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CHIEF EDITOR MESSAGE

It is my pleasure to present before you the first issue of "AIFTP Indirect Tax and Corporate Law Journal". This Journal would cover the Amendments, Notification, Judicial Decisions and updates about **GST, Company Law, RERA, NCLT/IBC, ESI/PF/Labor Laws, FEMA, Others laws.**

There was a consistent demand since last many years of all the Tax Professionals regarding a dedicated Journal on Indirect Tax and Corporate Law. The National President Dr. Ashok Saraf took a decision that it is the need and demand of the Members and we should start a new journal catering to Indirect Tax and Corporate Laws. He said that we should start the journal without any delay and because of his pursuance and support we are able to workout the modalities and release the journal in February, 2019 to be issued monthly later on. It is important that this year the Journal would be free to all Members and will be sent in hard copy if the Members opt for hard copy at the link provided on the website of AIFTP i.e. www.aiftponline.org. The journal will also be circulated in soft copy and will also be uploaded on the website of the AIFTP.

The task given to me to conceptualize the journal and release it in the month of Feb., 2019 itself was a hard task as it was announced during the visit to Bangkok of AIFTP in the first week of February, 2019 itself. However request was made to the paper contributors, my editorial team and all and because of the hard work and efforts of the team we are able to release the journal. The journal is unique in itself as in addition to the Indirect tax laws it also cover Corporate Laws and later on we will be adding more features including query and answers, recent updates etc. to it. My request to all Members to support the journal by sending their updates, judicial decisions, articles etc. for publication in the Journal. I also request all the Members to send advertisement for the journal to make it self sufficient as we are circulating it free of cost.

AIFTP is organization which is marching ahead with full vigor and under the dynamic leadership of Dr. Ashok Saraf and his team taking new decisions and working hard to achieve new heights in the working of AIFTP. The start of the new journal at the short notice and taking a conscious decision not to charge any amount for it and circulating it free of cost to all Members who opt for the hard copy is remarkable.

We are confident that you will find this journal useful and will be benefited by it. We request your suggestions for further improvement.

PANKAJ GHIYA
Chief Editor

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PRESIDENT'S MESSAGE

The new monthly Journal of AIFTP on Indirect Tax & Corporate Laws is being launched with this issue. This Journal is the fulfilment of the wishes of the Members of the AIFTP which wanted more focus on Indirect Tax & Corporate Laws. Needless to say that the GST and corporate laws are the new fields for the professionals as there are consistent changes and amendments in the law and procedure along with rate of tax and classification of commodities. Continuous update and education is must and it was required from AIFTP for a focus led journal on these subjects.

I had entrusted the responsibility to Mr. Pankaj Ghiya for this journal and within a short time we are launching the inaugural issue of the Journal. The journal is covering the subjects namely **GST, Company Law, RERA, NCLT/IBC, ESI/PF/Labor Laws, FEMA, Others laws.** It is also covering time lines and recent amendments and judicial decisions along with article on the relevant topics by top professionals in the Country.

The journal would be circulated free of cost in hard copy to the Members of AIFTP who opt for the hard copy by clicking the link on the website of AIFTP i.e. www.aiftponline.org. The journal would also be circulated in soft copy through email and WhatsApp to all Members.

This year we had planned for the activities of AIFTP in advance and continues working is going on. After the Guwahati Convention we had National Tax Conference at Aurangabad and the next National Tax Conference would be at Ranchi in the month of April. In the meantime we had Mini Study Tour to Bangkok. The foreign tour of AIFTP would be in the month of August to Eastern Europe covering Prague, Budapest, Bratislava, Vienna, Salzburg and Munich. The tour would start in the last week of August, 2019 and the complete details would be available shortly. Members interested in the tour should opt for it at the earliest as there are limited seats.

The Members Directory published last year is also available at the Head Office and Members interested in it can get it by courier. Members are also requested to update their data with photograph on the website of AIFTP.

The new Journal is an effort by this team to fulfill the demand of the Members on the continued education and updation. Suggestions are invited for further improvement and members are also requested to attend the forthcoming National Tax Conference in large numbers.

DR. ASHOK SARAF
National President, AIFTP

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INPUT TAX CREDIT UNDER GST

Shri M.L. Patodi
Advocate,
Kota

1. **Claim of ITC under GST** :
   A registered taxpayer is entitled to claim input tax credit of taxes paid by him on inward supplies. For the purpose of availing such credit, the taxpayer needs to fulfil certain conditions. If a taxpayer becomes entitled to claim the ITC for the first time, he is required to file GST ITC-01 on GST portal.

2. **Conditions for claiming ITC by Registered Person:**
   A taxable person can claim the credit of tax paid on supply of goods or services if following conditions are satisfied.

3. **Recipient has valid tax invoice:**
   The recipient of ITC can claim the ITC only if he is in possession of a valid tax invoice or debit note issued by a registered supplier. The recipient can take the input tax credit against any invoice or debit note on or before the due date of furnishing of the return for the month of September after the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return (31st December of next financial year), whichever is *earlier*.

   The ITC in relation to invoices issued by the supplier during the financial year 2017-18 can be availed by the recipient till the due date for furnishing of Form GSTR-3B for the month of March 2019.

4. **Goods or Services are received:**
   The Input tax credit is allowed only if the recipient receives the goods or services. If advance payment has been made by him before receipt of goods or services, then input tax credit shall not be allowed to him as goods or services are not yet received. In case of receipt of goods against an invoice in instalments, the input will be available only on the receipt of last lot or instalment of goods.

5. **Taxes are paid to Govt.:**
   Input tax credit is allowed provided the tax charged in respect of such supply is deposited by the supplier to the credit of the Government. The recipient of goods and services can take provisional credit on basis of return filed by supplier. However, he will be eligible to take final input tax credit only if taxes are paid by the supplier to the Govt.

6. **Return is furnished by recipient :**

Filing of GST return is mandatory for the recipient to claim the credit of input tax paid on goods or services supplied to him.

7. Payment within 180 days:

The recipient shall be entitled to avail of the credit of input tax after fulfilling the above-mentioned conditions subject to the condition that he makes the payment of the amount towards the value of supply of goods or services along with tax payable thereon within a period of 180 days. If the amount is not paid, the recipient shall be liable to reverse the credit.

8. Documents required to claim ITC:

Input tax credit can be availed by a registered person or Input Service Distributor on the basis of following documents which should contain the prescribed mandatory information, *inter-alia*, amount of tax charged, total taxable value, GSTIN of supplier, GSTIN of recipient, etc.:

1. Tax invoice issued by the supplier of goods or services
2. Invoice of the supply for which tax has been paid on reverse charge basis
3. Debit note issued by a supplier
4. Bill of entry or similar document prescribed under Customs Act for assessment of IGST.
5. ISD Invoice or ISD credit note issued by an Input Service Distributor.

9. How to claim ITC for first time?

When a registered person becomes entitled to claim the credit of input tax, he can claim it so by filing a declaration in Form GST ITC-01 within 30 days or within such period as notified by Commissioner. Such person shall not be entitled to take input tax credit in respect of any supply of goods or services after expiry of 1 year from the date of issue of tax invoice relating to eligible supplies.

If the amount of credit exceeds Rs. 2 lakhs, this Form shall be verified and supported by a certificate from a Chartered Accountant or a Cost Accountant. A registered person becomes entitled to claim the ITC for the first time in following circumstances:

- **In case of mandatory registration within 30 days**

A supplier is required to apply for GST registration within 30 days from the date on which he becomes liable for registration. When he has been granted such registration, he becomes entitled to take credit of taxes paid in respect of inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax. To avail of such credit, the supplier is required to file ITC-01 through online mode or offline mode.

The input tax credit shall be available from the effective date of registration, which shall be the date on which supplier becomes liable to get the registration if he submits the application within 30 days from such date. Otherwise, the effective date of registration shall be the date of grant of registration certificate.

- **In case of Voluntary Registration:**
  If a supplier opts for voluntary registration under GST, he becomes entitled to take credit of taxes paid in respect of inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration. To avail of such credit, the supplier is required to file ITC-01 through online mode oroffline mode. The effective date of registration shall be the date of grant of registration certificate.

- **In case composition scheme ceases to apply:**
  If a registered person ceases to pay tax under composition scheme, he becomes entitled to take credit of taxes paid in respect of inputs contained in semi-finished or finished goods held in stock or on capital goods from the date on which he becomes liable to pay tax normally.

  Similarly, the registered person becomes entitled to take the credit of taxes paid in respect of capital goods when composition schemes ceases to apply. However, the credit to be claimed on capital goods shall be calculated after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice (or date of such other documents on basis of which the capital goods were received by the taxable person).

- **In case exempt supply becomes taxable :**
  If an exempt supply of goods or services by a registered person becomes a taxable supply, then such person shall be entitled to take credit of taxes paid in respect of inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply from the date on which such supply becomes taxable.

  The credit of taxes paid on capital goods shall be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice or such other documents on basis of which the capital goods were received by the taxable person.

10. <u>ITC of GST paid on Capital goods:</u>

Capital goods shall mean goods, the value of which is capitalised in the books of account of the person claiming the credit and which are used or intended to be used in the course or furtherance of business. As a general rule, the entire amount of GST paid on the capital goods can be claimed as input tax credit in the first year itself.

Exception 1*: No ITC if depreciation claimed on tax component*

If the registered taxable person recognizes the tax component as part of the cost of capital goods under the provisions of the Income-tax Act, 1961 and claims the depreciation on the aggregate amount, the input tax credit on the said tax component shall not be allowed.

Exception 2*: No ITC on pipelines and telecommunication tower*

GST paid in respect of pipelines laid outside the factory and telecommunication towers fixed to earth by foundation or structural support are not eligible for input tax credit.

ITC OF GST PAID ON JOB WORK

11. How to claim input tax credit?

A registered person is entitled to avail of the Input tax credit of the GST paid on the inputs and capital goods sent to the job worker for the job work. The ITC shall be available even if inputs are directly sent for the job work without being first brought to his place of business. To avail of the ITC, the registered person shall be required to file a challan on quarterly basis in Form GST ITC-04 on the 25th day of the month immediately next to the last date of quarter or within such time limit as notified.

12. When goods should be received back?

In case of Input goods:

The registered person should either receive back the inputs after completion of job work or should supply it further from the place of business of the job worker within 1 year. The period of 1 year shall be counted from the date of receipt of inputs by the job worker. If inputs are not received back or further supplied, it shall be deemed that inputs had been supplied to the job worker on the day on which said inputs were sent out. In that case, the registered person shall declare it as taxable supply in GSTR-1 and pay tax along with interest at rate of 18%.

In case of Capital Goods:

The capital goods sent for job work should be received back by the principal within 3 years, which shall be counted from the date of receipt of capital goods by the job worker. If such goods are not received back, it shall be deemed that goods have been supplied by the principal to the job worker on the day when the said capital goods were sent out. In that case, the registered person shall declare it as taxable supply in GSTR-1 and pay tax along with interest at rate of 18%.

Exception

The condition of receiving back the goods shall not apply to moulds, dies, jigs, fixtures or tools sent out to a job worker for job work.

NON-ENTITLEMENT OF I.T.C. ON GOODS OR SERVICES:

A taxpayer is not entitled to avail of the Input Tax Credit of taxes paid in respect of certain goods or services, even if these goods or services are used in the course or furtherance of business.

List of blocked credit:

Input tax credit shall not be available in respect of the following supply of goods or services.

A*) Purchase of Motor Vehicles:

Input tax credit shall not be available for the GST paid in respect of passenger motor vehicles, with approved seating capacity up to 13 persons including driver.

Exception

However, the input tax credit shall be allowed if motor vehicle is used for following:

1. Further supply of such motor vehicles
2. Transportation of passengers
3. Imparting training on driving such motor vehicles

B*) Purchase of Vessels and Aircrafts:

GST paid in respect of Vessels and Aircrafts are not eligible for Input tax credit.

Exception

However, the input tax credit shall be allowed if vessel or aircraft is used for following:

1. Further supply of such vessels or aircraft
2. Transportation of passengers
3. Imparting of training to navigate such vessels
4. Imparting of training to fly such aircrafts
5. For transportation of goods

****yet to be notified***

c) Repair & maintenance of Motor Vehicles, Vessels or Aircrafts:

Input tax credit shall not be available for the GST paid in respect of general insurance, servicing, repair and maintenance of such motor vehicles, vessels or aircraft.

Exception

However, the credit for the tax paid on these services shall be allowed in following cases:

1. If motor vehicles, vessels or aircraft are used for the purposes specified above and ITC is allowed thereon
2. If these services are received by a taxable person engaged in:
   a) The manufacturing of such motor vehicles, vessels or aircraft
   b) Supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by them

d) Personal care Services:

Following supply of goods and services are not eligible for input tax credit:

1. Food and beverages, outdoor catering, beauty treatment, health services, cosmetic, plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircrafts as mentioned above.
2. Membership of a club, health and fitness centre.
3. Travel benefits extended to employees on vacation such as leave or home travel concession.

The credit of GST paid on services mentioned in point no. 1 above would be allowed if such inward supply of goods or services is used by a registered person for making an outward taxable supply of the same

category of goods or services or as an element of taxable composite supply or mixed supply.

The ITC in respect of goods or services mentioned in point 1 to point 3 would be allowed if it is obligatory for an employer to provide the same to its employees under any law.

Example, as per section 46 of Factories Act, if 250 or more workers are employed, the provision of canteen facility is mandatory. Since this is mandatory, input tax credit of canteen services provided to employees should be available.

e) ***Works Contract service:***

GST paid in respect of works contract services, when supplied for construction of an immovable property (other than plant and machinery), is not eligible for input tax credit.

Exception

However, the credit of GST paid on works contract shall be available if input service are used for further supply of works contract service.

f) ***Construction service:***

Goods or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account or in the course or furtherance of business shall not be eligible for input tax credit. The expression 'construction' shall include re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

g) ***GST paid under composition scheme:***

Goods or services on which tax has been paid under composition scheme are not eligible for input tax credit.

h) ***Supply received by non-resident taxable person:***

Goods or services received by a non-resident taxable person are not eligible for input tax credit. However, the non-resident taxable person can avail of the credit of tax paid on goods imported by him.

i) ***Supply for personal consumption :***

Goods or services used by a taxable for his personal consumption are not eligible for input tax credit.

j) ***Loss of goods or free samples:***

GST paid in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples are not eligible for input tax credit. No credit shall also be available for any tax paid after detection of fraud or suppression or goods removed in contravention of GST Act.

*****

REVERSE CHARGE MECHANISM UNDER GST

CA Shilvi Khandelwal
(DISA, FCA,)

I. Introduction:

Generally, Onus to pay indirect-tax is on Supplier of Goods & Services. However, there are some cases where this liability to pay indirect-tax may be cast on the recipient of goods or services. This system is called as Reverse Charge Mechanism. Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. In the case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed.

II. Applicability of Reverse Charge Mechanism in India:

The basic idea behind introducing "Reverse Charge Mechanism" is to collect indirect tax easily and conveniently either fully or partially from the recipient and to increase tax revenues more administratively where the supplier of a particular goods or services are unorganized or they are situated in non-taxable territories or they are illiterate thereby not well versed with the indirect tax laws or they are very large in numbers.

Hence, as per provisions of the statute, government introduced method of tax shift to increase revenue and curb evasion of tax. If the service receiver has to pay the tax directly to the government instead of paying through the service provider it is called reverse charge mechanism or method of tax shift (because responsibility of paying the tax is shifted from provider to receiver). Broadly there are four factors providing the basis for introducing payment of tax under reverse charge:-

a) Assessee in the large number with small payment of tax from each assessee.
b) Unorganized sectors.
c) Problems in Collection of Tax.
d) Jurisdiction.

The concept of reverse charge mechanism was already present in Service Tax on Services. Taxation system of reverse charge for the service sector under Service Tax regime was came into effect in 1997 for the first time in India while partial reverse charge mechanism for the service sector under Service Tax regime was came into effect in July 2012 for the first time in India. Now, in GST Regime, reverse charge is applicable on Goods and Services both. Earlier, goods were not covered under this mechanism except as purchase tax on few goods in some states.

III. Legal Background of introducing Reverse Charge Mechanism in India:

In India the concept of reverse charge was introduced in service tax first time on certain services provided by goods transport agency and service provided by Clearing and forwarding agents in 1997. As per the notification, the recipient of service was made

liable to pay the tax. At that time, Section 68(2) of chapter V of the Finance Act, 1994 did not provide for recovery of tax from the recipient of service. Therefore, the recovery of tax from recipient of service was challenged.

Supreme Court in the case of "Laghu Udyog Bharati Vs Union of India (112) E.L.T. 365 (SC) stating that the provision of reverse charge was ultra vires the Act itself. After this Supreme Court Judgment, section 68 was amended by incorporating sub-section (2) which empowers the government to specify the service and the person liable to pay tax by notification. After the issuance of notification, the tax is payable by the person specified in the notification, which can be either the recipient of service or both provider of service as well as recipient of service. The Government has issued notification from time to time for recovery of tax from the recipient of service.

Constitutional validity of this reverse charge tax was upheld in the case of Orient Crafts Ltd Vs UOI (2006) (4) STR 81 (Del).

IV. Reverse Charge Mechanism under GST:

Since the inception of GST, reverse charge mechanism has wider scope now as compared to old regime of indirect taxation. At the time of GST implementation, Reverse charge was made applicable to Services as well as goods. There were three type of reverse charge scenarios provided in GST regime at the time of introduction. First is, dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST/ SGST (UTGST) Act and section 5 (3) of the IGST Act. Second scenario is, covered by section 9 (4) of the CGST/SGST (UTGST) Act and section 5 (4) of the IGST Act where taxable supplies by any unregistered person to a registered person was being covered. Now, There is a change in second scenario, where only notified goods and services shall be covered if, supplied by any unregistered person to a registered person. Third scenario is only applicable to E-commerce operators. This scenario is being covered by Section 9(5) of the CGST/SGST (UTGST) Act and section 5 (5) of the IGST Act.

If the supply involves taxable goods or services then reverse charge shall be applicable while if the supply involves exempted goods or services then reverse charge shall not be applicable. Unlike Service Tax, there is no concept of partial reverse charge under GST regime. The recipient has to pay 100% tax on the supply if covered under RCM.

V. RCM on the basis of nature of supply or Supplier :

As discussed, reverse charge shall be applicable dependent on the nature of supply and/or nature of supplier in the first scenario. As per the provisions of section 9(3) of CGST / SGST (UTGST) Act, 2017 / section 5(3)of IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. In exercise of the powers conferred by these provisions, CBEC has issued a list of goods and a list of services on which reverse charge is applicable.

Supplies of goods under reverse charge mechanism:

In accordance with the provision of Section 9(3) and Section 5(3), government has specified list of 5 goods on which RCM is applicable vide Notification No.4/2017-Central Tax (Rate) and Notification No.4/2017-Integrated Tax (Rate) initially. Since that time, this list is being getting amended by adding items. Now, total 8 items are specified on which RCM is applicable.

S. No.	Description of supply of goods	Supplier of goods	Recipient of goods
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	Bidi wrapper leaves (Tendu)	Agriculturist	Any registered person
3	Tobacco leaves	Agriculturist	Any registered person
4	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	Raw cotton (added w.e.f. 15/11/2017)	Agriculturist	Any registered person
5	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap (added w.e.f. 13/10/2017)	Central Government, State Government, Union territory or a local authority	Any registered person
7	Priority Sector Lending Certificate (added w.e.f. 28/05/2018)	Registered person	Recipient who is registered person

<u>Supplies of services under reverse charge mechanism:</u>

In accordance with the provision of Section 9(3) and Section 5(3), government has specified list of supply of goods on which RCM is applicable and enlarging this list judiciously time to time. Initially, this list was similar to reverse charge mechanism in previous service tax law. But, now more services have been added. Initially, 9 Services were specified in central tax while total 15 services have been notified yet. However, in IGST 2 more services were specified initially Thus total 17 services are covered under RCM. List of specified services are as given below-

Sl. No.	Description of Supply of Service	Provider of Service	Recipient of Service
	Notified List of Services under CGST and IGST		
1	Services provided or agreed to be provided by a goods transport agency (GTA) in respect of transportation of goods by road.	Goods Transport Agency (GTA)	(a) any factory registered under or governed by the Factories Act, 1948; (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; (c) any co-operative society established by or under any law; (d) any person registered under CGST/SGST/UTGST Act; (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons. (g) Casual taxable person.
2	Legal Services provided or agreed to be provided by an individual advocate or firm of advocates directly or indirectly	An individual advocate or firm of advocates	Any business entity located in the taxable territory
3	Services provided or agreed to be provided by an arbitral tribunal	An arbitral tribunal	Any business entity located in the taxable territory
4	Sponsorship services	Any person	Anybody corporate or partnership firm.

5	Services provided or agreed to be provided by Government or local authority excluding,- (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Government or local authority	Any business entity.
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017). *(Added w.e.f. 25/01/2018)	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017 read with clause (v) of section 20 of Integrated Goods and Services Tax Act, 2017.
6	Services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;	A director of a company or a body corporate	A company or a body corporate.
7	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business.

8	Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	A banking company or a financial institution or a non- banking financial company.
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs) *(added w.e.f. 27/07/2018)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory."
12	Services provided by business facilitator (BF) to a banking company *(added w.e.f. 01/01/2019)	Business facilitator (BF)	A banking company, located in the taxable territory

13	Services provided by an agent of business correspondent (BC) to business correspondent (BC). **(added w.e.f. 01/01/2019)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
14	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. ***(added w.e.f. 01/01/2019)	Any person other than a body corporate	A registered person, located in the taxable territory.”;
	Additional notified services under IGST		
1	Taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory other	Any person who is located in a non- taxable territory	Any person located in the taxable territory other than non-assessee online recipient (Business Recipient)

	than non-assessee online recipient (OIDAR)		
2	Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory to a person located in non-taxable territory	Importer as defined under clause (26) of section 2 of the Customs Act, 1962.

VI. RCM on supplies by any unregistered person to a registered person:

In second scenario, section 9(4) of CGST / SGST (UTGST) Act, 2017 / section 5(4) of IGST Act, 2017 deals with the RCM on supplies by any unregistered person to a registered person. It provides that the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of the Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, wherever a registered person procures supplies from an unregistered supplier, he need to pay GST on reverse charge basis.

However, supplies where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day were exempted. (Notification 8/2017-Central Tax (Rate) dated 28.06.2017). However, vide notification no.38/2017-Central Tax (Rate) dated 13.10.2017, (corresponding IGST notification no.32/2017-Integrated Tax (Rate) dated 13.10.2017) all categories of registered persons were exempted from the provisions of reverse charge under 9(4) of CGST / SGST (UTGST) Act, 2017 / section 5(4) of IGST Act, 2017, till 31.03.2018 which was further extended till 30.09.2019. However, this has been rescinded vide notification no. 01/2019 (Central Tax) dated 29th Jan 2019 due to amendment made in section 9(4) of CGST/ SGST (UTGST) Act and Sec 5(4) of IGST Act, 2017 w.e.f. 1st Feb 2019.

Now, there is an amendment in Section 9(4) of CGST / SGST (UTGST) Act, 2017 / section 5(4) of IGST Act, 2017 w.e.f. 1st Feb 2019 which provides that RCM in respect of unregistered person will be applicable only on specified goods or services and specified persons. The specific list of persons or goods/services is yet to be notified accordingly. Thus it can be said that RCM u/s 9(4) shall be applicable from the date when specific list for RCM shall be notified.

There are lot of misconception regarding applicability of section 9(4) RCM after the amendment made by the Central/Integrated Goods and service Tax amendment act, 2018. Let's compare the old as well as new provision of section 9(4). So that we could understand current position of this provision effortlessly-

Provision before amendment

~~9(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~

Provision after amendment-

9(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of taxable goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Analysis of the Amendment

1. **Section 9(4) which deals with payment of tax on reverse charge basis by a registered person upon receipt of supply from unregistered persons is now under suspension.**
2. **It has been proposed that the government will notify certain class of registered person who shall be liable to pay tax on reverse charge basis in case of receipt of goods from an unregistered person.**
3. **This has curtailed the applicability of this section on all registered taxpayers. Only a notified class of registered taxpayers are purported to be covered by this substituted section now. This will bring a huge sigh of relief to those registered taxpayers who will now be outside the scope of this section as it involved a substantial burden of compliance and cash flow on their part.**

VII. RCM on supplies made to Electronic Commerce Operator:

In this third scenario, The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on inter-state/intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of the Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. In respect of specified services, tax shall be paid by the E-Commerce operator on behalf of the service suppliers. Three categories of services have been notified by the government to give effect the provisions on which tax shall be payable by the electronic commerce operator under RCM-

S. No.	Description of supply of Services	Supplier of service	Person Liable to Pay GST
1	Transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle	Any person	E-commerce operator

2	Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Any person except who is liable for registration under sub-section (1) of section 22 of the said CGST Act	E-commerce operator
3	Services by way of house-keeping, such as plumbing, carpentering etc (added w.e.f. 22/08/2017)	Any person except who is liable for registration under sub-section (1) of section 22 of the said CGST Act	E-commerce operator

This is to be noted that above mentioned suppliers of services covered u/s 9(5) are exempted from compulsory registration and can take benefit of aggregate threshold limit.

VIII. Compliances in respect of supplies under RCM:

When a person becomes liable to pay tax on the reverse charge, certain provisions should be considered such as threshold exemption limit, time of supply, availing of input credit etc. There are some points which are needed to be considered by a person liable to pay tax under RCM-

- **Registration:** The person who is required to pay tax under reverse charge has to compulsorily register under GST irrespective of the aggregate limit. Threshold limit of Rs. 20/40 lakhs (Rs. 10/20 lakhs for special category states except J & K) is not applicable to them.
- **Input Tax Credit:** A supplier cannot take ITC of GST paid on goods or services used to make supplies on which recipient is liable to pay tax. Input tax credit shall be claimed by recipient who has paid GST under RCM subject to the provisions of the act. For this, the goods and services most be used for business or furtherance of business. If the composite dealer falls under reverse charge mechanism then the dealer is ineligible to claim any credit of tax paid. Along with the dealer is liable to pay tax at normal rates applicable to such supply and not the rate applicable for composition scheme.
- **Time of Supply:** The Time of supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, recipient is liable to pay GST. Thus time of supply for supplies under reverse charge is different from the supplies which are under forward charge.

In case of supply of goods, time of supply shall be earliest of -

- Date of receipt of goods; or
- Date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- The date immediately following thirty days from the date of issue of invoice or similar other document.

In case of supply of services, time of supply shall be is earliest of -

- Date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- The date immediately following sixty days from the date of issue of invoice or similar other document.

In case where it is not possible to determine time of supply using above mentioned methods, time of supply would be date of entry in the books of account of the recipient.

- **Tax Invoice:** As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge. The recipient paying tax under reverse charge is required to issue self-invoice.
- **Maintenance of accounts by registered persons**: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge. Here, concept of self -invoicing and self-documentation shall be applicable.
- **Payment:** Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible. Thus, Input Tax Credit cannot be used to pay output tax, which means that mode of payment is only through cash/bank under reverse charge.
- **Information to be furnished:** Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1. Also, details of Inward supplies (liable to reverse charge) i.e. taxable value and tax thereon, are required to be furnished in Form GSTR-3B in table no. 3.1. (d) And table no. 4.
- **Advance Payment:** Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.
- **ISD:** An ISD cannot make purchases liable to Reverse Charge. If the ISD needs to procure such supplies and take the Reverse Charge paid as credit, the ISD should have to get register as a Normal Taxpayer.

IX. Conclusion:

Reverse Charge Mechanism is a specific provision that intends to bring in the non-formal sections of the economy also within the tax net. All taxpayers are required to pay tax under reverse charge subject to the provisions of GST. Initially, small taxpayers faced many glitches due to non-awareness of RCM on purchase from unregistered persons. Since all provisions of the GST law apply for the registered taxpayers in case of RCM too, this was considered to be a rather onerous clause of the GST Act. Consequently, government came with relaxation in provisions related to RCM.

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GOODS AND SERVICES TAX – AN ANALYSIS OF SOME KEY AMENDMENTS

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The amendments to CGST Act, 2017 and IGST Act, 2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 (Act 32 of 2018 dated 30.08.2018), The Integrated Goods and Services Tax (Amendment) Act, 2018 (Act 32 of 2018 dated 30.08.2018) respectively and Central Goods and Services Tax (Amendment) Rules, 2019 has been made effective February 01, 2019 (Notification 02/2019 – Central Tax; Notification No. 01/2019 Integrated Tax and Notification No. 03/2019 Central Tax all dated 29.01.2019). Effective date for certain Sections are yet to be notified which has been indicated in the updates infra.

The Government having done its job of amending some of the key provisions of the legislations, the moot question as to whether such amendments are comprehensive may be questionable, whereas, the fact is, the amendments are carried out. With the amendments in place it now becomes important to understand the implications of such amendments. An attempt is made to provide a gist of such key amendments in this update.

A. CGST Act, 2017 - Amendments:

1. **Section 2(4) - Adjudicating Authority:** Authority constituted / empowered to examine anti-profiteering activities i.e. National Anti-Profiteering Authority is now excluded from the definition of adjudicating authority.

2. **Section 2 (17) (h) – Business:** This is an amendment where the Government set up the requirement to amend the section an year before. Consider this: Insertion of Rule 31A vide notification no. 3/2018-CT(R) dated 23 January 2018 and insertion of entry 229 to IV Schedule taxable at 14% CGST (plus SGST at 14%) vide notification 6/2018-CT(R) dated 25 January 2018 which reads "Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club". Any prudent professional would have understood that the Rule / entry in the notification cited supra does more than the Section bestows on the draftsman. By substituting the word 'services' with 'activities' the Government has expanded the scope of the levy in respect of a race club to include transactions by way of totalizator and licensed book maker. It is important to note that while the definition of the word 'business' is all

encompassing since it commences with 'business includes' whereas it goes on to pick and choose transactions in an enterprise to identify what is 'business'.

3. **Section 2(18) - Business Vertical:** The concept of 'Business Vertical' has been done away with by omission of section 2(18). Pursuant to this amendment, a tax payer now has an option to obtain multiple GST registrations in the same State. The legislature has also made corresponding amendments to the relevant section 25(2) together with insertion of Rule 41A to allow transfer of credits 'inter se'.
   - Rule 11 of CGST Rules, 2017 has been substituted wherein a person having multiple places of business ***within*** a State or a Union territory will be granted separate registration in respect of each such place of business subject to the following conditions: -
     a. such person has more than one place of business;
     b. such person is not paying tax under composition scheme for any of his places of business
     c. all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.
   - Further, where a person obtains multiple places registration within a State or Union Territory a facility for transfer unutilised input tax credit belonging to the new registrations has been enabled vide Form GST ITC-02A.
   - The determination of proportionate ITC will have to be undertaken based on the value of assets held by the units and the Form will have to be furnished within 30 days of obtaining the registration. The newly registered person is required to accept the details furnished by the transferor on the GST portal and upon acceptance the ITC will be credited to the newly registered person.

4. **Section 2(69) - Local Authority:** Development board constituted under Article 371J of the Constitution of India (For example Hyderabad Karnataka Region Development Board (HKRDB); Article 371J grants special status to 6 backward districts in the Hyderabad-Karnataka Region) is included in the meaning of Local Authority.

5. **Section 2(102) - Services:** It is clarified that although the definition of the word service excludes 'money and securities', the facilitation or arranging of transactions in securities falls within the scope and ambit of the word 'services'. For example, service charges / fees charged in relation to transactions in securities would be taxable.

6. **Section 7- Scope of Supply:** By deleting the entry 'Activities to be treated as supply of goods or services as referred to in Schedule II' in Section 7(1) of the CGST Act, 2017 from the definition of supply and by inserting a sub-section 1A in Section 7 of the CGST Act, 2017 , it is now clear that the scope of Schedule II to the CSGT Act, 2017 is restricted only to determine whether a particular supply is a supply of goods or services and does not determine as to whether a transaction is a supply or not.

Thus, ambiguity where an activity listed in Schedule II of the CGST Act would be deemed to be a supply even where an activity ***does not*** constitute a 'supply' is now put to rest. In the same breath, one must understand that simply because Schedule II does not list out a particular transaction it does not mean that it would remain free from tax.

7. **Schedule III of the CGST Act, 2017 - Activities or transactions which shall be treated neither as supply of goods nor as supply of services:** The three kinds of transactions that normally take place outside a taxable territory until they cross the customs frontiers of India are excluded from the scope of Supply. The scope of activities / transactions under Schedule III which shall be treated neither as supply goods nor as services is expanded to include the following:
   - Supply of goods from a non-taxable territory to another place in the non- taxable territory when such goods do not enter into India (Merchant Trade transactions).
   - Supply of warehoused goods before clearance for home consumption - to ensure there is no double taxation.
   - Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (High Sea Sales).

   One must bear in mind that in respect of each such transaction the corresponding input tax credit will need to be reversed (refer explanation to section 17(3) and explanation to Rule 45).

8. **Section 9- Levy and collection of tax under reverse charge mechanism:** Section 9(4) has been amended enabling the Government on the recommendation of the Council to notify a **class of registered persons** procuring **specified categories of goods or services** from unregistered persons who would be liable to pay tax under reverse charge mechanism. Notice the word **"specify"** in this provision. Similar amendment has been made under the Integrated Goods and Services Tax Act, 2017.

   Exemption vide notification 8/2017-CT(R) dated 28 June 2017 that was amended to remain in force till 30 September 2019 has been rescinded vide notification 1/2019-CT(R) dated 29 January 2019. It means that Section 9(4) will not be in operation until and unless the Government specifies the class of persons and the class of goods and / or services. One may believe that the class of registered persons (who will be **specified** through a notification) and the categories of goods or services that would be notified would be viz., works contractors, composition tax payers, job workers, e-commerce players, inter-State suppliers, Principals-Agents etc., - One may guess who else is left?

9. **Section 10 - Composition levy:**

- A drafting error has been corrected which now makes it clear that the composition tax payers will be liable to pay tax at special rates only in lieu of the tax payable under forward charge (the amendment declares that "the amount payable under section 10 will be 'in lieu of tax payable under section 9(1) of the Act'). Taxes will have to be paid at the applicable rates for transactions liable to reverse charge mechanism separately.

- Enabling amendment has been made to increase the threshold limit upto 1.5 Crores from the existing threshold limit of 1 Crore for composition scheme (not yet available to registered persons to opt).
- A composition tax payer can now provide services (other than composite supply of food and beverage services) to the extent of 10% of turnover in the State in the preceding financial year or Rs. 5 lakhs, whichever is higher. This amendment enables the composition tax payers to provide services which are incidental to their activity and still remain eligible to continue as a composition tax payer. For e.g: Manufacturers providing repairs, maintenance services. The question that still arises is whether the limit specified above is 'per registration' or 'per entity'? It may be fair to interpret the limit prescribed is 'per registration' and not 'per entity'.

10. **Section 13 - Time of supply of services:** A drafting error has been corrected to include issuance of invoice / other documents prescribed under all the clauses of Section 31 of the CGST Act, 2017 to determine the time of supply of services. For e.g: Issuance of invoice in accordance with Section 31(5) of the CGST Act, 2017 which provides for determination of time of supply in case of continuous supply of services was not covered under Section 13 on account of a drafting error.

    Illustration: BPO services provided over a period of time under a single agreement qualifies as a continuous supply of service. As per the existing Section 13 of the CGST Act, 2017, the time of supply of service is the earliest of the following:
    1. Date of invoice – If the same is issued within the period specified under Section 31(2) Or
    2. Date of receipt of payment.

    Note: Invoice under Section 31(2) has to be issued within 30 days from the date of provision of service. However, the time of issue of invoice for continuous supply of services is provided in Section 31(5) – leading to the ambiguity described above.

11. **Section 16 - Eligibility and conditions for taking input tax credit:**
    One of the conditions for availment of credit in terms of section 16(2) is that goods and / or services must be 'received'. An explanation has now been inserted that enables availment of credit when goods or services are delivered or provided 'on the direction' of a registered person, then such delivery or provision is 'deemed' to be received by the registered person (claiming credit).
    An amendment to Section 16(2) of the CGST Act, 2017 has been made to provide for a condition to be fulfilled for availment of input tax credit considering the new return format which is proposed to be introduced vide Section 43A of the CGST Act, 2017 (***effective date is yet to be notified***).

12. **Section 17 (3) -Apportionment of credit and blocked credits:** An explanation has been inserted to section 17(3) explaining the meaning of the expression 'Value of exempt supply'. It is now clear that for the purpose of reversal of input tax credits, the activities / transactions specified in Schedule III of the CGST Act, 2017 (***other than*** sale of land and sale of building where the entire consideration has been received after issuance of completion certificate) should not be considered as 'exempt supply'.

13. **Section 17(5) - Blocked credits:**
    Motor Vehicles: Input tax credit (ITC) restriction on motor vehicles is now limited to usage of the same for transportation of persons only (with certain exclusions). Earlier, the restriction was applicable on usage of motor vehicles for all purposes **excluding** for transportation of goods and taxable supply of transportation of passengers, imparting training and further supply of such vehicles. In other words, ITC on motor vehicles like dumpers, tippers, fork lift trucks etc., is now allowed.
    ITC restriction on motor vehicles for transportation of persons is now limited to motor vehicles, with seating capacity not exceeding 13 persons (including the driver). Hitherto, such ITC was restricted on motor vehicles used for transportation of persons irrespective of seating capacity.
    ITC on motor vehicles, vessels and aircrafts shall be allowed only when they are used for further taxable supply of the same category or transportation of passengers or for imparting of training on driving of motor vehicle / navigation of vessel / flying of aircraft and transportation of goods.
    Insurance, repair and maintenance services: ITC on payment of general insurance, repair and maintenance services in relation to the motor vehicles, vessels or aircraft will now be allowed as follows:
    a. If the ITC on such motor vehicles, vessels and aircrafts is eligible as discussed supra
    b. To a manufacturer of motor vehicles, vessels and aircrafts
    c. To the person engaged in supply of general insurance services in respect of the motor vehicles, vessels and aircrafts insured by him.
    Hitherto, no such restriction was existing.
    Others: ITC is restricted in respect of foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicle/ vessel/aircraft (except when motor vehicle / vessel / aircraft is used for specified purpose as discussed supra) life insurance and health insurance, membership of a club, health and fitness centre and travel benefits extended to employees on vacation. However, ITC now stands allowed, if the above-mentioned goods or services or both is obligatory for an employer to provide the same to its employee, under any law for time being in force.

14. **Section 20 - Manner of distribution of credit by input service distributor:** The manner of determination of 'turnover' for the purpose of arriving at input tax credits to be distributed by an Input Service Distributor (ISD) to the eligible recipients has been amended **to exclude** the taxes paid on purchase / sale of goods in the course of inter-State trade (other than newspapers) which was inadvertently omitted. Hitherto, such taxes were forming part of the turnover for the purpose of arriving at input tax credits to be distributed by an Input Service Distributor (ISD).

15. **Section 22 - Persons liable for registration:** The liability to register under the provisions of the GST law arises when the aggregate turnover exceeds Rs. 20 lakhs in a financial year. This threshold limit is restricted to Rs 10 lakhs for suppliers effecting taxable supplies from the Special Category States, except the State of Jammu and Kashmir. An enabling provision has now been inserted whereby the

threshold of Rs. 10 lakhs can be enhanced to a maximum limit of Rs. 20 lakhs on the request of the Special Category States and the recommendation of the GST Council. Further, the threshold limit of Rs. 20 Lakhs would be applicable to the Special Category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. Going forward, only the States of Manipur, Mizoram, Nagaland and Tripura will have concessional threshold limit of Rs. 10 Lakhs.
The Government, based on the Council's recommendation is mulling the option to enhance this limit of Rs.20 lakhs and Rs.10 Lakhs to Rs.40 Lakhs and Rs.20 Lakhs respectively. However, this needs an amendment to the Act, and requires the nod of the respective States / UTs.

16. **Section 24 - Compulsory registration in certain cases:** The provisions of mandatory GST registration requirements in relation to electronic commerce operators (i.e. registration irrespective of the threshold limit for registrations) is now amended to be applicable only to electronic commerce operators who are required to collect taxes under Section 52 of the CGST Act, 2017 (TCS). Therefore, for instance, e-commerce operators who operate as an agent and who do not collect consideration need not compulsorily register under the GST laws. Hitherto, all the e-commerce operators were required to obtain GTS registration irrespective of the threshold limit.

17. **Section 25- Procedure for registration:** A proviso has been inserted to provide that a separate registration will be required by a person having a unit in a SEZ or being a SEZ developer distinct from the place of business outside the SEZ in the same State/ Union Territory. In other words, a person operating under the SEZ and non-SEZ models will be required to have separate GST registrations for each such units within the State.

18. **Section 29- Cancellation of registration:** Provisions relating to suspension of registration have been inserted whereby during the pendency of proceedings for cancellation of registration, the registration of the tax payer can be suspended. This would relieve the tax-payer of compliance burden till the time when the cancellation process is completed.

19. **Section 34 - Credit and Debit notes:** A much needed relief has been granted to industry whereby a supplier can now issue a single credit / debit note for all the supplies made during the year. Hitherto, the tax payer was expected to issue a separate credit / debit note against each invoice.

20. **Section 35 - Accounts and other records:** The GST law provides for compulsory audit of accounts of all the registered persons whose turnover during a financial year exceeds Rs. 2 crore. The following entities have been excluded from the requirement of getting the books of accounts audited under the GST laws *when their books of account are subjected to audit by Comptroller and Auditor-General of India (CAG) or an auditor appointed to audit the accounts of local authorities*:

21. **Section 39 - Furnishing of returns:** The following amendments have been made in relation to the furnishing of the GST returns-

- The due date for furnishing monthly returns (i.e. in FORM GSTR 3 / 3B) will be prescribed by way of a Notification and date of 20th of a month is now omitted from the Act. This will empower the Government to change / extend the due dates of the returns at ease.
- Similarly, provisions have been enacted to empower the Government to change / specify the periodicity of returns for a notified classes of registered persons.
- Enabling provisions made for filing of quarterly returns for a notified classes of registered persons with a requirement of payment of taxes on a monthly basis.
- The manner of rectification of any omission or incorrect details identified after filing the returns will now be prescribed. Hitherto, the rectification was to be undertaken in the month in which such omissions or incorrect details were identified. **(Effective date is yet to be notified)**

22. **Procedure for furnishing return and availing input tax credit - Section 43A:** Amendments have been made in the procedure for filing of returns and claim of ITC to make provisions for the new simplified returns ***(effective date is yet to be notified)***. The detailed mechanism is awaited.
    Broadly, the highlights of the new returns are provided below:
    - Single monthly return with staggered filing dates based on turnover
    - Quarterly return for small taxpayers - turnover upto 5Cr
    - Introduction of 'Sahaj' and 'Sugam' to reduce burden of return filing for small taxpayers
    - Requirement of the recipient to verify, validate, modify or delete the details furnished by the suppliers.
    - Prescribing a maximum limit to the percentage of input tax credit that a recipient may avail in respect of outward supplies not declared by the supplier.
    - Nil return filing facility for taxpayers with no output tax liability and no ITC
    - Real-time viewing for recipients of details of invoices uploaded
    - Linking of export details with ICEGATE/ SEZ online makes it easier to file returns
    - Only invoices uploaded by supplier to be valid document for ITC
    - No recovery of ITC from recipient if supplier does not pay tax
    - Facility for locking and deemed locking of invoices, rejection and pending invoices
    - Reporting of missing invoices by recipient allowed for two tax periods.
    - Supplier and the recipient to be jointly liable to pay tax or input tax credit so availed where the supplier declares outward supplies but does not furnish a return.

23. **Section 49 - Payment of tax, interest, penalty and other amounts:** It has now been clarified by way of an amendment that the ITC of SGST/ UTGST can be utilised against IGST liabilities only where there is no balance of ITC of CGST is available for set-off against IGST liabilities.

24. **Section 49A - Utilisation of input tax credit subject to certain conditions:** The sequence of set-off of input tax credit has been amended to the extent that ITC on account of CGST and SGST/UTGST can be utilised against the IGST, CGST, SGST

liability only when the available ITC of IGST is utilised completely. **In other words, it is prescribed that all the IGST credits should be utilised first, before using the CGST and SGST/UTGST credits.**

On account of the above, there may arise a situation where a tax payer will have to discharge tax (CGST or SGST/UTGST) by cash even though SGST/UTGST or CGST credit is available with him. An illustration is provided below:

A. Pre-Amendment:

Particulars	IGST	CGST	SGST
Output tax	1000	500	500
ITC available	1500	250	250
Balance tax liability (or refund) – Adjustment I i.e. Available ITC utilised against respective tax liabilities	(500)	250	250
Adjustment II – IGST credit used against CGST / SGST liabilities	500	(250)	(250)
Net liability / (carry forward)	**Nil**	**Nil**	**Nil**

B. Post-Amendment:

Particulars	IGST	CGST	SGST
Output tax	1000	500	500
ITC available	1500	250	250
Balance tax liability – after Adjustment I i.e. ITC of IGST utilised against IGST-CGST-SGST **in that order**	(1000)	(500)	-
Adjustment II – ITC of SGST utilised against SGST payable			(250)
Net liability payable / (carry forward)	**Nil**	**(250)**	**250**

Note: Although the total amount of output tax i.e Rs.2000/- and ITC i.e Rs.2000/- is the same in both the instances (pre-amendment and post amendment scenarios). In the post-amendment scenario, you will notice that a registered person will have to pay SGST of Rs.250/- by cash although he has credit of Rs.250/- of CGST still available to be set-off.

25. Section 52(9) - Concept of matching extended to GSTR 3B for e-com transactions:

1. The concept of matching and informing about discrepancies were only limited to two statements in case of an e-commerce operator transaction:
   a. Return by Ecommerce operator under GSTR 8
   b. Statement of outward supplies under GSTR 1

2. On account of continuation of GSTR 3B under Section 39, the matching concept of matching against GSTR 2 could not be put in place.
3. The provision to carry out matching between the following has been enabled:
   a. Return by Ecommerce operator under GSTR 8
   b. Statement of outward supplies under GSTR 1 or Monthly return as per GSTR 3 / GSTR 3B (**Effective date is yet to be notified)**

26. Section 54 – Refunds:

- Section 54(8) provides a list of situations where the principle of unjust enrichment does not apply in relation to disbursement of refund which includes, amongst others, zero-rated supplies of goods or services. This section has now been amended to provide that the principle of unjust enrichment will have to be checked for refund claims on suppliers of goods/ services to SEZ developer / units.
- For refund relating to export of service, receipt of money in convertible foreign exchange is a pre-condition. It is now provided that if money is received in Indian Rupee of permitted by Reserve Bank of India, then such receipt would be considered as receipt in convertible foreign exchange of export of service. Suitable amendments have been made in the meaning of 'relevant date' for export of service providing date of receipt in Indian Rupee of permitted by Reserve Bank of India would be considered as relevant date for computing the period of limitation.
- A contradiction in the GST laws regarding time limit for claim of refund of unutilised ITC has been resolved. The relevant date for claiming refund of unutilised ITC has been provided as the due date for furnishing of return under Section 39 for the period in which such claim for refund arises**.**

27. Section 79 - Recovery of tax: Recovery of taxes can now be made from distinct persons located in different States/ Union Territories. Therefore, in case of default of payment of tax, recovery can be made from the other establishments of the registered person located in different States/ Union Territories to ensure speedy recovery of taxes.

28. Section 107 - Appeals to Appellate Authority: Hitherto, the pre-deposit was 10% of the disputed tax without any ceiling limit. A taxpayer friendly amendment has been made to restrict the amount of pre-deposit to a maximum of Rs. 25 Crores of disputed demands for filing appeals to appellate authority. As this limit in respect of CGST, there will be corresponding limit additionally in respect of SGST and in respect of IGST dues, this limit will be doubled.

29. Section 112 - Appeals to Appellate Tribunal: Hitherto, the pre-deposit was 20% of the disputed tax without any ceiling limit. The amount of pre-deposit for disputed demands in case of filing appeals to appellate tribunal has been restricted the Rs. 50 Crores. As this limit in respect of CGST, there will be corresponding limit additionally in respect of SGST and in respect of IGST dues, this limit will be doubled.

30. Section 129 - Detention, seizure and release of goods and conveyances in transit: The time available to a pay the tax and penalty in case of detention or seizure of goods has been increased from 7 days to 14 days.

31. **Section 140 - Transitional credits:** CENVAT credit of eligible duties alone is now permitted to be claimed as transitional credit by a tax payer. Further, credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978.) is not eligible as transitional credit. A plain reading of the amendment indicates that since service tax, educational cess, secondary higher educational cess are not covered under the definition of 'eligible duties', a tax payer would be denied such credits also. However, vide Circular No. 87/06/2019 - GST, F. No. 267/80/2018-CX.8 dated 2nd January, 2019, the CBIC has clarified that CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 will be available as transitional credit. No credit of cess (viz. Krishi Kalyan Cess, Education Cess, Secondary and Higher Education Cess), including cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 will be allowed as transitional credit.

32. **Section 143 - Job work procedure:** A registered person (principal) is permitted to send inputs or capital goods (other than moulds, jigs, dies and fixtures) to a job worker without payment of tax subject to the condition that the inputs or capital goods are brought back within a period of 1 year and 3 years, respectively. A provision has been made to provide for extension of such time by 1 year and 2 years respectively, by the Commissioner on sufficient cause being shown.

B. IGST Act, 2017 – Amendments

1. **Section 2(6) - Export of Services:** RBI permits receipt of payment in Indian Rupees in case of export of goods and services particularly in the case of Nepal and Bhutan. However, under the GST laws, amongst other conditions prescribed, receipt of payment in foreign convertible currency is a mandatory requirement for an export of service to qualify as 'export of service'. Accordingly, the definition has been amended to allow receipt of payment in Indian Rupees where **permitted** as per Reserve Bank of India regulations to qualify as export of service. As a word of caution trade and industry must look out for this **permission** that RBI has granted.

2. **Section 2(16) - Non-taxable online recipient:** Panchayats established under Article 243G of the Constitution of India have been now included in the definition of 'Governmental Authority' for the purpose of determining 'non-taxable online recipient'. Therefore, a Panchayat receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession located in a taxable territory will be regarded as 'non-taxable online recipient'.

3. **Section 12 - Place of supply of domestic services of transportation of goods for export:** Place of supply of services by way of transportation of goods to a place outside India by a transporter located in India to a recipient of service shall be place of destination of goods. Export of service is defined under Section 2(6) of the IGST Act, 2017 to mean supply of any service when
   (i) The supplier of service is located in India;
   (ii) The recipient of service is located outside India;
   (iii) The place of supply of service is outside India;

(iv) The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

As the condition of 'recipient of service located outside India' (i.e. where the recipient is located in India) will not get fulfilled, in the amendment made in Section 12 of the IGST Act, 2017 the said service will not qualify as export of service.

Further, Section 7 (5) (a) of IGST Act, 2017 provides that when the supplier is located in India and the place of supply is outside India, the supply of service would be in the course of inter-State trade or commerce. Therefore, on combined reading of Section 7 (5) (a) of IGST Act, 2017 and newly inserted proviso to Section 12(8) of the IGST Act, 2017 it would imply that even where transporter being service provider and a recipient of service both located in India are within the same State, the service will still be inter-State supply.

4. **Section 13 - Place of supply of services of treatment or process to goods imported and re-exported:** Services, in relation to goods which are required to be made physically available, and are temporarily imported into India for treatment/process (for e.g: goods imported for job-work etc.) which are then exported will now be regarded as 'export of service' subject to fulfilment of the other conditions of export of services. Hitherto, such a concession was available only for goods temporarily imported for repairs and then re-exported. Please note that this provision cannot be extended to a case of "testing" services where the goods received for 'testing' are not exported.

5. **Section 20 - Application of provisions of Central Goods and Service Tax Act:** A taxpayer friendly amendment has been made to restrict the amount of pre-deposit for disputed demands in case of filing appeals to appellate authority and appellate tribunal to Rs. 50 Crores and Rs. 100 Crores respectively (in line with the CGST amendments). Hitherto, the pre-deposit was 10% of the disputed tax without any ceiling limit.

C. Council decisions needs another (set) of Amendment Acts later

The GST Council in its January meeting has approved the option for payment of tax under the composition scheme in respect of **service providers** and for an **increase in threshold from Rs.20 lakhs to Rs.40. lakhs.** Implementing these decisions will **NOT** be possible unless another Amendment Act is introduced, to Section 10 and 22, just for these two decisions.

The GST Council's approval is the first step in a long process of bringing about amendments in Central and (all) State GST legislations. News reports must be considered with caution and one cannot jump to understand that these amendments are already in place. As seen above, there are no amendments to implement these decisions..

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APPEAL PROVISIONS UNDER THE GST LAW

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This is an attempt to provide an overall basic understanding of the statutory provisions, pertaining to the processes of GST appeals at various levels.

- Appeal provisions are covered in Chapter XVIII of the CGST Act, 2017 (from Sections 107 to 121) and from Rules 108 to 116 in the CGST Rules, 2017.
- Categories of Appeals
  - Section 107-Appeal to Appellate authority
  - Section 112-Appeal to Appellate Tribunal
  - Section 117-Appeal to High court
  - Section 118-Appeal to Supreme court

  The following are the relevant definitions:-

  "Section 2 (8) "**Appellate Authority**" means an authority appointed or authorised to hear appeals as referred to in section 107;

  (9) **"Appellate Tribunal**" means the Goods and Services Tax Appellate Tribunal constituted under Section 109;"

APPEALS TO APPELLATE AUTHORITY.

Section 107-Appeals to Appellate authority (first appellate authority):

a. Appeal may be filed by **any person** aggrieved by any decision or order under the C/S/UT GST Act by an adjudicating authority within a period of **three months** from the date of receipt of order or decision in FORM GST APL-01 (Rule 108 (1).(Sec.107 (1))

b. Section 2 (4) of the CGST Act defines "adjudicating authority" to mean *any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in subsection (2) of section 171 (as amended wef 1.2.2019)*

c. The Commissioner may by order direct any **officer** subordinate to him to **apply** to the Appellate Authority within **six months** from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.(Sec.107 (2)). Thus even the Officers also can file applications. (Rule 109 and Form GST APL-03). Even the officer has to file certified copy of the decision or order appealed against within seven days of filing the application.

d. The Board may, on the recommendations of the Council, from time to time issue orders or instructions or directions **fixing such monetary limits**, as it may deem fit, for the purposes of **regulating the filing of appeal or application** by the officer of the central tax under the provisions of this Chapter. (Section 120 (1). Pl see sub sections (2), (3) and (4) for ancillary provisions. (**Application** to be filed before the

Appellate Authority and the Appellate Tribunal and **appeal** to be filed before the High Court and Supreme Court)

e. If **sufficient cause** is shown, the appellate authority may extend further period by one month, beyond three or six months, as the case may be. (**delay condonation)** (Sec.107(4))

f. Appeal shall be filed in form **GST APL -01** along with all the required documents as per Rule 108 of the CGST Rules 2017 online. A **provisional acknowledgment** shall be issued to the appellant immediately. (Rule 108 (1))

g. Grounds of appeal and the form of verification in GST APL-01 shall be **signed** in the manner specified in Rule 26 (digital signature certificate or through e-signature). (Rule 108 (2))

h. A **certified copy of the decision** or order appealed against shall be submitted within **seven days** of filing the appeal and a **final acknowledgement** indicating appeal number shall be issued thereafter in form GST APL-02. Where the certified copy is submitted **within seven days,** the date of filing of appeal shall be the date on which the provisional acknowledgement stands issued.(Rule.108 (3))

i. In case, the said certified copy is **filed after a period of 7** days, then, the date of filing of appeal shall be the date of submission of such copy. (Rule.108 (3))

j. In any case, appeal shall be treated as filed only when the **final acknowledgment indicating the appeal number is issued.** (Explanation under Rule 108 (3)).

k. Appellant has to pay tax, interest, fee, fine and penalty arising from the impugned order in full, as is **admitted** by him. (Sec.107 (6a))

l. Appellant has also to pay **TEN PERCENT OF the DISPUTED TAX** arising from the said order, subject to a maximum of Rs.25 crores. (Sec.107 (6b))

m. On payment of the above amounts, the recovery proceedings for balance amount shall be **deemed to be stayed.** (Sec.107 (7)). It is a welcome feature than going round different forums praying for stay.

n. Appellate authority on sufficient cause shown at any time of hearing, can adjourn the hearing for reasons to be recorded in writing. **No such adjournment** shall be granted for more than **three times.** .(Sec.107 (9))

o. Appellate Authority, at the time of hearing may **allow to add any ground of appeal** not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal **was not willful or unreasonable**. (Sec.107 (10))

p. Appellant **shall not be allowed to produce additional evidence,** whether oral or documentary, other than the evidence produced before the adjudicating authority except in the following circumstances (Rule 112-Applicable to both the Appellate Authority and Appellate Tribunal):-

1. Where adjudicating/appellate authority has refused to admit evidence, which ought to have been admitted or,
2. Where appellant was prevented by sufficient cause from producing the evidence when called upon to produce by the adjudicating/appellate authority; or
3. Where appellant was prevented by sufficient cause from producing the evidence, which is relevant to any ground of appeal before the adjudicating/appellate authority; or
4. Where the adjudicating or appellate authority has made the order appealed against, without giving sufficient opportunity to the appellant.

No such evidence shall be admitted under sub rule (1) **unless** the appellate authority/appellate tribunal **records in writing the reasons for its admission**. Further the Appellate Authority/Appellate Tribunal shall not take any such evidence **unless** the adjudicating authority or an officer authorized by the said authority has been allowed a reasonable opportunity to examine the evidence or document or to **cross-examine** any witness produced by the appellant, or to produce any evidence or any witness in rebuttal of the evidence produced by the appellant. (Rule 112 (3))

It must therefore be noted that the registered person must be doubly **careful** in producing all the evidence before the adjudicating authority itself by all means, as otherwise it will be difficult to get any additional evidence admitted at the time of appeal.

q. Appellate authority to pass the order confirming, modifying or annulling the decision or order appealed against but **<u>shall not remand</u> the case back to the adjudicating authority.** (Sec.107 (11)). This is a welcome feature. Present system of remanding back to the assessing authority has been consuming lot of time.
r. An order **enhancing** any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order. (Sec.107 (11) first Proviso)
s. Where appellate authority is of the opinion that any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilized, show cause notice shall be given and such order must be passed within the time limit specified under Section 73 (**within three** years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or ITC wrongly availed or utilized relates to or within three years from the date of erroneous refund) or Section 74 (within **five years—fraud** or any willful misstatement or suppression of facts). (Sec.107 (11) second Proviso)
t. The appeal order shall be in **writing** and shall state the **points for determination**, the **decision** thereon and the **reasons for such decision.** (Sec.107 (12). It is therefore mandatory to pass a speaking order or a reasoned decision.
u. Where it is possible to do so, the appellate authority shall hear and **decide** every appeal with in a period of **one year of filing**. Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year. (Sec.107 (13))
v. Appellate authority to **communicate** the copy of order to the appellant, the respondent, adjudicating authority and jurisdictional Commissioner of CGST, SGST or UTGST.(Sec.107 (14) & (15))
w. The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a **summary of the order in FORM GST APL-04** clearly indicating the final amount of demand confirmed (Rule 113 (1)).
x. An authorized representative for appearing before the Appellate authority can be (Section 116):-

1. a relative; or
2. a regular employee; or
3. an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

4. any chartered accountant/cost accountant/company secretary, holding a certificate of practice, and who has not been debarred from practice
5. a retired officer of the Commercial Taxes Department of any State Government or UT or of the Board. whose rank was minimum a Group-B gazetted officer for a period of not less than two years
6. any person who has been authorized to act as a Goods and Services Tax Practitioner (Pl see Section 2 (55) and Section 48) on behalf of the concerned registered person

- o Retired officers cannot appear within 1 year from the date of their retirement or resignation (Proviso under clause (d).
- o Sub Section (3) of Section 116 specifies the persons who are not eligible to represent ie., persons dismissed or removed from Government service; persons, who are convicted for any offence connected with the proceedings under the specified Tax laws; persons found guilty of misconduct by the prescribed authority and persons adjudged as insolvents.
- o Under Rule 116 of the CGST Rules, the Commissioner has power to disqualify an authorized representative, other than an Advocate and CA/CWA/CS.

y. Appeals **cannot** lie for the following decisions taken by a GST officer (Section 121)-

1. An order to transfer the proceedings from one officer to another officer; or
2. An order seizing or retaining books of account and other documents; or
3. An order sanctioning prosecution under the Act; or
4. An order allowing payment of tax and other amount in installments (Section 80).

APPEALS TO APPELLATE TRIBUNAL

Section 112-Appeal to Appellate tribunal:

a. The GST Appellate Tribunal is the second level of appellate forum, constituted by the Government on the recommendations of the Council. Appeals can be filed before the Tribunal against the orders passed by the Appellate Authority (Section 107) or orders in revision passed by the revisional authority (Section 108), by any person aggrieved by such appeal order or revision order.

b. The powers of the Appellate Tribunal shall be exercisable by four types of benches ie. National Bench, Regional Bench, State Bench and Area Bench. (Section 109). The following is their constitution:-
National Bench at New Delhi shall function with President, one Technical Member (Centre) and one Technical Member (State) (Sec. 109 (3).
Such number of Regional Benches may be constituted by the Government on the recommendations of the Council. Each Bench shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State). (Sec. 109 (4).

c. The **National Bench or Regional Benches** shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where **one of the issues involved relates to the <u>place of supply.</u>** If such order does not deal with any issue relating to the place of supply, no appeal lies to these two Benches. (Sec.109 (5)).

d. Government shall by notification, specify for each State or UT (except for the State of J&K), a Bench of the Appellate Tribunal named 'State Bench' for exercising the powers within the concerned State or UT. For J&K, the State Appellate Tribunal constituted under the J&K GST Act, 2017 shall be the State Bench. (109 (6).

e. On the specific request from any State Government, Government shall constitute such number of Area Benches in that State, as may be recommended by the Council. Further on the request of any State, or on its own motion for a UT, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or UT on the recommendations of the Council, subject to such terms and conditions, as may be prescribed. (Sec.109 (6) Proviso)
f. The **State and Area Benches** have jurisdiction to hear appeals involving matters **other than the issues relating to place of supply** mentioned in Section 109 (5). (Sec.109 (7).
g. Each State Bench and Area Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President. (Sec.109 (9))
h. In the absence of a member in any bench, appeal can be heard by **two members** with the approval of President or State President. A **single member** can also hear the appeal, if the amount involved **does not exceed five lakh rupees** or where **no question of law** is involved, with the approval of President.(Sec.109 (10))
i. In a case where the members of the Benches differ in opinion, procedure has been specified in Section 109 (11) for disposal.
j. The President and State President shall distribute the cases among Regional benches or the Area benches, as the case may be. (Sec.109 (8).
k. Qualifications, appointment and conditions of service of President and Members of Appellate Tribunal have been specified in Section 110.
l. Appellate Tribunal is not bound by the procedure laid down in the Civil Procedure Code, 1908 but shall be guided by the principles of natural justice and applicable provisions. It has power to regulate its own procedure (Section 111 (1)). It has the same powers as are vested in a civil court under the CPC, 1908, in respect of the specified matters. (Sec.111 (2).
m. Any order made by the Appellate Tribunal may be enforced by it as if it were a decree made by a court in a suit pending therein and it shall be lawful for the Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction the appellant (Company/person) is situated/resides. (Sec.111 (3).
n. All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of the specified provisions of IPC. Tribunal shall be deemed to be civil court for the purposes of Section 195 and Chapter XXVI of the CPC. (Sec.111 (4).
o. Appeal must be filed within a period of **three months** from the **date of communication of the order** to the person preferring the appeal. (Section 112 (1)).
p. Appellate Tribunal may **refuse** to admit an appeal if the amount involved in appeal **does not exceed fifty thousand rupees**. (112 (2).
q. Department can also file application before Tribunal within six months from the date on which the said **order has been passed** (Section 112 (3)). Such application shall be dealt with by the Tribunal as if it were an appeal made against the order under Section 107 (11) or 108 (1) and the provisions of the Act shall apply to such application, as they apply in relation to appeals filed under Section 112 (1). (Sec.112 (4).

r. Respondent has to file memorandum of **cross objections** within **45 days** of receipt of notice (Sec. 112 (5).

Example:-

a) Date of order of the Appellate Authority or the Revisional Authority -- 05-04-2018.

b) Date of communication of the order to the person --- 10.04.2018.

c) Appeal to the Tribunal to be filed by any person within 3 months i.e. on or before 09-07-2018

d) Date of receipt of intimation of filing appeal to the party against whom appeal has been preferred --- 12.08.2018

e) Date by which cross objections have to be filed – 26.09.2018.

f) Application to the Tribunal by the officer subordinate to the Commissioner within six months from the date of order, to be filed on or before 04-10-2018.

s. If sufficient cause is shown, Appellate Tribunal may admit an appeal within further **three months** and permit filing a memorandum of cross objections within further 45 days. (Sec.112 (6).

t. Appeal shall be filed in form **GST APL -05** along with all required documents as per Rule 110 (1) of CGST Rules 2017 online. A provisional acknowledgment shall be issued to the appellant immediately.

u. Memorandum of cross objections shall be filed in form **GST APL-06.** (Rule 110 (2).

v. A certified copy of decision or order appealed against shall be submitted to the Registrar within **seven days** of filing of appeal electronically. Thereafter, a final acknowledgement indicating the appeal number shall be issued in **Form GST APL 02** by the Registrar. In such a situation the date of filing of appeal shall be the date of issue of provisional acknowledgment. In case the certified copy is filed **after** a period of **7 days** then, the date of filing of appeal shall be the date of submission of such copy. However the **appeal shall be treated as filed** only when the **final acknowledgement** indicating the appeal number is issued. (Rule 110 (4).

w. Fees for filling appeal to Tribunal or restoration of appeal is **one thousand rupees** for every one lakh rupees of tax, fine, fee, penalty, involved in appeal, subject to a **maximum of Rs.25,000.** There is no fee for filing rectification application referred to in Section 112 (10) for rectification of errors. (Rule 110 (5).

x. **Department** has to file application in form **GST APL-07** along with the relevant documents on the common portal. Certified copy of the decision or order also shall be filed within **seven days** of filing the application. (Rule 111).

y. Appellant shall **pay** tax, interest, fee, fine and penalty arising from the impugned order in **full**, as **admitted** by him. (Section 112 (8) (a).

z. Appellant shall also to pay **TWENTY PERCENT of the DISPUTED TAX** arising from the said order subject to a maximum of Rs.25 crores. (Sec.112 (8) (b).

aa. Where the appellant has paid the amount as mentioned in sub Section (8), the recovery proceedings for the balance amount shall be deemed to be **stayed till the disposal of the appeal.**

bb. The Appellate Tribunal may **confirm, modify or annul** the decision or order appealed against or may **refer the case back** to the Appellate Authority or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence,

if necessary. In contrast to Appellate Authority, Tribunal has been conferred with the power of remanding back the matter with directions. (Sec. 113 (1).

cc. Appellate Tribunal on sufficient cause shown at any time of hearing, adjourn the hearing. No such adjournment shall be granted, more than **three times.** (Section 113 (2))

dd. Tribunal may amend any order so as to rectify errors in the order with in a period **three months from the date of order.** If such rectification results in enhancing the liability, opportunity of being heard has to be given to the party. (Sec.113 (3).

ee. Provisions relating to production of **additional evidence** mentioned against first appeal would be applicable mutatis mutandis. (Rule 112).

ff. Where it is possible to do so, Tribunal shall hear and decide every appeal with in a period of **one year.** (Sec.113 (4).

gg. Appearance of **authorized representative** is the same as in the case of first appeal. (Sec.116)

hh. Section 121 deals with the situations, where **no appeal** can be filed. It is the same as in the case of first appeal.

ii. Jurisdictional officer shall issue a statement in form **GST APL-04** clearly indicating the final amount of demand confirmed by Appellate Tribunal. (Rule 113)

jj. As per Section 115, where an amount paid by the appellant under Section 107 (6) or Section 112 (8) is required to be refunded consequent to appeal order, **interest** at the rate specified in Section 56 shall be **payable** in respect of such **refund** from the date of payment of the amount till the date of refund of such amount.

APPEALS TO HIGH COURT

Section 117-Appeal to High court:

a. Any person aggrieved by any order passed by **STATE Bench or Area Benches** of the Appellate Tribunal may file an appeal to the High court. High court admits such appeal if it is satisfied that case involves substantial question of law. (Sub Section (1)

b. Appeal must be filed within **180 days** from the date of receipt of order by the aggrieved person. High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period. (Sub Sec. (2)

c. High Court shall formulate **substantial question of law** involved in that case and the appeal shall be heard only on such question and the respondents be allowed to argue that the case does not involve such question. However nothing prevents High Court to hear the case on any other substantial question of law not formulated by it if it is satisfied that the case involves such question. (Sub Sec.(3)

d. High Court may also award such **cost** as it deems fit. (S.Sec.(4).

e. High Court may determine any issue which has not been determined by the State Bench or Area Benches or has been wrongly determined by them. (S.Sec (5).

f. Appeal to High court shall be filed in form **GST APL-08.** (Rule 114).

g. Where an appeal has been filed before the High court, it shall be heard by a **bench of not less than two judges** of High court. Decision shall be by majority. (S. Sec.(6). In case of difference of opinion, shall be referred to one or more of the other Judges of the High Court and thereafter shall be decided according to the opinion of the majority. (S. Sec (7).

h. The judgment shall be **given effect** by either side on the basis of a **certified copy** of the judgment. (S. Sec. (8).
i. Jurisdictional officer shall issue a statement in form **GST APL-04** clearly indicating the final amount of demand confirmed by the High court. (Rule 115).
j. Code of Civil Procedure, 1908 relating to appeal to High court applies for appeal under this Section. (S. Sec.(9)
k. Notwithstanding that an appeal has been preferred to High court, **sums due to Government as a result of order passed** by National or Regional or State or Area benches of Appellate Tribunal shall be payable in accordance with the order so passed. (Section 119).

APPEALS TO SUPREME COURT

Section 118-Appeal to Supreme Court:

a. Appeal lies to the Supreme court in the following two cases
   - From any order passed by **NATIONAL Bench or REGIONAL Benches** of the Appellate Tribunal
   - From any judgment or order passed by the High court in appeal made under section 117 in any case, which, on its own motion or on an application made by or on behalf of the aggrieved party, immediately after passing of the judgment or order, the **High court certifies to be a fit one for appeal to the Supreme Court.**
b. Jurisdictional officer shall issue a statement in form **GST APL-04** clearly indicating the final amount of demand confirmed by Supreme Court. (Rule 115).
c. Notwithstanding that appeal has been preferred to the Supreme court, sums due to Government as a result of order passed by National or Regional or State or Area Benches of the Appellate Tribunal or High court shall be payable in accordance with the order so passed. (Sec.119).
d. Code of Civil Procedure, 1908 relating to appeal to the Supreme Court applies for appeal under this section. (Sec. 118 (2)

Author's comments:-

Trade and Industry have been requesting the Governments since decades to change the system of mechanism for redressal of grievances against the merits of a decision taken by the officers. First appellate authority, being an officer of the Department is fettered by the official and unofficial instructions of the superiors and hence it is but natural that it errs towards revenue in most of the cases. Absence of independence of first appellate authority strikes at the very route of fair judicial process. Though the appellate authorities are quasi-judicial authorities, due to official constraints, they tend to be partial. As a thumb rule, no appellate authority under the VAT Act, in both the Telugu States, has every granted stay of collection of tax, though in majority of the cases, the impugned orders were subsequently set aside. Instead of punishing the Departmental Officer by assigning the task of appeal work, it would be better if a non-Departmental person, having required qualifications is entrusted with such work, by designating him as the first appellate authority.

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CREATION OF NATIONAL BENCH OF GOODS AND SERVICES TAX APPELLATE TRIBUNAL (GSTAT) – WHAT A SHOCK WITHOUT A JUDICIAL MEMBER?

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Introduction

Section 109(1) of The Central Goods and Services Act 2017 (Central Act) mandates Central Government to constitute a Goods and Services Tax Appellate Tribunal (GSTAT) on the recommendations of the GST Council.

Let us examine Section 109 and sub section (1), (2) and (3) which is reproduced:

1. Sub Section (1) empowers the Central Government to constitute the Goods and Services Tax Appellate Tribunal (GSTAT)
2. Sub Section (2) provides for the exercise of powers of the Tribunal by the National Bench, State Benches, Regional Benches and Area Benches
3. Sub Section (3) is the most important and critical statutory provision since it specifies about the composition of the GSTAT that the National Bench would be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State)

The Union Cabinet on 23rd January 2019 approved and released a press note for the creation of Goods and Services Appellate Tribunal (GSTAT) with the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) to be located at New Delhi and shall consist of a President and two technical members one from the Centre and one from the State respectively. After the creation of the GSTAT any person aggrieved by an order passed against him under Section 107 or Section 108 of this Central Goods and Services Act (CGST) or the State Goods and Services Act (SGST) or the Union Territory Goods and Services Act (UTGST) may appeal to the Appellate Tribunal against such order within three months from the date on which order sought to be appealed against is communicated to person preferring the appeal. The creation of the GSTAT without any

judicial member in the bench stands on a very weak judicial footing and will have to withstand the judicial scrutiny against the settled legal position.

Current Legal position

The Hon'ble Supreme Court has held in unequivocal terms in plethora of judgments that the presence of Judicial Member in the Tribunal is sine-qua-non for its creation. Absence of Judicial Member would render the entire judicial process otiose. It is apprehended that absence of Judicial Member would hinder the correct dispensation of justice resulting in clogging of the Judicial system with litigants travelling all the way to High Courts and Supreme Court and thereby defeating the main objective of creation of Tribunals i.e. to mitigate the burden on the higher judiciary. It is imperative that the Higher Courts namely High Courts and Apex Court are not required to consume their precious time and energy in examining issue and rendering justice on issues which could be decided at the level of the Tribunal. Presence of a Judicial Member will ensure that the tax litigant is given a fair hearing before the Tribunal and absence of a Judicial Member would be violating Article 323 B of the Constitution of India. The creation of GSTAT without a Judicial Member would be directly against settled legal position held by the Honble Apex Court in a plethora of Judgments over the years. It is imperative that the Tribunal being a creature of Statute must apply its mind on all the issues agitated before it both on facts and on law interpreting the Statute in its entirety and applying the correct principles of Law. GST Law is in its nascent stage and it is absolutely necessary that proper justice is rendered to the assessees from the inception who approach the Tribunal in the hope of obtaining a fair hearing and orders. Currently the CESTAT continues to hear the appeals filed before it under the erstwhile regime of Central Excise Act and Finance Act. The assesses are heard by a Single member bench or Double member bench depending on the pecuniary limits of the appeals by either a judicial or technical member (Single bench) or by both technical and judicial members collectively (Double bench) as the case may be. It is submitted that the GST law committee should immediately recommend to the GST council for amending Section 109 sub section (4) in particular and include one judicial member in the National Bench and in all other Benches proposed to be constituted. Such a step should be taken immediately before the Central Government notifies the creation of the Tribunal.

History of Tribunals in the Indian legal system

Part XIVA and Article 323 A & 323 B of the Constitution of India mandates the Parliament to provide for Administrative Tribunals and Tribunals for other matters respectively. Appellate Tribunals under different Acts have been set up over the years to provide judicial support and acts as mediator between the judicial system and department and public. Tribunals have been established under different statutes with the aim to overcome lags and delays in the judicial system, answer the queries of public with respect to functioning of the administrative authorities. "The term 'Tribunal', not being a term of art, referred to any dispute-resolution body or process, from the regular courts of law, through domestic bodies regulating clubs, societies and professions, to ministers making decisions in the course of their administrative duties." It reduces the burden of

judiciary by sharing lower value cases or cases involving and deciphering facts. Based on the recommendations of the Swaran Singh Committee, Part XIV-A was added by the Constitution (Forty-Second Amendment) Act, 1976, titled as 'Tribunals' which provided for the establishment of 'Administrative Tribunals' under Article 323-A and 'Tribunals for other matters' under Article 323-B. The Constitution (Forty-Second Amendment) Act, 1976 is as under:

> *"To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution."*

Administrative Tribunals Act 1985 helped achieve the aim of establishing the Tribunals to reduce the burden with the courts. Various matters come under these Tribunals. Administrative Tribunals created under Article 323A do not have to follow rules of Evidence Act 1872 but have been vested with the powers of Civil Court in respect of some matters including the review of their own decisions and are bound by the principles of law and natural justice. "Where a statutory Authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act."

To ensure that Tribunal fulfils the principle of law and natural justice and is fulfilling its duty judicially, the Members of Tribunals must be member of judicial or legal fraternity. Setting up of tribunal with technical members only and no judicial members will reduce the number of cases reaching the courts directly, but will it be sufficient to achieve the goal? The technical members do not have in-depth understanding of the law. They have pro-department/revenue approach in their decision making thought process. This may initially reduce the number of cases going to courts, but will ultimately increase the cases as, those not satisfied with the order of the appellate tribunal will go to the court ultimately. This is burden on the people and the economy as well. This does not help in achieving the aim of setting up appellate tribunals. Tribunal has not been defined, but various cases set the principle and working for tribunals and appellate tribunals. In Associated Cement Co. Ltd. v. P.N. Sharma it was held that "the basic and fundamental feature that is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State". In Durga Shankar Mehta v. Raghuraj Singh , the Supreme Court of India held that the 'Tribunal' according to Article 136 does not mean 'Court' but includes within it, all adjudicating bodies, provided they are constituted by State to exercise judicial powers as distinguished from discharging of administrative or legislative functions.

Existing Tribunals under other non-Tax Statutes

A cursory glance at the composition of various tribunals under other non-tax statutes would prove that all of them have one judicial member in the bench constituted under the respective Acts.

A few examples are cited below:

1. Companies Act 2013 under Section 411 states the qualifications of Chair-person and Members of Appellate Tribunal where a (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court and (2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years. The competition law follows the same pattern for appellate tribunal. Insurance Act also works through NCLAT.
2. Composition of Securities Appellate Tribunal under Section 15L under Securities and Exchange Board of India Act, 1992 also makes it mandatory to include Judicial Member as the member of the Appellate Tribunal with being judge of 5-7 years of experience.
3. In the Foreign Exchange Management Act, 1999, S. 20 of the Act gives description of composition of the Appellate Tribunal which makes it compulsory to have Judicial Members as the member of the Appellate Tribunal.

Existing Tribunals under the Tax regime

• Income tax Act 1961

ITAT (Income Tax Appellate Tribunal) must have a Judicial Member under Section 252 of Income tax Act 1961.

"The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act." as well as

"A Judicial Member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Central Legal Service and has held a post in Grade 1 of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years."

• Customs Act 1962

Section 129 of the Customs Act 1962 provides for the establishment of Central Excise and Service Tax Appellate Tribunal (erstwhile CEGAT) which runs "The Central Government shall constitute an Appellate Tribunal to be called the 'Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act." Further, it provides "A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years."

There is no need for any departure from the existing practice of having a judicial member especially in the GST regime which is touted as the most revolutionary indirect tax regime post Independent India and glorified as "ONE NATION ONE TAX". Over the years we have witnessed some landmark orders passed by the tax tribunals and CESTAT

in particular. The Honble Supreme has taken cognizance of the various orders passed by the CESTAT by confirming them.

• Central Sales Tax Act 1956

S. 19 of the Central Sales Tax Act mandates creation of Central Sales Tax Appellate Authority, and states explicitly as follows
"The Authority shall consist of the following Members appointed by the Central Government, namely: — (a) a Chairman, who is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court; (b) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India".

• State VAT Tribunal constituted under the erstwhile State VAT Acts

Most of the erstwhile State VAT statutes created Tribunals at the State level to hear and dispose-off VAT tax disputes and Judicial Members were a part of the bench which heard the case and passed orders. Every State has the President/Chairman as a Judicial Member along with a Judicial Member and Technical Member in their larger bench and a Judicial Member along with a Technical Member in their double bench.

Judicial precedents –Settled Legal position

The Apex courts in a series of judgements have time and again reiterated the presence of judicial member as a sine-qua-non for the validity of the Tribunals. Some of the illustrious judgments rendered by the Apex Court:

In the case of **Union of India (UOI) Vs. R. Gandhi and Ors**, the following extracts have been taken from Para 18, "Tribunals should have a Judicial Member and a Technical Member. The Judicial Member will act as a bulwark against apprehensions of bias and will ensure compliance with basic principles of natural justice such as fair hearing and reasoned orders. The Judicial Member would also ensure impartiality, fairness and reasonableness in consideration. The presence of Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making". Para 14 brought the point that, "Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a Judicial Member and a Technical Member who is an 'expert' in the field to which Tribunal relates. Some highly specialized fact finding Tribunals may have only Technical Members, but they are rare and are exceptions." And para 35 says that, "In respect of such Tribunals, only members of the Judiciary should be the Presiding Officers/members of such Tribunals. Typical examples of such special Tribunals are Rent Tribunals, Motor Accident Tribunals and Special Courts under several Enactments."

Also for our consideration, "It was expected that a judicious mix of judicial members and those with grass-roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted."

The Constitution Bench in **Union of India (UOI) Vs. R. Gandhi** observed that if Tribunals are to be given judicial power which was earlier exercised by courts, they must possess independence, security and capacity associated with courts.

In **Madras Bar Association versus Union of India (2014),** it was observed that the newly constituted Tribunals will be invalidly constituted unless its members are appointed in same manner and are entitled to same conditions of service as were available to the judges of the courts sought to be substituted. Appointment of non-judicial members may constitute dilution and encroachment upon independence of judiciary and rule of law. The accountant members or technical members could not handle complicated questions of law. The judicial members are to handle substantial questions of law. Mere technical knowledge or knowledge of accounts was not enough.

In **Gujarat Urja Vikas Nigam Limited versus Essar Power Limited**, it was upheld that, "Composition of the appellate Tribunal dealing with questions of law being manned by non-judicial members was not desirable which called for a review of composition of such Tribunals".

Conclusion and recommendations

In view of the above discussion and settled legal position it is imperative that the proposed GSTAT must have a judicial member in all the benches. The step to create an Appellate Tribunal under GST is much-needed and welcome move but the attempt to have bias-free decision making mechanism will fail if the Tribunal does not have a Judicial Member. The Appellate Tribunal must have at least one Judicial Member along with Technical Member to ensure a fair hearing and to ensure decisions based on correct interpretation of GST Act across the country. There is need to have judicial member in the appellate tribunal along with the presiding officer, both shall be of the legal background/ judicial member with certain number of experience in the industry. The number of members in the appellate authority is always odd number for the majority to prevail while deciding the case, where there is no veto power. Hence, inclusion of judicial member is must. In all fairness let us start the process of GSTAT creation on the right note and ensure a fair and reasonable hearing to all the stake holders in tax litigation in the interest of Justice.

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SOME IMPORTANT ADVANCE RULINGS UNDER GST

CA Manoj Nahata, FCA, DISA
Guwahati

1. **Whether GST payables on sale of spiritual products like religious books, DVD, CD by a religious charitable trust?**

   Held: Yes.
   In case of ***Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra***- **AAR Maharashtra** held that there was no specific exemption to registered charitable trusts for a supply of such goods under GST. The activities of 'trade and commerce' are also part of main objective of the trust. Therefore, the sale of spiritual products could be treated as supply under the GST Act and GST would be applicable to it.

2. **Whether GST is payable on membership fee of Lions Club?**

   Held: No.
   In case of ***Lion Club of Poona Kothrud***- **AAR Maharashtra** held that there is no GST liability for the amount collected by individual Lions club and Lions District is for the convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single hank account. The AAR also observed that there is no furtherance of business in this activity and neither any service are rendered goods being traded.

3. **Whether GST is applicable on transactions between Head Office & Branches even if no amount is charged like common accounting service, I.T service, marketing service etc?**

   Held: Yes
   In case of ***Columbia Asia Hospitals*- AAR Karnataka** held that that the services provided by the employees to the employer, the corporate office, have the nature of the employee and employer relationship. Therefore, activities performed by employees of the corporate office for other units of the company shall be treated as supplies as per Entry 2 of Schedule I of the CGST Act. Hence, GST would be applicable even if made without consideration.

4. **Whether GST is applicable on compensation received by a tenant for delayed possession of new premises?**

   Held: Yes

In case of ***Zaver Shankarlal Bhanushali*- AAR Maharashtra** held that as assessee agrees to do an act the compensation received from the developer for vacating the said premises shall be subject to GST.
Further, the amount received for delayed possession of new premises would be a receipt for tolerating the construction-cum-redevelopment work and for tolerating an act of not completing the redevelopment work within the prescribed time. The same would be covered under the definition of 'supply' and, therefore, the GST would be leviable on the said amount.

5. Whether Co-owners needs to take registration if his individual Turnover does not exceed Rs 20 Lakhs?

Held: No
In case of ***Elambrancheri Khaldoon*-AAR Kerala** held that when the rent is collected together and divided equally between respective co-owners, then the small business exemption for registration under GST is available to co-owners separately.

6. Whether GST is payable on Supply of Food Items to Employees for Consideration in Canteen run by Company?

Held: Yes
In case of ***M/s. Caltech Polymers Pvt. Ltd* -AAAR Kerala** held that supply of food items to the employees for consideration in a canteen run by the appellant would come under the definition of 'supply' as per the GST Act.
Note: Very recently the **AAR Maharashtra** in case of ***POSCO India Pune Processing Centre*** held that GST cannot be levied on sums recovered from staff for benefits. The same will be discussed in my next write up.

7. Whether GST is payable on Penal Interest charged by finance company on default in EMI?

Held: Yes
In case of ***Bajaj Finance Ltd*-AAR Maharshatra** held that the applicant was engaged in providing various types of loans to customers. The applicant received penal charges on delayed payment of EMIs of loans. The authority held that the amount received as penal charges would not be considered as additional interest and, therefore, was to be treated as ‘supply’ under the GST Act. Therefore, penal Interest on default in EMI payment would be taxable under GST.

8. Whether ITC available for lease rent paid during pre-operative period of leasehold land on which resort was being constructed on his own account and such rent was also capitalized in the books?

Held: No

In case of ***GGL Hotel & Resort Company Ltd*-AAR West Bengal** held that AS (Accounting Standard) -10 is relevant. It says that the cost of a self-constructed asset should be determined using the same principles as for an acquired asset, and it is usually the same as the cost of constructing an asset for sale. The cost of constructing the immovable asset, therefore, includes the lease rental paid for right to use the land on which the asset is built. Being an integral part of the cost of the immovable property the lease rental paid for the service of right to use the land is a supply for construction of the said property.
Therefore, the lease rental paid during the pre-operative period should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property (other than plant and machinery) on the applicant's own account. Input tax credit is, therefore, not admissible on such lease rental in terms of section 17(5)(d).

9. Whether services of warehousing, loading, unloading, packing and storage of 'Tea' are exempted as 'agricultural produce'?

Held: No
In case of ***Nutan Warehousing Company (P.) Ltd*-AAR Maharashtra** held that the activity of processing of raw tea-leaves into tea, results in emergence of a new product which has distinct name, character and use, and such manufactured products cannot be considered as agricultural produce. So warehousing of Tea is not an exempted service under entry sl. No: 54(e) of NN 12/2017- CT (Rate).
Note: Similar matter is pending before Hon'ble Gauhati High Court in a Writ case as well.

10. Whether GST registration is required when a person is engaged in exempt supply except under RCM?

Held: No
In case of ***Joint Plant Committee* –AAR West Bengal** held that the Applicant is not required to be registered under the GST Act if he is not otherwise liable to pay tax under reverse charge under section 9(3) of the GST Act.
Note: Section 23(1) has got overriding effect over section 22 and section 24(2) has got overriding effect over section 23.

(Source: gstcouncil.gov.in)

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RECENT CASE LAWS IN GST REGIME

CA ARPIT HALDIA
JODHPUR

Case-1:-N.V.K. Mohammed Sulthan Rawther and Sons and Willson [2019] 101 taxmann.com 24 (Kerala)

The petitioner had consigned a load of Roja betel nut to its dealer, through tax invoice dated 22.09.2018 alongwith eway bill with "HSN 0802", and paid the tax at 5%. On 26.09.2018 ASTO detained goods, alleging that first petitioner's product fits the description "HSN 2106" and attracts 18% tax-not 5%. It was contended by the petitioner that dispute about the rate of tax is not a matter for adjudication in a proceeding under Section 68 or 129 of the GST Act.

Kerala High Court following the ratio laid down in J.K. Synthetics Ltd.v. CTO 1994 taxmann.com 370 (SC), Rams v. STO [1993] 91 STC 216, held that if inspecting authority entertains any suspicion that there is an attempt to evade tax, they can at best alert assessing authority to initiate the proceedings "for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his pleas on law and on fact." The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of that tax. Accordingly, detention was held to be arbitrary and unsustainable, and set aside. As a result, the Assistant State Tax Officer was required to release the goods.

Case-2-Asianet Digital Network (P.) Ltd. v. Assistant State tax Officer, Thiruvananthapuram [2018] 100 taxmann.com 379 (Kerala)

The Petitioner is a cable TV and Internet services provider. It purchased a few Set Top Boxes. The conveyance was intercepted on 14thNovember 2018 on account of mismatch between the delivery challan and the e-way bill. The value of goods noted in the e-way bill is Rs. 10,04,888/-, whereas in the delivery challan, it is 3,20,000/-. The petitioner contended that although a single delivery challan was prepared by the appellant but set-top boxes were shown in two entries separately. The first entry comprised of 200 boxes, and corresponding value was shown as Rs. 3,20,000/-. In the second Entry of 600 boxes, value was shown as zero due to computer error. The appellant argued that once e-way bill has shown correct value and even if the delivery challan shows incorrect value, there cannot be any presumption regarding any suppression.

Kerala High Court held that petitioner needs to comply with provisions of Section 129(1)(a) of CGST Act, 2017. The petitioner has shown quantity and value of 200 set-top boxes correctly in the delivery challan. However, for remaining 600 boxes only, incorrect value was mentioned in the delivery challan therefore, subject to further adjudication of issue before State Tax Officer, petitioner needs to provide a bank guarantee and personal bond under Section 129(1)(a) for the amount to be confined to 600 set-top boxes.

Case-3: Palaniappan Chinnadurai - [2019] 102 taxmann.com 35 (AAR TAMILNADU)

Query: What is the applicable chapter and GST rate for Quicklime having 86% Calcium oxide content and Slaked lime having 86% Calcium hydroxide content?

Held: Goods to be supplied is industrial grade Calcium Hydroxide of high purity of 86% and industrial grade Calcium oxide of high purity of 86% are rightly classifiable under CTH 28259040 and CTH 28259090 respectively taxable at 9% CGST and 9% SGST as per entry sl.No.38 of Schedule III of Notification no. 01/2017-C.T.(Rate) dated 28.06.2017 as amended and G.O. (Ms) No. 62 dated 29.06.2017 No. II (2)/CTR/532(d-4)/2017 as amended respectively.

Case-4: Storm Communications (P.) Ltd., [2019] 101 taxmann.com 479 (AAR-WEST BENGAL)

Query: Applicant is a supplier of Event management services and is registered in West Bengal. The applicant organised events in Tamilnadu on behalf of clients and, for this purpose, books conference halls, banquet halls, outdoor caterers etc. On inward supplies, they are charged CGST & SGST of Tamil Nadu and invoices are issued as B2B with Applicant's GSTIN. These invoices are also reflected in the Applicant's GSTR-2A.

Whether payment of CGST of one State can be used as ITC for another State?

Held: As the Applicant is not registered under section 25(1) in Tamil Nadu, SGST and CGST paid on intra-state inward supply in Tamil Nadu are not 'input tax' to the said person. In no case, the Applicant can claim/adjust/avail ITC outside Tamil Nadu on the said invoices, even if the invoices are issued as B2B mentioning the Applicant's GSTIN in West Bengal. Applicant cannot avail ITC or cannot adjust ITC of one State from the output liability of another State along with this applicant cannot adjust GST paid in unregistered State for the payment of IGST.

Case-5: ITD Cementation India Ltd [2019] 101 taxmann.com 137 (AAR-WEST BENGAL)

Query: The appellant seeks to enquire that whether work awarded for construction of multi-modal IWT terminal at Haldia on EPC basis to the applicant from Inland Waterways Authority of India (hereinafter referred as IWAI) would fall under Serial No. 3(vi) of Notification No. 11/2017 as amended time to time. **The only issue involved in the Query raised by the applicant is whether the project satisfies the condition as**

provided in Entry 3(vi)(a) above i.e. "original work meant predominantly for use other than for commerce, industry, or any other business or profession".

Held: IWAI is a statutory authority under direct control of the Central Government. It is, therefore, a 'Government Entity' in terms of para 4(x) of Notification No. 31/2017 – CT (Rate) dated 13/10/2017. Section 17(1) of the IWAI Act, 1985 empowers IWAI to collect user fees with previous approval of the Central Government. All such fees and charges are credited to the Inland Waterways Authority of India Fund, constituted under section 19(1) of the IWAI Act, 1985 and not to the Consolidated Fund of India. The user fees that IWAI collects is not credited to the Consolidated Fund of India and is, therefore, not revenue but proceeds from business as defined under section 2(17) of the GST Act. Therefore, construction of multi-modal IWT Terminal is a project undertaken within functional authority entrusted to IWAI and with Government sanction would have fallen under Serial No. 3(vi) of the Rate Notification, had it not been meant for commerce or business and taxable @ 12%. However, since the predominant use of the structure would be for commerce and business, therefore it would be falling under the residual entry 3(xii) and Taxable at the rate of 18%.

Case-6: Pew Engineering (P.) Ltd., [2018] 100 taxmann.com 450 (AAR-WEST BENGAL)

Query: Whether Retro-fitment of Twin Pipe Air Brake Systems on wagons is a Composite Contract and whether Principal Supply will be the supply of the Twin Pipe Air Brake Systems or the supply of services of fitting these goods to the wagons.

Held: Mere delivery of the Twin Pipe Air Brake Systems is not sufficient discharge of contractual obligation. Work is measured based on its assembling and fitting on the wagon. In fact, the contract is not only for supply of the air brake system, but also for its retro-fitment. It is, therefore, evident that the two supplies, as far as the terms of this contract, are naturally bundled in the ordinary course of business. The supply of services of the fitting is, therefore, dependent upon and ancillary to supply of the Twin Pipe Air Brake Systems. Predominant supply is, therefore, of the Twin Pipe Air Brake Systems, which constitutes essence of the contract would be treated as supply of goods.

Twin Pipe Air Brake System is classifiable under Tariff Head 8607 21 00 [Parts of Railway….Air Brakes and part thereof] which is taxable @ 5% under Serial No. 241 of Schedule I of Notification No. 01/2017 – CT (Rate) dated 28/06/2017 with no benefit of refund of the unutilized input tax credit (as per TRU Clarification issued under F.No.354/1/2018-TRU dated 25/01/2018).

Case-7: Sanjog Steels (P.) Ltd. [2018] 100 taxmann.com 405 (AAR- RAJASTHAN)

Query: In the given matter, there were four parties involved.

S. No.	Name of the Parties	Roles
1.	Sanjog Steels Pvt. Ltd. (M/s. SSPL)	Manufacture/Applicant
2.	M/s. Rathi Steel Enterprises (M/S RSE)	First Buyer
3.	M/s. Goyal Alloys Pvt. Ltd. (M/S Goyal)	Second Buyer
4.	Final Consumer	Consumer

Whether supply from Applicant to M/s. X from M/S SSPL on a "Bill to Ship to" mode as per provisions of Section 10(1)(b) of IGST Act, 2017 is permissible?

Held: Section 10(l)(b) of IGST Act, 2017 does nowhere limit the transaction to only three parties/persons. The said section only contemplates about role of 'third party' and declaration of 'principal place of businesses. Therefore, the supply from M/s. SSPL to M/s. X on a "Bill to Ship to" mode as per provisions of Section 10(1) (b) of IGST Act, 2017 is permissible.

Case-8: Punjab Small Industries & Export Corporation Ltd. [2018] 99 taxmann.com 293 (AAR- CHANDIGARH)

Query: The applicant is a State Government owned Industrial Development Undertaking providing 30 years or more lease of industrial plots against one-time upfront amount called as premium, salami, cost, price, development charges or by any other name to the industrial units. This service is exempt from GST virtue of Entry No. 41 of the Notification No. 12/2017 – Central Tax (Rate), dated 28-6-2017. **Whether ancillary services provided by a State Government owned Industrial Development Undertaking in relation to lease service of Industrial plot as exempt vide Notification No. 12/2017 – Central Tax (Rate), dated 28-6-2017, are also exempt from GST?**

Held: Additional services though are in respect of same plots but entry No. 41 does not provide exemption to all services related to the plots covered but grants exemption only to the upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more. Therefore, other subsequent services which are not mentioned in the notification are not covered under the said exemption entry or any other entry in Notification No. 12/2017-CT(R) and thus liable for payment of CGST and UTGST. The other subsequent services which have not been specifically exempted under Entry 41 of Notification No. 12/2017 dated 28thJune 2017 are covered under "Other Miscellaneous services"-Group 99979, taxable at the rate of 9% CGST and 9% SGST/UTGST.

Case-9: Umax Packaging (A unit of Uma Polymers Ltd.) [2018] 100 taxmann.com 398 (AAR- RAJASTHAN)

Query: Whether IGST can be charged in "Bill to-Ship to" transactions wherein both supplier and recipient are located in same state and third party is located in different state?

Held: The transaction between M/s Uma Polymers, Guwahati, M/s Umax Packaging Jodhpur and M/s Pratap Snacks Ltd., Guwahati is a case of 'Bill to-Ship to' model. In terms of provisions of Section 10(1)(b) of IGST Act, 2017, M/s Umax Packaging Jodhpur is acting as a third party, directing M/s Uma Polymers, Guwahati (supplier) to dispatch the goods directly to M/s Pratap Snacks Ltd., Guwahati (Recipient). M/s Uma Polymers, Guwahati would accordingly 'bill to' the applicant and 'ship to' M/s Pratap Snacks Ltd., Guwahati.

In view of provisions of Explanation to Section 16(2)(b) of CGST Act, 2017, it would be deemed that applicant has received goods from M/s Uma Polymers Ltd., Guwahati and thereafter the said goods are dispatched to M/s Pratap Snacks Ltd., Guwahati. IGST in this case is applicable on both the transactions i.e. Supply by M/s Uma Polymers Ltd., Guwahati (Supplier) to Ms. Umax Packaging, Jodhpur (Third Party) and Ms. Umax Packaging, Jodhpur (Third Party) to M/s Pratap Snacks Ltd., Guwahati (Recipient).

Thus, M/s Uma Polymers Ltd., Guwahati can charge IGST from the applicant, against which the applicant ie. M/s Umax Packaging, Jodhpur are eligible to claim full input tax credit as per the relevant provisions of Section 16 and 17 of Chapter V of CGST Act, 2017.

Case-10: National Aluminium Company Ltd [2019] 102 taxmann.com 371 (AAAR-ODISHA)

Appeal was filed before the AAAR-Odisha to set aside / modify Advance Ruling No.02/OD1SHA-AAR/2018-19 dated 28.09.2018 and allow input tax credit on inputs and input services used by them for maintenance of their township, security services and horticulture meant for township.

Held: The ruling of the AAR that inward supplies towards management, repair, renovation, alteration or maintenance service or goods received for furnishing the residential colony shall not qualify for input tax credit is found to be correct. Provision of housing to its employees by the Appellant is nothing but a perquisite. As clarified by the CBIC vide its Press Release dated 10.10.2017, referred to by the Appellant-I, perquisites are not subjected to GST. Therefore, since the perquisites are outside the scope of GST, input tax credit shall not be available to the Appellant in respect of tax paid on goods and services procured by it for management, repair, renovation, alteration or maintenance services (including watch and ward services, security services, Plantation/Gardening/Landscaping services, etc.) pertaining to residential accommodation for its employees in township/colony.

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SOME IMPORTANT CASE LAWS UNDER GST

Mukul Gupta, Adv.
Sr. Partner
SHARNAM LEGAL

D. PAULS TRAVEL & TOURS LTD
VERSUS
UNION OF INDIA
W.P. (C) NO. 7320 OF 2017 (Hon'ble Delhi High Court), DECIDED ON 06-12-2017

Facts:

Assesse is in business of booking tours and hotel packages for customers and it charges Integrated Goods and Services Tax (IGST) from customers for bookings in hotels located outside Delhi. The Assesse is unable to avail Input Tax Credit on State Goods and Services Tax (SGST) charged by hotels located outside Delhi as it was not registered in that State. This, it is submitted, is contrary to the purpose and objective of Goods and Services Tax.

Issue:

Whether assesses would have to be registered in all States and Union Territories to avail input credit of SGST?

Ratio

Direction to Government to examine assertions and inform Court on treatment accorded on sale of manufactured goods and other services provided by an assesse across country - Government also directed to examine and consider whether matter should be placed before GST Council.

Decision

The Court observed that the matter requires in depth examination by the respondents for there are several examples which show anomalies that arise. Different provisions are applicable in case of online bookings through web travel portals and they are able to avail the credit.

Insight

The case has been initiated in December, 2017. More than 14 months have passed after the institution of the case before the High Court, but the government is still to come out

with the necessary clarifications in this regard. Timely action by the government complying with the directions of the High Court will instil confidence in the trade and industry.

M/S SCOTT EDIL PHARMACIA LIMITED.....PETITIONER VERSUS ASSISTANT COMMISSIONER CWP NO.: 2970 OF 2018 (Hon'ble Himachal Pradesh High Court), DECIDED ON: 17.12.2018

Facts

Petitioner Company has been held guilty of suppressing Gross Turn Over of `95,90,00,000/- and consequently, it has been subjected to SGST and penalty to the tune of `23,01,60,000/-. Since no Appellate Forum for SGST has been notified by the State of Himachal Pradesh, due to which, the petitioner has been denied its valuable right of appeal, leaving no other option but to file the instant Writ Petition.

Issues

Whether the petitioner has rightly filed the writ in absence of appellate forum under SGST?

Ratio

There is violation of the principles of natural justice and fair play. Forum for judicial remedy as prescribed under the relevant law must be in place.

Decision

Aggrieved party cannot be left remedy-less merely because the State Government has not notified the Appellate Forum. There is direction to the Additional Chief Secretary-cum-Financial Commissioner, State Taxes and Excise, to notify the Appellate Forum within one week. Till then no coercive action can be taken.

Insight

The need for 1st appellate authority as well as appellate tribunal is requirement by principles of law in all the states. Hence, the decision has been rightly taken. The above decision reflects upon the lackadaisical approach of the state government in constituting the statutory appellate mechanism under GST.

HINDUSTAN UNILEVER LIMITED Versus UNION OF INDIA & ORS. W.P. (C) No. 378/2019 (Hon'ble Delhi High Court), ORDER DATED: 16.01.2019

Facts

The MRP on the goods were not reduced when the rate of taxes were reduced from 28% to 18%. Rather the base price was increased so that the MRP remains the same. The National Anti-Profiteering Authority directed HUL to deposit Rs.223 Crores in consumer welfare fund out of a total demand of Rs.383 crores after allowing an amount of Rs.160 crores which was already deposited by the company.

Ratio

The anti-profiteering provision is made to ensure that at the point of transition to new regime of GST, the reduction in output GST rates or benefit arising out of incremental input tax credit is passed on to the consumers and where this practice is not followed, the money should ultimately go for consumer's welfare.

Decision

1. The contention of the petitioner that TRAN-2 credit was made available in March, 2018 was not accepted as the order was not held erroneous on this count.
2. As an interim relief, Petitioner shall deposit partial payment of Rs. 90 crores with the Central Consumer Welfare Fund in two instalments of Rs. 50 crores and Rs. 40 crores till further investigations. Subject to the said deposit, no coercive steps would be taken in proceedings pursuant to the impugned order.

Insight

At the stage of interim order, since the investigation is yet to take place, it is not appropriate to comment on the outcome of the case. But going by the interpretation & sprit of law, the court has ordered the party to deposit in consumer welfare fund. The Hon'ble High Court directed the appellant to deposit 90 crores and stayed the balance amount pending further investigation and submission of report.

TVL. R.K. MOTORS
VERSUS
STATE TAX OFFICER
W.P. (MD) NO. 1287 OF 2019 AND W.M.P. (MD) NO. 1098 OF 2019
(Hon'ble Madras High Court), DECIDED ON: 24.01.2019

Facts

Petitioner is an authorised dealer for Bajaj Auto Limited for dealing in two wheelers. They have registered themselves as an assesse under the Goods and Service Tax Act, 2017 with the respondent. The writ petitioner had placed orders with their principal for delivery of 40 numbers of two wheelers [Pulsar Bike]. The goods were shipped from Pune to be delivered at Branch Office of the writ petitioner at Virudhunagar. It appears that the vehicle transporting two wheelers instead of halting at Virudhunagar, had moved towards Sivakasi. When the vehicle was en-route to Sivakasi and 7 km away from Virudhunagar, it was intercepted by the respondent roving squad. The respondent seized the vehicle. The impugned order of the detention was passed. A sum of Rs. 18,96,000/- had been levied as a penalty.

Issue

1. Whether the goods and truck detained under Section 129(3) of the Tamil Nadu Goods and Services Tax Act, 2017 was correct action taken by the department?
2. Whether the action can be considered as an attempt of evasion of tax?

Ratio

The pro-revenue approach will not be good in terms of law and justice to people. When a power is conferred on a statutory authority, it should be exercised in a reasonable manner.

Decision

The detention order dated 28.12.2018 and the order dated 11.01.2019 suffer from vice of gross unreasonableness and disproportionality. Circular dated 14.09.2018 issued by the Government of India, calling upon the officials to condone the minor lapses and not to proceed under Section 129 of the Tamil Nadu Goods and Services Tax Act, 2017. The said circular contemplates levy of only a minor fine of Rs. 500/-.

The goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. That would require proper documentation. Therefore, in a case of this nature, the writ petitioner could not have evaded his statutory obligations in any manner. This aspect of the matter ought to have been taken note by the respondent.

Insight

The court has rightly decided in favour of the petitioner and ordered release of goods. The law needs to be decided from the perspective of both, the department as well as the assesse and cannot follow a pro-revenue approach. This will not be good in terms of law and justice to people. Power conferred on a statutory authority can be exercised in a reasonable manner.

VASU CLOTHING PVT. LTD.
VERSUS
UNION OF INDIA
W.P. NO. 17999 OF 2018 (Hon'ble Madhya Pradesh High Court), DECIDED ON: 23.08.2018

Facts

The petitioner has claimed that the duty free shops at international airports in India are located beyond the Customs frontier of India and any transaction that takes place in a duty free shop is said to have taken place outside India and petitioner is not liable to pay any CGST, SGST and IGST.

Issue:

1) Whether duty free shops at international airport are liable to GST?
2) Refund of accumulated credit of GST paid by duty free shops on supplies made by Indian suppliers

Case laws cited

Hotel Ashoka - 2012 (276) E.L.T. 433

Decision of the Court

On the plea of the petitioner that the Board may be directed to issue clarifications regarding eligibility of refund of accumulated credit of CGST, SGST and IGST paid by the duty free shops on goods and services supplied, the High Court directed the Counsel for the respondent to seek instructions from the Board for issue of the clarifications within 10 days.

Insight

Since, there is was clarity on this issue under the erstwhile regime of VAT as held by Apex Court in the case of Hotel Ashoka, the petitioner might be in abundant precaution moved the High Court. The High Court rightly directed the government to issue necessary clarification in this regard to avoid any ambiguity. Further, in an earlier ruling, the Authority for Advance Ruling (AAR) had ruled that duty-free outlet is not located in India, but within the territory of India, as defined under Customs and CGST ACT.

M/S JEYYAM GLOBAL FOODS PVT. LTD.
VERSUS
UNION OF INDIA
WP (MD) NO. 937 OF 2019 (Hon'ble Madras High Court at Madurai Bench)

Facts

Petitioner manufactures Dried Chick Peas, Gram Flour, Pulses and Grams. Petitioner classifies the product under 0713 HSN code [Dried Leguminous Vegetables, shelled, whether or not skinned or split, other than put up in unit container and bearing a registered brand name]. The petitioner did not have e-way bill due to the exemption as per Rule 138 (14) in the respective State / Union Territory GST rules. The officer seized the goods and the vehicle when it travelled from Salem to Dindigul within Tamil Nadu. Officer classified the products available in the consignment under (Roasted Chick Peas/ Roasted Grams) and hence, HSN code of 2106 [Namkeen, Bhujia, mixture, and similar edible preparations in ready for consumption form]. And thereby, tax penalty was levied. The documents of detention have been called under the writ of certiorari. The detention was due to Rate of Tax / HSN code of the goods.

Issues

1. Whether the Commercial Tax Officer, Roving Squad of Tamil Nadu is authorised to detain the goods?
2. Whether the Commercial Tax Officer, Roving Squad of Tamil Nadu is the correct authority to classify the goods and detain thereby?

Ratio

Jurisdictional Officer is the only competent authority to adjudicate where there is a bonafide dispute of classification of goods and such questions cannot be decided by the Squad Officer, the Jurisdictional Officer must take charge in such cases.

Decision

The court held that the Roving Squad Officer is correct to detain the vehicle and goods though the Squad Officer is not the correct authority to decide on the classification of the goods. The Jurisdictional Officer must take charge in this case. The Squad Officer is asked not to detain the goods wherein the correct amount of tax or classification of goods are involved.

Analysis

As per Section 86(1) of the Tamil Nadu Goods and Services Act, 2017 read with Section 129(1), the tax officer is the correct authority for the matter. The Roving Squad Officer can inspect and detain the goods for a reasonable period. The Honourable Madras High Court following the earlier judgement of Kerala High Court on the same issue has laid down a very important principle that where a bonafide dispute on the classification of goods has arisen in cases where goods have been detained, only the Jurisdictional Officer is competent to adjudicate the same and not the Squad Officer.

PARTHO KUMAR NATH VERSUS STATE OF ASSAM WRIT PETITION (CIVIL) NO. 7169 OF 2018 (Hon'ble Gauhati High Court), DECIDED ON 09-10-2018

Facts

The petitioner was allotted a contract work by the Hailakandi Municipal Board as per work order dated 29-9-2015. The Hailakandi Municipal Board by a communication dated 7-8-2018 addressed to the petitioner informs that as per the Govt. Circular dated 24-8-2017, in respect of the work contracts executed up to 30-6-2017, where the bills/invoices been raised on or after 1-7-2017, the payment in respect of deduction of tax will be made as per the provision of GST Act of 2017. It is also stated that since the raising of invoices and payment for the supplies would be under the GST regime and the transaction were not accounted under the VAT, therefore, the provisions of deduction of tax under the Assam Vat Act, 2003 shall not be applicable.

Issue

Whether after the coming into effect of the GST regime from 1-7-2017, the respondent Hailakandi Municipal Board is required to add and deduct the VAT Tax along with the bills?

Ratio

GST on works contract executed up to 30-6-2017, but where bills/invoices raised after 1-7-2017 — such transactions not to be accounted for under VAT provisions nor TDS to be deducted under State VAT Act. In such view of the matter and being prima facie satisfied and also considering the balance of convenience and the irreparable loss the petitioner may suffer, however, the authority will be at liberty to do the needful as required under the law by adding the GST to the bills and thereupon deducting it, if so advised. Because

of inaction on the part of the respondent Hailakandi Municipal Board, the petitioner is now being exposed to the risk of being subjected to some coercive action by the taxing authorities.

Decision

It is provided that in the interim, no coercive action shall be taken by the respondent authorities against the petitioner regarding the payment of GST.

Insight

The court has very rightly provided the interim relief but the matter needs to be finally decided by applying the Doctrine of double Jeopardy so as to bring in the parity between the applicability of law and tax authorities without hampering the economic effect on the work.

M/S. GITANJALI VACATIONVILLE PRIVATE LIMITED & ANR. VERSUS THE UNION OF INDIA & ANR. W.P. 380 (W) OF 2019 (Hon'ble Calcutta High Court), DECIDED ON: 15.01.2019

Facts

The authorities are proposing to conduct an audit under the provisions of the Chapter V of the Finance Act, 1994 and whereas the petitioner refers to Sections 173 and 174 of the Act of 2017 and submits that, the provisions of Chapter V of the Finance Act, 1994 stands omitted.

Issue

Whether the audit under the Finance Act 1994 stands correct on the petitioner?

Ratio

Even inspite of repeal and saving provisions of Sections 173 and 174 of the GST Act of 2017, an enquiry or an investigation or even a legal proceeding under the provisions of Chapter V of the Finance Act, 1994 is permissible notwithstanding the coming into effect of the CGST Act of 2017. The previous dues and liabilities cannot be waived off just by virtue of the enactment of new statue.

Decision

The Audit under the given case is ordered to be correct and permissible under the CGST ACT 2017.

Analysis

Since, Section 174 is the repeal and saving provisions, the previous dues and liabilities cannot be waived off just by virtue of the enactment of new statue. Hence, the court has rightly ordered here.

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RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. ABHAY SINGLA
Adv. DEEPAK GARG

NOTIFICATIONS CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
15.01.2019	01/2019-CENTRAL TAX	To Amend The Meaning Of "Advance Authorisation"
29.01.2019	02/2019-CENTRAL TAX	To Appoint 1st February, 2019 For Enforcing The Provisions Of Cgst (Amendment) Act, 2018 Except Amendments In Section 8(B), 17, 18, 20(A), 28(B)(I) And 28(C)(I)
29.01.2019	03/2019-CENTRAL TAX	Central Goods And Services (Amendment) Rules, 2019 – Amendment In Rules 7, 8, 42, 43, 53, 80, 83, 85, 86, 89, 91, 92, 96a, Forms GST REG-01, GST REG -17, GST REG-20, GST PCT-05, GSTR-4, GST RFD-01, GST RFD-01A, GST APL-01 AND GST APL-05; Substitution Of Rule 11; Insertion Of Rules 21a, 41 And Form GST ITC-02A
29.01.2019	04/2019-CENTRAL TAX	Section 3, Read With Section 5, Of The Central Goods And Services Tax Act, 2017 – Officers Under The Act – Notified Officers – Amendment In Notification No. 2/2017 – Central Tax, Dated 19-6-2017
29.01.2019	05/2019-CENTRAL TAX	Section 10 Of The Central Goods And Services Tax Act, 2017 – Composition Levy – Notified Rate, Turnover And Other Conditions – Amendment In Notification No. 8/2017 – Central Tax, Dated 27-6-2017
29.01.2019	06/2019-CENTRAL TAX	Section 23, Read With Section 9, Of The Central Goods And Services Tax Act, 2017 – Registration – Persons Not Liable For – Notified Persons – Amendment In Notification No. 65/2017 – Central Tax , Dated 15-11-2017

31.01.2019	07/2019-CENTRAL TAX	Section 39, Read With Section 168, Of The Central Goods And Services Tax Act, 2017 – Return – Furnishing Of – Extension Of Time Limit For Furnishing Return In Form Gstr-7 – Amendment In Notification No. 66/2018 – Central Tax , Dated 29-11-2018
08.02.2019	08/2019-CENTRAL TAX	Section 39, Read With Section 168, Of The Central Goods And Services Tax Act, 2017 – Return – Furnishing Of – Extension Of Time Limit For Furnishing Return In Form Gstr-7
20.02.2019	09/2019-CENTRAL TAX	Section 168 Of The Central Goods And Services Tax Act, 2017 – Return – Furnishing Of – Extension Of Time Limit For Furnishing Return In Form Gstr-3B

NOTIFICATIONS CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
29.01.2019	01/2019-CENTRAL TAX (RATE)	Section 11, Read With Section 9, Of The Cgst Act, 2017 – Power To Grant Exemption From Tax – Cgst Exemption In Case Of Intra-State Supplies Of Goods Or Services Or Both Received By A Registered Person From A Supplier, Who Is An Unregistered Person – Rescission Of Notification No. 8/2017 – Central Tax(Rate), Dated 28-6-2017

CIRCULARS

DATE	CIRCULAR	REMARKS
01.01.2019	82/2019	Applicability Of Gst On Various Programmes Conducted By The Indian Institutes Of Managements (Iims).
01.01.2019	83/2019	Applicability Of Gst On Asian Development Bank (Adb) And International Finance Corporation (Ifc).
01.01.2019	84/2019	Clarification On Issue Of Classification Of Service Of Printing Of Pictures Covered Under 998386.
01.01.2019	85/2019	Clarification On Gst Rate Applicable On Supply Of Food And Beverage Services By Educational Institution.

01.01.2019	86/2019	Gst On Services Of Business Facilitator (Bf) Or A Business Correspondent (Bc) To Banking Company.
02.01.2019	87/2019	Clarification Regarding Section 140(1) Of The Cgst Act, 2017
01.02.2019	88/2019	Seeks To Make Amendments In The Earlier Issued Circulars In Wake Of Amendments In The Cgst Act, 2017 (Which Shall Come Into Force W.E.F. 01.02.2019).
18.02.2019	89/2019	Seeks To Clarify Situations Of Mentioning Details Of Inter-State Supplies Made To Unregistered Persons In Table 3.2 Of Form Gstr-3b And Table 7b Of Form Gstr-1.
18.02.2019	90/2019	Seeks To Clarify Situations Of Compliance Of Rule 46(N) Of The Cgst Rules, 2017 While Issuing Invoices In Case Of Inter- State Supply.
18.02.2019	91/2019	Seeks To Give Clarification Regarding Tax Payment Made For Supply Of Warehoused Goods While Being Deposited In A Customs Bonded Warehouse For The Period July, 2017 – March, 2018.

ORDERS

DATE	ORDER	REMARKS
31.01.2019	01/2019-GST	Extension Of Time Limit For Submitting The Declaration In Form Gst Tran-1 Under Rule 117(1a) Of The Central Goods And Service Tax Rules, 2017 In Certain Cases.

REMOVAL OF DIFFICULTIES ORDER

DATE	ORDER	REMARKS
01.02.2019	1/2019 – CENTRAL TAX	Seeks To Supersede Removal Of Difficulties Order No. 1/2017 – Central Tax Dated 13.10.2017 In View Of The Amendment To Section 10 Of The Cgst Act, 2017 (Regarding Allowing Registered Persons Opting For Composition Scheme To Supply Services Up To A Limit) Coming Into Force W.E.F. 01.02.2019

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BIRTH OF REAL ESTATE (DEVELOPMENT AND REGULATION) ACT 2016[1]

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SHARNAM LEGAL

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INTRODUCTION

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There was, thus, absence of professionalism, standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of the industry. The stagnant market rates of the flats and distorted regulations in the real estate sector created a pressing situation for this sector to be regularised. Therefore, the need for regulating the sector by the specific law keeping necessary and specific concerns of the real estate business and home buyers has been emphasised on various forums. This was felt necessary to restore and maintain the trust of builders/ developers in the mind of the home buyers/ Investors in the larger interest of the economy as well as the social need of the large Indian population.

GROWTH OF REAL ESTATE LAW

2009

The first baby step towards the enactment of a Central level Real Estate Regulation mechanism was mooted in 2009 during the National Conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs proposed a law for real estate sector. Lot of deliberations took place as to whether the regulation should be a central legislation or a state legislation but ultimately it was decided to have a central-homogeneous regulation for the country which needs to be adopted and implemented by every state.

[1] *This is the first article in the series on RERA :-Series (1/2019)*

2011

The move towards the enactment gained momentum during subsequent consultations by the Central Government in 2011, when it was decided to enact a central law for real estate sector. This was endorsed by Competition Commission of India, Tariff Commission and Ministry of Consumer Affairs. Ministry of Law & Justice suggested a central legislation for real estate under specified entries of Concurrent List of the Constitution for regulation of contracts and transfer of property.

2013

Union Cabinet approved the Real Estate Bill, 2013 and The Real Estate Bill, 2013 introduced in the Rajya Sabha.

2014

Subsequently the Real Estate bill was referred to the Standing Committee of the department. Report of the Standing committee was tabled in Lok Sabha and Rajya Sabha. The real estate industry also raised their concerns as they fear the avoidable clinches of the regulation for which they were not ready. The industry did not want any control due to their vested interest and thus, objected to various provisions from every possible angle.

2015.

Significant stride towards the passing of the Real estate bill was achieved during 2015 with the steps earlier taken in the following sequence:

- Attorney General upheld the validity of central legislation for Real Estate Sector and the competence of Parliament
- Union Cabinet approved Official Amendments based on Standing Committee Report
- Real Estate Bill, 2013 and Official Amendments referred to the Select Committee of the Rajya Sabha
- Select Committee of the Rajya Sabha tabled its report along with the Real Estate Bill, 2015
- Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of the Rajya Sabha for further consideration of Parliament
- Bill listed in the Rajya Sabha for consideration but could not be taken up

2016

In spite of the steps taken by the banks and the government, the real estate industry had not been able to come out of the depression which was very much expected after the new Think tank in the NDA government. The large number of adversely affected home buyers created huge pressure on the government to save their investment and to force the builders/ developers to deliver the large quantity of under-construction flats in all corners of the country. The erstwhile legislations could not provide any viable solution to the grave situation. Under the mounting pressure of the public, ultimately the Lok Sabha and the Rajya Sabha passed the bill in March 2016. The President gave his assent to the bill March 2016. The Real Estate (Development and Regulation Act 2016) is notified in the Official Gazette for public information. 69 Sections of the Real Estate (Regulation and Development) Act, 2016 notified by the Ministry of Housing & Urban Poverty Alleviation on 27 April 2016 bringing the Act into force with effect from 1 May 2016.

PREAMBLE TO THE RERA ACT 2016

"THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 NO. 16 OF 2016 [25th March, 2016.]
An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressed and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto".
This is the central statute enacted which focuses on ensuring the sale of plot, apartment or building, keeping the timelines, quality of construction, ensuring the specific facilities committed and contractual obligations in mind. It ensures that healthy pressure is created on the developer/ builder to have smooth working of real estate sector and thereby free flow of funds in the economy. On the other hand, the builders/ real estate developers due to the transparency provided under the regulations could also ensure smooth flow of inward payments for timely completion of the project in the interest of all the prospective allottees.

IMPLEMENTATION OF THE ACT

Even though RERA Act is a Central Act, it has to be implemented by the State Governments by prescribing rules, regulations and procedures for the effective implementation of the Act. Thus, every state has enacted its own state Act in compliance and following the Central Act. The State governments also have to appoint a regulatory authority, an adjudicating authority and appellate tribunal for redressal of complaints received from the home buyers. While the regulating authority will ensure quick disposal of complaints, the adjudicating authority will decide the amount of monetary compensation to be paid to the aggrieved home buyers in case of defaults by the promoters and the Appellate Tribunal consisting of Judicial and Technical members will hear and dispose off appeals arising out of the Orders of the regulating authority and the adjudicating authority filed both by the allottee and promoter. The Regulating authority of each State (RERA) will operate a website on which details of all the projects undertaken by the promoter in the State will have to be updated on a periodical basis.
The protection of the Home buyer's interest is the foremost objective of the Act and the legislation has prescribed adequate safeguards in this regard at every stage by prescribing time lines which the promoter has to adhere to and the failure to do so attracts heavy monetary penalty including imprisonment in certain offences.

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CASE LAWS AND NOTIFICATIONS/CIRCULARS ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016)

CA Sanjay Ghiya (D.I.S.A)
CA Ashish Ghiya (L.L.B, C.S)

CASE LAWS

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

JITENDRA JAGDISH TULSIANI VERSUS M/S LAVASA CORPORATION Ltd & ORS.

The legal question involved in this complaint - "Whether lessee can file a complaint against a lessor under RERA"? The appellant as complainant has invoked its jurisdiction in terms of Sec 18 of the Act and declared that he has paid premium in the time schedule as prescribed in agreement and the possession of the apartment shall be delivered in time. Further, The Ld. Counsel for the appellant pointed out to the provision of sec. 2(d) of the RERA Act which according to him only provides exclusion in the event of rent. He placed reliance on various judgments of Hon'ble Supreme Court and Income Tax Appellate Authorities. The Ld. Council for Lavasa (Other party to the case) contented that, the RERA Act contemplates concept of buyer and the provisions of RERA will not be triggering owing to no title to the appellant as a buyer.
After hearing both the side, perusal of the documents, following point arise for consideration:

1) Whether the order under challenge dated. 15.1.2018, dismissing the complaint on the point of jurisdiction calls for interference?

Section 31 of the Act deals with filing of complaint. It conceives "Any aggrieved person" may file a complaint with the Authority or the Adjudicating Officer for any violation or contravention of provisions of this Act and Regulation, against any Promoter, allottee or real estate agent as the case maybe. Thus, the cumulative effect of Sec. 18, Sec. 2(d) and Sec. 31 of RERA Act brings into in encompass the appellant herein. This is because even if the exclusion of respondent are for the sake accepted, however, within the terms indicated "any aggrieved person", the Appellant shall certainly fit as a person who has been adversely affected and hence Appellant has right and the availability of Forum with the Authority.With reference to the case of "Neelkamal V/s. Union of the India, it was further observed that harmonious and balanced construction of the provisions shall suffice the purpose. Hence, it would do harm in case individual provisions of this nature and their clauses are considered in isolation and by separating them from one another.
The tribunal also observed that the annual rental is of no consequence as the agreement itself provides a deposit of Rs. 50, 000/- by the appellant for meeting with exigencies.

Consequently, it informs that there can't be in perpetuity any breach any payment or deposit of rentals. The amt. of Rs. 43, 77,600/- was accepted as premium naturally to provide freehold rights to the Appellants to enjoy the property subject to restrictions under the Development Control Authority or the Regulatory Authority of a township or the Hill Station Rules however that by itself would not tantamount to squeeze the rights of the Appellant to enjoy the property absolutely or to invoke the jurisdiction of RERA. It is curious that before initiation of complaint, Frequently Asked Question (FAQ) was raised by the Appellant or on his behalf and in response to FAQ 6 the Authority has answered in affirmative to have jurisdiction in terms of Sec. 2 (d) with the Authority in respect of long term lease. Hence, the tribunal held that the adjudicating member of MahaRERA has the jurisdiction to entertain the complaint of the Appellant on its merits.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

SACHIN PATIL
VERSUS
MANISH KHANDELWAL

The complainant seeks the refund of the booking amount on cancellation of booking. He contends that he booked a flat and paid Rs.14, 62,295/- to the respondent. On cancellation of booking by the complainant the respondent refunded after deducting the service tax but he wanted the refund of the full amount. The respondent states that as per the agreement he was entitled to retain 5% of the cost of the flat but he re-paid the booking amount. The authority contends that the complainant cancelled the booking on his own due to financial difficulties and there is no such provision in RERA (Act) under which complaint can be entertained. Hence, the complaint is dismissed.

MAHADEO NALAWADE
VERSUS
APL YASHOMANGAL DEVELOPERS

The complainant alleged that he had purchased a flat from the respondent but the possession was not handed over to him by the respondent by 31st December, 2013 and thus, claims the interest or compensation on his investment. He further complained that the respondent has not adhered to the sanctioned plan and failed to supply the amenities. The respondent argues that the complainant has possessed the flat from November, 2015 and fit out possession was from March, 2015. In the given case, since possession is given in March, 2015 so authority has no jurisdiction and thereby the complaint cannot survive. The complaint stands dismissed.

ANANT BAGARIA & VASHU BAGARIA
VERSUS
GODREJ GREENVIEW HOUSING PVT.LTD.

The complainants seek the direction for refund of Rs.7, 35,048/- paid along with interest and compensation. The complainants booked the flat with the respondent but came to know that the respondent have not received approvals from the Forest Wild Life Department. The

respondent submitted that this project is not in the area of forest Reservation and Wild Life Boundaries by placing evidence before the complainants. Thereafter, various evidences of clearance from Maharashtra Government has been placed before and argued that this project is outside the periphery of Eco Sensitive Zone. The complainants paid less than 20% of total considerations as earnest money. Therefore, as per terms and conditions, it is liable to be forfeited. On verification of all the facts, authority found that respondent itself made the complainants to believe in the fact that some other approvals were awaited on the basis of mail exchanged between them. As per the letter of Revenue and Forest Department, Mumbai, this project lies in Eco-Sensitive Zone of Sanjay Gandhi National Park. Therefore, allegation of the complaint has reason to believe that the project site was within Eco-Sensitive Zone. The authority finds that when the complainant took the decision to withdraw from the project, the facts were such that any ordinary man would have labored under impression that the site of project was within Eco Sensitive Zone for which the respondents have not received approval. Therefore, the complainants should get refund and compensation of Rs.20000 for cost of complaint under provisions of RERA.

MADHYA PRADESH REAL ESTATE REGULATORY AUTHORITY

SHRI VINAY PRAKASH JAIN
VERSUS
BHOPAL DEVELOPMENT AUTHORITY

The applicant booked a unit in the Lawyers Chamber Scheme of Bhopal Development Authority in the year 2012. The cost of the unit was estimated at Rs. 10,09,980/-. The applicant paid an initial deposit of Rs.2,01,996/- in May 2012 and the BDA issued the letter of allotment in August 2012, according to which the balance amount was to be paid in 4 installments on different dates, the fourth and final installment would be due within 30 days of the construction and final evolution.

On 3rdJune 2017 the BDA informed that the applicant was to pay interest of Rs. 1,12,373/- towards the delay in payment of installments. The applicant challenged before the authority by alleging that the BDA had not declared time period of the completion of the project and the promoter BDA cannot accept more than 10% of the cost of apartment before executing a written agreement for the sale, whereas in the present case more than 80% of the amount has been taken without written agreement for the sale. The applicant also asked to pay compensation of Rs. 1,00,000/- for rental of premises due to delay in possession of the apartment. The applicant also made various submissions with relying upon various rulings of the various courts.

As per RERA (Act) it is mandatory to provide the completion date of the projects but the omission cannot be punished retrospectively. After considering arguments from both the side, applicant has to pay interest at the prevailing rates for the late payment of 3rd installment only up to 29th December 2016 and interest should be waived for the balance period. Further interest charged for the late payment of 1st installment and 4th installment would also be payable by the applicant, other ground of complaint are not sustainable. The BDA is directed to execute lease in the favour of the applicant within 15 days of the receiving the all the due payments.

Dr. GAURAV RAJ BHAGAT\ VERSUS SAYED NAVED HASAN

The applicant filed a suit for refund of Rs. 3, 00,000/- along with interest and compensation against the respondent. The facts are that the promoter of Creative Infra", Shri Sayed Naved Hasan gave an advertisement in which the applicant applied for allotment of flat. The respondent promised to start construction in 2015 and in Jan, 2016, the possession will be given. The respondent assured the applicant to complete the project in a short period up to Jan, 2016 but on verification from the site it was found by the applicant that there was no construction going on. The applicant gave a legal notice to the respondent which has not been accepted by the respondent and the notice was sent back. Therefore, complainant asked for refund of principal amount along with interest. The respondent has not challenged the agreement for sale and receipts of payments. Therefore, it is proved that the claim made by the applicant is true and correct. On verification of the agreement for sale, it was found that no starting and possession date is mentioned. It is settled in law that the documentary evidence prevails over oral evidences. Therefore, there is no reason to believe that time period claimed by the applicant was made between the parties.

The progress of project as claimed by the applicant had been proved by presenting the photo of the site, on reviewing these, it is seen that no substantial work has been made on the site. It is fact that there is no time limit for completion of the project incorporated in the agreement but it does not mean that respondent is free to take indefinite time to complete the project. After analyzing the facts of the case and prevailing rate of interest, the adjudicator has directed to pay advance received along with interest from 28thAugust 2015 till the date of payment.

PUNJAB REAL ESTATE REGULATORY AUTHORITY

REAL ESTATE REGULATORY AUTHORITY, PUNJAB VERSUS SINGLA BUILDERS AND PROMOTERS LIMITED

The authority noticed that various promoters of real estate were advertising their projects in the print media, and also through other visual medium, without displaying the Registration Number issued by the Authority in relation to such projects.

It needs to be noted that the promoter had earlier been issued two notices in relation to their projects namely "City of Dreams" vide Memo No. RERA/2018/1068 and for "SBP Homes" vide Memo No. RERA/2018/1069 that were advertised in violation of the law. However, the fact that the promoter has again issued present advertisement regarding "Olivia Floors" on 07.01.2018 cannot be ignored as the promoter was well aware about the earlier violation for which it had been admonished earlier. From the above discussion, it is clear that there has been a default on the part of the promoter. A penalty of Rs. 10000/- (Rupees ten thousand only) is therefore imposed upon it.

JAI GOPAL MAHAJAN VERSUS M/S BARNALA BUILDERS & PROPERTY CONSULTANT

The complainant has not taken the possession of the said flat till date as he is disputing the claims made by the respondent in respect of certain payments allegedly pending towards him. He disputed that he could not raise bank loan in time as the documents to be submitted by the builder were delayed. The complainant has also alleged that one time maintenance charges of Rs.1,83,348/- is illegal and that the balance 5% of the amount amounting to Rs.2,27,463/- is illegal as till date the actual completion and physical possession of the flat has not taken place. Respondent has contested the delay and mentioned the fact that as the complainant applied for documents in Oct'2012; respondent provided the same in Feb' 2013 which is a reasonable time.

After hearing the views from both the sides, the authority concluded that contention of complainant is not tenable as he is liable to pay the balance 5% amount at the time of taking possession. In view of the fact that complainant made 95% of the payment towards purchase of flat well within the stipulated period and any delay in the balance 5% amount or service tax and maintenance charges are on account of delayed possession offered by the respondent, the complainant can't be held liable for the same. The complaint is accordingly disposed of with directions to the respondent to make a fresh offer of possession to the complainant without levying interest on the delayed payment and one time advance payment of maintenance charges. However, the complainant shall pay the balance 5% amount due towards him at the time of taking over possession of the flat along with taxes, if any, leviable at the time of execution of registered deed.

NOTIFICATIONS/CIRCULARS

PUNJAB REAL ESTATE REGULATORY AUTHORITY

ORDER NO.: RERA/Pb./ENF/16
Date: 04.01.2019

As per proviso to Section 4(2)(1)(D) of the Real Estate (Regulation and Development) Act, 2016 every promoter registered with RERA shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project. As per this provision, accounts reports for the year ending 31.03.2018 were required to be got audited by 30.09.2018 and submitted to the Authority in the month of October 2018. But it has been noted that a very few such promoters have submitted their audited reports to the Authority though a considerable period of more than three months has passed.

The matter has been considered by the Authority and it has been decided that such promoters be given another opportunity by giving one month more to comply with the above provisions of Law. Therefore, all the promoters are directed to submit their audited reports to the Authority latest by 31.01.2019. In case of non-compliance, action as warranted under the law will be initiated against the defaulted promoters.

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PATENT, TRADE MARKS & TAX EFFECTS

ADV. G.D. BANSAL
VICE-CHAIRMAN
BAR COUNCIL OF RAJASTHAN

1. PATENT:-

Patent rights protected scientific invention under the provisions of Patent Act, 2005, a patent is an exclusive right granted to a person who has invented a new/unique and useful article or process of making an article. A patent is a form of Industrial property. As per the Indian patent act, the patent rights granted for 20 years. After the expiry of the duration of the patent any body can use of the invention and the invention then became part of the public domain. During the term of patent the owner can sell the whole or part of this property. He can also grant licenses to other to use it. The patent granted in one country cannot be enforced in another Country unless the invention concern is patented in that country also.

OBJECT OF THE PATENT:-

The object of granting patent is the increasement and development of new technology and industry in the country. The basic theory of patent system is simple and reasonable it is desirable in the public interest that industrial techniques should be improve. The patent systems tends to encourage and maintained a continuous flow of invention. New products and process are created, industry encourage to manufacturer new and batter products and an expansion of the industry based upon the invention takes place. Thus employment, national wealth and a higher living standard are created.

ADVANTAGE OF PATENT TO INVENTOR:-

To the inventor a patent system confers certain definite advantages. The incentive for technological innovations is monetary reward. It is not compulsory for an invention to be patented. An inventor may use his invention secretly for as long as he can keep it secret without patent.

INVETION MUST BE NEW AND USEFUL:-

It is fundamental principle of patent law that a patent monopoly is granted only for inventions which are new and useful, and which have industrial application.

INVENTION NOT PATENTABLE:-

It is not considered in the pubic interest to grant patent monopolies in respect of the discovery of a scientific principle, or an invention injurious to public health, or method of agriculture or horticulture, or a process for the treatment of human beings, animals or plants. Such inventios are not patentable under the present Indian law.

ABUSE OF PATENT MONOPOLY:-

Every monopoly is liable to be abused and patent monopoly is no exception. To prevent the abuse of monopoly rights created by the patent grant the act provides for compulsory licensing of the patented invention on certain grounds. In the case of certain categories of patents, for example, drugs and medicines and substances used as food, essential to the life and health of the community, there is provision for endorsing them with the words "licences of right" to enable any interested person to obtain a licence automatically as of right. In spite of the grant of compulsory licences, if the patent is not worked in India, it can be revoked for non-working.

2. TRADE MARK:-

Trade mark means brand name of the goods/products or services, by which ordinary prudent person identifying the goods/products or services from other.

Trademarks are one of the most important elements of intellectual Property (IP). The concept of trade mark is essentially a business concept but is intertwined with legal things. The exclusion of all others except the one using it or a similar trade mark or with his permission is the fundamental of a trade mark. This sort of monopoly is possible with the help of law alone.

While explaining business things in respect of trade marks, it is natural to find mentioned of legalities involved. An attempt is made to understand the business concept of trade ark is explained with the help of its legal definition and the setting and circumstances in which the law of trade marks is administered.

"A trademark can be a word, a logo, a number, a letter, a slogan, a sound, a color, or sometimes even a smell which is identifies the source of goods and/or services with which the trade mark is used".

Trademarks can be owned by individuals or companies and should be registered at a Registrar of Trade Mark which is usually referred to as the trademarks office. When a trademark is used in connection with services, it is sometimes referred to as a "Service Mark".

The trademark registration symbol- the letter R in a circle ® - may not be used unless the trademark with which it is associated has been actually registered with the Registrar of Trade Mark alluded to above.

A trade mark may be defined as a visual symbol that distinguishes the goods or services of one enterprise from those of the competitors. Trade marks have traditionally been and still are at the center of global business petition in a modern, market driven economy.

Consumers come to associate certain value in the goods or services being provided under specific brands, which may be among the greatest assets of the enterprises.

In the language of the law, brand name are known as trade narks, several products, of the same category or of different categories, can be marketed under one brand name. The trade mark and brand name rights governed in India under the trade mark act, 1999 and trade marks rules 2017.

That trade mark registration is not compulsory in India as per the law, but for batter protection of rights the registration of trade mark is necessary, the unregistered trade mark is also protected under the common law principles.

DURATION/TERM OF REGISTRATION:-

The registration of trade mark shall be period of Ten years, but may be renewed from time to time in accordance with the provisions of trade mark act, 1999, if the Registered trade mark is not renewed properly within time period, then the registration may be removed by registering authorities from the register, in this position such removed trademarks may be treated as unregistered trade mark.

The trade mark is an Intellectual Property, it may be assigned or transmitted with or without goodwill of the business concern, and such assignment shall be made in writing between the party concern according to the terms and conditions.

The registration of trade mark is not perpetual, it is subject to the provisions of the trade mark act, 1999, if the registered trade mark is not used continuously more than 5 years by the registered proprietor then it may be removed from the register of trade mark u/s. 47 of the trade mark act, the registrar of trade mark also having power to rectify registered trade mark u/s. 57 (4) of the trade mark act, 1999.

In the trade mark act, 1999 remedy against the infringement of registered trade mark or unregistered trade mark provided as "Criminal and Civil". The registered proprietor of the trade mark can initiate both remedies simultaneously or separately, the offence committed under the trade mark act, 1999 shall be cognizable.

The civil suit for infringement of action/passing off action may be instituted before the district court, it means the district court (District Judge) having original jurisdiction try to such trade mark suit under the provisions of CPC.

3. TAX EFFECTS:-

Intangible assets like intellectual property have been recognized as a depreciable asset for the purpose of computation of income. Let us now consider the taxation aspects when rights in such property are sold to interested business entities either in full or in part for a consideration the nature of such rights will include transfer or such rights for a royalty or technical services. Transfer of such rights may lead to either one of the following situations:

(a) Where the transfer is made for a lump sum consideration once and for all, and

(b) Where the transfer is made for a limited period as recurring payments, based on the trading results of the user of the intellectual property.

In the former transaction, the transfer will result in "**Capital Gains"** assessable to tax under the head, and in the latter as revenue receipts.

The supreme court has laid down in the case of *Alembic Chemicals Limited v/s. Commissioners of Income Tax 177 ITR 377,* in the light of the fast changing technology, an asset for which a lump sum payment has been made, which had all along been considered as capital expenditure, can no longer be treated as an asset of enduring benefit and, therefore, in such circumstances even the lump sum payment can be treated as a revenue expenditure.

Prior to the inclusion of intangible assets in Section 31 of the Income-tax act, 1961 for the purpose of grant of depreciation, both circulars and other decisions have held the view that technical fees paid towards drawing, designs, charts, plans, etc, are to be treated as part of the cost of the plaint.

In this context, the CBDT Circular No 21 of 1969 stated as under:

(1) Fee paid for technical known-how relating to design and engineering of the plaint in India or the erection or commissioning of the plant should be treated as part of the cost of the plaint and machinery, and depreciation should be allowed thereon.
(2) Where the "fees" do not relate to any depreciable asset, the expenditure would be capital and would not rank for depreciation and development rebate.
(3) Treatment of fees paid for manufacturing know-how would depend upon whether the know-how has ben purchased giving out enduring benefit the rights of use for a limited period.

In the case of CIT v Ciba of India Limited, 69 ITR 692, the Supreme Court of India has discussed the taxation of expenditure incurred on intangible assets. The apex court held that payments made for use of process, scientific data, patent and trade mark were allowable as business expenditure, and held them as revenue in nature as it did not constitute any benefit of enduring nature.

The apex court followed the ratio decidendi laid down by the House of Laws in the case of *Atherton v British Insulated & Helsby cables Limited 10 TC 155* wherein it was held that when an expenditure is made not only 'only and for all' but with a view to brining into existence an asset or an advantage for the enduring benefit of a trade was of a capital nature.

On the above analogy, the Supreme Court has held that know-how is part of cost of plant. Similar treatment was also given to designs and drawings used in manufacturing items forming part of plaint, vide decision in *scientific engineering ad Elcon Engineering v ITO, 157 ITR 86.*

It may be relevant to understand the provision of Section 44D and s 115A of the Income-Tax Act 1961 which are deeming provisions. Section 44D of the said Act provides for special method for computing income by way of royalty or fees for technical services in the case of foreign company. The rate of tax is fixed at 20 percent of the gross receipts, without computing the income by allowing the expenses referred to in Ss. 28 to 44C of the Income-Tax Act 1961. Section 115A of the Act also deals with tax on dividends, royalty and technical service fees received by foreign company which are taxed at a fixed rate without computing the income in the normal manner by applying the provisions of Ss. 28 to 44C of Act for the purpose of deducting the expenditure.

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HAS THE TAP OF MONEY DRIED FOR STARTUPS?

CA RAJNEESH SINGHVI, Jaipur

Many budding entrepreneurs approach me and lament about drying taps of funds for a start up. The common refrain is, "The prospective investor asks for lot of information. We invest lot of time, energy and hire professional consultants to reply to their queries, but when it's the time to ink up a real deal, it simply comes to a naught."

Here, a few readers may raise some basic questions, like, "what is a start up?" or "how the startups are different from small new businesses?" Without breaking the narrative I shall encourage them to refer the side-block. "Whether money inflow has really dried down?"

This question sets me into a contemplative mode. Before, I attempt to reply to this question, let me draw your attention to the typical herd behavior of an investor.

Any new wave of ideas is first met with distrust and touted as a very risky adventure. No one is ready to put money on such business. Be it the gold rush for oil exploration, early stage of industrial revolution or dotcom era, finding money for commercial adaption of ideas in preliminary stage of any wave is very difficult.

A few persons with lot to spare and splurge, who find the promoters genuine and believe upon the story coupled with personal whims, invest in such ventures. Most ventures fail. A few serve a

> **What is a start up?**
>
> While each new business is a start up. In this digital era, a startup is generally a technological start up, which aims to develop and commercialize a new product or service.
>
> It must significantly improve existing product, service or process, which creates or adds substantial value to the customers or work-flow.
>
> The start up must have ability to scale up fast and significantly, lapping up major share of market, geography or populace, which is not attainable by regular business practices.
>
> Such start-up has to be mainly value creator instead of focusing on profit in initial period.
>
> Ventures in existing business space with grand plans do not become Startups, if they do not satisfy all the above conditions.

limited purpose, do not find sufficient headway and are absorbed by existing businesses. Very few ventures become hugely successful and valuations of such companies skyrocket, as if a jackpot has been hit. It becomes talk of the town. In this digital era, rather, the whole world listens about such successes in apt attention.

And suddenly, all kinds of money starts rushing in similar startups, reflecting greed and fool hardiness at its epitome. The area is new and unregulated. There is lot of freedom to act and explore. Some of the investors again ride the crest of the surf and earn loads of money. The losers keep silent for the fear of ridicule and the gainers flaunt their multi-baggers. The news-hungry world grabs yet another rag to riches story.

Now flood-gates are opened and each person with even a pence to spare wishes to get on the band wagon. Nobody tries to understand the business or sector. They only hope to multiply their money in the shortest time possible. Lo and behold, billions of dollars flow in. Even a conservative investor starts doubting himself about his wisdom and investing strategy. During such times, each idea sounds WOW! Each venture sounds appealing. All types of ideas/businesses find takers and are over-funded.

No sooner the craze begins; people start burning their fingers and burn it hard, even depriving of their life savings. Media catches the failed stories and now paints a very gloomy picture. The tide of money which was flowing in the startup technology sector dries up significantly for all frivolous ideas. Now, the funding is available only for those entrepreneurs who are serious, passionate and are ready to put everything of their own in the venture. The funding is available for those who are not afraid of failures and are ready to pursue the toughest Holy Grail. This is the time, which reflects maturity in the market and while the failure rate still prevail high, the money chases only serious promoters with strong business plan, potential of scalability and good work ethics.

As a budding entrepreneur, you must follow these important rules:

1. **Ideation & Traction**
   The idea may be quite hot and promising but an investor does not see the excitement just by listening. Demonstrate the proof of concept (prototype) and show actual traction (pilot run or commercial commencement) achieved by you.

2. **Test your premises solidly and reiterate**
   The idea has to be revalidated and cross checked with the market realities continuously. Take opinions of satisfied & disgruntled users, peers and well-

wishers etc. Keep on testing your premises repeatedly and improve as you go. Do not be afraid to fail. If your premise does not hold well, move over. Do not waste your life sticking to your first love.

3. **Take help of professionals & consultants**
   Most people find professional cost to be quite high. If the selection of the professional is good, she will provide immense value to your business. Take her help liberally and spend your money wisely on good professionals.

4. **Personal sacrifice and commitment**
   Be ready to sacrifice. Don't create your own security net by having dual or multiple business interests to fall back on. Investors will not bet their money on half-hearted efforts.

5. **Effective Execution**
   Many strong and sound viable ideas have failed due to poor execution. Take help of knowledgeable people. Learn swiftly from your mistakes and keep the execution strong. Hire employees and create a logistics support team. Let the cash burn for actual implementation also, while pursuing technological improvement.

6. **Do not Overvalue your venture**
   An investor is put off by abnormally high valuation of a venture with little substance to showcase. Do not make mistake of overvaluing and losing her interest permanently.

7. **Be Transparent & Ethical**
   Be transparent and ethical in your dealings with all the stake-holders. All investors look for genuine entrepreneurs. If you are transparent, despite your initial failures, they will be ready to back you for long period. Even a small noticeable breach in transparent practices and disclosures and the investors shun you for always.

8. **Understand the investor and her goals**
   Each investor is not for you. Do not chase each and every prospective investor you come across. Do a good research of the investors. There are so many investors, whose expectations and funding goals are different. Do not waste your energy upon them. Select 2 to 4 investors to begin with whose ideology match and deploy your resources and energy there.

Many times, you still do not get a nod. It is natural. The funding is very much dependent upon the people. Look for another suitor.

In these turbulent times, a gentle stream of river keeps flowing, providing a life–line to selected chosen startup arena. Be optimistic, have belief in yourself, work harder and smarter. You will get what you seek.

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FUGITIVE ECONOMIC OFFENDERS ACT, 2018: A CRITICAL ANALYSIS

- **Krishna Pratap Singh**[1]
- **Kumar Deepraj**[2]

If we look back in a year or so, it is pcived that there have been several instances where individuals after committing an economic offence have fled away avoiding the jurisdiction of the Indian Courts, thus making the Indian Judicial System inoperative and ineffective. The existing civil and criminal law was inadequate to deal with this kind of situation, hence the Government was compelled to bring the Fugitive Economic Offenders Act, 2018[3] (Hereinafter to be referred as "Act"). In the Budget session of Parliament in March 2018, the Ministry of External Affairs in the Lok Sabha informed that more than 30 individuals are absconding[4] who are accused of economic offences involving over Rs. 40,000 crores. The seriousness of the offences can be evaluated from this particular ground that approximately same amount was allotted to Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA)[5]–the world's largest rural employment flagship programme, in financial year 2017-18.[6] It was widely felt that the spectre of high-value economic offenders absconding from India to defy the legal process seriously undermines the rule of law in India. It is necessary to provide an effective, expeditious and constitutionally permissible deterrence to ensure that such actions are curbed. This Bill was brought by the Government to serve these objectives[7].

Recently, on 05th January 2019, the famous Liquor Tycoon of India, Dr. Vijay Mallya was declared a Fugitive Economic Offender under the provisions of this Act, thus making him the first individual to be declared as a Fugitive Economic Offender. Dr. Mallya is accused of defaulting loan of over Rs. 9000 Crores of almost thirteen banks. Earlier to this, The Westminster Magistrates' Court, United Kingdom on 10th December 2018, ordered extradition of Dr. Mallya, which is appealed at the Superior Court of United Kingdom. If the decision comes in favour of duped Indian banks, he may be extradited, since there is an Extradition Treaty between the Republic of India and the United Kingdom of Great Britain and Northern Ireland, signed on 22nd September 1992, came into force after the Instruments of Ratification were exchanged on 15 November

[1] *Indian Revenue Service, Former Commissioner Customs and Managing Partner, ASAV Attorneys & Advisors LLP.*
[2] *Legal Associate, ASAV Attorneys & Advisors LLP.*
[3] *Fugitive Economic Offenders Act, No. 17, Act of Parliament, 2018*
[4] *Question No.3198 in Lok Sabha on 14th March 2018*
[5] *Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), No.42 Act of Parliament, 2005 (India)*
[6] *Ashwini Kulkarni, Budget 2018: Highest Funding To MGNREGA in 2017. Yet, 56% Wages Delayed, India Spend (Feb,18,2019, 01:05 PM),https://www.indiaspend.com/budget-2018-highest-funding-to-mgnrega-in-2017-yet-56-wages-delayed-73865/*
[7] *The Fugitive Economic Offenders Bill, 2017: Explanatory Note in Parliament, https://dea.gov.in/sites/default/files/Final_Explanatory_Note%20o n%20the%20Draft%20Bill.pdf*

1993. However, in the last three years, only one fugitive has been extradited to India in the year 2016.[1]

In this article, the author will discuss about the judicial standing of this Act, whether it was needed or the same is arbitrary.

Introduction of the Act

UNCC: For the first time, the concept of fugitive economic offenders internationally came in light in the United Nations Conventions against Corruption in 2003, which India ratified in 2011[2]. The said Convention recommends non-conviction-based asset confiscation for corruption related cases and lays down the mechanism to confiscate property outside the jurisdiction of Domestic Courts through international cooperation. Article 54 and 55 of this Convention laid down the procedures for mutual legal assistance of ratified states with respect to property acquired through or involved in the commission of offence enumerated in the treaty.[3]

This Act[4], *inter alia* provides for the definition of the Fugitive Economic Offender, following the mechanism to declare an individual as a Fugitive Economic Offender and the processes therein.[5]

This Act was first laid down in Lok Sabha on 12th March 2018[6], but due to various political and non-political reasons, the government failed to get it pass through both the Houses. For expeditious effect of this Act and growing instances of fugitive economic offenders, the Central Government brought the Ordinance w.e.f. 21st April 2018. However, before the expiration of the same, the government got it passed from both the houses, assented by the President and the Act was retrospectively brought into force from 21st April 2018.

Major Features of the Act

This Act is enacted to provide measures to deter fugitive economic offenders from evading the jurisdiction of the Indian Courts. The highlights of the Act is as follow.

Who is a Fugitive Economic Offender: An individual against whom a warrant has been issued from a competent Court of India, accused of an economic offence scheduled under this Act amounting at least Rs. 100 Crores and has left India or refused to return to avoid criminal prosecution[7].

Process to declare an Individual as a Fugitive Economic Offender: The Act lays down a simple though strict procedure to declare an individual as a Fugitive Economic Offender. The Act is very much inter- related and can be termed as a *Sister Act* to The

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[1] *Question No.3119in Lok Sabha on 14th March 2018*

[2] *United Nations, Office on Drugs and Crime, http://www.unodc.org/unodc/en/corruption/ratification-status.html*

[3] *United Nation, Office on Drugs and Crimes, "United Nations Convention Against Corruption", New York, 2004), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf*

[4] *Fugitive Economic Offenders Act, No. 17, Act of Parliament, 2018*

[5] *Id.*

[6] *Fugitive Economic Offenders Bill,2018, PRS Legislative Research, (Feb,18, 2019, 02:16 PM) http://www.prsindia.org/billtrack/fugitive-economic-offenders-bill-2018*

[7] *Fugitive Economic Offenders Act, s.2 cl.(f)*

Prevention of Money – Laundering Act, 2003[1] (Hereinafter to be referred as "PMLA") as the Authorities appointed under PMLA is the same as in this Act[2]. Also, the Special Courts constituted under PMLA will serve as "Special Court" under this Act[3].

The Director or authorized officer not below the rank of Deputy Director can move an application under Section 4 of the Act to declare any individual as a Fugitive Economic Offender following with an order of the Special Court to attach the property under the provisions of Section 5, if required. The attachment under this section shall continue for 180 days and can be further extended by the Court as per the request of the authorized officer.

Hearing opportunity shall be given to the accused and if he appears before the Court, the proceedings under this Act shall be ceased right away. But, if the accused fails to appear before the Court or is represented through a Counsel, the Court shall as per its discretion may allow to file a reply to the application under Section 4 within one week[4].

Now, if the Court is satisfied, the Court can declare the accused as a Fugitive Economic Offender as per the provisions envisaged in Section 12 of the Act, following which further process shall be initiated.

Repercussion after being declared as a Fugitive Economic Offender: The Act's sole objective is to tackle the situation of the economic offenders fleeing out of the country. The Act thus provides confiscation of properties after declaring the accused as a Fugitive Economic Offender under section 12 of the Act. The Special Court under the provision of this Act may order to confiscate any property either benami or not, owned by the Fugitive Economic Offender and any other properties acquired through proceeds of crime in India or abroad even if the same is not owned by the Offender. A novel sanction that this Act possesses is to disallow civil claims of the Fugitive Economic Offender as per the provisions of the section 14 of the Act. The Act empowers the Court and Tribunals to bar the Fugitive Economic Offenders from putting forward or defending any civil claim. Further, if the individual is promoter or key managerial personnel or majority shareholder of a company or have a controlling interest in a limited liability partnership, Courts or Tribunals may bar that company or limited liability partnership in putting forward or defend any civil claim.

Judicial Enforceability of the Act

Soon after the commencement of this Act, the judicial enforceability of the statute was questioned and a lot was debated about the same being arbitrary in nature and was a politically motivated legislation, brought to hush the common people after the high value monetary scam came into light. However, many termed it as a need of the time, since there was a big loophole in the economic offenders' jurisprudence and the same needed to be rectified.

There are various provisions in this statute which *prima facie* looks arbitrary or insufficient, the same is discussed hereinafter.

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[1] *The Prevention of Money Laundering Act 2005, No.15 Act of parliament, 2005*
[2] *Fugitive Economic Offenders Act, s.4 cl.(3)*
[3] *Fugitive Economic Offenders Act, s.2 cl.(n)*
[4] *Fugitive Economic Offenders Act, s.11*

Section 5 of the Fugitive Economic Offenders Act, 2018

The aforesaid section provides for attachment of properties of the accused on mere suspicion. It empowers the Special Court on request of the Officer authorised either Director or Deputy Director, to attach any property as mentioned in the application under Section 4 of the Act. The provision of attaching the property for an interim period of 180 days without even declaring him as a fugitive economic offender *prima facie* looks against the basic norms of natural justice. This provision looks arbitrary and there are vast chances of abusing the provisions of this section, however similar provisions are there in Section 83 of Criminal Procedure Code.

This section is in resemblance to Section 5 of PMLA, whereas similar provisions of attachment of property involved in money-laundering is envisaged. Section 5 of PMLA had qualified the judicial test quite at times. Recently, a division bench of Delhi High Court has upheld the second proviso of this section in *J. Sekar & Anr. Versus Union of India &Ors*[1] wherein it has held that the impugned proviso is not in contravention to Article 14 of the Constitution of India. However, it shall be noted that as per the provisions of this section of PMLA, the authorised officer if believes that certain individual is in possession of any proceeds of crime must record the reason of believe in 'writing'. The Division Bench of Delhi High Court in J Sekar Case (supra) have much emphasized on the 'reason of belief' in writing.

However, if compared with section 5 of the Act, there is no provision of recording the 'reason to belief'in 'writing'. The sole provision is only the belief of authorized officer with the permission of the Court which looks little arbitrary, whimsical and can be misused. This provision till now has not come under the scrutiny of judicial review, thus debatable. Also, the term 'reason to believe' was quoted as vague till the time it was judicially clarified. However, it is defined under Section 26 of The Indian Penal Code, 1860[2], according to which, *a person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.* Also, in *Phool Chand Bajrang Lal v. ITO*[3], the Supreme Court in the context of the Income Tax Act, 1961[4] explained the said expression as under:

> *"Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."*

Reasons to believe also cannot be a rubber stamping of the opinion already formed by someone else as rightly pointed out by a division bench of Supreme Court in *Union of India v. Mohan Lal Kapoor*[5].

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[1] *2018 SCC OnLine Del 6523*

[2] *The Indian Penal Code,1860, No. 45, Act of Parliament, 1860.*

[3] *(1993) 203 ITR 456 (SC)*

[4] *Income Tax (Amendment) Act,1961, No.43, Act of Parliament, 1961*

[5] *(1973) 2 SCC 836*

The Hon'ble Supreme Court has illustrated briefly and settled the expression "reason to believe" in *Kranti Associates & Anr. Versus Masood Ahmed Khan & Ors.*[1]. The Supreme Court reiterated the importance of recording of the reasons of believe. It observed *"Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power".*

However, Hon'ble Supreme Court has a dissent opinion on the probability of abuse of power. In *Mafatlal Industries Ltd. & Ors. Versus Union of India & ors.*[2] a Bench of 9 Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. Also, In *Collector of Customs & Anr. Versus Nathella Sampathu Chetty & Anr.*[3], the Apex Court observed, *"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity."* It was also said by the Supreme Court in *State of Rajasthan v. Union of India*[4], *"it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief."*

Now, assessing these judicial precedents with Section 5 of this Act, it can be observed that not recording the reasons to believe is in contravention of the decisions of Supreme Court, but providing permission from the Special Court give an upper hand to this legislature. Absence of any directions for attachment of the property and merely giving the power of attachment may be used arbitrary and unjustifiably. However, the provision of attachment of property of the individual before declaring him fugitive economic offender may be sustained.

Section 9 of the Fugitive Economic Offenders Act

Section 9 of the Act lays down the procedure of search of a person, if any authorised person has a reason to believe that such individual has secreted under his possession, ownership or control, any record or proceeds of crime which may be useful or relevant to any proceedings under this Act. Clause (b) of this section requires the authorised officer to take the searched person to any gazetted officer or a Magistrate within 24 hours. The question here arises are:

a) Whether a Gazetted Officer is the right person, if not Magistrate to decide if there is reasonable reason to search that individual?
b) Whether the person can waive of his right to be produced before a Gazetted Officer or a Magistrate?

The provisions of clause (b) of this section is also in resemblance with sub-section (1) of Section 18 of PMLA and sub-section (1) of Section 50 of Narcotic Drugs and Psychotropic Substance Act, 1985[5] (NDPS Act). The provision of producing the person before the Gazetted Officer or Magistrate has been accepted under these legislatures and

[1] *(2010) 9 SCC 496*
[2] *(1997) 5 SCC 536*
[3] *(1962) 3 SCR 786*
[4] *(1977) 3 SCC 592*
[5] *The Narcotic Drugs and Psychotropic Substances Act, 1985, No.61, Act of Parliament, 1985*

has not been declared unconstitutional by any competent court. Thus, the provision of producing the person to be searched before any Gazetted Officer or Magistrate may stand the judicial scrutiny.

However, as far the question of waiving of his right to be produced before a Gazetted Officer or a Magistrate is little disputable and arguable. Recently, the Supreme Court of India in *Arif Khan versus State of Uttarakhand*[1], in context of Section 50 of NDPS Act, has held that the provisions of Section 50 have to be strictly complied with in reference to the observation made by the Constitutional Bench of Supreme Court in *Vijaysinh Chandubha Jadeja versus State of Gujarat*[2]. The Court observed that *"... It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer."*

Keeping in mind the above precedents, the requisites of Section 9 of the Fugitive Economic Offenders Act is required to strictly comply with.

Section 14 of Fugitive Economic Offenders Act, 2018

The provisions of section 14 are novel in Indian Jurisprudence. The said section empowers the Courts or Tribunals in India to disallow any individual who has been declared as a Fugitive Economic Offender from putting forward or defending any Civil Claim. It also bars any company or limited liability partnership from putting forward any civil claim or defending any civil claim if the individual who has been declared as a Fugitive Economic Offender, is promoter or key managerial personnel or majority shareholder of a company or have a controlling interest in a limited liability partnership. This kind of deterrent provision is very much debatable since it is violating some of the vested rights. Right to access to justice is an invaluable human right which has its origin in Common Law as much as in the Magna Carta. Right to Access to Justice has been recognised as a Fundamental Right under the ambit of Article 21 of the Constitution of India by a 5 Judges Constitutional Bench of Supreme Court in *Anita Kushwaha & Anr. Versus Pradeep Sudan & Anr.*[3] The Universal Declaration of Human Rights, 1948 (UDHR)[4] and International Covenant of Civil and Political Rights, 1966[5] also recognise the concept of *Right to Access to Justice.*

Conclusion

The main Objective of The Fugitive Economic Offenders Act is to compel the fugitive economic offender to revert to the jurisdiction of Indian Courts. Thus, provisions of confiscation of properties may be considered as a finer approach to prevent any individual to evade the jurisdiction of Indian Courts. However, as discussed above, absence of the common safeguards of natural justice while drafting this statute is of primary concern and rectification of the same is neded.

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[1] *2018 SCC OnLine SC 459*

[2] *(2011) 1 SCC 609*

[3] *(2016) 8 SCC 509*

[4] *Universal Declaration of Human Rights, Paris 10 December 1948,Art. 8 and 10,available at: http://www.un.org/en/universal-declaration-human-rights/ (See Resolution 217A III)*

[5] *International Covenant of Civil and Political Rights,1966, Art. 2(3) available at, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (See Resolution 2200A (XXI)*

SOME IMPORTANT CASE LAWS & NOTIFICATIONS UNDER COMPANY LAW

CS ANIL GUPTA
JAIPUR

SWARAJ INFRASTRUCTURE (P.) LTD.
VERSUS
KOTAK MAHINDRA BANK LTD.
Civil Appeal Nos. 1291 To 1294 of 2019 (Hon'ble Supreme Court of India),
DECIDED ON: JANUARY 29, 2019

Secured creditor can file a winding up petition even after such secured creditor has obtained a decree from the Debts Recovery Tribunal ["DRT"] and a recovery certificate based thereon. Since winding up proceeding under the Companies Act, 1956, is not "for recovery of debts" due to banks, the bar contained in Section 18 read with Section 34 of the Recovery of Debts Act would not apply to winding up proceedings under the Companies Act ,1956

TATA TELESERVICES (MAHARASHTRA) LTD., *IN RE*
NCLT - New Delhi, DECIDED ON: 21.01.2019

Section 231, read with sections 231 and 232, of the Companies Act, 2013
Where all statutory compliance had been completed, scheme of arrangements was to be approved.

UNION OF INDIA, MINISTRY OF CORPORATE AFFAIRS
VERSUS
MUKESH MANEKLAL CHOKSI
NCLT – Mumbai, DECIDED ON: 03.01.2019

Section 140 (5) & 141 of the Companies Act, 2013
Where family members of statutory auditor were shareholders of respondent company and statutory auditor had issued audit certificate without examining books of account of company, provisions of section 143(3)(d) had been violated and statutory auditor would cease to function as statutory auditor of respondent company.

RECENT NOTIFICATIONS

1. **NOTIFICATION NO. GSR 108(E) [F.NO.P.12011/24/2017-ES CELL- DOR], DATED 13-2-2019 :** Prevention Of Money-Laundering (Maintenance Of Records) Amendment Rules, 2019 - Amendment In Rules 2 & 9
2. **NOTIFICATION F. NO. 1/1/2018 CL-V, DATED 8-2-2019**: Companies (Significant Beneficial Owners) Amendment Rules, 2019 - Amendment

In Rule 2; Substitution Of Rules 3, 4, 7 & 8, Form Nos. Ben-1, Ben-2, Ben-3 & Ben-4

3. **NOTIFICATION F.NO.1/1/2019-CL.I, DATED 30-1-2019**: Section 1 Of The Companies Act, 2013 - Act - Enforcement Of - Notified Date On Which Provisions Of Section 465 Shall Come Into Force
4. **NOTIFICATION NO. GSR 43(E) [F.NO.1/21/2013-CL-V-PART], DATED 22-1-2019**: Companies (Prospectus And Allotment Of Securities) Amendment Rules, 2019 - Amendment In Rule 9a
5. **NOTIFICATION SO NO. 368(E) [F.NO.17/6/2017-CL-V], DATED 22-1-2019:** Specified Companies (Furnishing Of Information About Payment To Micro And Small Enterprise Suppliers) Order, 2019
6. **NOTIFICATION GSR. 42 [F.NO.1/8/2013-CL-V], DATED 22-1-2019:** Companies (Acceptance Of Deposits) Amendment Rules, 2019 - Amendment In Rules 2, 16, 16(A) & FORM DPT-3
7. **NOTIFICATION NO. SEBI / LAD - NRO / GN / 2019 / 02, DATED 21-1-2019:** Securities And Exchange Board Of India (Prohibition Of Insider Trading) (Amendment) Regulations, 2019 - Amendment In Regulations 2 And 7
8. **NOTIFICATION NO. G.S.R.29(E) [F.NO. 1/30/2013-CL.V], DATED 15-1-2019:** National Company Law Tribunal (Amendment) Rules, 2019 - Amendment in Rule 71
9. **NOTIFICATION NO. GSR 24 (E) [F.NO.P.12011/2/2009-ES CELL-DOR], DATED 11-1-2019:** Section 66 Of The Prevention Of Money-Laundering Act, 2002 - Information - Disclosure Of - Notified Authority - Amendment In Notification No. GSR 381(E) [NO.6/2008 (F.NO.6/9/2006-E.S.)], Dated 27-6-2006
10. **NOTIFICATION NO. G.S.R 23(E) [F.NO.P.12011/5/2015-SO (ES CELL)], DATED 11-1-2019:** Prevention Of Money-Laundering (Restoration Of Confiscated Property) Amendment Rules, 2019 -Amendment In Rule 1; Insertion Of Rule 3a
11. **NOTIFICATION NO. SEBI / LAD-NRO / GN / 2019 / 01 , DATED 1-1-2019:** Securities And Exchange Board Of India (Custodian Of Securities) (Amendment) Regulations, 2018 - Amendment In Regulations 2, 6, 8, 15, 17, 18, 19, First Schedule & Third Schedule.

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CASE LAWS AND NOTIFICATIONS/CIRCULARS ON FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

CA ANIL MATHUR
CHARTERED ACCOUNTANT, JAIPUR

BHARAT CO-OPERATIVE BANK (MUM.) LTD. VERSUS DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, DELHI APPELLATE TRIBUNAL, PREVENTION OF MONEY LAUNDERING ACT, NEW DELHI

Section 5, read with section 8, of the Prevention of Money Laundering Act, 2002 and section 13 of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Where properties were mortgaged with appellant bank for securing loan, long before mortgagors were alleged to have committed Scheduled Offence, appellant-bank being an innocent party not involved in any money laundering, said property could not be said to have been purchased with any proceeds of crime and hence could not have been attached under section 5(1) of PMLA

SIDDHI VINAYAK LOGISTIC LTD. VERSUS DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI APPELLATE TRIBUNAL, PREVENTION OF MONEY LAUNDERING ACT, NEW DELHI

Section 238 of the Insolvency and Bankruptcy Code, 2016, read with section 35 of the Prevention of Money Laundering Act, 2002. Section 5, read with section 8, of the Prevention of Money Laundering Act, 2002 and section 7, read with section 14, of the Insolvency and Bankruptcy Code, 2016.

- Prevention of Money Laundering Act is a statute which came into effect much prior to coming into force of IB&C, hence, IB&C has overriding effect over PMLA
- Adjudicating Authority under PMLA does not decide on criminality of offence, hence, proceedings under section 8 of PMLA before Adjudicating

Authority are civil proceedings and should have been stayed on passing of moratorium order by NCLT under IBC which was applicable to all proceedings except criminal proceedings

ABDULLAH ALI BALSHARAF
VERSUS
DIRECTORATE OF ENFORCEMENT
HIGH COURT OF DELHI

Section 3, section 8, Section 5 and 17 of the Prevention of Money-Laundering Act.

- Where there was no allegation of money-laundering against purchaser who had purchased shares from floor of exchange and paid reasonable consideration for same, Enforcement Directorate could not have withheld and frozen shares to be delivered in settlement to purchaser
- Scheme of effecting provisional attachment and seizure of property under PMLA is wholly inconsistent with one as enacted under Cr.P.C. as property under Cr.P.C. can be seized on mere suspicion whereas under PMLA reasons for attaching property are to be recorded in writing
- Where it is established that petitioners held any property overseas, which is derived or obtained by a scheduled offence, Enforcement Directorate would be well within its right to initiate proceedings against any property held by petitioners in India to extent of value of proceeds of crime held overseas

INDIABULLS HOUSING FINANCE LTD.
VERSUS
VAIBHAV JHAWAR
HIGH COURT OF DELHI

Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

- Where a person other than borrower/guarantor files an appeal before Arbitral Tribunal then stipulation of pre-deposit of 50 per cent (or 25 per cent) of amount of debt due from him as claimed by secured creditors or determined by DRT cannot be insisted upon.

NOTIFICATIONS

1. **NOTIFICATION NO.GSR 108(E) [F.NO.P.12011/24/2017-ES CELL- DOR], DATED 13-2-2019:** Prevention Of Money-Laundering

(Maintenance Of Records) Amendment Rules, 2019 - Amendment In Rules 2 & 9

2. **NOTIFICATION NO. S.O. 649(E) [F. NO. 11/21022/23 (78)/2018-FCRA-III], DATED 1-2-2019:** Section 2 Of The Foreign Contribution (Regulation) Act, 2010 - Foreign Source - Specified International Organization Which Is Not To Be Treated As Foreign Source U/S 2(1)(*J*)(*Ii*)

3. **NOTIFICATION NO. CEPD.PRS.NO.3370/13.01.010/2018-19, DATED 31-1-2019:** Ombudsman Scheme For Digital Transactions, 2019

4. **NOTIFICATION NO. G.S.R. 78(E) [NO. FEMA.20 (R) (6) / 2019 - RB (F.NO.1 / 22 / EM / 2016)], DATED 31-1-2019:** Foreign Exchange Management (Transfer Or Issue Of Security By A Person Resident Outside India) (Amendment) Regulation, 2019 - Amendment In Regulation 16B

5. **NOTIFICATION NO. FEMA 22(R)/(2)/2019-RB/GSR 40(E) [F.NO.16/13/EM/2014-PART-I], DATED 21-1-2019:** Foreign Exchange Management (Establishment In India Of A Branch Office Or A Liaison Office Or A Project Office Or Any Other Place Of Business) (Amendment) Regulations, 2019 - Amendment In Regulation 5

6. **NOTIFICATION F.NO. IRDAI/REG/2/153/2019, DATED 21-1-2019:** Insurance Regulatory And Development Authority Of India (Insurance Brokers) (First Amendment) Regulations, 2018 - Amendment In Schedule Ii

7. **NOTIFICATION NO. GSR 24 (E) [F.NO.P.12011/2/2009-ES CELL-DOR], DATED 11-1-2019:** Section 66 of the Prevention of Money-Laundering Act, 2002 - Information - Disclosure Of - Notified Authority - Amendment in Notification No. GSR 381(E) [No.6/2008 (F.No.6/9/2006-E.S.)], Dated 27-6-2006

8. **NOTIFICATION NO. G.S.R 23(E) [F.NO.P.12011/5/2015-SO(ES CELL)], DATED 11-1-2019:** Prevention Of Money-Laundering (Restoration Of Confiscated Property) Amendment Rules, 2019 -Amendment In Rule 1; Insertion Of Rule 3a

9. **NOTIFICATION F.NO.IRDAI/RI/1/152/2019, DATED 10-1-2019:** Section 101a of the Insurance Act, 1938 - Re-Insurance with Indian Re-Insurers - Notified Percentage and Terms and Conditions for Re-Insurance Cessions to Indian Re-Insurers.

CIRCULARS

1. **CIRCULAR NO. FIDD.CO.FSD.BC.12/05.05.010/2018-19, DATED 4-2-2019:** Kisan Credit Card (Kcc) Scheme: Working Capital For Animal Husbandary And Fisheries

2. **CIRCULAR NO. IRDAI / BRK / ORD / MISC / 018 / 01 / 2019 , DATED 25-1-2019:** Remuneration To Insurance Intermediaries For Direct Insurance Business - New & Renewal

3. **CIRCULAR NO. IRDA / RI / GDL / MISC / 012 / 01 / 2019 , DATED 16-1-2019:** Insurance Regulatory And Development Authority Of India (International Financial Service Centre Insurance Intermediary Offices) Guidelines , 2019

4. **CIRCULAR NO. DBR.DIR.BC.NO.22/04.02.001/2018-19 , DATED 11-1-2019:** Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit

5. **CIRCULAR DBR.BP.BC.NO.20/21.06.201/2018-19 , DATED 10-1-2019:** Basel III Capital Regulations - Review Of Transitional Arrangements

6. **CIRCULAR NO. DBR. IBD.BC.19/23.67.001/2018-19 , DATED 9-1-2019:** Gold Monetization Scheme, 2015

7. **CIRCULAR NO. DBR.NO.BP.BC.18/21.04.048/2018-19, DATED 1-1-2019:** Micro, Small and Medium Enterprises (Msme) Sector - Restructuring Of Advances

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CASE LAWS AND NOTIFICATIONS/CIRCULARS ON INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

Adv. ARPIT MATHUR
JAIPUR

LION SERVICES LTD. VERSUS AURA MANAGEMENT SERVICES (P.) LTD. NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH (SPECIAL BENCH)

Section 238, section 9, Section 3(12), section 7 , Section 8 of the Insolvency and Bankruptcy Code, 2016

- Pendency of execution proceeding under provisions of Arbitration and Conciliation Act, 1996 would not exclude jurisdiction of Tribunal to accept application under section 9 to initiate CIRP.
- Where arbitration award was announced on 2-12-2013 and while execution proceedings were pending, petition for initiation of CIRP was filed on 1-6-2018, same was to be admitted.
- Where invoices and demand notice were sent to address of corporate debtor which was available in MCA record, corporate debtor's objection that it was not served at new address which was known to operational creditor could not be accepted, CIRP petition was to be admitted.

VIJAY KUMAR JAIN VERSUS STANDARD CHARTERED BANK SUPREME COURT OF INDIA

Members of erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of committee of creditors, must be given a copy of such plans as part of 'documents' that have to be furnished along with notice of such meetings.

SWISS RIBBONS (P.) LTD. VERSUS UNION OF INDIA SUPREME COURT OF INDIA

Financial creditors are clearly different from operational creditors and, therefore, there is obviously an intelligible differentia between the two which has a direct relation to the

objects sought to be achieved by the Code. Operational creditors are not discriminated against or that Article 14 has not been infracted either on the ground of equals being treated unequally or on the ground of manifest arbitrariness.

FORECH INDIA LTD.
VERSUS
EDELWEISS ASSETS RECONSTRUCTION CO. LTD.
SUPREME COURT OF INDIA

Proceedings initiated under section 7 or section 9 of the Insolvency and Bankruptcy Code are independent proceedings, which can continue independent of any winding up petition that may be pending in a High Court under Companies Act.

UNION BANK OF INDIA
VERSUS
IP CONSTRUCTION (P.) LTD.
NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH

Where applicant bank had sanctioned and disbursed loan amounts recoverable with applicable interest by entering into loan agreements with corporate debtor but corporate debtor had defaulted in repayment of loan amount, loan being disbursed against consideration of time value of money with a clear commercial effect of borrowing would come within purview of financial debt and applicant bank was financial creditor whose application under section 7 was to be admitted.

SMT. ALKA AGARWAL
VERSUS
PARSVNATH LANDMARK DEVELOPERS (P.) LTD.
NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH

Where corporate debtor i.e., Parsvnath builders, failed to handover physical possession of flat to allottees within agreed period of thirty six (36) months from date of commencement of construction of tower in which flat was located, amount of consideration paid was financial debt in terms of revised definition under section 5(8)(f) and application filed under section 7 by allottee-financial creditors for default committed by corporate debtor in repayment of outstanding debt was to be admitted.

NOTIFICATIONS

1. **NOTIFICATION NO. GSR 114 (E) [F.NO.30/3/2016-INSOLVENCY], DATED 8-2-2019:** Insolvency And Bankruptcy Board Of India (Medical Facility To Chairperson And Whole-Time Members) Scheme, 2019

2. **NOTIFICATION NO. IBBI/2019-20/GN/REG040, DATED 24-1-2019:** Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) (Amendment) Regulations, 2019 - Amendment In Regulations 36b, 38, 39 And Form-H

3. **NOTIFICATION NO. GSR 41(E) [F.NO.30/3/2016-INSOLVENCY], DATED 18-1-2019:** Insolvency And Bankruptcy Board Of India (Salary, Allowances And Other Term And Conditions Of Chairperson And Members) Third Amendment Rules, 2019- Substitution Of Rule 9

4. **NOTIFICATION NO. IBBI/2019-20/GN/REG039, DATED 15-1-2019:** Insolvency And Bankruptcy Board Of India (Voluntary Liquidation Process) (Amendment) Regulations, 2019 - Amendment In Regulation 6 & Schedule I

5. **NOTIFICATION NO. G.S.R. 1083(E) [F.NO.30/63/2018-INSOLVENCY], DATED 2-11-2018:** Insolvency and Bankruptcy Board Of India (Salary, Allowances and Other Terms and Conditions of Services of Chairperson and Members) Second Amendment Rules, 2018 - Amendment in Rule 20.

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COMMERCIAL NEWS

MS. PRIYAMVADA JOSHI
ADVOCATE, JAIPUR

• HYDERABAD: MAHESH BABU'S MULTIPLEX FACES GST HEAT, TOLD TO PAY UP RS 35 LAKH

HYDERABAD: In another case of theatres not passing on the benefits of the goods and services tax (GST) to moviegoers as per the Union government's directives, GST Rangareddy anti-evasion teams have found out that AMB Cinemas in Gachibowli had pocketed Rs. 35 lakh in January 2019 while violating the anti-profiteering clause in the CGST Act.

The theatre which is operated by Asian Cinemas and owned by actor G Mahesh Babu on its part said that the amount of Rs 35 lakh is an "inflated" figure and that they had not received any notice from GST officials. The theatre also said that they have obtained a fresh court order that had fixed ticket price and would be effective from February 22.

Meanwhile, the GST Rangareddy Commissionerate has forwarded the details of the profiteering case to the state screening committee of the GST anti-profiteering wing. "GST on movie tickets was reduced by Centre with effect from January 1, 2019. AMB Cinemas did not reduce the ticket price despite GST on movie tickets brought down from 28% to 18% on tickets priced Rs 100 and above. Upon inspection by GST Hyderabad officials, it was found that many theatres had not reduced the price," said a source from the GST Commissionerate.

"AMB Cinemas reduced the prices after almost a month (since Centre's notification) in February. The undue profit they have accrued by pocketing a differential amount from moviegoers in January has to be paid back to the consumer welfare fund. Companies like Nestle Products have paid such amounts back to the welfare fund after they were found to have profited around Rs 100 crore despite the reduction in GST," the source added. GST officials have said that action will be taken should AMB Cinemas fail to deposit the Rs 35 lakh to the consumer welfare fund.

Responding on the matter, a top functionary from Asian Cinemas said: "There was no notice served to AMB Cinemas. The figure of Rs 35 lakh is inflated, the actual figure would be around Rs 20 to 25 lakh. However, immediately after we came to know that PVR Cinemas had reduced their ticket prices, we too did the same from Rs 200 to Rs 185 at the end of January."

"We have a fresh order from the Telangana High Court which has fixed the Rs 170 with an additional Rs 30 as GST, which makes a total of Rs 200. We will be implementing the order from February 22 which means the price will come back to Rs 200," the functionary said on condition of anonymity.

The state government has not issued any order on fixing the prices of tickets for theatres due to which theatre managements are approaching the high court to get the price fixed. In case of theatres where a court order did not mention that the price included GST, the theatres have reduced total ticket price after a warning from GST officials. But in case of

court orders stating that the price fixed by the court is including GST, the theatres have not reduced the ticket price.

[Reported on 20.02.2019 by Times of India]

• GST COUNCIL DEFERS DECISION ON REAL ESTATE TAX; EXTENDS DEADLINE FOR SALES RETURNS

NEW DELHI: The GST Council has deferred a decision on tax rates on real estate and lottery till Sunday, and extended the deadline for businesses to file sales returns for January till Friday.

Briefing reporters after a meeting of the GST Council on Wednesday, finance minister Arun Jaitley said, because of the rush of filing of returns, the due date has been extended till February 22 for all states; and February 28 for Jammu & Kashmir. The due date for filing summary sales return - GSTR-3B - is February 20. With regard to goods and Services Tax (GST) rate on under-construction housing properties, Jaitley said, since certain states wanted physical meeting for this agenda, hence, the Council would meet again on February 24 to take a decision. “Today's meeting has been adjourned till Sunday,” Jaitley said, adding discussion on real estate and lottery will continue.

[Reported on 20.02.2019 by Times of India]

• SIR DORABJI TATA TRUST CONTESTS R VENKATARAMANAN TAX ORDER

Sir Dorabji Tata Trust has appealed against the income tax department’s order that stemmed from the salary of outgoing managing trustee R Venkataramanan. The department had withdrawn the exemption given to such philanthropic organisations on account of this in a December 31 order.

The trust confirmed the move without giving details. “The trust has challenged the assessment order by filing an appeal before the commissioner of income tax (appeals),” it told ET.

According to people with knowledge of the matter, the trust stated that taxes had been paid in accordance with the Income Tax Act governing charitable trusts and that its FY16 income of around Rs 300 crore shouldn’t be brought under tax purview. The matter concerns Rs 2.66 crore paid as salary to Venkataramanan by the trust for the assessment year 2015-16, which the income tax department views as excessive and a violation of the rules under Section 13 of the I-T Act.

The Central Bureau of Investigation and the Enforcement Directorate are probing Venkataramanan in a separate case involving AirAsia India, in which the Tata Group has a 51% stake.

“The trust has filed an appeal before CIT (commissioner of income tax), appeals, challenging the exemption wing’s order revoking the exemption granted to the trust,” said one of the persons cited above. “In its appeal, the trust has stated that the conditions

under Section 13 of the I-T Act have not been violated and that the trust was very much within its limits to offer the compensation it made to the former managing trustee."

Section 13 specifies that a trust's income or property has to been spent on the objectives that it has been set up to address.

The CIT, appeals, will decide the matter based on the order submitted by the exemption wing and the grounds on which it has been contested, said one of persons cited above. The subsequent courts of appeal are the Income Tax Appellate Tribunal (ITAT), the high court and the Supreme Court in that order.

"Generally, these matters take years to be decided upon owing to the backlog but if cases are of serious nature, they are expedited," said the person.

According to the people cited above, in its December 31 order, the department held that exemption claimed under Section 11 of the I-T Act had been denied. In the 19-page assessment order, the tax department arrived at a sum of Rs 317.27 crore as taxable income and initiated penalty proceedings for "furnishing inaccurate particulars" of total income.

"The exemption claimed under Section 11 has been denied for violation of condition under Section 13 of the I-T Act," said another senior official privy to the order.

ET had first reported on January 31 that the income tax department had denied tax exemption to Sir Dorabji Tata Trust.

While contesting the I-T's order, the trust had defended the payment to Venkataramanan by submitting a certificate from Aon Hewitt. The global HR consultancy firm was hired for "external benchmarking" to arrive at the compensation for the executive trustee. The same was cited before the exemption wing, which refused to grant relief stating that internal benchmarking was a more reliable option.

The trust was established in 1932 by Sir Dorabji Tata, the eldest son of Tata group founder Jamsetji Tata with an endowment of Rs 1 crore to catalyse development across the nation.

Sir Dorabji Tata Trust and the Allied Trusts have been credited with the establishment of several leading national institutions including the Indian Institute of Science, Tata Institute of Social Sciences, Tata Memorial Centre, Tata Medical Center, Tata Institute of Fundamental Research and National Centre for Performing Arts, among others.

[Reported on 20.02.2019 by Economic Times]

• ERICSSON CASE: ANIL AMBANI HELD GUILTY OF CONTEMPT, TO BE JAILED IF HE FAILS TO PAY RS 453 CRORE IN 4 WEEKS

In a big setback for Anil Ambani, the Supreme Court today held Reliance Group chairman and its two directors guilty of contempt for willfully not paying Rs 550 crore to Ericsson. Swedish telecom equipment maker Ericsson had filed three contempt plea in the Supreme Court for not clearing its dues.

A bench of Justices RF Nariman and Vineet Saran, however, asked RComNSE -6.67 % and Ambani to purge the contempt by paying Rs 453 crore to Ericsson in four weeks in addition to a Rs 118 crore amount lying with the court. Court has asked Ambani to pay

Rs 453 crore to Ericsson in four weeks, failing which he will have to serve three months of jail term.
Additionally, apex court has imposed a fine of Rs 1 crore on the three RCom entities. This will also have to be deposited within four weeks or the directors will spend a month each in jail.
The court rejected Rcom and Ambani's unconditional apologies saying they had shown a cavalier attitude to the administration of justice.
"Unconditional apology by Reliance can't be accepted given the attitude of the deponent to the highest court of the land. Three Reliance companies had no intention of payment of money, it amounts to contempt," SC said.
Ericsson had sought contempt action by way of remanding them to civil prison and had also urged the court to seize the personal assets of ambani and recover its dues.
Ambani, who was directed to be present during the two day long hearing on the contempt case, was present in court when the ruling was delivered.
The court had reserved its judgement on February 13 when Ericsson India had alleged that the Reliance Group has money to invest in the Rafale jet deal, but they were unable to clear its Rs 550-crore dues, a charge which was vehemently denied by the Anil Ambani-led company.
Ambani told the top court that with the failure of its assets sale deal with elder brother Mukesh Ambani-led Reliance Jio his company has entered insolvency proceedings and is not in control of the funds.
Reliance Communications (RCom) had told the court they had tried to move "heaven and earth" to ensure Ericsson gets its due but was unable to do so due to failure of assets sale deal with Jio.
His lawyer Mukul Rohtagi had argued that Ambani could not be held personally liable for the dues of a listed company.
The contempt plea was filed against Ambani, Reliance Telecom chairman Satish Seth, Reliance Infratel chairperson Chhaya Virani and SBI chairman.
The insolvency proceedings against the company will now go ahead.
[Reported on 20.02.2019 by Economic Times]

• IL&FS PROBE: ED REGISTERS MONEY LAUNDERING CASE, RAIDS UNDERWAY IN MUMBAI, GURGAON

MUMBAI: The Enforcement Directorate (ED) has registered a money laundering case in the matter concerning alleged financial irregularities in Infrastructure Leasing and Financial Services (IL&FS) Ltd. Raids are underway in Mumbai and Gurugram, atleast two sources in the know told ET.
The ED's case follows the predicate offence registered with Delhi Police.
The Delhi Economic Offence Wing (EOW) is also probing the cash-strapped IL&FS. A case under various sections of the Indian Penal Code (IPC) for criminal conspiracy and forgery was registered by the EOW.
The EOW's case was based on a complaint by Ashish Begwani, director of New Delhi-based Enso Infrastructures. It was alleged that in or about August 2010, Begwani was

approached by officials like Ravi Parthasarthy, Hari Shankaran, and K Ramchand — all directors of IL&FS Transportation Networks Ltd. "Allured by the tall promises, Enso Infrastructures agreed to invest in the company IL&FS Rail Ltd and invested Rs 170 crore in order to take 15% shares of IL&FS Rail Ltd, a Special Purpose Vehicle (SPV) for the Gurgaon Metro project. However, over a period of time, complainant observed that the company is not performing profitably and funds are being misused," the complaint said.

"In May 2018, the complainant came across copies of demand notices served by the income tax department upon IL&FS Rail Ltd. Deputy commissioner of income tax, Gurgaon, had passed assessment orders concluding that IL&FS Rail Ltd had issued bogus contract orders to Silverpoint Infratech Ltd when, in fact, no work was executed by this company. The invoices raised by the Silverpoint Infratech Ltd are forged and fabricated," according to the complaint.

IL&FS Rail Ltd has done so to inflate its expenditure and show less profit in its books. The amount of about Rs 21.88 crore so paid to Silverpoint is not an actual expenditure incurred. It is alleged by the complainant that directors of the alleged company IL&FS Rail Ltd and other officers of the company intentionally siphoned off the funds of the company to the tune of Rs 70 crore causing loss to the complainant company," it read.

In November, SFIO had placed an interim report detailing out the alleged irregularities surrounding IL&FS. It recommended that the assets of the key managerial individuals may be considered for restrainment under the provision of the Companies Act, 2013 by the central government.

[Reported on 20.02.2019 by Economic Times]

• PANEL TO CURB GST FRAUDS

In the backdrop of increasing incidents of fraud related to Goods and Services Tax (GST) via the filing of fake invoices and e-way bills, the Union government is planning to set up a committee of tax officers to suggest steps to deal with the problem, which has led to GST evasion worth Rs 15,278.18 crore.

"The government has been constantly tracking incidents of GST evasions. There have been many cases registered by us and the zonal officials are taking actions. Considering the steep rise in such cases, the ministry has proposed to set up a committee to take care of such incidents," an official with Central Board of Indirect Taxes and Customs told this publication.

The committee will comprise of representatives from both the Centre and states. It is expected to look into the cases of GST evasion and non-filing of returns, among others.

The government has introduced e-way-bill last year as an anti-evasion measure, for moving goods worth over Rs 50,000 from one state to another. The same for intrastate (or within the state) movement was rolled out in a phased manner from April 15, 2018.

However, the tax officials have reported many cases where the traders were giving fake invoices and bills.

According to the government's own admission, GST compliance has steadily declined over the past one year as 28.75 per cent of regular taxpayers did not file returns in November 2018, compared to 10.56 per cent in November 2017, which is an almost threefold rise in non-filers.

Among taxpayers under the composite scheme, the non-filers have increased to 25.37 per cent in the July-September period of FY19 from 15.03 per cent in the same period a year ago.

According to internal assessment, instances on bogus e-way bills based on fake invoices have been detected since April and the tax evasion involved worked out to about Rs 5,000 crore.

From April-December 2018, central tax officers have detected 3,626 cases of GST evasion or violations cases, involving Rs 15,278.18 crore.

From April this year, the council will roll out an initiative to tag e-way bills to FASTag mechanism, which will help track movement of goods.

Integration of e-way bills with FASTag would help find the location of the vehicle, and when and how many times it has crossed the NHAI's toll plazas.

[Reported on 18th February, 2019 The New Indian Express]

• GST PAID FOR INSPECTION OF MEDICAL COLLEGE PALAMU

GST (Goods & Services Tax) for medical college. It should not sound any bizarre. It is and it has been paid for the upcoming medical college in Palamu. According to the principal of the medical college Palamu H K Singh "The Government has paid `54,000 as GST for an inspection fee worth `3 lakh for Medical Council Of India on whose receipt of 3.54 lakh only then the Medical Council of India sent its three member team here in the mid week of December last year, which carried out intensive inspection for two days here." Singh said, "This 3 lakh is the mandatory fee for inspection by Medical Council of India on which comes 18 per cent of the GST." The 120 bed Sadar hospital in Daltonganj has been attached to this medical college. Ground floor and first floor of the three wings of the upcoming Medical College at Pokhraha about 12 Kms away from Daltonganj in Palamu district are 'ready for occupancy' said the project in-charge Amit Bhowmik. Bhowmik said The G plus 1 are fit for being class rooms while tools and equipments when brought in here the necessary labs too would be ready to use. He said by May end the construction of this medical college building will be complete. Two hostels one each for boys and girls having 100 bed capacity each are also coming up at Pokhraha. CM Raghubar Das had laid its foundation while the Jharkhand state building construction corporation had allotted this construction work to the Maharashtra based company Shapoor ji Pallonji Pvt Ltd. Prime Minister Narendra Modi is to do online inauguration of this Palamu medical college and other two medical colleges one each at Dumka and Hazaribagh on February 17 from Hazaribagh. H K Singh principal of this medical college Palamu who is a senior faculty in DMCH Dhanbad said the first year admission is all set to end by 31st of August and the intake capacity of this college is 100 students. However Singh said "We wait for Lop. It is letter of permission. This is given by the medical Council of India. Without LoP nothing takes off academically at all. The admission and teaching depend upon this LoP in the medical colleges in the country." Expressing hope Singh said, "We are sure to get this LoP and once we will be armed with it teaching in this medical college will take off."

[Reported on 14th February by Daily Pioneer]

- **JUBILANT FOODWORKS FINED RS 41.4 CR FOR NOT PASSING ON GST RELIEF**

The National Anti-Profiteering Authority (NAA) has fined Jubilant FoodWorks, which operates the Domino's Pizza chain in India, Rs 41.42 crore for not passing on the benefit of a reduction in the goods and services tax (GST) to consumers. The company has been asked to deposit the amount with the government. The order was passed on an e-mail complaint filed by a customer that Domino's had not reduced the price of 'stuffed garlic bread' and 'medium veg pizza' even after the GST rate was cut to 5% from 18%. The GST council had cut rates on restaurants to 5% without input tax credit (ITC) from 18% with such credit, with effect from November 15, 2017. The authority held that Jubilant did not pass on the benefit of this reduction to customers during the period from November 15, 2017 to May 31, 2018. It also asked the company to reduce prices of its products by way of commensurate reduction in taxes. "The respondent (Jubilant FoodWorks) is directed to refund to the applicant an amount of Rs 5.65 along with interest @18% from the date of charging the above amount from him till its refund. He is further directed to deposit the balance amount of Rs 41,42,97,629.25 in the ratio of 50:50 in the central and the state consumer welfare funds along with interest @18% till the same is deposited, within a period of three months," the NAA said. The NAA also asked the Directorate General of Anti-Profiteering, which investigated the case, to conduct a further investigation post May 31, 2018, to check if the benefit of tax reduction was passed on to customers. The authority has also issued a show-cause notice to Jubilant FoodWorks to explain why a penalty should not be imposed on the company.
[Reported on 4th February, 2019, The Economic Times]

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TIMELINE

CA DEEPAK KHANDELWAL
JAIPUR

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summery GST Return	GSTR-3B		
	(a) Regular Taxpayers ***** Due date of GSTR- 3B for the month January 2019 has been extended to 22 February 2019***		March, 2019	20th April. 2019
			February, 2019	20th March. 2019
			January, 2019	22nd February. 2019**
	(b) Newly migrated taxpayers		July 2017 to Feb 2019	31st March 2019
(ii)	Detail of Outward Supplies: -	GSTR-1		
	(a) Taxpayers with annual aggregate turnover up to Rs. 1.5 Cr.		Oct. to Dec. 2018	31th Jan. 2019
			Jan to Mar. 2019	30th Apr. 2019
	(b) Taxpayers with annual aggregate turnover more than Rs. 1.5 Cr.		December, 2018	11th Jan.2019
			January, 2019	11th Feb. 2019
			February, 2019	11th Mar. 2019
			March, 2019	11th Apr. 2019
	(c) Newly migrated taxpayers		July 2017 to Feb 2019	31st March 2019
(iii)	Quarterly return for Composite taxable persons	GSTR-4		
	(a) Normal Composition Taxpayers		Oct. to Dec. 2018	18th Jan. 2019
			Jan to Mar. 2019	18th Apr. 2019
	(b) Newly migrated taxpayers		July 2017 to Feb 2019	31st March 2019

(iv)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(v)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vi)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(vii)	Return to be filed by the persons who is required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	Oct 2018-Dec 2018	28th February 2019
			January 2019	28th February 2019
			February 2019	10th March 2019
			March 2019	10th April 2019
(viii)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	Oct 2018-Dec 2018	7th February 2019
			January 2019	10th Feb 2019
			February 2019	10th March 2019
			March 2019	10th April 2019
(ix)	Details of inputs/capital goods sent for job-work. Quarterly Form	GST ITC-04	July 2017 to Dec 2018	31st March 2019
(x)	Annual GST return and GST Audit	GSTR-9/9A/9C	F Y 2017-18	30th June 2019

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Budapest, Bratislava, Prague, Vienna, Salzburg, Munich

26th August 2019 - 03rd September 2019 (09 Days /08 Nights)

TOUR COST- INR 1,25,000/- Per Person on Twin Share Basis
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EXCLUDES:
Anything not mentioned in the inclusions.

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1. Advance amount of INR 50,000/- Per Person on immediate basis i.e. upto 15.03.2019
2. Balance total payment by 30th June 2019.

Cancellation Terms:

1. 25% of the total booking amount upto 31st March 2019.
2. 50% of the total booking amount till 30th April 2019.
3. 100% cancellation after 15th May 2019.

Note: Above is only a tentative itinerary and is subject to change.

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