



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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Monthly Newsletter  
February, 2024

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## MAA FOUNDATION ACTIVITIES



**Women Empowerment:** Maa Foundation is dedicated to advancing women's empowerment. Additionally, as part of the goal, Maa Foundation is offering women vocational training through our initiative "Sui Dhaga".

## **MESSAGE FROM THE CHIEF EDITOR**

*“When I let go of what I am, I become what I might be.” – Lao Tzu*

It gives us immense satisfaction to share the 82<sup>nd</sup> Edition of “WINS – E-Newsletter” for February 2024, covering legal updates released during the month of February 2024, articles shared by respected professionals, Case Laws and compliance calendar for the month of March 2024.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, RBI, CBEC, CBDT and other miscellaneous Laws
2. Articles
3. Case Laws
  - a) Recent Income Tax decision /Legal Decision
  - b) Emancipating Stressed Assets Under IBC Through HR Strategies
  - c) GST Updates And Amendments
4. Compliance checklist for the month of March 2024.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at [vinayshukla@whitespan.in](mailto:vinayshukla@whitespan.in) or [+91 9810 624 262](tel:+919810624262)

With warm regards,

**TEAM WINS (Whitespan Information and News Services)**  
**February 29, 2024**



**OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, a semi qualified company secretary and a graduate in Commerce from Kanpur University.
- 7. Ms. Sanjana Bindal**, a semi qualified company secretary and a graduate from H.P. National Law University.

# Ministry of Corporate Affairs (MCA)

## 1. Establishment of Central Processing Centre

**Date of Notification:** February 03<sup>rd</sup>, 2024

**Effective Date:** February 06<sup>th</sup>, 2024

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=FrgS%252FjRXtmK%252BHpwL13BHRQ%253D%253D&type=open>

MCA vide notification dated February 03<sup>rd</sup>, 2024 notified that the Central Processing Centre at Indian Institute of Corporate Affairs at Plot No. 6,7,8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050 shall have territorial jurisdiction all over India for processing and disposing off e-forms filed along with the fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014.

Further, in respect of all other provisions of the Companies Act, 2013, the jurisdictional Registrar, other than the Registrar of the Central Processing Centre, within whose jurisdiction the company's registered office is located, shall retain jurisdiction over the companies whose e-forms are processed by the Registrar of the Central Processing Centre.

## 2. Relaxation of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No.4D under the Limited Liability Partnership Act, 2008

**Date of General Circular:** February 07<sup>th</sup>,2024

**Effective Date:** February 07<sup>th</sup>,2024

**Link:**

[chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=ui4J8CwvqBhepbNiu3putw%253D%253D&type=open.](chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=ui4J8CwvqBhepbNiu3putw%253D%253D&type=open)

MCA vide its general circular dated February 07<sup>th</sup>, 2024 extended the due date for filing of Form No. LLP BEN-2 and LLP Form No. 4D To be filed in accordance with the Limited liability Partnership (Significant Beneficial Owners) Rules, 2023 to May 15<sup>th</sup>, 2023. The two forms shall be made available in version-3 for filing purposes from April 15<sup>th</sup>, 2024.

MCA has introduced LLP BEN-2 and LLP Form No. 4D to promote transparency and LLP compliance, **LLP BEN-2 form to declare significant beneficial owners** under section 90 of the Companies Act, 2013 and **LLP Form No. 4D to declare beneficial interest in LLP contributions.**



### **3. Companies (Registration Offices and Fees) Amendment Rules, 2024**

**Date of Notification:** February 14<sup>th</sup>, 2024

**Effective Date:** February 16<sup>th</sup>, 2024

**Link:**

<chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=TC5IiKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open>

MCA vide Notification dated February 14<sup>th</sup>, 2024 notified the Companies (Registration Offices and Fees) Rules, 2014 by inserting Rule 10A to the Companies (Registration Offices and Fees) Rules, 2014.

**Key highlights of Rule 10A are:**

- The Registrar of the Central Processing Centre shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered for approval, registration or taking on record by the Registrar.
- The Registrar shall take a decision on the application, e-forms or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.
- Registrar of the Central Processing Centre shall exercise jurisdiction all over India in respect of the examination of application, e-Forms or documents including MGT-14, Form no. SH-7, Form no. INC-24, Form no. INC-6, Form no. INC-27, Form no. INC-20, Form no. DPT-3, Form no. MSC-1, Form no. MSC-4, Form no. SH-8, Form no. SH-9 and Form no. SH-11.

#### 4. Deployment and usage of Change Request Form (CRF) on MCA-21

**Date of General Circular:** February 19<sup>th</sup>, 2024

**Effective Date:** February 19<sup>th</sup>, 2024

**Link:**

<chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=Gdp7pwkWmPucgX1GlBvdSw%253D%253D&type=open>

MCA vide its general circular dated February 19<sup>th</sup>, 2024 announced the deployment of the Change Request Form (CRF) on the V3 portal. Details for the same are as follows:

- It is a web-based Form to be used only in exceptional circumstances to make a request to the Registrar of Companies (RoCs) for purposes that cannot be met by any existing form, service, or functionality available at either the Front Office level (users of MCA-21 services) or the Back Office level (RoCs).
- It is not a substitute for any reporting, application, or registry requirements under the Companies Act of 2013, and the LLP Act of 2008, and requests made using this form will be summarily rejected.
- The Form should also not be used to replace any approval or registration-related queries that require the use of existing tickets or help desk facilities.
- The Form will be processed by RoCs within three days of filing, and then forwarded to the Joint Director (e-governance cell), who will process and decide the matter within seven days.

**News update**

**Link:** <https://www.nsws.gov.in/>

Ministry of Corporate Affairs incorporation related services can also be accessed through the National Single Window System (NSWS) by going through the link.

# Securities Exchange Board of India (SEBI)

## 1. Guidelines for returning of draft offer document and its resubmission

**Date of Circular:** February 06<sup>th</sup>, 2024

**Effective Date:** February 06<sup>th</sup>, 2024

**Link:**

[https://www.sebi.gov.in/legal/circulars/feb-2024/guidelines-for-returning-of-draft-offer-document-and-its-resubmission\\_81146.html](https://www.sebi.gov.in/legal/circulars/feb-2024/guidelines-for-returning-of-draft-offer-document-and-its-resubmission_81146.html)

SEBI vide circular dated February 6<sup>th</sup>, 2024 introduced guidelines for return and resubmission of draft offer documents and draft letters of offer filed for public issuances and rights issues, respectively.

### **Broad guidelines for returning of draft offer document and its resubmission:**

- a) The usage of short sentences, definitive, unambiguous, and conventional words, sentences in active voice, usage of lists and tables for presentation, the non-usage of multiple negatives and the usage of simple language accompanied with visual representation of data.
- b) Language to be presented in a clear and concise manner across sections, paragraphs, and sentences with the usage of descriptive headings and subheadings. The language should not be very legal and technical in nature and wherever such technical or complex language is to be used, it should be accompanied by relevant clarifications and explanations.



- c) Draft Offer Documents should avoid complex presentations that could lead to incomprehensible disclosures, vague and imprecise explanations, legally complex, repetition of disclosures which do not lead to improvement in the effectiveness of information; and inconsistent data or facts across a Draft Offer Document.
- d) Clarity in the risk factors included in the Draft Offer Documents.

In the event a Draft Offer Document is to be returned, there will be no additional fee payable solely for the resubmission of such Draft Offer Document with SEBI. However, the applicable fees pertaining to any updation of the Draft Offer Documents will continue to apply as per the provisions of the SEBI (ICDR) Regulations, 2018. The failure to resubmit a Draft Offer Document post its return, will not result in any refund of fees paid for the original submission of a Draft Offer Document.

## 2. Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism

**Date of Circular:** February 07<sup>th</sup>, 2024

**Effective Date:** February 07<sup>th</sup>, 2024

**Link:**

[https://www.sebi.gov.in/legal/regulations/feb-2024/securities-and-exchange-board-of-india-employees-service-amendment-regulations-2024\\_81336.html](https://www.sebi.gov.in/legal/regulations/feb-2024/securities-and-exchange-board-of-india-employees-service-amendment-regulations-2024_81336.html)

SEBI vide its Circular dated February 07<sup>th</sup>, 2024, amended the Securities and Exchange Board of India (Employees' Service) Regulations, 2001. Key highlights of the amendment are as follows:

1. Under regulation 6 Competent authority shall constitute a selection committee, comprising such number of persons and outside experts as may be determined for recruitment and promotion. For recruitment at the level of Executive Director on deputation or contract, the Competent authority shall constitute a search-cum-selection committee and shall be approved by the Board before an offer of appointment is issued to the selected candidate.
2. In the Schedule, in the Table in column 5, For Promotion and Deputation/ Contract -Chairman, two other members of the Board and two external experts to be nominated by the Chairman shall constitute the Selection Committee.

### 3. Securities and Exchange Board of India (Employees' Service) (Amendment) Regulations, 2024

**Date of Notice:** February 09<sup>th</sup>, 2024

**Effective Date:** March 10<sup>th</sup>, 2024

**Link:**

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240201-34>

BSE vide its notice dated February 09<sup>th</sup>, 2024 in continuation to SEBI's Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 dated October 16<sup>th</sup>, 2023 on framework on Offer for Sale (OFS) of shares through stock exchange mechanism, announced that the promoters can also offer the shares to employees in OFS through the Stock Exchange Mechanism.

#### **4. Corporate Grouping of Listed Companies**

**Date of Notification:** February 09<sup>th</sup>, 2024

**Effective Date:** February 09<sup>th</sup>, 2024

**Link:**

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240209-41>

BSE in continuation to the Circular No. 20231130-27 dated November 30<sup>th</sup>, 2023 regarding maintaining a repository containing names of companies forming a part of each Indian corporate group introduced a online facility for filling of information related to change in the corporate group through listing centre. The said facility is available in listing centre login on below path: BSE Listing Centre> Listing Compliance > Corporate Group Repository

Accordingly any change in its corporate group pursuant to any event such as Corporate Restructuring, Takeover, Merger, Demerger, Acquisition, Delisting etc., the companies have to intimate the Exchange within Two Working Days of the Effective Date of the change through listing centre with supporting document.

For identifying the corporate group, the criteria / parameters that shall, inter alia, be considered by the listed companies / proposed to be listed companies are attached to the Notification.

5. Intimation of credit of Dividend into attached bank accounts of notified parties under Special Court (TORTS) Act 1992

**Date of Notice:** February 09<sup>th</sup>, 2024

**Effective Date:** February 09<sup>th</sup>, 2024

**Link:**

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240209-42>

BSE vide notice dated February 09<sup>th</sup>, 2024 notified that whenever online dividend payment is credited into bank account of notified parties, intimation thereof is invariably required to be sent to Custodian's office without fail for further necessary action.



## 6. Centralization of certifications under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard(CRS) at KYC Registration Agencies (KRAs)

**Date of Circular:** February 20<sup>th</sup>, 2024

**Effective Date:** February 20<sup>th</sup>, 2024

**Link:**

<https://www.sebi.gov.in/legal/circulars/feb-2024/centralization-of-certifications-under-foreign-account-tax-compliance-act-fatca-and-common-reporting-standard-crs-at-kyc-registration-agencies-kras-81583.html>

SEBI vide its Circular dated February 20<sup>th</sup>, 2024, notified that that RFI intermediaries are required to upload FATCA and CRS certifications obtained from clients into the KRAs system from July 1<sup>st</sup>, 2024. The existing certifications obtained from clients prior to July 1<sup>st</sup>, 2024 must be uploaded by the intermediaries onto the systems of KRAs within 90 days of the implementation of this circular.

Further, intermediary shall confirm the reasonableness of such certification based on the information obtained during account opening, including any documentation obtained in accordance with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, and shall update the self-certification as and when the client reports a change. The KRAs shall develop their systems/mechanisms in coordination with one another and shall follow uniform internal guidelines/standards, in consultation with SEBI.



**RESERVE BANK**  
**OF INDIA**  
**(RBI)**

## **1. Amendment to Master Direction on Prepaid Payment Instruments**

**Date of Notification:** February 23<sup>rd</sup>, 2024

**Effective Date:** February 23<sup>rd</sup>, 2024

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12612&Mode=0>

RBI vide notification dated February 23<sup>rd</sup>, 2024 in reference to the Master Directions CO.DPSS.POLC.No.S-479/02.14.006/2021-22 dated August 27<sup>th</sup>, 2021 on Prepaid Payment Instruments (MD-PPIs) regarding various types of PPIs which banks and non-banks issue after obtaining necessary approval / authorisation from RBI, notified that authorised bank and non-bank PPI issuers are authorized to issue PPIs for making payments across various public transport systems.

## **2. Appointment/re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies**

**Date of Notification:** February 27<sup>th</sup>, 2024

**Effective Date:** February 27<sup>th</sup>, 2024

**Link:**

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12614&Mode=0>

RBI vide notification dated February 27<sup>th</sup>, 2024 notified that Asset Reconstruction Companies(ARCs) are required to obtain prior approval of the Reserve Bank for appointment/re-appointment of any Director, Managing Director or Chief Executive Officer.

ARCs are required to furnish a form with the requisite information about the candidate and an indicative list of documents as Annex I and Annex II, respectively to the Department of Regulation at least ninety days before the vacancy arises / the proposed date of appointment or re-appointment.

Reserve Bank may call for additional information/documents for processing the application, if required.



# **Central Board of Direct Taxes (CBDT)**





## **1. Income Tax Return Forms for the Assessment Year 2024-25**

**Date of Press Release:** February 02<sup>nd</sup>, 2024

**Effective Date:** February 02<sup>nd</sup>, 2024

**Link:**

[chrome-](#)

[extension://efaidnbmnnnibpcajpcgglefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1177/PressRelease-CBDT-notifies-ITR-Forms-for-AY2024-25-well-in-advance-2-2-24.pdf](https://efaidnbmnnnibpcajpcgglefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1177/PressRelease-CBDT-notifies-ITR-Forms-for-AY2024-25-well-in-advance-2-2-24.pdf)

CBDT vide press release dated February 02<sup>nd</sup>, 2024 notified that all ITR Forms 1 to 6 have since been listed and will come into effect from 1st April, 2024.

1. ITR-1 (SAHAJ) filed by resident Individuals having total income upto Rs. 50 lakh and having income from Salaries, one house property and income from other sources.
2. Individuals and HUFs not having income from business or profession can file ITR-2, while those having income from business or profession can file ITR Form- 3.
3. ITR-4 (SUGAM) is for resident individuals, HUFs and Firms (other than LLP) having total income upto Rs. 50 lakh and having income from business and profession computed under section 44AD, 44ADA or 44AE.
4. Persons other than individual, HUF and companies i.e. partnership firm, LLP etc. can file ITR Form- 5.
5. The companies other than those claiming exemption under section 11 can file ITR Form-6.

## **2. Implementation of e-Verification Scheme-2021**

**Date of Press Release:** February 26<sup>th</sup>, 2024

**Effective Date:** February 26<sup>th</sup>, 2024

**Link:**

[chrome-](#)

[extension://efaidnbmnnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1180/Press-Release-Implementation-of-e-Verification-Scheme-2021-dated-26-02-2024.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1180/Press-Release-Implementation-of-e-Verification-Scheme-2021-dated-26-02-2024.pdf)

CBDT vide press release dated February 26<sup>th</sup>, 2024 notified that for taxpayers to provide their response for the information mismatches relating to Financial Years 2021-22 and 2022-23 displayed on the Compliance portal an on-screen functionality has been made available on the e-filing website..

The taxpayers who have already registered on the e-filing website, can navigate to Compliance portal directly after logging into their account whereas those who are not registered on the e-filing website have to register themselves on the e-filing website to view the mismatch.

In case the taxpayer has disclosed the interest income in the ITR under the line item 'Others' in the Schedule OS, he/she need not respond to the mismatch pertaining to the interest income. The taxpayers who are unable to explain the mismatch may consider the option of furnishing an Updated Income Tax Return if eligible, to make good any under reporting of income.

# Miscellaneous Laws

## **1. CGPDTM launching “Open House Helpdesk Portal”**

**Date of Notification:** February 09<sup>th</sup>, 2024

**Effective Date:** February 09<sup>th</sup>, 2024

**Link:**

<https://ipindia.gov.in/newsdetail.htm?951>

The office of Controller General of Patents, Designs and Trademarks (CGPDTM) vide notification dated February 09<sup>th</sup>, 2024 notified launch of “Open House Helpdesk Portal “on February 14<sup>th</sup>, 2024 at 11:30 AM under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India for enhancing its services and improving stakeholder engagement.

## **2. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

**Date of Circular:** February 15<sup>th</sup>, 2024

**Effective Date:** Publication in Official Gazette

**Link:**

[chrome-](#)

[extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ibbi.gov.in/uploads/legalframework/88458173f47fbd\\_a03d775370a420f307.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://ibbi.gov.in/uploads/legalframework/88458173f47fbd_a03d775370a420f307.pdf)

IBBI vide circular dated February 15<sup>th</sup>, 2024 notified amendment in Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as follows:

1. Regulation 4D inserted that required any corporate debtor having any real estate project, the interim resolution professional or the resolution professional shall operate a separate bank account for each real estate project.
2. The resolution professional (RP) is mandated to convene a CoC meeting at least once in every thirty days, with a provision to extend the interval between meetings to a maximum of one meeting per quarter, if CoC so decides.



3. The CoC to decide the period of opening of electronic voting window with a minimum of twenty-four hours and a maximum of seven days with further increments of twenty-four hours each.
4. Regulation 31B inserted that require the insolvency professional to place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs part of insolvency resolution process costs.
5. For the explanation of the valuation methodology to the members of the CoC before the computation of estimates.
6. The fair value to be made part Page 2 of 2 of the information memorandum (IM). However, the CoC, after recording the reasons, can decide not to share such an information.
7. The amendment clarifies that after due examination, the CoC may direct the RP to invite separate plan for each project.
8. The CoC to decide for constitution of a monitoring committee for overseeing the implementation of the resolution plan.
9. The RP continues to discharge his responsibilities under the resolution process till an application for extension is being decided by the Adjudicating Authority.

### **3. Deposit and withdrawal of unclaimed dividends and / or undistributed proceeds format**

**Date of Circular:** February 22<sup>nd</sup>, 2024

**Effective Date:** February 22<sup>nd</sup>, 2024

**Link:**

[chrome-](#)

[extension://efaidnbmnnnibpcajpcgclefindmkaj/https://ibbi.gov.in/uploads/legalframework/d578543c7d3d9447faf0089802820ec2.pdf](https://efaidnbmnnnibpcajpcgclefindmkaj/https://ibbi.gov.in/uploads/legalframework/d578543c7d3d9447faf0089802820ec2.pdf)

IBBI vide circular dated February 22<sup>nd</sup>, 2024 notified form in Annexure attached to circular for the release of the amount for onward distribution to stakeholder under sub-regulation (7) of regulation 46, who claims to be entitled to any amount deposited into the Corporate Liquidation Account for withdrawal before the dissolution of the corporate debtor, the liquidator, after due verification.

#### **4. Enhancing Transparency and Stakeholder Engagement in Liquidation Process**

**Date of Circular:** February 22<sup>nd</sup>, 2024

**Effective Date:** February 22<sup>nd</sup>, 2024

**Link:**

[chrome-](#)

[extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ibbi.gov.in/uploads/legalframework/ebdbf10dbd0e11662bd6dbf2b02ca7fe.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://ibbi.gov.in/uploads/legalframework/ebdbf10dbd0e11662bd6dbf2b02ca7fe.pdf)

IBBI vide circular dated February 22<sup>nd</sup>, 2024 notified following directions under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 :

1. The liquidator shall also share the progress reports with the members of the Stakeholders' Consultation Committee (SCC) after receiving a confidential undertaking.
2. The liquidator shall submit progress reports under Regulation 15 till the filing of the final report under Regulation 45.
3. The liquidator shall seek suggestions / observations of the members of the SCC while preparing the Preliminary Report under regulation 13 and finalise the Preliminary Report after considering such suggestions / observations, and thereafter, submit it to the AA, Board and members of SCC.

# Article 1

## **Recent Income Tax decision / Legal Decision**

### **Delay of 1132 days in filing of appeals is condoned: Delhi HC**

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA VS ALISHAN STEELS PVT LTD (ITA No. 2244/Kol/2017)

#### **Facts:**

1. There is a delay of 1132 days in filing the appeal, though the explanation offered is not fully satisfactory, since this appeal has been filed under Section 260A of the Income Tax Act,
2. The revenue has raised the following substantial question of law for consideration :-  
“Whether the Hon’ble Tribunal has substantially erred in law in upholding the decision of the Learned CIT (Appeals)-9, Kolkata thereby deleting the addition of Rs.6,00,00,000/- under Section 68 of the Income Tax Act, 1961 as unexplained cash credit in the form of share capital and share premium only on the ground that no cash or cheque was actually received by the respondent assessee and the purchase of share assets and allotment of share by the assessee was under barter system ?
3. This appeal filed by the Income Tax Department is directed against the order dated 18.3.2020 passed by the Income Tax Appellate Tribunal B Bench,

#### **ITAT Kolkata held as below:**

1. After we have elaborately heard the learned Advocates for the parties we have no hesitation to hold that substantial question of law raised in this appeal has to be answered against the appellant/revenue.

2. Therefore, we exercise discretion and condone the delay in filing the appeal. The application is allowed.

CIT while exercising power U/S. 263 must record a specific finding that it is a case of no enquiry: Calcutta HC

**COMMISSIONER OF INCOME TAX, KOLKATA - XII VERSUS GOPAL SHARMA (ITA NO. 31 OF 2015)**

**Facts:**

1. Scrutiny assessment for the year under consideration was completed by an order determining the total income of the assessee at Rs. 3,19,86,520/-.

2. The CIT invoked his powers under Section 263 of Income Tax Act, alleging that the assessing officer completed the assessment in hasty manner and accepted the return of income without making necessary enquiry and verification and hence, the order was prejudicial to the interest of revenue.

3. Therefore, a show cause notice was issued to the assessee to answer few issues hinting at undervaluation of stock and the assessee submitted reply.

4. However, the CIT rejected the contention raised by the assessee and affirmed the proposal in the show cause notice and directed the assessing officer to make necessary investigation on the said issues and pass orders as per law.

5. Aggrieved by this, the assessee preferred appeal before the tribunal which allowed the same. Hence, the matter was before the High Court.



**Hon Calcutta HC held as below:**

1. We have noted as to the exercise conducted by the assessing officer in the scrutiny assessment which was examined by the tribunal and found that the due enquiry conducted by the assessing officer and after perusal of the documents, stock register etc. the assessment was completed.
2. The tribunal also re-appreciated the factual position and found that the CIT while exercising power under Section 263 of the Act has not recorded a specific finding that it is as case of no enquiry by the assessing officer rather the observation was there could be a possibility of understatement of the closing stock.
3. The appeal by the Revenue is dismissed

**Assessment u/s 153A - Addition of cash deposits in bank account and savings bank account interest - additions based on the bank account statement furnished by the assessee:**

**ITAT DELHI, SH. RAJESH MANGLA, RRA TAXINDIA VERSUS DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-II, FARIDABAD, HARYANA-No.- ITA Nos. 2811, 2813 & 2814/DEL/2018, ITA Nos.2994, 2996 & 2997/DEL/2018**

Dated.- February 21, 2024

We have heard both the parties and perused the material available on record. As could be seen from the bank account statement, in the year under consideration, the assessee had deposited cash amounting to Rs. 30,95,000/-, whereas, he had total withdrawals of Rs. 25,50,000

The consistent stand taken by the assessee is to the effect that cash deposits were made out of cash withdrawals. As can be seen from the materials on record, on 03.04.2010, the assessee withdrew cash of Rs. 7,50,000/-, whereas, he deposited cash of Rs. 3,00,000/- on 25.05.2010. Similarly, he withdrew cash of Rs. 7,50,000/- on 26.06.2010 and 26.08.2010 and deposited cash aggregating Rs. 4,45,000/- on 31.08.2010 and 21.10.2010. Further, cash aggregating to Rs. 10,50,000/- was withdrawn on 06.12.2010 and 18.01.2011. Whereas, cash deposits of Rs. 6,50,000/- was made on 02.02.2011. As can be seen from the aforesaid facts, the proximity between cash withdrawal and deposit is quite close. Further, the Departmental Authorities have not brought any material on record to establish that the cash withdrawals were utilized for any other purpose and not available with the assessee for re-deposit. Thus, applying the ratio laid down in the judicial precedents cited before us, we hold that the source of cash deposit has been explained by the assessee. Accordingly, we delete the addition of Rs. 13,50,000/-

Cases relied upon-

- i. Jaya Aggarwal vs ITO [2018] 254 taxman 398 (Del)
- ii. Moongipa Investment Limited vs ITO [2012] 70 DTR 132
- iii. ACIT vs Baldev Raj Charla & Ors. [2009] 18 DTR 413

**Notice of reassessment proceedings issued on a wrong E-mail ID - primary and secondary email ID - there exists two email ID of the petitioner-Company - what is the registered e-mail address of the petitioner as on 07.03.2023 i.e the date of issuance of notice under Section 148A (b) of the Act, 1961**

**ALLAHABAD HIGH COURT:**

**GRS HOTEL PVT. LTD. LKO. THRU. DIRECTOR SHRI GANGA CHARAN RAJPUT VERSUS UNION OF INDIA THRU. ITS SECY. (REVENUE) MINISTRY OF FINANCE GOVT. OF INDIA, NEW DELHI AND OTHERS,.- Writ Tax No. - 228 of 2023**

**Dated.- February 27, 2024**

Reference explanation (t) of Section 144B of the Act, 1961 which defines registered email address as follows :-

"registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—

(i) the email address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(vi) any e-mail address made available by the assessee to the income-tax authority or any person authorised by such authority

From the aforesaid definition of registered e-mail address, this Court finds that there are several alternatives provided for considering any email address as a “registered e-mail address”. It has been argued by the learned counsel for the respondents that the notice under Section 148A(b) of the Act, 1961 had been sent to the petitioner on the available email ID on the portal of the Income Tax department, but the question is as to whether the said available email ID can be construed to be a registered email ID in view of the explanation (t) to Section 144B of the Act, 1961. Although it has been contended by the learned counsel for the respondents that the said e-mail address was the email ID made available by the assessee, so as to satisfy the sub-clause (vi) of the aforesaid definition, however, this Court is unable to countenance as to why the respondents without resorting to the various sub-clauses from (i) to (v) has pressed sub-clause (vi) into action. No doubt, all the sub-clauses are alternative to each other and each of them indicate independent mechanism for determination of the registered email address, but the Court cannot be oblivious to the fact that sub-clause (vi) has been inserted by the legislature as a residual provision to determine the registered email address, when the registered email address of the assessee cannot be determined by the mechanism as provided from sub-clauses (i) to (v).

Thus, if the registered email address of the assessee cannot be determined from (a) e-filing account of the addressee registered in designated portal or (b) from the last income tax return furnished, or (c) from the permanent Account number data base relating to the addressee or (d) from the official website of the Ministry of corporate affairs, etc. then only the authority may resort to any e-mail address made available by the assessee. Further, the word “available” is of significance as it records a positive action on the part of the assessee in making available the e-mail ID, so that the same may be construed as the registered email ID of the assessee.

### **Held**

For all the aforesaid reasons, the order dated 26th March, 2023 passed by the Assessing Authority under Section 148-A (d) of the Act, 1961 for the Assessment Year 2019-20 and the consequential notice dated 29th March, 2023 issued under Section 148 of the Act, 1961 for the Assessment Year 2019-20 as also the consequential proceedings undertaken subsequent thereto cannot be sustained in the eyes of law and, as such, the same are quashed and the parties are relegated to the stage of reply of notice under Section 148A(b) of the Act dated 07.03.2023.

(27) Needless to say, the petitioner-company shall have an opportunity to file a reply to the said show cause notice dated 07.03.2023 within a period of four weeks from today and for that purposes, the Assessing Officer shall provide necessary opportunity to the petitioner for uploading the response of the petitioner on the designated portal and thereafter the Assessing officer shall pass an order in terms of section 148A(d) of the Act.

(28) In view thereof, the writ petition is partly allowed, subject to the aforesaid terms and conditions. There shall be no order as to cost



## **Cases relied**

Delhi High Court in the case of Jyoti Narang Vs Income tax Officer, (Writ Petition (C) No. 9289/2023) has also set aside the penalty and demand notice on the ground that the show cause notice was issued on a wrong E-mail ID.

Developers Vs Deputy Commissioner of Income Tax Circle (Writ Petition No 1983/2022), wherein the issue before the Bombay High Court was as to whether subsequent proceedings initiated by the revenue authorities for non-compliance of notice under Section 148 under the Act would be vitiated on account of notice under Section 148 of the Act being served on the secondary email id registered with PAN instead of the registered primary email id or updated email ID filed with the last return of income

Bombay High Court in Chitra Supekar Versus Income Tax Officer, (Writ Petition No. 15580 of 2022

Delhi High Court Commissioner of Income Tax (Central-1) Vs Chetan Gupta”: 382 ITR 613

## **Startups and Interim Budget 2024**

The Interim Budget 2024 reflect the growing interest of India to emerge as manufacturing hubs for deep tech and high end emerging technologies. There is a strong realization that unless India invests and encourages the youth for greater participation in manufacturing developmental journey, the services sector will not take it to a developed nation. One of key problems of startups are the long-term and low cost fund requirement.

Let us explore the relevant takeaways for startups in this interim budget:



**A) Rs one trillion fund:**

1. One trillion fund: This fund will be created to provide support to support start ups with 50 years low or nil interest loans to fuel their growth and innovation in emerging sectors.
2. Aim is to boost research and innovation in high-tech manufacturing, such as semiconductors, electronics, drones, med-tech, space, renewable energy, green power generation.
3. The modalities and operationalization of the fund will be shortly worked out by the relevant ministry.
4. The fund will provide much needed support to private enterprises in these sectors
5. The fund will reduce dependence of the nascent startups on equity funding. In the absence of any long-term fund support, the entrepreneurs are forced to dilute significant shareholding at low value.

**B) Tax Advantage:**

6. The tax breaks for startups for any three years out of 10 years, for incorporation was expiring on 31st March, 2024. This is being extended till 31st March, 2025. Any startups incorporated till 31st March, 2025 can avail the benefits. However, the turnover limit of INR 100 cr will continue.

More clarity will come when full budget is presented in July, 2024.

Some more intricacies related to disallowances U/S 43B(h) ie payments to MSMEs:

## Introduction:

Clause (h) in Sec 43B of the Income Tax Act vide Finance Act 2023, which provides a deduction of the sum payable to Micro Enterprise or Small Enterprise ("MSME") otherwise allowable only on a payment basis.

As per this amendment, any sum payable by an assessee to MSME supplier beyond the time limit specified in section 15 of the Micro Small and Medium Enterprises Development Act, 2006 ("MSMED Act") shall be allowed as a deduction in the year in which actual payment has been made.

If a buyer is entering into an agreement with an MSME supplier, the due date of payment cannot exceed 45 days from the date of actual delivery of goods or rendering of services as the case may be. Where there is no written agreement, the due date will be the 16th day of actual delivery.

Some more important points to remember:

As per O.M. 5/2(2)/2021-E/P & G/Policy dated 02-07-2021, wholesale and retail trader are entitled for Udyam registration only for the benefit of Priority Sector Lending only. So, purchase from traders would be outside the purview of these amendments.

In case any defect in goods or deficiency in service is noticed, then an objection in writing should be made within 15 days. Date of removal of objection by the vendor should also be kept in record as counting of due date will start from this date.

In Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. (unit2) & Anr. (2003) 6 SCC 401, Hon. Supreme Court has held that the MSME Act is a special act and overrides any general act like the Arbitration Act. It further held that if the supplier on the date of transaction is not holding the registration/memorandum and is not covered under the MSME Act, it can't claim benefits with subsequent registration. Thus, status of the supplier has to be checked on the date of transaction.

As per the memorandum No. No.2(18)/2007-MSME(pol), dt. 26-08-2008, it is not only enough to obtain Udyam Registration but necessary to print the said number on the tax and other invoices and letter heads etc. along with GST number and also include a declaration to the effect of its validity similar to that of declaration under the GST law.

As per section 2(e) of MSME Act, 2006 "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called. Thus an individual carrying out a business without an office may not classify as a MSME.

## **GST Recent Updates**

### **No Penalty for movement of goods on expired e-way bill if there was no tax evasion**

- 1- ALLAHABAD HIGH COURT IN THE CASE OF Globe Panel Industries India Pvt. Ltd. V/s State of U.P. and Others.
- 2- This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the penalty order under Section 129(3) of the CGST Act.
- 3- The only discrepancy that was found at the time of Detention was that one of the E-Way Bills had expired. Apart from this discrepancy, there is no other finding with regard to intention of the petitioner to evade tax.
- 4- This Court is of the view that such a technical violation by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act.

### **Case referred/cited :**

Falguni Steels Versus State of U.P. and Others — (Allahabad)

Hindustan Herbal Cosmetics Versus State of U.P. and Others — (Allahabad)

Pepsico India Holdings Limited Lucknow Versus Commissioner of Trade Tax

Jain Shudh Vanaspati Limited Ghaziabad and Others Versus State of U.P. and Others

**Author**

**CA Mrattunjay**  
**AVP & Finance Controller**  
**OKAYA POWER GROUP (Battery Business)**



# Article 2



## **EMANCIPATING STRESSED ASSETS UNDER IBC THROUGH HR STRATEGIES**

IBC of 2016 was supposed to be a game changer as solution to the eternal problem of stressed and non performing assets. But for few successful cases like Bhushan Steel, Essar Steel, Electrosteel and Binani Cement, not much success can be showcased by the Resolution Professionals under the IBC. Even where resolution was successful, the lenders ended up with huge hair cuts.

Many of the bankruptcies invoked post IBC still await resolution with insolvency professionals only focussed on the numbers of the withering businesses - the operating cost, the revenue, the employee cost etc. Seldom any thought seems to have been given on emancipating the companies through the HRM route. Empirically speaking, by invoking the emotional commitment of employees many systemic improvement can be brought resulting in business turnaround. In fact the stressed assets are not looked into from this point of view at all.

The biggest turnaround in the country and even internationally has been of Steel Authority of India Limited(SAIL) in the year 1985-86. Since it was the first greenfield PSU, its inefficiencies were always under the protective cover of JPC(Joint Plant Committee) which would increase prices of Steel to cover losses every time, as it was authorised under administered pricing regime. These price increases always came as windfall to Tata Steel which was the only Private Sector company allowed to manufacture steel post independence and under Administered Pricing regime. The losses of SAIL used to be covered by the price increase every six months .

Had IBC been there, SAIL would have been the earliest to be sent for bankruptcy proceedings. But it was turned around through nothing but HR intervention in form of a massive Town Hall exercise - “ Priorities for Action “. This was a series of workshops to brainstorm-“what ails SAIL and the way forward”. This started when the legendary Dr V Krishnamurthy having turned around BHEL and Maruti was handed over the reins of this Public Sector behemoth already in dire straits. He first decided to stop taking doles from the government and tried to instil sense of pride amongst the employees. He also stopped the ugly practice of JPC covering the losses by increasing price of Steel . Since mostly government entities like Railways and Shipping Corporation of India used to buy its Steel , no remorse was shown by the JPC in increasing the price. By Q2 of 1986 -87 the losses of SAIL were wiped out and by Q4 it came into black. This was hundred percent HR success story. So many systemic changes were brought through the Priority for Action workshops to catapult it to much greater Heights. It could also be made possible due to the least interference from politicians and bureaucrats who hitherto used entitled for poking their noses in general in the working of PSUs . Dr Krishnamurthy was perched atop as Chairman, SAIL in the rank of Secretary to GOI which insulated the massive change management exercise by him from political interference . His close proximity to the first family of India and particularly with Rajeev Gandhi kept the politicians and bureaucrats at bay.

Immediately after his decision for not passing on the inefficiencies of SAIL to customers and making JPC dormant, he dropped a bombshell by declaring Zero Overtime. The practice of rampant OT was an universal bane for all PSU run businesses and SAIL was no exception. Against this decision, Alloy Steel Plant of Durgapur was shut down by the unions for 65 days but the decision of Zero OT survived and sustained. Similarly a plethora of wrong legacies were done away with and a new paradigm came to the fore with sharp business orientation.

In the year 1985-86, without steel price hike, SAIL's profit climbed to a record 150 Cr. The turnaround was set in motion and by the year 2005-06 the PAT of 8800 cr elevated SAIL as third most profitable PSU after ONGC and IOC. This amount was more than combined profits of some of the top IT firms that year. By putting robust HR practices in place, SAIL has survived the downturn twice albeit through stimulus of restructuring of assets once.

Having worked in SAIL for 22 years including during the great era of Krishnamurthy, I firmly believe that the insolvency professionals and the COC should give a serious look-in into the HR strategies proven so successful in case of SAIL. There are similar success stories the IPs and COC can look into. One being the great improvement journey of Tata Steel which scripted historic performance hike in the last one decade. A score of HR and OD interventions and process optimisations on the bedrock of its ethical and humane business and social values are behind the success of Tata Steel.

The Road Map is there . You only need to look into this very important aspect and learn from the successes and failures of others. Unfortunately whenever businesses cut corners, the immediate victims are the people processes. Lay offs; pink slips ; withholding of increments;wage cut or cancelling trainings are the most favourite strategies adopted universally. This hardly makes any business or cost sense since the manpower cost in manufacturing setups is in the range of 3-6% only. You cannot make it zero, but you certainly will be demoralizing the manpower and the output would further decline.

The Chemistry of people should always be given precedence over the Arithmetic of business. This will result in enhanced arithmetic finally. A serious Paradigm shift is thus required to be taken for adopting HRM driven solutions.

It is my firm belief that lot can be done through HRM route to take these beleaguered companies if not towards turn around but at least to an economic fluidity which can get higher bids and thus lower hair cuts. The Bankers and CAs for once need to come out of their cocoon of numbers and look at the morale and capability improvement of people .

The IPs should be allowed at tiny budget of 0.01% of the debts they seek to recover. This budget be used for getting some HR insights(from HR Experts-not from the big Consulting firms)which can help replicate and deploy various HR driven processes. This is very likely to result in higher emotional commitment from employees leading the businesses to pay back to the lenders.

Will the RBI and bankers ever listen???

**AUTHOR:**

**Praveen K Sinha**

**Retd Chief(HRM),Tata Steel**

# Article 3



## **GST UPDATES AND AMENDMENTS**

### **Payments, winnings in digital assets, casino, online gaming to face GST**

Payments received and winnings paid in virtual digital assets (VDAs) by casinos and online gaming companies are likely to be brought under goods and services tax when the GST Council clarifies the rules on August 2, officials said. The move is aimed at bringing both overseas and domestic online gaming companies that accept and make payment in VDAs such as cryptocurrency under GST, they said. The GST Council, which approved a 28% levy on July 11 on online gaming, casinos and horse racing on full face value, will meet virtually on August 2 to clarify the definition of online gaming. It is likely to provide a clear definition of “online gaming” and “online money gaming” by amendment in the CGST Act to rule out any future discrepancy, officials said. According to them, online money gaming is expected to be defined as online games where players pay, deposit or receive money or money's worth, including virtual digital assets, in the expectation of winning money. This will also cover any experience or any kind given to players, which will be equivalent to the monetary value of that gift or experience offered to player as “prize”. This will also define GST for casinos and online casinos, which transact in virtual digital assets.

### **E- invoicing mandatory for businesses with aggregate turnover of Rs 5 crore from August 1**

Starting August 1, businesses with aggregate turnover of Rs 5 crore or more will have to mandatorily opt for e-invoicing under the Goods and Services Tax. In May, the CBIC had notified the lower threshold that would come into effect from August 1. The move is aimed at boosting collections and improving compliance under the GST, which has been a focus area of tax authorities. The current threshold for businesses to mandatorily register for e-invoicing is Rs 10 crore but the tax department has been gradually reducing it to bring more businesses under the system. Experts noted that many mid-sized and expanding small businesses will be brought under the e-invoicing system now. “By implementing e-invoicing, the government aims to combat tax evasion and facilitate real-time invoice matching between clients and vendors. This step ensures transparency and enhances compliance by modernising the tax collection system contributing to a broader GST base,” said Srivatsan Sridhar, Founder and CEO, Skydo.

### **Mastermind in generating fake invoices, bills apprehended in Hyderabad by Visakhapatnam GST officials**

Officers of the Directorate General of GST Intelligence (DGGI), Visakhapatnam Zonal Unit, apprehended a Hyderabad resident, who is said to be the mastermind in generating invoices/bills valued at Rs.108.9 crore and passed on fake Input Tax Credit (ITC) of Rs.19.60 crore, using business entities operated by him, without the actual supply of goods or services. These entities are used to facilitate passing of fraudulent ITC by issuing fake GST invoices to multiple business firms/companies located in various States

The accused along with their acquaintances used stolen identities such as PAN, Aadhaar and bank accounts of innocent people on the pretext of getting bank loans etc. and created fake business entities with the sole purpose of passing on fraudulent ITC, there by defrauding the exchequer to the tune of Rs.19.60 crore. The accused was arrested under Section 69 of CGST Act, 2017, and was produced before the Special Judge for Economic Offences, Visakhapatnam. The court has remanded the accused to judicial custody for 14 days. Further investigation is in progress.

### **Govt to set up online audit mechanism under GST, says Parliamentary panel**

The Union government will set up an online audit mechanism under the Goods and Services Tax (GST) in order to streamline the process, as suggested by a parliamentary panel in its report on ‘anti-competitive practices by the big tech companies’.

“The ministry has accepted the recommendation concerning the establishment of an online audit mechanism. The committee would expect the ministry to earnestly pursue this issue with the objective of further streamlining the GST audit process. The committee desires to be apprised of the results of this undertaking at the time of furnishing the final action taken statement,” the standing committee on finance said in its report.

### **INR 557 Crore GST Fraud Unearthed In UP, 3 Arrested**

GST officers have unearthed two fake billing rackets involving 246 shell/fake entities involved in fraudulently passing input tax credit (ITC) of INR 557 crore and arrested three key operatives.

Forensic examination of seized laptops and mobile phones of the two masterminds led to the retrieval of ledgers, invoices, e-way bills, etc. Apart from this, WhatsApp chats/ voice messages evidencing the transactions of fake GST bills and illegal cash flow have also been retrieved.

## **Case Law**

### **2023(06)LCX0043**

#### **Shree Ram Agrotech**

The writ is filed challenging the Summary Order in form GST DRC-07 whereby tax, interest and penalty under the Jharkhand GST Act has been imposed upon the Petitioner. The Petitioner has additionally challenged the consequential recovery notice, whereby he was directed to pay the outstanding liability of Rs.8,04,134/- based on the Summary Order in form GST DRC-07. The specific case of the petitioner is that it had neither received DRC-01; nor any detailed show-cause notice and above all, no adjudication order has been passed in the instant case and only on the basis DRC-07, which is summary of the Order, the Respondents are not entitled for recovery as it is against the mandatory provisions of the JGST Act. From the records, it is crystal clear that no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 has been served by the Respondents upon the Petitioner towards imposition of the tax, interest and penalty. The contents of the Summary show cause in Form GST DRC-01, dated 20.12.2018, does not provide the specific alleged violations by the Petitioner and also does not specifically give the opportunity to the Petitioner to rebut the allegations of the Respondent Department. Additionally, it is an admitted fact that no detailed adjudication order, as required under Section 73 (9) of the JGST Act, 2017, has been passed by the Respondents. Furthermore, admittedly; no such adjudication order is available on the records of the Respondents. It further emerges from perusal of the appellate order that the Appellate authority has not considered any of the grounds taken by the petitioner herein (Annexure to Form GST APL-01) and dismissed the appeal. Thus, the Summary order and Appellate Order are hereby, quashed and set aside. However, the Respondent department would be at liberty to issue fresh SCN to the Petitioner, if so advised, and proceed in the matter strictly following the provisions of JGST Act and its Rules. Petition stands allowed.

## **2023(06)LCX0028**

### **Umbar Marketing Private Limited**

Respondent has imported Non-Texturised Polyester Lining Fabric classifying the same under the Chapter Heading No.5903. The SIB intercepted the impugned goods and found that the imported goods were 'Umbrella Panel Fabrics' classifiable under Chapter Heading 5407. Accordingly, the goods were seized and later provisionally released on execution of bond and Bank Guarantee. SCN was issued proposing to classify the same under CTH 5407 and also demanding differential duty and penalties. The importer filed a Writ Petition at Kolkata High Court, court disposed the Writ Petition by directing the goods, or samples drawn there from, to be tested by the Textiles Committee Laboratory. Same was accepted by department and test was done. Ld Adjudicating Authority, Commissioner of Customs, passed an order holding that the subject goods have fulfilled the criteria as mentioned in Chapter Note 2 (a) to Chapter 59.03 and also they do not fall under the exception clauses (1) to (6) in general. Aggrieved against the order passed by Commissioner, the Revenue is in Appeal before tribunal.

Department contended that the Principal condition for the goods to be classified under Heading 5903 is that the goods have to be impregnated, coated, covered or laminated with plastics. The test report of IIT, Delhi mentions that four of the samples (other than Sample E) were coated with "Aluminium Paste". The test report of RLTC states that the "-Silver colour coating is applied on basic fabric as visible to naked eyes. However, it cannot be ascertained that this type coating is used for waterproofing or anti UV purpose. These qualities of the impugned goods are not in dispute. Consequently, the impugned goods cannot be classified under Heading 5903. Hence, the Department contended that the Commissioner has erred in ignoring this primary condition and erroneously classified the impugned goods under the Heading 5903.



Tribunal contended that in the instant case, the Test Reports of RLTC and IIT Delhi clearly indicates that the impugned fabrics are not coated with plastics. They find merit in the argument of the Department. The Department has sought the classification of the impugned goods under the Chapter Heading 5407 on the ground that the fabrics are utilized mainly as ‘Umbrella Cloth’. In this regard, the Counsel for the Respondent argued that end use of a product cannot be the criteria for deciding classification of the goods, to which tribunal agrees. Thus, the goods are not classifiable under CTH 54071094.

**Crux:** Appeal regarding classification of Non-Texturised Polyester Lining Fabric under CTH 54071094 is rejected.

### **2023(06)LCX0036**

#### **Bharat Parihar**

The petition challenges provisional attachment of bank account of the Petitioner with Yes Bank, under Section 83 of the CGST Act, 2017 and further communication dated 19th April 2023, whereby the provisional attachment made on 21st April 2022 is retained under Section 83 of the CGST Act. At the outset, the Respondents have raised a preliminary ground that the order disposing off objections under Rule 159(5) of CGST Rules attaching the bank account provisionally is an appealable order, This objection is no more res integra and concluded by the decision of the Supreme Court in the case of Radha Krishan Industries, petition needs to be entertained. Section 83(2) provides that provisional attachment made under sub-section (1) of Section 83 shall cease to have effect after the expiry of a period of “one year” from the date of the order made under sub-section (1)



In the instant case, the provisional attachment order was made on 21st April 2022 and period of one year from the said date expired on 21st April 2023. No fresh order is found to be passed by the Respondents to attach the bank account on 19th April 2023. Mere notings in the file of the concerned Officer cannot constitute an order without a formal order as the law may mandate being passed and most importantly such order being communicated to the affected person, whose bank account is attached. Respondents have also not disputed that letter of 19th April 2023 is only a communication to the bank, to retain provisional attachment of the account. Thus, it can never be a fresh order under Section 83(1) provisionally attaching the Petitioner's bank account. Thus, held that the communication dated 21st April 2022 provisionally attaching the Petitioner's bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. The extension of the provisional attachment by communication dated 19th April 2023 is hereby quashed and set aside. Petition stands allowed.

### **2023(05)LCX0052**

#### **Sri Saraswathi Saw Mills**

The writ is filed against the order of Commissioner (Appeals) who dismissed the appeals of the Department as time barred. Revenue argues that Commissioner (Appeals) has computed the period of three months from the date of the Order-in-Original instead of the date of communication of the order, if that have been so there would be no delay in passing the review order. Similar appeals had come up for hearing before the Tribunal wherein the Commissioner (Appeals) had dismissed appeals filed by Department on the ground of being time barred. In those cases also it was urged by the Department that the seal impressed on the Order-in-Original by the Reviewing Cell would establish that the order was received by the Reviewing Authority on a much later date.

The Tribunal after considering the submissions made by the learned AR and perusing the records observed that there was no reason to disbelieve, the observation made by the Commissioner (Appeals) that there was no evidence available before him as to the date on which the Reviewing Authority received the order. From the foregoing, Court found no ground to take a different view. The impugned orders passed by the Commissioner (Appeals) are sustained.

### **Advance Ruling**

### **2023(06)LCX0038(AAR)**

### **Baba Lokenath Flour Mills Private Limited**

#### **Issue:**

1. What is the value of supply of services provided by the applicant Company to the State Government?
2. What is the rate of tax applicable on the value of supply? What components are to be included in calculation of the % of value of goods in the total value of composite supply for the purpose of Notification No. 2/2018- Central Tax (Rate)?

#### **CruX:**

The value of supply shall be the consideration in money as well as non-cash consideration. This composite supply of services by way of milling of food grains into flour (atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry serial no. 3A of the Notification No. 12/2017-CT(R), as amended, since the value of goods involved in such composite supply does not exceed 25% of the value of supply.

**2023(06)LCX0018****Penuel Nexus Pvt. Ltd**

The writ is filed against the order rejecting the petitioner's appeal for revocation of GST on the ground that appeal was filed after 209 days, which is undoubtedly beyond the statutory period fixed under Section 107 (4) of the Act. CGST Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted. On an appreciation of the language of Section 107(4) and settled judgments, the Court is of the view that there is no illegality in the action of the 1st respondent in rejecting the appeal as time-barred. The writ petition is meritless and is consequentially dismissed.

**2023(04)LCX0020****Creative Newtech Ltd.**

The writ is filed against the order passed by CUSTOMS APPEAL NO: 86862 OF 2019 challenging the adoption of rate of duty corresponding to tariff item 8525 8090 of First Schedule to Customs Tariff Act, 1975, with consequent denial of notification no. 12/2012-Cus dated 17th March 2012 (at serial no 428A) and notification no 50/2017-Cus dated 30th June 2017 (at serial no 502), for reassessment of 'cameras' to duties of customs.

Revenue has made several submissions on the technical specification of ‘digital still image video camera’ specified in the notification claimed in the bill of entry for entitlement to ‘duty-free’ import and which, being more restricted than the description corresponding to the classification claimed in the bill of entry, is not relevant to the denial of exemption by disturbing the very same classification as well as his opinion on the deficiencies in the order of the Tribunal cited by Appellant in support of the classification claimed by them. Positing another ground in support of the adopted classification, Revenue submits that ‘statutory definition’ should be of the foremost consideration but his citing of the Explanation contained below the description ‘digital still image video camera’ can only be of subsidiary consideration upon acceptance that the tariff item corresponding to the said description in the notification is applicable to the impugned goods. The eligibility for the notification is, first and foremost, claim of classification within the description corresponding to tariff item 8525 8020 of First Schedule to Customs Tariff Act, 1975 and, thereafter, to conformity with ‘digital still image video camera’ describing the article to which the exemption may be allowed. There is nothing on record to indicate that the imported goods do not conform to the description that entitles them to the benefit of exemption in the impugned notification. The confirmation of demand under section 28 of Customs Act, 1962, therefore, has no basis in law. The confiscation under section 111(m) of Customs Act, 1962 in the impugned order is vacated along with penalties.

### **Advance Ruling**

**2023(04)LCX0156(AAR)**

**Y S Hitech Secure Print Private Limited**

### **Issue:**

Is the supply of printing services like question papers, OMR sheets, answer sheets, marks card etc. to an educational institution exempt from GST?

**CruX:**

Supply of Printing of test papers/question papers, OMR sheets, Certificates, Marks Memo, MICR cheque books etc. using his own paper and ink to educational institutions is a composite supply, of which Printing services is the principal supply which makes the supply exempt from payment of GST as per Sr. No. 66(b)(iv) of notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017.

**2023(06)LCX0022**

**Sri Mutharamman Traders**

Challenging the assessment order, in respect of AY 2020-21 and 2021-22, the petitioner has approached the first appellate authority by way of statutory appeals. The limitation for filing of such appeals is 90 days from date of receipt of the order and a further period of 30 days is granted within which time, the assessee concerned can seek condonation of delay.

In the present case, the appeals have, admittedly, been filed within 10 days after the statutory period of 120 days. Thus, there is nothing untoward in the return of the appeals citing delay beyond the condonable period. Thus, an explanation has been given to the effect that the petitioner was unaware of the orders having been issued as it had been sent to the Consultant's email id and also to the effect that the sole proprietor was unwell at the relevant point in time. Hence, while rejecting the challenge to the orders of assessment, court accede to the request for condonation of delay of 10 days. Let the petitioner represent the appeal papers within a period of one (1) week from date of receipt of a copy of this order. If the appeal papers are so re-presented as aforesaid, the appellate authority shall entertain the same holding them be maintainable, hear the appeals and dispose the same in accordance with law.

**CruX:** Writ petition stands disposed of.



## **2023(04)LCX0017**

### **India Transport & Travel Private Limited**

The writ is filed against the order passed by Ld. Commissioner of Customs (Airport & ACC), West Bengal, Kolkata, whereby he has ordered for continuation of the suspension for violation of Regulation 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 and initiated further proceeding under Regulation 17(1) of CBLR, 2018. The Appellant stated that the impugned order passed under Regulation 16(2) of CBLR, 2018 was not warranted as there was no necessity of initiating 'immediate action' under Regulation 16(1) of CBLR 2018. Regulation 16(1) provides for suspension of license of the Customs Broker where an inquiry against them is pending or contemplated. It is required only in 'appropriate cases' where 'immediate action' is necessary. Thus, suspension of CB license is not a mandatory requirement in all cases. Suspension of CB license is resorted only in cases where 'immediate action' is warranted. Reliance is placed on the decision of the Hon'ble Calcutta High Court's in the case of Rubee Air Freight Ltd. v. CC (Airport & Administration), Kolkata wherein it has been held that immediate suspension of the license of Customs Broker is not warranted when the goods were found to be 'restricted goods' on examination. It is observed that the goods in question have been received in the Port area on 23.02.22 and the Customs Broker has filed the warehousing Bill of Entry on 31.05.22. The Customs Broker was issued the CB Order 19.12.22 and the same was confirmed on 10.01.23. It is observed that after filing of the warehousing BOE by the Customs Broker, the SIIB (Port) has initiated the investigation against the imported consignment and issued a SCN dated 19.02.2022. CB have opted for first check on their own and fully cooperated with the investigation by the SIIB (Port). It is noticed that the investigation in the case has already completed and there is no urgent necessity warranting restriction on the Customs Broker. Accordingly, the suspension of the licence is not warranted in this case, at this stage, after completion of the investigation and issue of SCN. Accordingly, the impugned order suspending the licence is set aside.



**2023(06)LCX0025**

**Stallion Energy Private Limited**

The writ is filed under Article 226 praying to issue a Writ of Certiorari quashing and setting aside the provisions attachment proceedings under Section 83 of the Act by the Assistant Commissioner and be further pleased to direct the Respondents to return, repay and refund to the petitioner the amounts as prayed for by them in Letter dated 1.7.2022. It is the case of the petitioner that as per the provisions contained in section 107 of the Act, the petitioner is required to pre-deposit 10% of the amount of tax i.e. Rs.3,55,334/-. However, the respondents have recovered an amount of Rs.46 lakh and therefore it is prayed that the respondents be directed to refund the remaining amount of Rs.42,44,664/- to the petitioner. It is observed that such contention is misconceived in view of the provisions contained in Section 73(9) read with Sections 78 and 107 of the Act. If the appeal filed by the petitioner is allowed by the Appellate Authority, it is always open for the petitioner to make such request before the Appellate Authority that direction be issued to the respondents to refund the amount. However, the present petition is misconceived and is accordingly, dismissed.

**2023(05)LCX0033**

**Aurora Fine Arts**

The writ is filed by revenue against the order of adjudicating authority, who held that the mistake committed by the respondent while declaring the value of goods is bonafide mistake and the respondent has been paid the duty and interest, therefore, no penal action is required against the respondent. It is noted that total duty credit given in the EPCG Authorization is R.54,65,880/- and the total duty on the said goods is almost the same

It may be a bonafide mistake of declaring value correctly while filing the Bill of Entry and later on when the mistake was found by the respondents themselves at the time of calculation of duty, the respondents paid the differential duty along with interest. In that circumstances, Court agree with the observations of the adjudicating authority that it is a bonafide mistake of the respondent and no penalty action is required against the respondent. The appeal filed by the Revenue is dismissed.

**2023(06)LCX0005**

**Marjit Basumatary**

The writ is filed to assail the legality and validity of the SCN as well as the letter both issued by the Deputy Director, Directorate of GST & Service Tax Intelligence. The demand of GST on the petitioner is not only based on levy of GST on mining lease and/or royalty paid to the State Government which is the subject matter of decision by a larger Bench of the Supreme Court of India, but the demand is also based on other claims. Therefore, before issuance of notice in the matter, the Court is inclined to examine the records relating to SCN for the purpose of examining whether “reasons to believe” exists or it is a mere pretence. Therefore, the respondent no. 4 is directed to produce the records relating to show-cause notice dated 16.09.2022. List on 19.06.2023.

**2023(04)LCX0030**

**Mohammed Ali Jinnah**

The appeal is filed by the department against the order passed by the Commissioner (Appeals) who set aside the confiscation of goods (gold) and also the penalties imposed by the adjudicating authority.

Department submitted that the Commissioner (Appeals) has completely ignored the evidence available on record of the case. In the voluntary statement dated 23.1.2017 and 24.1.2017, the respondent has admitted his involvement in the smuggling. Further, the respondent has not produced any valid document to show legal possession / import of the smuggled crude gold bars and has admitted the activity of smuggling for monetary consideration. The first issue that requires to be analyzed is whether the gold is of foreign origin. Admittedly, the gold does not have any foreign markings. It is the case of department that the gold assayer Sh. G.K. Shankar has issued certificate that the purity of the gold is 24 karat and of 999.9%. However, the said document is not made part of relied upon documents for the purpose of issuing SCN. This document which is not made part of RUD and of which a copy has not been served to the respondent, when produced at the fag end of proceedings cannot be viewed without suspicion. It merely says 24 carat. It does not mention the method adopted to test the purity. Thus, the certificate of the assayer produced by the learned AR cannot be accepted in evidence.

Further, the gold was seized from the respondent at a public place which is a bus stand. At the time of interception, the respondent did not produce any valid documents as to how he has procured the gold. It is alleged that the respondent deposed that the gold was handed over to him by Murugan who said that it was smuggled from Sri Lanka and asked the respondent to handover to Shri Batcha @ Pitchai, the department has not been able to establish any of this.

The respondent has put forward the contention that the seized gold belongs to him and that he had procured it using his earning and the gold jewellery of other members of the family. The department has not been able to adduce any evidence to disprove these contentions. It is thus held that the view arrived by the Commissioner (Appeals) is legal and proper and does not require any interference. Appeal dismissed.

**Author**

**CA Mrattunjay**  
**AVP & Finance Controller**  
**OKAYA POWER GROUP (Battery Business)**



# Case Laws

## **CASE LAWS**

**Swami Goverdhan Rangachariji & Ors. Vs. M/s. A.J. Printers** : The Supreme Court ruled in favor of the landlord in a tenancy dispute governed by the Delhi Rent Control Act, 1995, instructing an eighty-two-year-old tenant to vacate the premises by February 28, 2025. Upholding the ejectment order, the Supreme Court emphasized the importance of honoring contractual obligations and complying with legal directives. This case underscores the complexities of tenancy disputes and underscores the importance of seeking legal remedies for resolution.

**Rajesh Viren Shah Vs. Redington (India) Ltd.** : The Supreme Court ruled that a director who had resigned before the issuance of a bounced cheque cannot be prosecuted under Sections 138 and 141 of the Negotiable Instruments Act. The court noted that the director had resigned in accordance with the Companies Act, 1956, and the resignation was properly recorded and accepted. It emphasized that since the resignation occurred prior to the issuance of the cheques in question, the director could not be held liable for the company's actions at that time. Additionally, the court observed that the complainant failed to present evidence linking the director to the alleged crime, and Form-32 confirmed the director's non-involvement in issuing the cheques. Consequently, the court allowed the appeal and dismissed the prosecution against the director.



**Venkataraman Krishnamurthy and Anr. Vs. Lodha Crown Buildmart Pvt. Ltd. :** The Supreme Court, in instructing a builder to reimburse purchasers for failing to provide possession of apartments by the agreed-upon date, stated that the NCDRC (National Consumer Disputes Redressal Commission) does not have the authority to alter the terms and conditions of an agreement. The two-Judge Bench comprising Justice Aniruddha Bose and Justice Sanjay Kumar held, “it was not open to the NCDRC to apply its own standards and conclude that, though there was delay in handing over possession of the apartment, such delay was not unreasonable enough to warrant cancellation of the Agreement. It was not for the NCDRC to rewrite the terms and conditions of the contract between the parties and apply its own subjective criteria to determine the course of action to be adopted by either of them.”

**Anun Dhawan & Ors. Vs. Union of India & Ors. :** The Supreme Court rejected the petition calling for the enforcement of Community Kitchens across States and Union Territories, reiterating its inability to assess the suitability or appropriateness of a policy. The petition, filed by social activists, urged the Court to intervene and instruct the Central and State governments to devise schemes for Community Kitchens to address hunger, malnutrition, and deaths due to starvation. The Court clarified that while the Constitution doesn't explicitly mention the Right to Food, Article 21 guarantees the Right to life with dignity, including access to food and essential needs. The Court observed “ *It is well settled that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy which the executive is entitled to formulate. The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review.*”

**Amit Kumar Kachhap Vs Sangeeta Toppo :** The Jharkhand High Court held that if a wife decides to reside separately from her husband without any valid justification, she is not eligible for maintenance under Section 125 (4) of the Code of Criminal Procedure, 1973. The Judge emphasized *“In view of the overall evidence adduced on behalf of both the parties, it is found that the respondent-applicant has been residing aloof from the husband without any reasonable cause. Accordingly, this point of determination is decided in favour of the petitioner-husband and against the opposite party-wife. In consequence thereof, in view of - 10 - Section 125 (4) of the Code of Criminal Procedure, 1973 she is not entitled to any amount of maintenance”*.

**Farhana Vs. State of Uttar Pradesh & Ors. :** The Supreme Court held that in prosecuting individuals under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, it is essential to establish a clear connection between the accused and offenses falling under anti-social activities as defined in Section 2(b) of the Act. Without such a connection, the prosecution under the Act lacks justification and amounts to an abuse of court process. Therefore, when framing charges under the Gangsters Act, it is imperative for the prosecution to explicitly state that the accused are being prosecuted for offenses covered by anti-social activities as defined under Section 2(b) of the Act.

# Compliance Checklist



**COMPLIANCE CALENDAR FOR MARCH 2024**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|-----|-----|-----|-----|-----|-----|
|     |     |     |     | 1   | 2   | 3   |
| 4   | 5   | 6   | 7   | 8   | 9   | 10  |
| 11  | 12  | 13  | 14  | 15  | 16  | 17  |
| 18  | 19  | 20  | 21  | 22  | 23  | 24  |
| 25  | 26  | 27  | 28  | 29  | 30  | 31  |

| <b>Tax Related Compliance</b>  |   |
|--------------------------------|---|
|                                | GSTR-1 Return (Monthly)   |
|                                | GSTR-3B Return (Monthly)  |
|                                | GSTR-5  |
|                                | Professional Tax (PT) on Salaries for February 2024   |
|                                | GSTR-6  |
|                                | Due date for deposit of Tax deducted/collected for the month of February 2024                       |
|                                | Advance Tax Payment for Jan to Mar 2024   |
| <b>FEMA Related Compliance</b> |   |
|                                | Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA |
| <b>RBI Related Compliances</b> |   |
|                                | Monthly return (NBS-6) on exposure to capital market  |
|                                | Monthly statement of short-term dynamic liquidity in Form ALM-I                                     |

**Economic, Industrial & Labour Law Related Compliance**

Monthly payment of PF (Non-Corporate)

File monthly return of employees entitled for membership of Insurance Fund (Form No.2 (IF))

File Monthly Return (Form No.5) for employees leaving / joining during the Previous Month

File monthly Return for members of Insurance Fund leaving service during the previous month (Form No.3 (IF))

File monthly return of members joining service during the previous month (Form No. F4(PS))

PF/ ESIC Payment for the month of Feb 2024.

**Ministry of Corporate Affairs**

Filing of CSR 2 for FY 2022-2023



## Professional tax Due Dates

| S.L | State          | Due Date                        |
|-----|----------------|---------------------------------|
| 1   | Andhra Pradesh | 10 <sup>th</sup> of every month |
| 2   | Assam          | 28 <sup>th</sup> of every month |
| 3   | Gujarat        | 15 <sup>th</sup> of every month |
| 4   | Karnataka      | 20 <sup>th</sup> of every month |
| 5   | Madhya Pradesh | 10 <sup>th</sup> of every month |
| 6   | Manipur        | 30 <sup>th</sup> March          |
| 7   | Meghalaya      | 28 <sup>th</sup> of every month |
| 8   | Tamil Nadu     | 31 <sup>st</sup> March          |

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