date on which the recipient shows receipt of service in its books. In the instant case, the supply was prior to introduction of GST, thus it does not get covered under provision of sec 13(2). Accordingly, it had been held that GST is not applicable for the amount claimed under work contract executed prior to GST.

As for the liquidated damages claimed by the Applicant for the delays in making available possession of site, drawings and other schedules by the contractee beyond the milestones fixed, the AAR observed that such damages are consideration for tolerating an act or a situation arising out of the contractual obligation. It was observed that Entry No. 5(e) of Schedule II of the CGST Act, agreeing to tolerate an act, or a situation, is a supply.

It was observed that the time of supply of the service of tolerance is the time when such determination takes place, which happened only by the arbitration award post GST. Therefore, it was held that the time of supply of the service as per Section 13 of the CGST Act is the arbitration award i.e., post GST. Accordingly, the amount received through Arbitration shall be taxable under the GST regime.

Tribunal allows cash refund of credit of cesses

Atul Limited
2021-TIOL-755-CESTAT-AHM

The Appellant had filed a refund application for credit of education cesses available as on February 2015 and carried forward till 30 June 2017. The said application had been rejected by the original as well as appellate authorities. Aggrieved, the Appellant preferred an Appeal before the Tribunal.

The Tribunal observed that Notification No. 12/2015 – CX dated 30 April 2015, amending the CENVAT Credit Rules, 2004 provided that the credit of cesses was permissible even for inputs and capital goods received by the manufacturer after 01 March 2015. It was further observed that as the credit had not been utilized, it became a vested right, which cannot be denied. The Tribunal also observed that the credit is refundable u/s. 142 of the CGST Act and accordingly, allowed the Appeal.

Authors' Note

While the Ahmedabad Tribunal has allowed cash refund of cesses in the instant case, the Madras HC had taken a contrary view in Sutherland Global Services Private Limited **[2020-TIOL-192-HC-MAD-GST]**. In this case it had been held that merely having book entries does not grant an assessee a vested right.

Outdoor catering for employee's personal consumption not an input-service

Toyota Kirloskar Motor Private Limited
Special Leave to Appeal (C) No(s). 17903-17904/2021

The Petitioner provides a canteen facility wherein it provides foods refreshment and beverages to the workers, employees and staff which is mandatory under the Factory Act. In connection thereto, the Applicant filed the current petition against an advance ruling wherein outdoor catering services were not eligible input services being excluded vide Rule 2(l)(c) of the CENVAT Credit Rules.

In regards to above, the SC, referring to the definition of input service held that when outdoor catering services are used primarily for personal use or consumption of any employee it shall be excluded from the definition of input service. Further, it also held that the decision of the HC in denying the input tax credit in respect to such services is excluded from input service is correct. Accordingly, the Petition was dismissed.

Interest refund of pre-deposit to be paid from Tribunal's order finalizing assessment

Bochasanwasi Shri Aksharpurushottam Swaminarayan Sansth
2021-TIOL-760-CESTAT-AHM

The Revenue had filed an Appeal against an order of the Commissioner (Appeals), which had been reversed by the Ahmedabad Tribunal. The Tribunal had also held that held that refund of pre-deposit was warranted and interest

liability arises from the date of the order of the Tribunal. Aggrieved, the Revenue had preferred an Appeal before the HC, who also ruled against the Revenue and held that the interest liability arises from the date of the order of the tribunal and liability to pay interest would arise from the date of the order of the Tribunal.

Thereafter, the Commissioner (A) had passed an order vide which interest on refund was directed to be calculated from expiry of three months after passing of the Tribunal's final order at 6% p.a. and the Appellant's demand of interest on interest was denied. Aggrieved, the Appellant preferred an Appeal before the Tribunal.

The Tribunal held that in view of the concurrent orders of Tribunal as well as High Court, since it was held that the interest arises from the date of order and this finding was not challenged by the revenue, it attains finality. Therefore, it was held that the appellant was entitled for interest from the date of order of the tribunal and not from expiry of three months from the date of order.

As regards the demand for interest on interest, the Tribunal observed that there is no provision under the Customs Act to grant the same. Therefore, the Tribunal being a creature under Statute, cannot decide anything beyond the provisions of the law.

HC rejects Assessee's plea for refund by way of repeated representations

E-LAND Apparels Limited
2021-TIOL-1995-HC-MUM-VAT

The Petitioner is inter alia engaged in trading and manufacturing of textile fabrics, the sales of which were exempted under MVAT Act. The Petitioner had filed for the refund application during the period 2009-10 in the name of Mudra Lifestyle Limited which was at a later stage taken over by E-Land Apparel Limited. The Revenue passed an ex-parte order rejecting the refund application. Aggrieved, the Petitioner preferred a Writ before the Bombay HC, contending that the refund rejection order had never been served upon them.

Referring to provisions of sec 18 of MVAT Act, the HC observed that the registered dealer who transfer by sales/otherwise his business or there is effective any change in the business, shall within the prescribed time inform the authority about such change. In the instant case, the Petitioner had not complied with the said provision. Further, the Revenue had intimated about the rejection at the portal, duly complying with the applicable provisions. Thus, HC rejected Petitioner's contention that since the copy of the refund rejection order was not served, the cause of action survived.

Further, the HC also observed that the Petitioner had been filing representations since 2018, even though the application pertained to 2011 as per Form 501. In this regard, it was observed by the HC that the Petitioner, by passage of time had allowed the remedy of claiming refund to be lost whereas the law is well settled that making of repeated representations does not have the effect of keeping the claim alive. In view of the above, the HC held that such repeated representations do not give a fresh cause of action to the Petitioner and mere making of representation cannot justify a belated approach. Accordingly, the HC dismissed the Writ Petition, being unreasonable.

Notification / Circular	Summary
Instruction No. CBIC-90206/1/2021-CX-IV-Section-CBEC dated 18 November 2021	**CBIC issues Instructions in respect to the SCN issuance and disposal of adjudication matters related to IDT** In connection to the Audit, CBIC had made few observations thereon. Basis which CBIC has issued instruction which has been detailed hereunder: ▸ SCN must be issued without any delay and without waiting for last date once investigation is over/analysis is done; ▸ Further, SCN issued in normal cases should be adjudicated within 6months in respect to Central Excise and Service Tax and issues involving extended period shall be adjudicated within 2 years in respect to Central Excise and 1 year in respect to Service Tax matters; ▸ In cases where is delay in issuance of adjudication orders beyond the stipulated period, the reasons shall be recorded for such delays; and ▸ Further, it was directed that instructions in respect to call book cases shall be adhered to and there should be proper handling of Call book cases. Further, the said matter can be transferred only with approval of Commissioner; The monitoring system in respect reason for pendency of adjudicating cases shall be properly analyzed by the Commissioners and Chief Commissioners
Circular No. 166/22/2021-GST dated 17 November 2021	**CBIC issues clarification on various refund related issues** Basis various representations received from several taxpayers CBIC vide Circular No. 166/22/2021-GST dated 17 November 2021 issued clarification on various issues relating to refund. The key clarifications of the above-mentioned Circulars have been tabulated hereunder: ▸ **Whether the time period provisions as specified u/s 54(1) of the CGST Act shall be applicable in case of refund of excess balance in electronic cash ledger** - It has been clarified that the time period provisions u/s 54 of the CGST Act would not be applicable in such case; ▸ **Whether declaration u/r 89(2)(l) or 89(2)(m) of CGST Rules is required to be furnished along with the application for refund of excess balance in cash ledger** - It has been clarified that no such declaration shall be required as per CGST Rules is required in such case ▸ **Whether refund of TDS/TCS deposited in electronic cash ledger u/s 51/52 of the CGST Act can be refunded as excess balance in cash ledger** - It has been clarified that the amount credited in the electronic cash ledger is equivalent to cash deposited in electronic cash ledger and the same can be utilised for discharging the tax liability. Any unutilised amount in the electronic cash ledger post discharge of tax dues can be refunded to the as excess balance in electronic cash ledger in accordance with the proviso sec 54(1) of the CGST Act. **Whether the date of return filed by the supplier or date of return filed by the recipient**

Notification / Circular	Summary
	shall be considered for the purpose of determining relevant date for refund of tax paid on supplies regarded as deemed export - Referring to Explanation of 2(b) u/s 54 of the CGST Act it has been clarified that the relevant date for purpose of filing of refund claim for refund of tax paid on deemed export supplies would be the date of filing of return, related to such supplies, by the supplier
Circular No. 165/21/2021-GST dated 17 November 2021	**CBIC clarifies no dynamic 'QR' code on B2C invoices** Through the Circular it has been clarified that invoices should be issued without the Dynamic QR Code when supplier is located in India and receiving the payment in the permitted mode by the RBI from the service receiver located outside India;
Guideline bearing reference No. CBEC-2016/05/2021-GST/1552 dated 02 November 2021	**CBIC issues guidelines for disallowing debit of ECL u/r 86A of the CGST Act** CBIC vide Guideline clarified various issues pertaining to disallowing debit of ITC from ECL u/r 86A of CGST The guidelines have been summarized hereunder: Grounds for disallowing debit of an amount from ECL – ▸ The Commissioner or any officer not below the rank of Assistant Commissioner, must have 'reasons to believe' that ITC available in ECL is either ineligible or has been fraudulently availed by registered person before disallowing the debit. The reasons for such belief shall be based on following grounds: ▸ Credit is availed by a supplier, who is found to be non-existent or not conducting any business from the place declared in registration; ▸ Credit is availed without actually receiving any goods or services or both; ▸ Credit is availed in respect to the tax which has not been paid to the Government; ▸ Credit is availed by the registered person without having any invoice or debit note or any other valid document for it. ▸ The concerned officer must form an opinion for disallowing debit of an amount from ECL in respect of a registered person only after proper application of mind considering all the facts of the case. ▸ The concerned officer has power of disallowing debit from ECL, must not be exercised in a mechanical manner and careful examination of all facts is important to determine cases fit for exercising power under Rule 86A. ▸ Proper authority whose power can be exercised for disallowing the debit of amount from ECL Rule 86A is Deputy/Asst. Commissioner when the total amount of ineligible credit availed is Not exceeding Rupees 1 crore, Additional Commissioner/ Joint Commissioner when total amount of ineligible credit availed is Above Rupees 1 crore but not exceeding Rs 5 crore, and Principal Commissioner/ Commissioner when total amount of ineligible credit availed is Above Rs 5 crore.

Notification / Circular	Summary
	Procedure for disallowing debit of ECL/blocking credit under Rule 86(A) ▸ For disallowing debit of ECL, the amount fraudulently availed by ITC, shall be prima-facie ascertained based on material evidence available or gathered on record after the proper officer applies his mind to and has as to reasons to believe, and only after recording such reasons in writing on file, the officer concerned shall proceed to disallow the debit. Allowing debit of disallowed/restricted credit u/r Rule 86A(2) ▸ The proper officer may either on his own or based on the submissions made by the taxpayer with material evidence thereof may allow the use of the credit on being satisfied that ITC, either partially or fully, is not availed wrongly; ▸ Further, restriction imposed u/r. 86A (1) shall cease to have effect after expiry of 1 year from the date of imposing such restriction. Accordingly, the registered person would be able to debit input tax credit so disallowed; ▸ Since, the restriction imposed u/r. 86A(1) is resorted to protect the interests of the revenue and also has bearing on the working capital of the registered person, endeavor must be that in all such cases the investigation and adjudication are completed at the earliest, well within the period of restriction;
Circular No. 1079/03/2021-CX dated 11 November 2021	**Clarification on issuance of pre-show cause notice under Excise and Service Tax laws** The requirement for issuance of pre-Show Cause Notice consultation is case specific rather than being formation specific. Earlier, vide a Board's instruction, a concept of pre-show cause notice consultation in Excise and Service Tax was introduced wherein it had been clarified that pre-show cause notice consultation with the Principal Commissioner and Commissioner will be mandatory prior to issue of Show Cause Notice ('SCN') in the case of demand of duty above Rs. 50 Lakhs. Further, vide Circular No.1076/02/2020-CX dated 19 November 2020, it was clarified that pre-SCN consultation with assessee, prior to issuance of SCN in case of demand of duty is above Rs.50 Lakhs shall be mandatory and would be required to be adhered by the authority issuing SCN. In connection thereto, the DGGI had sought clarification of relevance of aforementioned Circulars and instructions for DGGI formations. In respect thereto, it has been clarified that pre-SCN consultation shall not be mandatory for those cases booked under the Central Excise Act or under Finance Act for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of fraud, collusion, wilful mis-statement, suppression of facts, contravention of any specified provision.

Directs Registry to accept Sony's appeals in BoE reassessment matter not involving additional duty payment

Sony India Private Limited
DEFECT INTERIM ORDER NO.171-284,_286_/2021

The Registry had issued a bunch of deficiency memos against the refund applications filed by the Appellant. In response thereto, the Appellant had submitted that there is no involvement of any additional duty, interest or penalty and as such, payment of fee as provided under the statute is not required to be complied with by the Appellant.

The Tribunal observed that that the applicant had self-assessed the Bills of Entry in terms of Section 17 of the Customs Act. Further, the duty liabilities assessed in the said Bills of Entry were also accepted by the department inasmuch as no objections were raised and no re-assessment order was passed. Consequent to the re-assessment, the Appellant would be entitled for the refund of the duty amount already paid during the course of assessment.

It was further observed that there is no involvement of any additional duty payable by the Appellants in this case. Accordingly, it was held that Section 129A (6) shall not be applicable for payment of fee as contemplated therein. The Tribunal noted that on an identical set of facts, the Larger Bench of this Tribunal while answering to the reference made before it, had held that the provisions of Section 86(6) of the Finance Act, (pari materia to the provisions of Section 129A(6) ibid) shall not be applicable where there is no involvement of any duty amount. In view of the above, the Tribunal directed the Registry to accept the appeals filed by the applicants and to assign the appeal numbers thereto and list the appeals for final hearing in due course of time.

HC directs release of seized goods on non-issuance of notice beyond 12 months during investigation

Indosheel Mould Limited
2021-TIOL-2118-HC-MUM-CUS

The Petitioner had entered into agreement to import Mercebenz-Benz Engine Oil, which was later supplied to Mercedes-Benz India. The Revenue authorities had undertaken an investigation alleging that the goods were procured at a lower price and sold at a higher value. Accordingly, the Petitioner's later consignments were seized on the ground that there is mis-declaration of value. Thereafter, provisional release was granted in view of the steep condition which was not accepted by the Petitioner. Aggrieved, the Petitioner preferred a Writ, seeking release of consignments of goods imported seized during investigation stage.

The Bombay HC refrained from interfering with the investigation procedures wherein the Petitioner shall co-operate in the investigation process and make requisite submissions. Further, in respect to the goods seized u/s 10(1) of the Customs Act, the HC observed that the Revenue can extend the seizure period not exceeding six months. However, as per the proviso of sec 110(2), the higher authority to inform to the person from whom such goods were seized before the expiry of the period of six months. It was observed that there was neither any notice under sec 124(a) within six months of the seizure nor has the period of six months been extended for a further period of six months. Accordingly, in the absence of there being any notice as per the requirement, the HC held that the Revenue authorities ought to release of the seized consignments.

Benefit of Advance Authorization not deniable upon change of import Tariff

Balkrishna Industries Limited
Customs Appeal No.13125 of 2018

The Respondent had registered an Advance Authorization Licence for import of various goods including miscellaneous Chemical plasticizer. The Respondent had also claimed benefit of Notification No. 96/2009-Cus dated 11 September 2009 which exempts the material imported in to India against advance authorization. An investigation had been carried and an SCN was issued wherein the benefit claimed was proposed to be denied alleging that the import goods were misclassified and demand, interest and penalty was levied. The Adjudicating authority however, set aside the demand and passed an order in favour of the Respondent. Aggrieved, the Revenue preferred an Appeal.

The Tribunal observed that in the instant matter, the Appellant had denied the exemption benefit to the Respondent due to misclassification of the CTH i.e., instead of CTH 27079900 it was classified as CTH 38122090. It was further observed that even though the classification of the goods has been changed from 38122090 to 270799000, the goods imported by the Respondent were admittedly used by the Appellant in the manufacture of their export final product as Plasticizer only. Therefore, as per the use, the Respondent has correctly mentioned the description as Plasticizer.

Further, referring to the exemption Notification it observed that all the raw materials are exempted if it is used in the manufacture of export goods. In the instant case, the Respondent had used the goods in the manufacture of their final export product. Further, on the basis of the test report it was found that aromatic constituents exceed that of non-aromatic constituents. However, the use of the product does not get altered. Accordingly, it was held that the benefit of Advance Authorization and Notification issued there under cannot be denied, on the basis of mis-classification of the goods that too under bona fide belief. In view of the above, the Revenue's Appeal was dismissed and the Adjudicating Authority's order was upheld.

Notification/Circular	Key Updates
Trade Notice No. 24/2021-22 dated 15 November 2021	**Date for mandatory e-filling of non-preferential certificate of origin** DGFT has extended the date for Mandatory electronic filing of Non-preferential Certificate of Origin (CoO) through the Common Digital Platform to 31 January 2022. The Electronic platform has been expanded to facilitate electronic application for Non-Preferential CoO and the existing systems for submitting and processing non-preferential CoO applications in manual/paper mode is being allowed for the stated time period and the online system is not being made mandatory.
Trade Notice No. 22/2021-22 dated 02 November 2021	**Last date for online application filing under MEIS/SEIS/ROSL/ROSCTL** DGFT has notified the last date as 31 December 2021 for making online applications under MEIS/SEIS/RoSL/RoSCTL schemes. Thereafter the online system will not be operational and no applications can be submitted and filing facility of application with late cut provision will not be in a process.
Trade Notice No. 23/2021-22 dated 09 November 2021	**Representations to be submitted directly to the RODTEP committee** Earlier, the CBIC vide the order dated 18. October 2021 had constituted a committee for determination of RODTEP rates for AA/EoU/SEZ exports and to give supplementary report/ recommendations on issues relating to errors or anomalies. Thereafter, CBIC, vide the order dated 28 October 2021 provided a defined format for a EPCs and trade/industry associations for submitting their representations. Now the DGFT vide the instant Notice has informed the members of Trade and Industry that their representations should be submitted directly to the RoDTEP Committee within the stipulated timelines in the requisite format.
Trade Notice No. 24/2021-22 dated 15 November 2021	**Date for mandatory e-filling of non-preferential certificate of origin** DGFT has extended the date for Mandatory electronic filing of Non-preferential Certificate of Origin (CoO) through the Common Digital Platform to 31 January 2022. The Electronic platform has been expanded to facilitate electronic application for Non-Preferential CoO and the existing systems for submitting and processing non-preferential CoO applications in manual/paper mode is being allowed for the stated time period and the online system is not being made mandatory.

SC holds arbitrator cannot award interest given specific bar under contract governing parties

Union of India vs. Manraj Enterprises
2021-TIOLCORP-37-SC-MISC

A contract was entered into between the Appellant and Respondent with regards to three work contracts. A dispute arose between the parties and both the parties went into arbitration for the resolution of the dispute.

The learned sole arbitrator awarded an amount of INR 78,81,553.08 and also awarded pendente lite and future interest at the rate of 12% and 18% respectively on the entire awarded amount except for the earnest money deposit and security deposit.

Aggrieved, the Appellant preferred an appeal before the Single Judge of the HC against the pendente lite and future interest awarded on the balance due payment, from the due date of payment which was dismissed by the Single Judge of the HC.

Aggrieved, the Appellant approached the Division Bench of HC under Section 37 of the Arbitration Act which confirmed the award made by the learned arbitrator awarding pendente lite interest and future interest awarded on the balance due payment.

Aggrieved, the Appellant approached the SC contending that as agreed between the parties and as per clause 16(2) of the General Conditions of Contract (GCC) governing the contract between the parties, there was a bar against payment of interest and that since the arbitrator and arbitration proceedings are creatures of the contract, they could not traverse beyond what had been contemplated in the contract between the parties.

The SC observed that once the Respondent agreed that he shall not be entitled to interest on the amounts payable under the contract, the Arbitrator had no power to award interest, contrary to the agreement between parties.

Thus, setting aside Division bench order confirming the award passed by the sole arbitrator awarding interest in favor of the Respondent, the SC held the Respondent to not be entitled to any interest pendente lite or future interest on the amounts due and payable to it under the contract in view of the specific bar contained in clause 16(2) of the GCC.

Authors' Note

It would be interesting to note that in the instant case, the SC rightly quipped against the Appellant's argument that even the Respondent had claimed interest, it did not imply that the Respondent was entitled to interest pendente lite. Even if the Respondent would have been awarded interest, the same also would not have been permissible and could have been a subject matter of challenge. In short, there could not be an estoppel against law.

SC holds NCLT has no jurisdiction over contractual disputes unrelated to Corporate Debtor's insolvency

TATA Consultancy Services Ltd. vs. Vishal Ghisulal Jain and Others
2021-TIOLCORP-41-SC-IBC

The Appellant and the Corporate Debtor entered into a Build Phase Agreement on August 24, 2015 followed by a Facilities Agreement on December 1, 2016. The Facilities Agreement obligated the Corporate Debtor to provide

premises with certain specifications and facilities to the appellant for conducting examinations for educational institutions.

Clause 11(b) of the Facilities Agreement stated that either party was entitled to terminate the agreement immediately by written notice to the other party provided that a material breach committed by the latter was not cured within thirty days of the receipt of the notice.

CIRP was initiated against the Corporate Debtor on March 29, 2019. On May 29, 2019, the Corporate Debtor in its email alleged that the Appellant had failed to make the requisite payments and the electricity was disconnected as a result. In its response dated May 30, 2019, the Appellant stated that it came to know about the CIRP against the Corporate Debtor only when the Electricity Board disconnected the supply of electricity to the Corporate Debtor on April 24, 2019.

Further, alleging that the Corporate Debtor failed to discharge its obligations as per the Facilities Agreement, a termination notice was issued by the Appellant to the Corporate Debtor on June 10, 2019 which came into effect immediately.

Aggrieved by the termination notice, the Corporate Debtor approached the NCLT which passed an order dated December 18, 2019 granting an ad-interim stay on the termination notice issued by the Appellant and directed the Appellant to comply with the terms of the Facilities Agreement. The NCLT observed that prima facie it appeared that the contract was terminated without serving the requisite notice of thirty days.

Aggrieved by the order, the Appellant preferred an appeal before the NCLAT. The NCLAT by its order dated June 24, 2020 upheld the order of the NCLT observing that it had correctly stayed the operation of the termination notice since the main objective of the IBC was to ensure that the Corporate Debtor remained a going concern.

Aggrieved, the Appellant approached the SC which observed that the NCLT did not have any residuary jurisdiction to entertain the present contractual dispute which had arisen dehors the insolvency of the Corporate Debtor and in the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice.

The SC further observed that even if the contractual dispute arose in relation to insolvency, a party could only be restrained from terminating the contract if it was central to the success of the CIRP.

Further, remarking that the NCLAT, in its impugned judgment, had averred that the decision of the NCLT preserved the 'going concern' status of the Corporate Debtor but there was no factual analysis on how the termination of the Facilities Agreement would have put the survival of the Corporate Debtor in jeopardy, the SC allowed the appeal.

Authors' Note

It would be interesting to note that in the instant case, the SC rightly observed that NCLT in its residuary jurisdiction was empowered to stay the termination of the agreement if it satisfied the criteria laid down by the SC in Gujarat Urja Vikas v. Amit Gupta & Ors [(2021) 7 SCC 209], where the SC had observed that the NCLT/NCLAT correctly stayed the termination of a Power Purchase Agreement ('PPA') by the Appellant, since allowing it to terminate the PPA would certainly result in the "corporate death" of the Corporate Debtor inasmuch as the PPA was its sole contract. In any event, the intervention by the NCLT and NCLAT in that case could not be characterized as the re-writing of the contract between the parties. Accordingly, the SC held in that case that the NCLT and NCLAT were vested with the responsibility of preserving the Corporate Debtor's survival and could only intervene if an action by a third party could cut the legs out from under the CIRP.

SAT holds Appellant cannot deny being company's director when name found on MCA portal

Ipsita Das Giri vs. SEBI
Appeal No. 317 of 2020

The Ministry of Corporate Affairs forwarded a complaint to SEBI to enquire with regard to the chit fund companies operating in the State of West Bengal which included URO Autotech Limited in which the Appellant was a Director.

Pursuant to the enquiry, a show cause notice was issued to show cause why appropriate directions should not be issued as the offer and allotment of shares of the company was in violation of Section 73(2) of the Companies Act.

The appellant contended before the Whole Time Member ('WTM') that she had never signed any papers relating to the company and her signatures appearing on various documents were forged by her husband who was a Director in the company. The Appellant denied that she ever became a Director. It was also contended that she had filed a divorce case against her husband and that she had made a statement before the Crime Investigation Department ('CID'), that her signatures were forged by her husband.

Since no proof of the assertions made by the Appellant were filed, the WTM did not accept her contention and found that since her name was registered as a Director in the filings before the MCA, she was thus responsible for the refund of money as a Director and accordingly passed an order.

Aggrieved by the order of SEBI, the Appellant approached the SAT which observed that only a bald assertion has been made by the Appellant with reference to the allegation that her husband had forged her signatures, and apart from this oral assertion, no proof had been filed by the Appellant before SEBI or even before it. Thus, in the absence of any FIR being lodged or any evidence to support her stand, such contentions could not be considered especially when her name as a Director was found in the MCA Portal.

Thus, dismissing the appeal filed by the Appellant against the SEBI order, the SAT observing that the order of the SEBI had no error, held the Appellant responsible for the offer and allotment of shares of the company which was in violation of Section 73(2) of the Companies Act and directed the Appellant along with the other Directors to also refund the misappropriated sum as per the SEBI order.

SC holds Company can sue for cheque dishonour, through authorised Managing Director

Bhupesh Rathod vs. Dayashankar Prasad Chaurasia & Anr.
Criminal Appeal No.1105 of 2021

A certain sum was advanced to the Respondent by the Company and cheques were issued to repay loan, but these cheques got dishonoured, and hence the Company authorised the Appellant (Company's Managing Director) to file a complaint.

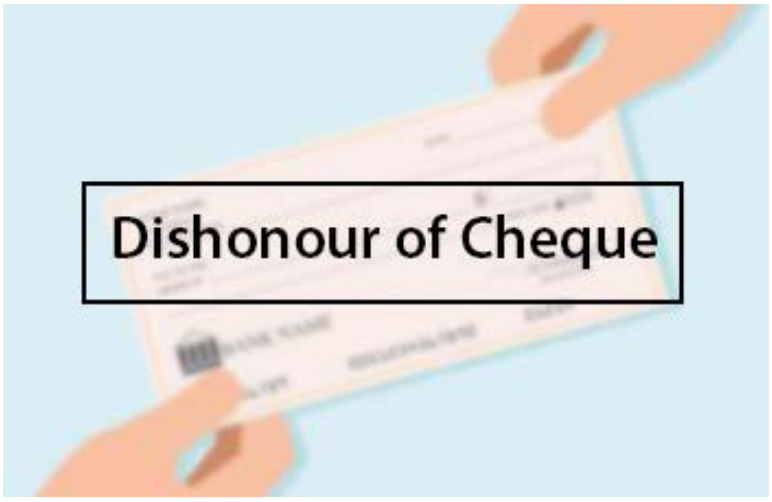
The Respondent took an objection that the complaint was filed in the personal capacity of the Appellant and not on behalf of the Company to the Trial Court which acquitted the Respondent.

Aggrieved, an appeal was filed by the Appellant before HC which was dismissed on the ground that it couldn't be said that the complaint had been filed by a payee or holder in due course as mandated under Section 142(a) of the NI Act, as the payee was the Company, and the complaint

wasn't filed by the Company itself, but by the Appellant who had described himself as the Managing Director of the Company only in the cause title of the complaint.

The HC further remarked that probably a conscious choice was made not to file the complaint in the name of the Company as it was unclear whether the Company was authorised to advance loans.

Aggrieved, the Appellant approached the SC which perusing Sections 138, 139 and 142 of the NI Act, stated that the words of Section 139 of the NI Act were quite clear that unless the contrary was proved, it was to be presumed that the holder of the cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. The Respondent had not set up a case that the transaction was of the nature which fell beyond the scope of Section 138. Other than taking a technical objection, really nothing had been said on the substantive aspect. It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation.



The SC further observed that it was wrongly concluded by the HC, that the Appellant was not authorised.

Further, against observations regarding the format of the complaint, the SC observed the format itself could not be said to be defective though it may not be perfect, the body of the complaint need not contain anything more in view of what had been set out at the inception coupled with the copy of the Board Resolution, and thereby the SC concluded that the Respondent merely sought to take a technical plea arising from the format of the complaint, to evade his liability.

Further, noting that although the punishment prescribed under Section 138 of the Act was 2 years of imprisonment or fine which may extend to twice the amount of the cheque, or with both, SC opined that since 15 years had elapsed from the institution of the complaint, the Respondent should have been sentenced with imprisonment for one year and with fine twice the amount of the cheque, however, in view of passage of time, if the Respondent paid a sum equivalent to the amount of cheques to the Appellant, then the sentence would stand suspended.

Thus, setting-aside HC order wrongly holding that the complaint against dishonour of cheques issued in favour of the Company, was not filed by the payee i.e. the Company itself), but was filed the Appellant who was the Company's Managing Director and hence the Respondent was to be acquitted, the SC observed that the Company could sue for cheque dishonour through its authorised Managing Director.

SC quashes summoning-order under Minimum Wages Act, holds person can't be prosecuted merely due to status as Director

Dayle De'souza vs. Government of India
2021-TIOLCORP-36-SC-MISC

The Company had entered into an Agreement for Servicing and Replenishment of ATMs of the State Bank of India, upon inspection of the ATMs, the Labour Enforcement Officer issued notice to the Appellant (i.e. the Director) as well as another official, alleging non-compliance with the provisions of the Minimum Wages Act, and on complaint being filed, the Judicial Magistrate, First Class, took cognizance of the offence and issued a bailable warrant against the Appellant and the official.

Aggrieved, the Appellant approached the HC which dismissed the petition sans merit. This caused the Appellant to approach the SC which noted that Section 22C of the Minimum Wages Act, stated that where an offence was committed by a company, every person who at the time the offence was committed was in-charge of and was responsible to the company for the conduct of the business, as well as the company itself was to be deemed guilty of the offence. However, a person who was liable would not be punished if he proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Thus, SC observed that the onus to satisfy the requirements to take benefit of this exception was on the accused, but it did not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of Section 22C(1) of the Minimum Wages Act. Thus, in the instant case it was crystal clear that the complaint did not satisfy the mandate of sub-section (1) to Section 22C of the Act as there were no assertions or averments that the Appellant was in-charge of and responsible to the Company.

Further the SC observed that it was clear from a reading of sub-section (2) to Section 22C of the Act that a person could not be prosecuted and punished merely because of their status or position as a Director, Manager, Secretary or any other officer, unless the offence in question was committed with their consent or connivance or was attributable to any neglect on their part.

Therefore, quashing the summoning order issued against the Director and another official of the Company alleging non-compliance with the provisions of the Minimum Wages Act on the ground that the Company had not been made an accused or summoned for the offence so committed, the SC disposed of the appeal.

Authors' Note:

In the instant case, the SC rightly remarked that criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion, or when the violation of law was doubtful. It is therefore, the duty and responsibility of the public officer to proceed responsibly and ascertain the true and correct facts. Execution of law without appropriate acquaintance with legal provisions and comprehensive sense of their application could result in an innocent being prosecuted.

NCLAT holds '*void ab initio*', share-transfer to outsiders disregarding pre-emptive right under AoA

Niklesh Tirathdas Nihalani vs. Shah Poddar Nihlani Organisers Pvt. Ltd. and Others Company Appeal (AT) No. 167 of 2020

The Respondent was constituted by 3 families and in case of transfer of shares of the Respondent, the AoA provided pre-emptive rights to the shareholders, However, disregarding this pre-emptive right of the shareholders, the Respondent, transferred the shares to outsiders and amended Article 13 of the AoA which prior to amendment, specifically provided that 'no shares shall be transferred to a person who is not a member of the company. This led to reduction of shareholdings of the Appellant.

Aggrieved, the Appellant approached the NCLT contending that inducting new shareholders, i.e. outsiders in the Respondent company and providing them with shareholding was an act of fraud on the Appellant, as being an existing shareholder of the Company it was not offered shares in the exercise of their pre-emptive right as per Article 13 of the AoA and this amounted to mismanagement and oppression on account of the Respondent against its shareholders. This contention of the Appellant was rubbished by the NCLT which caused the Appellant to approach the NCLAT.

The NCLAT allowing the appeal, observed that the transfer of Respondent's shares to outsiders (i.e. not from family of existing shareholders), in complete disregard of the pre-emptive right available to existing shareholders under the AoA, was void ab initio and accordingly, directed the Respondent to rectify the register of Members, opining that the act of the Respondents to amend the AoA while Appellant's application challenging the aforesaid transfer was pending before NCLT, to be a deliberate act with the sole motive to frustrate the Company Appeal and thereby holding transfer of shares without providing the pre-emptive right to the existing shareholders against the AoA and MoA of the Respondent to be unsustainable

Authors' Note:

In the instant case, the NCLAT rightly observed that the Respondents were able to illegally transfer the Company's shares to outsiders, against the original AoA due to their majority in the Board of Directors deliberately causing a reduction in Appellant's shareholding.

Disclosure obligations of listed entities in relation to related party transactions

Securities and Exchange Board of India vide notification no. SEBI/LAD-NRO/GN/2021/55 dated November 9, 2021 has notified Securities and Exchange Board of India (Listing obligations and Disclosure requirements) (Sixth Amendment) Regulations 2021 vide gazette notification. Vide that notification Regulation 23 regarding Related Party Transactions has been amended and sub regulation (9) has been substituted as below:

"The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website. Provided further with effect from April 1, 2023, that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results.

Further, It has been decided to prescribe the information to be placed before the audit committee and the shareholders for consideration of RPTs.

Information to be reviewed by the Audit Committee for approval of RPTs

- Type, material terms and particulars of the proposed transaction;
- Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
- Tenure of the proposed transaction;
- Value of the proposed transaction;
- The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction;
- If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
  - i) details of the source of funds in connection with the proposed transaction
  - ii) where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments, nature of indebtedness; cost of funds; and tenure;
  - iii) applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of

Information to be provided to shareholders for consideration of RPTs

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:

- A summary of the information provided by the management of the listed entity to the audit committee;
- Justification for why the proposed transaction is in the interest of the listed entity;
- A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
- Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
- Any other information that may be relevant.

security; and iv) the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT. ▸ Justification as to why the RPT is in the interest of the listed entity; ▸ A copy of the valuation or other external party report, if any such report has been relied upon; ▸ Any other information that may be relevant; ▸ The audit committee shall also review the status of long - term (more than one year) or recurring RPT s on an annual basis;	

Authors' Note:

This move in aligned with SEBI's endeavour to encourage listed entities to come forward and take prior approvals before entering into related party transaction. This move by SEBI was intended to curb the transactions that happen with related party to give undue advantage to them and no on arms length price.

Issuance of updated Master circular on Guarantees and co Acceptances by RBI

RBI has issued master circular on Guarantees and co Acceptances on 9th November, 2021 vide notification No. RBI/2021-22/121 numbering DOR.STR.REC.66/13.07.010/ 2021-22 that consolidates all then instructions/ guidelines issued to banks in respect of Guarantees and Co Acceptances.

Salient Features	
General Guidelines related to Guarantees	▸ Confine only to financial guarantees ▸ Exercise due caution with regard to performance guarantee business ▸ Obtain declaration from customers about non fund based credit facilities with other banks before granting any new facility ▸ Follow due credit appraisal process similar to fund based credit limit approval

	▸ No unsecured guarantees shall be given
Specific Guidelines related to Guarantees	▸ Credit worthiness appraisal of Customers ▸ In the case of performance guarantee, due caution shall be exercised while considering customer's experience, capacity and means to perform the obligations under the contract ▸ Personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course ▸ FEMA compliances to be ensured in case of guarantees issued against export advances ▸ Banks, including overseas branches / subsidiaries of Indian banks, shall not issue standby letters of credit / guarantees / letter of comforts etc. on behalf of overseas JV / WOS of Indian companies for the purpose of raising loans / advances of any kind from other entities except in connection with the ordinary course of overseas business
Co Accceptance of bills	Master circular has prescribed various safeguards that banks should follow like: ▸ Assessment of need while sanctioning co-acceptance limits ▸ Only genuine trade bills should be co-accepted ▸ Similarly, banks should not co-accept bills drawn by NBFCs.
Precautions to be taken in the case of Letter of credit	▸ Payments release to the foreign parties post due verification of documents and terms of LC.

Authors' Note:

This circular was very much required in light of present era. Vide this RBI has given clear guidance to banks what are the basic and preliminary checks that they need to tick off while entering into any transaction pertaining to provision of guarantees including financial and performance guarantee , extending Letter of credit, co accepting and discounting of bills. With the help of these measures RBI shall be able to safeguard banks to a larger extent against customer defaults.

Change in format in details to be filled up for List of creditors as specified in IBBI (Insolvency resolution process for Corproate persons) Regulations 2016

The Board has issued the Circular No. IBBI/CIRP/36/2020 dated 27th November, 2020 directing the Insolvency Professionals to file the list of creditors and modification thereof in the stipulated format on electronic platform viz. www.ibbi.gov.in. The circular has removed the column of "Identification No." in the prescribed format where list of creditors was required to be submitted.

Vide this circular, the insolvency professionals are directed to file the list of creditors of the respective corporate debtor and modification thereof, in the revised format placed in below format, within three days of the preparation of the list or modification thereof, as the case may be. The creditors needs to be divided into following broad categories.

Sl.No.	Summary
1	Secured financial creditors belonging to any class of creditors
2	Unsecured financial creditors belonging to any class of creditors
3	Secured financial creditors (other than financial creditors belonging to any class of creditors)
4	Unsecured financial creditors (other than financial creditors belonging to any class of creditors)
5	Operational creditors (Workmen)
6	Operational creditors (Employees)
7	Operational creditors (Government Dues)
8	Operational creditors (other than Workmen and Employees and Government Dues)
9	Other creditors, if any, (other than financial creditors and operational creditors)

The resolution professional is required to provide details such as number of claims received under each category, amount of claim, quantum of claim admitted, amount of claim under verification etc.

Post this, a detailed format is also provided in circular for each of above category, the purpose The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform.

Authors' Note:

This clarification was much needed by Department, since it has been observed that sensitive information are being feeded here like PAN No., Aadhar no. etc. The General Guidelines for securing Identity information and Sensitive personal data or information in compliance to Aadhaar Act, 2016 and Information Technology Act, 2000 issued by the Ministry of Electronics and Information Technology also provides that any personal identifiable data including Aadhaar should not be published in public domain.

Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advances

Reserve Bank of India vide circular no. RBI/2021-2022/125 has issued clarifications regarding Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to advances. Below is the list of clarifications provided in said circular:

Specification of Due date/repayment date:

Presently an amount is to be treated as overdue if it is not paid on the due date fixed by the bank, however due dates are not specifically mentioned in many cases in loan agreements. The exact due dates for repayment of a loan, frequency of repayment, breakup between principal and interest, examples of SMA/NPA classification dates, etc. shall be clearly specified in the loan agreement and the borrower shall be apprised of the same at the time of loan sanction and also at the time of subsequent changes, if any, to the sanction terms/loan agreement till full repayment of the loan.

Classification as Special Mention Account (SMA) and Non-Performing Asset (NPA)

The classification is applicable for all the loans incl. retail loans. The basis for classification of SMA categories has been provided in said circular. it is further clarified that borrower accounts shall be flagged as overdue by the lending institutions as part of their day-end processes for the due date, irrespective of the time of running such processes. Similarly, classification of borrower accounts as SMA as well as NPA shall be done as part of day-end process for the relevant date.

Clarification regarding definition of 'Out of Order'

Cash credit/Overdraft (CC/OD) account is classified as NPA if is 'out of order'. An account shall be treated as 'out of order' if:

- The o/s balance in the CC/OD account remain continuously in excess of the sanctioned limit/drawing power for 90 days or
- The o/s balance in the CC/OC account is less than the sanctioned limit/drawing power but no credits continuously for 90 days or not enough to cover the interest debited during the previous 90 days period.

NPA classification in case of interest payments

Earlier an account is classified as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter. But the same has been modified and shall be effective from 31st March, 2022 that now classification as NPA if the interest remains overdue for more than 90 days.

Upgradation of accounts classified as NPAs

Loan accounts classified as NPAs can be upgraded as 'Standard' asset only if entire arrears of interest and principal amount are paid by the borrower rather than on the basis of only interest and partial overdue payment.

Authors' Note:

This is a move with a view to ensuring uniformity in the implementation of IRACP norms across all lending institutions, certain aspects of the extant regulatory guidelines are being clarified and/or harmonized, which will be applicable mutatis mutandis to all lending institutions. This could result in more non-banking finance companies' loans being categorised as NPAs and raise provisioning requirements as classification norms are now on a par with that of banks.

Mauritania joins OECD/G20 Inclusive Framework on BEPS agreeing to 2-pillar solution

The OECD/G20 Inclusive Framework on BEPS was joined by Mauritania which brought the total number of participating jurisdictions to 137 and total membership of the Inclusive Framework to 141.

OECD reports that the countries were aiming to sign a multilateral convention in 2022; with effective implementation from 2023 and that the OECD will develop model rules for bringing Pillar Two into domestic legislation during 2022 so as to make it effective in 2023.

Pillar Two introduces a global minimum corporate tax rate set at 15%. The new minimum tax rate will apply to companies with revenue above EUR 750 million and is estimated to generate around USD 150 billion in additional global tax revenues annually. Further benefits will also arise from the stabilisation of the international tax system and the increased tax certainty for taxpayers and tax administrations.

Through its membership, Mauritania has also committed to address the tax challenges arising from the digitalisation of the economy by joining the two-pillar plan to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.

Accordingly, collaborating on an equal footing with all other members of the Inclusive Framework, Mauritania will participate in the implementation of the BEPS package of 15 measures to tackle tax avoidance and improve the coherence of international tax rules and ensure a more transparent tax environment.

UAE-Amendment in VAT

The UAE VAT Regulations have been amended with changes to the rules applicable to Designated Zones ('DZs'), and the FTA has issued a corresponding VAT Public Clarification VATP027.

The amendment made in respect of supply of goods in a DZ for consumption in the UAE mainland, will be considered outside the scope of UAE VAT, provided that the supplier is able to establish that VAT was accounted for upon importation of the goods to the UAE mainland.

Further, the FTA has also published a Tax Public Clarification TAXP003 on the recent amendments to the Federal Tax Procedures FTP Law. 'TAXP003' provides for the mechanism and requirements for objections and appeals by taxpayers, alternative mechanisms for objections and appeals by government entities, and the mechanism of waiving, refunding, and payment of penalties as instalments.

KSA-Implementation of e-invoicing

The e-invoicing will be implemented in the Kingdom of Saudi Arabia KSA by the end of this year in two phases i.e., General Phase and Integration Phase.

The first phase of e-invoicing will be implemented from December 04, 2021 and second phase from January 01, 2023.

Global Alliance for Tax Justice reports loss of USD 483 Bn in tax havens accordingly, suggests excess profit tax, wealth tax

The second edition of State of Tax Justice 2021 issued by Global Alliance for Tax Justice reports that countries are losing USD 483 Billions of tax every year to global tax abuse committed by multinational corporations and wealthy individuals.

The report further uses data from country-by-country reporting's published by the OECD to demonstrate that multinational corporations are shifting USD 1.19 trillion worth of profit into tax havens a year, causing governments around the world to lose USD 312 billion a year only in direct tax revenue which are due to the misalignment between the location of profits and the location of productive economic activity.

The report elucidates that UK and its dependent territories (UK spider's web) are responsible for a third of the corporate tax losses whereas "axis of tax avoidance" (UK spider's web, Netherlands, Luxembourg and Switzerland) are together responsible for half and in aggregate, the OECD member countries and their dependencies account for seven of every ten dollars lost.

According to data contained in the report, Cayman Islands, United Kingdom, United States and Luxembourg are among the top 15 jurisdictions with highest value of abnormal deposits whereas Switzerland tops the secrecy score on ownership registration at 92, followed by Panama at 89.

The report further states that lower income countries lose the equivalent of 4.2 per cent of their collected tax revenue to corporate tax abuse a year, while higher income countries lose the equivalent of 2.8 per cent of their collected tax revenue.

Drawing a relative comparison, the report estimates that the tax lost in a single year to cross-border tax abuse would have covered the cost of fully vaccinating the world's entire population more than three times over.

Accordingly, the report puts forth three recommendations:

- Introduction of pandemic excess profits taxes
- Introduction of wealth taxes
- Immediate national measures to be accompanied with a global and architectural shift

The report also suggests that governments of the OECD member countries should begin negotiations on an UN Framework Convention on Tax, to establish a transparent and globally inclusive alternative.

GLOSSARY

Abbreviation	Meaning	Abbreviation	Meaning
AAAR	Appellate Authority of Advanced Ruling	ITA	Interactive Tax Assistant
AAR	Authority of Advance Ruling	ITAT	Hon'ble Income Tax Appellate Tribunal
ACIT	Assistant Commissioner of Income Tax	ITC	Input Tax Credit
AE	Associated Enterprise	ITES	Information Technology Enabled Services
ALP	Arm's Length Price	MAT	Minimum Alternate Tax
AMP	Advertisement Marketing and Promotion	MRP	Maximum Retail Price
AO	Assessing Officer	NAA	National Anti-Profiteering Authority
APA	Advance Pricing Agreement	NCLAT	National Company Law Appallete Tribunal
APU	Authorized Public Undertaking	NCLT	National Company Law Tribunal
AY	Assessment Year	OECD	Organization for Economic Co-operation and Development
BEPS	Base Erosion and Profit Shifting		
CASS	Computer aided selection of cases for Scrutiny	PCIT	Principal Commissioner of Income Tax
CBDT	Central Board of Direct Taxes	PLI	Production Linked Incentive
CBEC	Central Board of Excise and Customs	R&D	Research and Development
CBIC	Central Board of Indirect Taxes and Customs	RFCTLARR Act	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act
CENVAT	Central Value Added Tax		
CESTAT	Custom Excise and Service Tax Appellate Tribunal	RoDTEP	Remission of Duties and Taxes on Export of Products
CGST Act	Central Goods and Services Tax Act, 2017	SC	Hon'ble Supreme Court
CIRP	Corporate Insolvency Resolution Process	SCM	Subsidies and Countervailing Measures
CIT(A)	Commissioner of Income Tax (Appeal)	SCRR	Securities Contracts (Regulation) Rules, 1957
CLU	Changing Land Use	SLP	Special Leave Petition
CSR	Corporate Social Responsibility	TCS	Tax Collected at Source
CWF	Consumer Welfare Fund	TDS	Tax Deducted at Source
DCIT	Deputy Commissioner of Income Tax	The CP Act	The Consumer Protection Act, 2019
DGAP	Directorate General of Anti-Profiting	The IT Act/The Act	The Income-tax Act, 1961
DGFT	Directorate General of Foreign Trade	The IT Rules	The Income-tax Rules, 1962
DRP	Dispute Resolution Panel	TPO	Transfer Pricing Officer
Finance Act	The Finance Act, 1994	UN TP Manual	United Nations Practice Manual on Transfer Pricing
GST	Goods and Services Tax	VAT	Value Added Tax
HC	Hon'ble High Court	VSV	Vivad se Vishwas
IBC	International Business Corporation	NeAC	National e-Assessment Centre
IGST	Integrated Goods and Services Tax	The LT Act	The Limitation Act, 1963
IGST Act	Integrated Goods and Services Tax Act, 2017	CIRP	Corporate Insolvency Resolution Process
IRP	Invoice Registration Portal	MPS	Minimum Public Shareholding

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FIRM INTRODUCTION

TAXCRAFT ADVISORS

Taxcraft Advisors LLP ('TCA') is a multidisciplinary advisory, tax and litigation firm having multi-jurisdictional presence. TCA team comprises of professionals with diverse expertise, including chartered accountants, lawyers and company secretaries. TCA offers wide-ranging services across the entire spectrum of transaction and business advisory, litigation, compliance and regulatory requirements in the domain of taxation, corporate & allied laws and financial reporting.

TCA's tax practice offers comprehensive services across both direct taxes (including transfer pricing and international tax) and indirect taxes (including GST, Customs, Trade Laws, Foreign Trade Policy and Central/States Incentive Schemes) covering the whole gamut of transactional, advisory and litigation work. TCA actively works in trade space entailing matters ranging from SCOMET advisory, BIS certifications, FSSAI regulations and the like. TCA (through its Partners) has also successfully represented umpteen industry associations/trade bodies before the Ministry of Finance, Ministry of Commerce and other Governmental bodies on numerous tax and trade policy matters affecting business operations, across sectors.

With a team of experienced and seasoned professionals and multiple offices across India, TCA offers a committed, trusted and long cherished professional relationship through cutting-edge ideas and solutions to its clients, across sectors.

GLS
GST LEGAL SERVICES

GST Legal Services LLP ('GLS') is a consortium of professionals offering services with seamless cross practice areas and top of the line expertise to its clients/business partners. Instituted in 2011 by eminent professionals from diverse fields, GLS has constantly evolved and adapted itself to the changing dynamics of business and clients requirements to offer comprehensive services across the entire spectrum of advisory, litigation, compliance and government advocacy (representation) requirements in the field of Goods and Service Tax, Customs Act, Foreign Trade, Income Tax, Transfer Pricing and Assurance Services.

Of-late, GLS has expanded its reach with offerings in respect of Product Centric Regulatory Requirements (such as BIS, EPR, WPC), Environmental and Pollution Control laws, Banking and Financial Regulatory laws etc. to be a single point solution provider for any trade and business entity in India.

With a team of dedicated professionals and multiple offices across India, it aspires to develop and nurture long term professional relationship with its clients/business partners by providing the most optimal solutions in practical, qualitative and cost-efficient manner. With extensive client base of national and multinational corporates in diverse sectors, GLS has fortified its place as unique tax and regulatory advisory firm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

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VMG & Associates ('VMG') is a multi-disciplinary consulting and tax firm. It brings unique experience amongst consulting firms with its partners having experience of Big 4 environment, big accounting, tax and law firms as coupled with significant industry experience. VMG offers comprehensive services across the entire spectrum of transaction support, business and risk advisory, financial reporting, corporate & allied laws, Direct & Indirect tax and trade related matters.

VMG has worked with a range of companies and have provided services in the field of business advisory such as corporate structuring, contract negotiation and setting up of special purpose vehicles to achieve business objectives. VMG is uniquely positioned to provide end to end solutions to start-ups companies where we offer a blend of services which includes compliances, planning as well as leadership support.

VMG team brings to the table a comprehensive and practical approach which helps clients to implement solutions in most efficient manner. With a team of experienced professionals and multiple offices, we offer long standing professional relationship through value advice and timely solutions to corporate sectors across varied Industry segments.

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