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CHIEF-EDITOR'S COMMUNIQUE

There are continuous changes in the Tax Laws and particularly in the GST and because of it has become really difficult to keep track of the various notifications, circulars, amendments in the Act and Rules and other clarifications. In this journal we are trying to inform about the latest amendments and also about the latest judicial decisions. We are also working on compiling the amendments so that it may benefit all.

It is seen that the GST Law is amended first and then the repercutions of the amendments are thought later. The government is not very keen on the issue of solving of problems for the Tax payers but some time it is felt that they want to justify the mistake made by them by issuing the amendment or in the process. The GSTN is a big failure and because of it every body is suffering. It is a known fact that it always creates problems in the last working days and it is really funny to have a clarification from GSTN / Finance Ministry that the return should be filed not in the last three days but earlier. They are accepting their mistake that they do not have the capacity but if the assesse is late even by a day then the penalty starts. It is double standard. It was very aptly quoted by a professionals that if assesse defaults it is "deliberate" and penalty is levyable but if GSTN defaults then it is "technical Glitch". We have to look into the new rule regarding the ITC wherein the restriction has been imposed on the claim of Input Tax Credit. The Rule providing for 20% more of the eligible ITC is really funny and is contradictory to the provisions of the GST Act and also a calculation mystery. No body knows how it will work but the bureaucrats sitting in the government has thought of it only to boost artificial revenue for the government. It is really hard to understand as to why the government do not try to simplify the procedure and improve the working of GSTN. The due dates for the Annual return under GST for the year 2017-18 and 2018-19 has already been postponed as per the notification issued by the government. We expect that the simplification would be complete and returns would be able to be filed.

The outreach programme announced by the government though is good in intentions but how much the government will actually learn from it is anybody's guess.

As far as AIFTP is concerned regular programmes are being organized in all Zones. The Varansi Conference was a stupendous success. The arrangements and all working was marvelous. The next get together will be at the Mumbai Convention on 14th – 15th December, 2019. We expect huge gathering in the said Convention and request all the Members to register for it.

This is the second last issue for the year 2019 of this Journal. We had received various appreciations and support for the continuous publication of this Journal. We request all the Member to continue the patronage and suggest how to improve further. Looking forward to meet you all at Mumbai Convention.

Best Wishes

Regards,

PANKAJ GHIYA

Chief Editor & Vice-President (CZ)

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PRESIDENT'S COMMUNIQUE

Dear Friends,

We had a wonderful get together at Varanasi where the National Tax Conference was organized by the AIFTP North Zone under the leadership of Sri Arvind Shukla, the Conference Chairman and Sri O.P. Shukla. The complete team of Varansi conference had done a wonderful job. The Dev Deepawali event organized was a life time remembrance and everybody enjoyed it. For the first time in the history of the Federation, Swachhata Bharat Abhiyan was organized as well as 'Rudravhishek' was performed on the banks of Ganga. All the delegates enjoyed all the programmes.

The year 2019 is about to end and it has been a wonderful year. In addition to all the achievements and the working in the Federation, the start of this journal on the demand of the Members has been a major achievement. It received the support of the Members also who opted for the hard copy and also of the members who got the soft copy in PDF Format and thereafter circulated it in various whatsapp groups spreading the name of the Federation. The support of the paper writers and contributors in sending the articles has been great. Special thanks to the sponsors of the each issue as without their support it would have been difficult to release the issues.

AIFTP has always been in the forefront in the education of the Tax Professionals. Consistently the books, journals are being released and Conferences and Seminars are being organized and particularly in the current year we had seen that all Zones had worked hard in organizing Seminars and half day symposium. It has regularly submitted Memorandum on the issues of Indirect and Direct Taxes and many of the suggestions has been considered by the Government. We had been meeting authorities regularly putting forth the suggestions as received from the Members.

It is time for the Professionals to look into the other fields which are coming and can be considered as the new avenues for the future. The cyber law, IPR, IBC, Startup supports etc. are the fields which has a bright future. Apart from the regular taxation working it is also necessary for us to think of the group working and create a network. The Federation is the best platform for it. In the coming Conferences, we will try to have a paper on these aspects also.

Friends we look forward to meet you at the Mumbai Convention on 14th – 15th December, 2019.

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RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Abhay Singla
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NOTIFICATIONS - CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
31.10.2019	51/2019-CENTRAL TAX	Seeks to amend notification no. 2/2017-Central Tax in order to notify jurisdiction of Jammu Commissionerate over UT of J&K and UT of Ladakh
14.11.2019	52/2019-CENTRAL TAX	Seeks to extend the due date for furnishing FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover of up to 1.5 crore rupees for the quarter July, 2019 to September, 2019
14.11.2019	53/2019-CENTRAL TAX	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover more than 1.5 crore rupees for the months of July, 2019 to September, 2019
14.11.2019	54/2019-CENTRAL TAX	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019
14.11.2019	55/2019-CENTRAL TAX	Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019
14.11.2019	56/2019-CENTRAL TAX	Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017. [Primarily related to Simplification of the Annual Return / Reconciliation Statement]

CIRCULARS - CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
05.11.2019	122/2019	Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons
11.11.2019	123/2019	Seeks to clarify restrictions in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017

REMOVAL OF DIFFICULTY ORDERS - CGST

DATE	CIRCULAR NO.	REMARKS
14.11.2019	ORDER NO. 8/2019-CENTRAL TAX	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020

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TIMELINE - GST

Adv. Deepak Garg, Jaipur

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summery GST Return	GSTR-3B		
	(a) Regular Taxpayers		November, 2019	20th Dec 2019
			December, 2019	20th Jan 2020
(ii)	Detail of Outward Supplies: -	GSTR-1		
	(a) Taxpayers with annual aggregate turnover up to Rs. 1.5 Cr.		Oct to Dec 2019	31st Jan 2020
	(b) Taxpayers with annual aggregate turnover more than Rs. 1.5 Cr.		November, 2019	11th Dec 2019
			December, 2019	11th Jan 2020
(iii)	Quarterly return for Composite taxable persons	CMP-08	Oct to Dec 2019	18th Jan 2020
(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 are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	November 2019	10th Dec 2019
			December 2019	10th Jan 2020
(viii)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	November 2019	10th Dec 2019
			December 2019	10th Jan2020
(ix)	Annual GST return and GST Audit	GSTR-9/9A/9C	FY 2017-18	31st Dec 2019
(x)	Annual GST return and GST Audit	GSTR-9/9A/9C	FY 2018-19	31st March 2020

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INTRODUCTION OF SUB-RULE 4 IN RULE 36 OF CGST RULES, 2017

Adv. PankajGhiya, Jaipur
Adv. Priyamvada Joshi, Jaipur

The Central Goods & Services Tax Act, 2017 prescribes for furnishing of details of outward Supplies of both goods and services effected during the tax period online on the GST Portal before the due date of filing of returns by a registered person, other than a composition dealer, a non-resident taxable person, input service distributor, or a person deducting tax at source or collecting tax at source. The said data is furnished by the Supplier in Form GSTR-1 before the due date as prescribed under the statute and modified from time to time by way of Notifications under GST.

An earlier system has been adopted in the newly introduced law whereby the tax is to be paid on the value addition like the earlier regime of VAT (ITC) and Service Tax (CENVAT). The tax paid on Inputs can be used to offset the output tax liability. For eg. Where A sells a product to B for Rs. 100 taxable @ 5% and B sells the same by adding value to the same for Rs. 120 taxable @ 5% to C, assuming that all are registered, A will show the outward supply of Rs. 100 and pay tax of Rs. 5 on the same. B however, can use that Rs. 5 at the time of payment of tax of Rs. 6 and so on.

However, there have been numerous cases where the Suppliers are not filing their GST Returns on time or are hiding their sales to defraud the Government. Because the current system is totally digitized all the details are available on the GST Portal it is not easy to hide the outward Supply in order to reduce the output tax liability. In addition to that several documentary requirements along with conditions have been prescribed under Rule 36 of the Central Goods & Services Tax Rules, 2017.

The department in order to keep a check on such registered persons under GST have introduced Sub-Rule 4 under Rule 36 by way of Notification No. 49/2019-Central Tax dated 09.10.2019 to curb this menace where on one hand the Government is not being able to realize the tax from the supplier and on the other hand is providing the entire amount of tax as Input Tax Credit to the Recipient when claimed by him in GSTR-3B in a consolidated manner. The restriction of 36(4) will be applicable only on the

invoices / debit notes on which credit is availed after 09.10.2019. Therefore, this provision is not retrospective in nature.

Sub-rule 4 of the said Rule prescribes that where the Invoices which were required to be uploaded by the Supplier before the due date of filing Returns under the provisions of Section 37 as discussed above have not been uploaded, the recipient would be entitled to only 20% of eligible Input Tax Credit of the Invoices which have been uploaded.

Let us understand the same by way of an example, if the total Input Tax Credit to be claimed for the month of October is Rs. 20 lakhs and the invoices uploaded in GSTR-1 by their Suppliers is only of Rs. 12 Lakhs, then in respect of the amount of Rs. 8 lakhs of ITC of which the invoices are not uploaded the recipient is only eligible to get 20% of Rs. 12 Lakhs i.e. Rs. 2.4 lakhs. Therefore, the total Input Tax Credit which can be claimed is Rs. 10.4 lakhs (Rs. 8 lakhs + Rs. 2.4 Lakhs).

A clarification by way of Circular No. 123/42/2019– GST dated 11.11.2019 was issued in order to clear the cobwebs around the newly introduced provision which will create awareness among the registered persons and hopefully improve compliance of law. It has been clarified that the said provision is to be implemented on self assessment basis and it would not be imposed on the taxpayer through the Portal automatically. It is their responsibility to calculate the eligible Input Tax Credit as per the formula prescribed and claim the same. It should also be noted here that the said condition of 20% credit is only on those invoices which are covered under Section 37(1) and not otherwise.

Sub-rule 4 is linked to the total eligible Input Tax credit from all the Supplies whose details have been uploaded by the Supplier. It is very important to note here that at the time of calculation of 20% of Input Tax Credit, it would only take into consideration where the Input tax Credit is eligible and those Invoices where the Input Tax Credit is anyway not available will not be considered. For eg., where the invoice by a supplier relates to an activity / transaction covered under the provisions of Section 17(5) where the credit is blocked, it would not be taken into consideration at the time of calculation of 20% of eligible Input Tax Credit.

One practical issue which has come to our notice after perusing the clarification in the Circular is that, it says that the recipient has to ascertain their eligible Input tax credit and self-assess the same on the basis of Form GSTR-2A where the receipts are

auto-populated only after the Supplier has filed their GSTR-1. Hence, it restricts the registered taxpayer from filing their summary returns in GSTR-3B before the due date of filing of GSTR-1 by the Supplier. In recent times usually the due date for filing of GSTR-1 is 11th day of the next month and for GSTR-3B is 20th of the next month. It therefore, gives the taxpayer only a window of 9 days to file their GSTR-3B and claim eligible ITC as per the formula. The same is required to be addresses as it will lead to a lot of burden on the Portal if all the taxpayers file their returns in one week's period.

Another issue is the different dates prescribed for filing GSTR-1 for the taxpayers whose turnovers are below Rs. 1.5 cr and the other dealers. A practical difficulty would arise where for eg. In the month of April a taxpayer (A) who files monthly returns receives supplies from a taxpayer (B) who files quarterly returns. In such a case the said supply would be reflected in GSTR-2A of B only after A has filed his GSTR-1 in July for the Quarter April to June. In such a case a mismatch would arise. Such possibility has been ignored at the time of providing clarification to this Sub-rule.
The said provision has been introduced to keep a check on the registered persons who are trying to evade tax by not showing the correct figures of Supply and the said amount being claimed by the recipient as Input Tax Credit. This may lead to huge evasions and in order to curb this Sub-Rule (4) of Rule 36 may prove to be beneficial to the department.
However, if seen closely it is difficult to be implemented practically because of the different dates of filing returns being prescribed and it cannot be easily monitored. There can be a scenario where a person might claim wrong ITC in a month when the ITC was not eligible and only 20% could be availed. However, it becomes eligible in the next month, the consequences of non-compliance of such a provision are ambiguous and the worst case scenario could be that the department may require the Taxpayer to pay interest for the period where the ITC was wrongly claimed.

Due to ambiguity of the provision and the practical difficulties associated with it, a Special Civil Application has been moved before the Hon'ble Gujarat High Court (SCA No. 19529 of 2019) pointing out the flaws and praying for it to be struck down where it has been admitted and Notices have been issued to the Department. A similar petition is being moved before the Hon'ble Rajasthan high Court as well by our office i.e. M/s. Ghiya Legal. The newly introduced provision is under challenge and its fate is yet to be decided by the Hon'ble Courts. Simplification is the need of the hour and these types of amendments create further complications and confusions.

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RIGHTS OF A PERSON ARRESTED UNDER GST LAWS

CA AnujBansal

Section 69 of CGST Act 2017, empowers Commissioner to order arrest of a person under certain circumstances. Recently, many arrests are made under GST Laws in different parts of the country. GST laws only enumerate circumstances under which a person can be arrested but for procedure of arrest and afterward trial of a case, reference has to be made to CrPC and settled cases. Person who is accused and arrested definitely has to face 'Law of Land' but on humanity grounds he has been vested with several Constitutional and legal rights. In this article 'Rights of a person arrested under GST Laws' has been summarised.

CONSTITUTIONAL RIGHTS

Constitution of India has provided certain fundamental rights to a person arrested. They are discussed hereunder Article wise.

1. **ARTICLE 14: Right to equality**
   According to this Article, every person shall be treated equally before Law and equal protection of Law shall be given in territory of India. There will be no dissemination on the basis of religion, race, caste, sex or place of birth. In **Aashirwad Films v. Union of India, (2007) 6 SCC 624**, it was held in para 14 of judgement, " It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India."

2. **ARTICLE 20(1): Right against ex post facto laws and in respect of conviction for offences.**
   Protection against 'Ex post Facto laws' means no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence. Meaning, if any Act was not an offence in eyes of Law at the time of its occurrence, a person can't be convicted if subsequently a new Law is made. Further, a person can't be subjected to any greater penalty than that which might have been inflicted under the law in force at the time of the commission of an offence.

3. **ARTICLE 20(2): Right against Double Jeopardy.**
As per this Article, no person shall be prosecuted and punished for the same offence more than once. For the protection of Article 20(2) three elements are necessary to be established:
1. A previous prosecution has taken place;
2. A punishment has ensued (or acquittal as well).
3. The punishment or acquittal is for the same offence.

Not only the Constitution of India but also the General Clauses Act, 1897 (vide section 26) and the Code of Criminal Procedure, 1973 (vide section 300) have recognized the same right of an accused person.

4. **ARTICLE 20(3): Right against Self-incrimination.**
According to this, no person accused of any offence shall be compelled to be a witness against himself. This is based upon a legal maxim which means that 'No man is bound to accuse himself'. The accused is presumed to be innocent till his guilt is proved. It is the duty of the prosecution to establish his guilt. ***NandiniSathpathy V. P.L. Dani AIR 1978, SC 1025. 202***is a landmark case in this regard.

5. **ARTICLE 21: Right to personal life and liberty.**
Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can be disputed only if that person has committed a crime.

6. **ARTICLE 22 (1): Right to know grounds of arrest**
In landmark case of ***3 State of M.P. v, Shobaram AIR 1966 SC 1910***, Apex Court re-affirmed "Arrest is arrest whatever may be the reasons for it and the first part of Article 22(1) enjoins a duty on an arresting person to tell the ground of arrest if made otherwise than under a warrant; and if it is made under a warrant, the warrant must itself inform the arrested person with grounds of arrest, so as to enable him to look for the second enshrinement of the right to counsel"

7. **ARTICLE 22 (1): Right to Counsel**
Right to Counsel is a fundamental right under the Constitution of India by virtue of Article 22(1). In ***MotiBai v. State, 1954 CrLL.J.(Raj)1591.***, where the applicant was arrested and detained while she was in police custody, and was denied interview with a legal counsel, the Rajasthan High Court viewed it as an infringement of the

Constitutional right under Article 22(1) and also an infringement of the right conferred upon an accused person under section 340(l)(now section 303) of the Code of Criminal Procedure, 1973.

8. **ARTICLE 22 (2): Right against illegal detention**
   A person arrested must be produced before the nearest Magistrate within twenty-four hours *of* his *arrest* excluding the time necessary for the journey from the place *of arrest* to court *of* Magistrate. Further, such person can't be detained in police custody beyond the period *of* twenty-four hours without the authority *of* the Magistrate.

LEGAL RIGHTS:

Code of Criminal Procedure (CrPC), 1973 enumerates certain procedures which have to be followed in case of an arrest:

1. **Requirement of warrant to arrest a person:**
   As per Section 155 of the CrPC, the officer arresting a person must be having a warrant with him. However, Section 41 of CrPC enumerates circumstances when arrest can be made without a warrant. As per said Section 41, for cognizable offences warrant is not required. Therefore, in case of cognizable offences, warrant is not required whereas in case of non-cognizable offence warrant is required.
2. **Manner of the Arrest:**
   As per Section 46 of the CrPC, the police officer shall not touch or confine the body of other person if there is submission to the custody by word or action. If such person forcibly resists his arrest, or attempts to evade, police officer or other person may use all means to affect the arrest.
3. **Accused persons not to be subjected to unnecessary restraint:**
   As per Section 49 of the CrPC, the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.
4. **Right of an accused to be informed of the Grounds of Arrest:**
   As per section 50 of the CrPC, any person arrested without warrant shall be communicated full particulars of the offence for which he is arrested or other grounds for such arrest.
5. **Right of the Accused to have himself medically examined**:
   Section 50 of the CrPC provides for examination of the arrested person by a medical practitioner at the request of the accused person.
6. **Protection against arbitrary or illegal detentions in Custody:**

SECTION 56 of the CrPC: Person arrested to be taken before Magistrate or officer in charge of police station

SECTION 57 of the CrPC***:*** Person arrested not to be detained more than twenty-four hours.

SECTION 76 of the CrPC***:***Person arrested to be brought before court without delay.

7. Right to *Grant of bail*

Section 132(5) of CGST Act, provides that where the tax evasion is above Rs. 5 Cr. and offence is falling under any of the Causes (a), (b), (c) or (d) of Section 132(1) of the CGST Act, same would be Non-Bailable and Cognizable. Other offences under GST would be Bailable and Non-cognizable.

Section 69(2) of CGST Act is dealing with the Non-Bailable or cognizable offence and states that where a person is arrested for non bailable or cognizable offence, the officer authorised to arrest shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

However, as per section 69 (3) of CGST Act, where a person is arrested for bailable or non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. In such cases, Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise shall have the same powers and be subject to same provisions as an officer-in-charge of a police station.

Therefore, if the offence is bailable, grant of bail is automatic and can be given by police officer in charge of police station or by court, on bond or even without bond. There is no discretion with the Court / Police Officer (Assistant Commissioner in the case of GST) in the matter for not granting bail. In the cases of **VamanMarainGhiyav.State of Rajasthan (2009) 2 SCC 781** and **Sultan KamruddinDharani v. UOI (2008) 231 ELT 217(Bom HC),** it has been held that in case of bailable Offence, there is no discretion to refuse the bail if the accused is prepared to furnish surety. It has further been held that there is no discretion even to impose any condition except demanding of security with sureties.

Conclusion:

It may be stated that a person/arrestee must be aware about his constitutional and legal rights and the departmental officer is duty bound to follow the procedures under the law.

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BETTING, GAMBLING AND WAGERING IN GST

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Before entering into the betting arena in the context of the GST law, it shall be apt to refer to what Hindu scriptures say on the subject as extracted from the case decided by the Honourable Supreme Court in the case of The State of Bombay vs R. M. D. Chamarbaugwala (9th April, 1957---1957 AIR 699, 1957 SCR 874:-

> "The Mahabharata deprecates gambling by depicting the woeful conditions of the Pandavas who had gambled away their kingdom. Manu forbade gambling altogether. Verse 221 advises the king to exclude from his realm gambling and betting, for those two vices cause the destruction of the kingdom of princes. Verse 224 enjoins upon the king the duty to corporally punish all those persons who either gamble or bet or provide an opportunity for it. Verse 225 calls upon the king to instantly banish all gamblers from his town. In verse 226 the gamblers are described as secret thieves who constantly harass the good subjects by their forbidden practices. Verse 227 calls gambling a vice causing great enmity and advises wise men not to practice it even for amusement. The concluding verse 228 provides that on every man who addicts himself to that vice either secretly or openly the king may inflict punishment according to his discretion. While Manu condemned gambling outright, Yajnavalkya sought to bring it under State control but he too in verse 202 (2) provided that persons gambling with false dice or other instruments should be branded and punished by the king. Kautilya also advocated State control of gambling and, as a practical person that he was, was not-averse to the State earning some revenue therefrom. Vrihaspati dealing with gambling in chapter XXVI, verse 199, recognises that gambling had been totally prohibited by Manu because it destroyed truth, honesty and wealth, while other law givers permitted it when conducted under the control of the State so as to allow the king a share of every stake. Such was the notion of Hindu law givers regarding the vice of gambling."

It shall be interesting to see the following observations of the Honourable High Court for the States of Telangana and Andhra Pradesh in the case of Satty& Associates Vs Joint Commissioner (CT), Enforcement Wing, Hyderabad (2015—81 VST 454):-

> "Horse racing and certain other forms of betting in connection therewith is well known across the world. There is a phenomenal increase in the race-goers in India in the recent times. Though huge revenues of the Government towards horse racing and betting in connection therewith are involved, it appears, no serious thought is given to bring about a new legislation covering several aspects, to prevent leakage of revenue of the State. Even now, horse racing and other forms of betting connected therewith are governed by the Hyderabad Horse Racing and Betting Tax Regulation of 1358 F., framed by the erstwhile Hyderabad State in 1358 Fasli. Having regard to the same, it is high time that the State should give a serious thought to cover up the lacunae in the regulations and, if necessary, bring about an appropriate new legislation to prevent leakage of revenue by way of tax in horse racing and betting."

According to Cambridge Dictionary, 'gambling' means 'the activity of bettingmoney, for example in a game or on a horserace' It is an activity of placing wages on particular outcomes. 'Betting' means 'the habit of riskingmoney on horseraces, sportsevents, etc'. Betting is also predicting the outcome of a future event and expecting such result, placing a wage. Betting is a word used to validate the activity of gambling. 'Wager' means 'to riskmoney by guessing the result of something'. Also means an amount of money that you risk in the hope of winning more, by trying to guess something uncertain, or the agreement that you make to take this risk. In these activities the person making correct prediction gets higher amount than the amount bet and loses if his prediction is not correct. In short these are all activities that are based upon chance or luck and have nothing to do with the skills of a person. We may find various types of gambling like betting on the result of sports, horse races, lotteries, casino games (famous game is roulette), etc. Of late, gambling on election results has also been happening.

The following are the relevant definitions in the CGST Act, 2017 (for short Act):-
"Section 2 (17)-- "business" includes—
(f) **admission**, for a consideration, of persons to any premises;"

"2 (102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;"

Schedule III to the Act enumerates certain activities or transactions, which shall be treated neither as a supply of goods nor a supply of services. In that, item No.6 reads as follows:-

"6. Actionable claims, **other than** lottery, betting and gambling."

Betting and gambling are actionable claims but they are treated as supply of services, due to the said exclusion. Scheme of Classification of Services notified in N. No.11/2017 Central Tax (rate) dated 28.6.2017 assigned the following SAC to these activities:-

"Sl. No. 696

SAC No.999692 --- **Gambling** and **betting** services including similar online services"

The following are the relevant entries providing for the rates of tax in the said Notification No. 11/2017 for these activities

"34 -- Heading 9996 (recreational, cultural and sporting services)

Originally sub item (iii) under item 34 read as follows:-

"(iii) services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as indian Premier league and the like. --- 14% -"

Item (iii) was substituted by items (iii) and (iiia) by Notification No. 1/2018-Central Tax (rate), dated 25-1-2018, w.e.f. 25-1-2018.

"(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet -----9%"

(iiia) services by way of **admission** to entertainment events or access to amusement facilities including **casinos**, **race club,** any sporting event such as Indian Premier League and the like.-----14%"

"(iv) Services provided by a **race club** by way of totalisator or a license to bookmaker in such club – 14%"

(v) **Gambling**. ---- 14%

(vi) Recreational, cultural and sporting services other than (i), (ii), (iia), (iii), (iiia), (iv) and (v) above----9%."

There is therefore levy of tax on both admission into the casinos and race club premises as well betting/gambling services.

Rule 31A of the CGST Rules, 2017 deals with the value of supply as follows in case of betting, gambling and horse racing:-

"31A. Value of supply in case of lottery, betting, gambling and horse racing -

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator."

During the pre-GST period, these activities were taxable under the relevant 'Betting tax/Entertainments tax statutes' of the States. For the sake of convenience, we may draw some clues from the Telangana Area Horse Racing and Betting Tax Regulation 1358F (Fasli). It would be useful to refer to certain definitions in this Regulation.

'2 (a) (a) "**admission**" and "admission to a race meeting" means admission to a race course on the occasion of a race meeting thereon;'

'2 (d) "**race course**" means a course at which a race meeting is held and includes the precincts thereof;'

'12(a) "**backer**" includes any person with whom a licensed book-maker bets;'

'12(b) "**bet**" includes "wager" and "betting" includes "wagering"'

'12(c) "**licensed book-maker**" means any person who carries on the business or vocation of or acts as book-maker or turf commission agent under a license or permit issued by any racing club or by the stewards thereof enabling him to carry on his business or vocation under the provisions of the Telangana Gambling Act, 1974 as specified in the license or permit;'

A bookmaker, bookie, or turf accountant is an organization or a person that accepts and pays off bets on sporting and other events at agreed-upon odds**(odds are the ratio of payoff to stake**). Common types of bets on horse races are 'win, place, forecast, quinella, tanala, jackpot etc. There could be off-track or off-course betting, which is outside a race track.

'12(f) **"totalisator**" means a totalisator in an enclosure which the stewards controlling a race meeting have set apart in accordance with the Telangana Gambling Act, 1974 and includes any instrument, machine or contravance known as the totalisator or any other instrument, machine or contravance of a like nature or any scheme for enabling any number of persons to make bets with one another on the like principles.'

In Circular No.27/01/2018-GST dated 4.1.2018 issued by TRU, Ministry of Finance, GOI, it has been clarified as follows:-

'As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/ gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/ drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.

GST would be leviable on the entire bet value i.e. total of face value of any or all bets **paid into the totalisator or placed with licensed book makers**, as the case may be. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.'

In the case of Gurdeep Singh SacharVs Union of India in Criminal PIL No.22 of 2019 dated 0.4.2019, the Honourable Bombay High Court held that 'Dream11 Fantasy game' is undoubtedly a game of skill and not a game of chance" and it does not amount to gambling and that since this activity does not amount to gambling or betting or wagering, these actionable claims fall under item 6 in Schedule III to the CGST Act. These activities are neither considered as supply of goods nor supply of services for the purpose of levy of GST."

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Deposits by Person Resident outside India

CA Paresh Shah & CA Mitali Gandhi

1. Introduction

Deposits between a person resident in India (PRII) and person resident outside India (PROI) is a capital account transaction as per section 6(3)(f) of the Foreign Exchange Management Act, 1999 (FEMA). Non-Residents are permitted to invest their money in India with banks, companies, firms or proprietary concerns subject to certain conditions. Deposits between a PRII and PROI is governed by Notification No. FEMA 5(R)/2016-RBof FEMA,1999(herein after referred to as FEMA 5(R)).

2. Important Definitions

i. Deposit-It includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person;

ii. Non-Resident Indian (NRI)- means a person resident outside India who is a citizen of India.

iii. Person of Indian Origin (PIO)- means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

   a. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
   b. Who belonged to a territory that became part of India after the 15th day of August, 1947; or
   c. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
   d. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

3. <u>Deposit by a PROI in India can be done through the following mediums:</u>

i. Acceptance of Deposit by an AD bank is done through:
   a. Non-Resident External Account (NRE) – Permitted for NRI only
   b. Foreign Currency Non-Resident Account (FCNR) - Permitted for NRI only
   c. Non-Resident Ordinary Account (NRO) – Permitted for all PROI

ii. Acceptance of Non-Interest Bearing Deposits by an AD bank is done through:
   a. Special Non- Resident Rupee Account (SNRR)
   b. Escrow Account

iii. Acceptance of deposits by a company incorporated in India (including a non-banking finance company (NBFC)registered with RBI) on repatriation basis from an NRI or PIO. An Indian company is not allowed to accept fresh deposits from an NRI or PIO but is only permitted to renew the deposits

iv. Acceptance of deposits by Indian proprietorship concern/firm or company (including NBFC registered with RBI) on non-repatriation basis from an NRIor a PIO

v. Acceptance of deposit by an Indian company by issue of commercial paper to an NRI, PIO or Foreign Portfolio Investor (FPI) registered with the Securities and Exchange Board of India (SEBI) subject to conditions. (Though a PROI other than an NRI and PIO cannot deposit directly against issue of commercial paper, they can invest through an FPI)

4. <u>NRE Account</u>

An NRE account is an Indian rupee denominated account. The foreign currency deposited into the account is converted to Indian rupees. It is primarily used to deposit income originating outside India. Any amount credited to an NRE account is fully repatriable

i. Eligibility- It can only be opened by an NRI/PIO personally. Individual and Entities of Pakistan and Bangladesh shall require prior approval of RBI

ii. Types of Accounts- The account can be opened in any form eg: savings, current, recurring or fixed deposit account.

iii. Joint Accounts- NRE account can be held jointly in the name of two or more NRIs/PIOs or NRIs/PIOs can hold jointly with resident relative on former or survivor basis. The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder

iv. Permissible Credits- Credits permitted to this account are inward remittance from outside India, interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds of investments (if such investments were made from this account or through inward remittance).Current income like rent, dividend, pension, interest etc. will be construed as a permissible credit to the NRE account. Any amount repatriable in nature can be credited to NRE account.

v. Permissible Debits- Permissible debits are local disbursements, remittance outside India, transfer to other NRE/ FCNR(B) accounts and investments in India.

vi. Taxability- Income earned on any amount in the NRE account is fully exempt from income tax.

vii. Loans in India - AD can sanction loans in India to the account holder/ third parties without any limit, subject to usual margin requirements.

a. These can be used in India only for the following purposes:
- Personal purpose or for carrying on any business (except for real estate and agricultural activities

- Making direct investment in Indian companies on non-repatriation basis
- Acquisition of flat/house for own residential use

b. In case of loans sanctioned to a third party, there should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.

c. In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from outside India through banking channels or out of balances held in the NRO account of the account holder.

d. The facility for premature withdrawal of deposits will not be available where loans against such deposits are availed of.

e. The term "loan" shall include all types of fund based/ non-fund-based facilities.

f. The loan amount cannot be credited to NRE account.

viii. Loans outside India –Loans outside India may be granted by branches /correspondents of AD bank outside India in favour of Non-resident depositor or third party at the request of the depositor for bona fide purpose against deposits in the NRE account.

ix. Change in residential status of account holder- NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the Resident Foreign Currency (RFC) accounts (discussed in the earlier article), at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.

x. Power of Attorney - Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.He cannot make gift to any resident or transfer funds from one account to another NRE account.

xi. Rate of Interest- SBI interest rate for NRE account is 3.25%p.a in case savings deposit balance is less than Rs one lakh and 3% p.a in case the deposit balance is more than Rs one lakh. NRE term deposit interest rate for tenure ranging from 1 year to ten years is 6.25% if deposit is less than Rs 2 crores and it is 5.25% for deposits of more than Rs 2 crores.

xii. Exchange Risk- Balances in NRE account is exposed to exchange risk because deposits are made in foreign currency but withdrawals are made in INR.

xiii. Nomination facility- Nomination facility is permitted in NRE accounts. Funds held in NRE account will be permitted to be repatriated back in case the nominee is a Non – Resident.

xiv. Temporary Over drawings- AD may at their discretion/ commercial judgement allow for a period of not more than two weeks, overdrawings in NRE savings bank accounts, up to a limit of Rs.50,000 subject to the conditions.

5. <u>FCNR Account</u>

FCNR account is a Foreign currency account which can be maintained in any permitted freely convertible currency such as Pound Sterling, US Dollar, Japanese Yen, Euro etc.

i. Eligibility- FCNR account can be opened by NRI and PIO. Individual and Entities of Pakistan and Bangladesh shall require prior approval of RBI

ii. Types of Account- FCNR account can only be maintained in the form of term deposits (deposits ranging from 1year to 5 years)

iii. Funds to Open the Account- These accounts may be opened with funds remitted from outside India through banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with

AD in India or funds which are of repatriable nature. Accounts may also be opened by transfer of funds from existing NRE/ FCNR (B) accounts. Deposit in the account can only be made in any designated foreign currency in which the account is desired to be maintained.

iv. Change of Residential status- When an account holder becomes a PRII, the term deposit may be allowed to continue till maturity. However, such deposits will be treated as resident deposit from the date of return of the account holder to India, except for provisions relating to rate of interest and margin requirements.AD should convert the FCNR deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder.

v. Exchange risk- Balances in FCNR account are not exposed to any exchange risk because the amount is deposited and withdrawn in foreign currency.

vi. Interest Rate – The interest rate will be as per the guidelines issued by the Department of Banking Regulations. The interest rate will vary depending on the designated currency.

vii. All other provisions with respect to Repatriation of funds, Joint Account, Permissible Debits and Credits, Taxability, Loans in and outside India, Power of attorney mentioned above in respect of NRE account shall apply mutatis mutandis to FCNR Account.

6. <u>NRO Account</u>

NRO is an Indian rupee denominated account primarily utilised to manage income earned in India by a PROI. Balance in NRO account is non repatriable.

i. Eligibility- Any PROI can open an NRO account for putting through bonafidetransaction in rupees. Individuals/ entities of Pakistan nationality/ origin and entities of Bangladesh origin require the prior approval of RBI.

ii. Types of Accounts- The account can be opened in any form eg: savings, current, recurring or fixed deposit account.

iii. Joint Accounts- NRO account can be held jointly in the name of two or more NRIs/PIOs or NRIs/PIOs can hold jointly with resident on former or survivor basis.

iv. Permissible Credits- Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account.
Rupee gift/ loan made by a resident to an NRI/ PIO relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account. Credits from inward remittance can not be used to create Fixed Deposits with the Bank.

v. Permissible Debits- The account can be debited for the purpose of local payments, transfers to other NRO accounts or remittance of current income abroad.
Apart from these, balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions specified in Foreign Exchange Management (Remittance of Assets) Regulations, 2016.
Funds can be transferred to NRE account within this USD 1 Million facility.
Fresh deposit can not be created from inward remittance

vi. Taxability- Income earned on any amount in the NRO account is taxable in India

vii. Loans in India - AD can sanction loans in India against the security of fixed deposit to the account holder/ third parties without any limit,

subject to usual margin requirements and usual norms as are applicable to resident accounts. The loans can be used in India only for personal purpose or for carrying on any business (except for real estate and agricultural activities. The term "loan" shall include all types of fund based/ non-fund based facilities.

viii. Loans outside India- Not permitted against deposits in NRO account

ix. Change in residential status of account holder - NRO accounts should be designated as resident accounts immediately upon the return of the account holder to India for taking up employment or for any purpose indicating his intention to stay in India for an uncertain period or on change in the residential status

x. Power of Attorney - Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. While making remittances, the limits and conditions of repatriability will apply.

xi. Rate of Interest- SBI interest rate for NRO account is 3.25% p.a in case savings deposit balance is less than Rs one lakh and 3% p.a in case the deposit balance is more than Rs one lakh. NRO term deposit interest rate for tenure ranging from 7 days to ten years is 4.50% to 6.25%if deposit is less than Rs 2 crores and for deposit of more than R 2 crores the interest rateranges from 4% to 5.25%.

xii. Repatriation of funds- Not repatriable except for all current income. Balances in an NRO account of NRIs/ PIOs cab be remitted up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.

xiii. Nomination facility- Nomination facility is permitted in NRO accounts. The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India.

xiv. A PROI other than NRI/PIO caninvest in fixed deposit in India only through an NRO account only NRE and FCNR accounts can only be opened by NRI/PIO

xv. A foreign national of non Indian origin visiting India can open an NRO A/c with funds remitted from outside India for a period not exceeding 6 months

7. <u>Comparison between NRE, FCNR and NRO account</u>

Particulars	NRE	FCNR	NRO
Who can open the account	NRI and PIO. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI	NRI and PIO. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI	Any PROI. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI
Purpose	It is an account opened by an NRI to primarily transfer foreign earnings to India	It is a foreign currency account maintained in India where money can be retained in foreign currency	It is an account mainly used to manage Income earned in India
Repatriation of Funds	Permitted	Permitted	Not permitted. Other than Income on investments which can be repatriated.
Taxability	Income earned in the accounts is exempt from Income tax	Income earned in the account is exempt from Income tax	Income earned in the account is taxable

Currency	Indian Rupees	Any Permitted Foreign currency	Indian Rupees
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current, Recurring, Fixed Deposit
Loans outside India against deposit in the account	Permitted	Permitted	Not Permitted
Exchange Risk	Exposed to Exchange Risk, since deposits are made in foreign exchange but withdrawals are done in INR	Relatively lower exchange risk than NRE account because deposit and withdrawals are made in foreign currency	Low exchange risk as deposits and withdrawals are done in INR

8. <u>Other Bank Accounts</u>

8.1. Special Non-Resident Rupee Account (SNRR) can be opened by those PROI having any business interest in India.

i. Any PROI, having a business interest in India, may open SNRR account with an authorised dealer for the purpose of putting through bona fide transactions in rupees, not involving any violation of the provisions of the Act, rules and regulations made thereunder.

ii. The SNRR account should carry the nomenclature of the specific business for which it is in operation.

iii. The operations in the SNRR account should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.

iv. The SNRR account shall not bear any interest.

v.The debits and credits in the SNRR account should be specific/ incidental to the business proposed to be done by the account holder.

vi.Authorised dealers should ensure that the balances are commensurate with the business operations of the account holder.

vii.All the operations in the SNRR account should be in accordance with the provisions of the Act, rules and regulations made thereunder.

viii.The tenure of the SNRR account should be concurrent to the tenure of the contract/ period of operation/ the business of the account holder and in no case should exceed seven years. No operations are permissible in the account after seven years from the date of opening of the account.

ix.The balances in the SNRR account shall be eligible for repatriation.

x.Transfers from any NRO account to the SNRR account are prohibited.

xi.All transactions in the SNRR account will be subject to payment of applicable taxes in India.

xii.SNRR account may be designated as resident rupee account on the account holder becoming a resident.

xiii.The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India.

xiv.The transactions in the SNRR accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

xv.Opening of SNRR accounts by Pakistan and Bangladesh nationals and entities incorporated in Pakistan and Bangladesh requires prior approval of Reserve Bank.

8.2. **Escrow Account**

i. An Escrow account in India can be opened in the following circumstances:

a. By non-resident corporates for acquisition/transfer of capital instruments/convertible notes through open offers/delisting/exit offers. The escrow account will be closed immediately after completing the requirements for which it was opened.

b. By resident and non-resident acquirers for acquisition/transfer of capital instruments/convertible notes. The escrow account shall remain operational only for six months.

c. In case of transfer of capital instruments between a PRII and a PROI.If so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty-five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement.

ii. Balances in an Escrow account will be non-interest bearing

iii. No fund or non-fund based facilities would be permitted against the balances in the Escrow account

iv. Balances in an escrow account can be repatriated outside India at the then prevailing exchange rate(i.e., the exchange rate risk will be borne by the person resident outside India acquiring the capital instruments/convertible notes), after all the formalities in respect of the said acquisition are completed.

9. **Acceptance of deposits by a company incorporated in India on repatriation basis from an NRI/PIO**

A company incorporated in India is not permitted to accept any deposit on repatriation basisfrom an NRI or PIO. It is only permitted to renew the depositsit had accepted in accordance with Schedule 6 of Foreign

Exchange Management (Deposit) Regulations), 2016, as amended from time to timesubject to the following conditions:

i. The deposits should be received under a public deposit scheme.
ii. If the deposit accepting company is an NBFC, then it should be registered with RBI
iii. The maturity period of deposits shall not exceed 3 years.
iv. The amount of aggregate deposits accepted by the company shall not exceed 35% of its net owned funds
v. The amount of deposits so collected shall not be utilised by the company for re-lending (not applicable to an NBFC or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.
vi. The amount of deposits accepted shall be allowed to be repatriated outside India.

10. <u>Acceptance of deposits by Indian proprietorship concern/firm or company on non-repatriation basis from NRI/PIO</u>

A proprietorship concern or a firm in India and a company incorporated in India may accept deposits on non-repatriation basis from NRIs or PIOs subject to the following conditions:

i. The deposits should be received under a public or private deposit scheme.
ii. If the deposit accepting company is an NBFC, then it should be registered with RBI
iii. The maturity period of deposits shall not exceed 3 years.
iv. The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/ FCNR (B) accounts into the NRO account
v. The amount of deposits so collected shall not be utilised for re-lending (not applicable to an NBFC or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern,

firm or a company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.

vi. The amount of deposits accepted shall not be allowed to be repatriated outside India.

11. <u>Acceptance of deposit by an Indian company by issue of commercial paper</u>

An Indian company may accept deposits by issue of Commercial Paper (CP) to an NRI, PIO or FPI subject to the following conditions:

i. The deposit amount is non repatriable.
ii. The CP issued by the company is not transferable.
iii. Payment should be made by inward remittance from outside India through banking channels or out of funds held in a deposit account maintained by NRI or PIO in accordance with the Regulations made by Reserve Bank in that regard;

12. Conclusion

An NRI/PIO can choose from the various bank accounts based on their requirements. For an NRI mainly having income from employment and Investment abroad would open an NRE account. However, if NRI/PIOs significant chunk of the earnings are from investments and assets in India, one will only be able to deposit those earnings in NRO account. Lastly, if the funds are not required anytime soon, then an NRI/PIO would choose to lock the funds in an FCNR term deposit.

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SOME IMPORTANT ADVANCE RULINGS UNDER GST

CA ManojNahata, FCA, DISA (ICAI)
Guwahati

1. Whether the execution of the civil works of Hydro Electric project awarded by State Electricity Board Ltd would fall under Sl.No.3 (iii) (b) or 3(vi) of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017attracting GST at the rate of 12%?

Held: No.

In the case of *R.S Development & Constructions India (P) Ltd.-AAR Kerala,* the applicant was awarded the work of execution of civil works of PazhassiSagar Small Hydro Electric Project. As per the work order, the work involves construction of intake structure, leading channel, tunnel, power house, tail race, civil works of switch yard, access roads and other allied works, fabrication and erection of steel liners and specials from tunnel portal to power house, trash rack, intake gate, draft tube gate and hoisting arrangements. The applicant sought an advance ruling on the taxability of the above said services.

The applicant stated that Kerala State Electricity Board Ltd is created by Section 131 of the Electricity Act, 2003 (Central Act \36 of 2003). It is fully owned by the Government of Kerala. The salient features of the National Electricity Policy, 2005 and Electricity Tariff Policy proved that such works are predominantly for the purpose of socio economic development of the country, which is one of the functions entrusted to a Municipality under Article 243W of the Constitution read with 12th Schedule. Rural electrification is specified in Schedule XI of Article 243G. Therefore, Kerala State Electricity Board Ltd is a Governmental authority as defined in Para 2(zf) of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017.The predominant nature of supply is construction of part of Dam i.e., construction of various structures of dam like tunnels etc. The above said supply fulfills all the condition mentioned in Sl. No.3(vi) of the Notification No.11/2017 CT-(Rate) dated 28.06.2017.

The Authority noted that in terms of the above mentioned notification, where the services are provided to a Government Entity, then such services should have been procured by the said Government entity in relation to work entrusted to it by the Central Government, State Government, Union Territory or Local Authority as the

case may be. Also it is evident that the Kerala State Electricity Board Ltd. is a Government Company incorporated under the Companies Act, 1956 with 90 per cent or more participation by way of equity or control of the Government of Kerala to carry out the business of generation, transmission and distribution of electricity in the State of Kerala and is a "State Transmission Utility" within the meaning of Section 2 (67) of the Electricity Act, 2003. Hence, Kerala State Electricity Board Ltd could not be considered as constituted or established by the Government of Kerala to carry out any function entrusted to a municipality under article 243W or a panchayat under article 243G of the Constitution. Therefore, Kerala State Electricity Board Ltd will not come under the definition of "Governmental Authority" under Para 2(zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. However, Kerala State Electricity Board Ltd squarely falls under the definition of "Government Entity" under Para 2 (zfa) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.Hence, the supply of above said services by the applicant do not attract concessional rate of 12%.

2. **Whether consideration received by a school from participant schools for participation of their students and staff in a conference would be exempted under GST in terms of Notification No.12/2017?**

Held: Taxable

In case of *M/s Emrald Heights International School–AAR Madhya Pradesh,* the applicant is a school which is owned and run under Emerald Heights School Samiti, which is a society registered under M.P Societies Act, 1971. The school is engaged in providing world class education to its studentsupto Higher Secondary only. Among various other organizations, the school is a member of an association namely Round Square which is a charitable organization registered in England. As the applicant is a member of the association, it intended to hold one educational conference in India. This conference would bring together various students and teachers of other member schools of the Association. The applicant intends to cover the charges of the conference from the member schools of the Association. An advance ruling is sought by the applicant regarding the taxability of such recovery of expenses of conference from the member schools.

The applicant contended that in terms of entry no.66 of the Notification No.12/2017-C. T (Rate), services provided by an educational institution to its students, faculty and staff are exempt under GST Law. Also services provided to an educational institution for transportation of students, catering and other specified services are exempt under

GST. Further, being a 12AA registered educational institute under Income Tax Act, 1961, the applicant is entitled to exemptions under GST.

The Authority stated that supply of all services to an educational institution is not exempt under GST. It further stated that the activities of holding educational conference cannot be treated as services provided by an educational institution to its students, faculty and staffs. It cannot be contended that supply of catering services to an educational institution should be exempt from tax, even if such catering services are for organizing educational conference. Otherwise, supply of catering services to an educational institution for non-exempted activities will also become eligible for exemption, which is not the intention of the legislation.

Hence, the consideration received by a school from participant schools for participation of their students and staff in a conference would be taxable under GST.

3. Whether the supply of technical testing services carried out on goods supplied from customers located outside India would be treated as "zero-rated supply"?

Held: No

In case of *M/s. Syngenta Bioscience Pvt. Ltd.-AAR Goa,* the applicant is engaged in providing the R&D services on the agrochemical products to group companies across the globe and also carries out the technical testing services on goods provided by customers located outside India. Such testing is carried out with the objective of providing a test report with the results to the overseas customers. The applicant provides the above said services from Goa. The applicant sought an advance ruling on whether the activity of technical testing services can be classified as zero rated supply?

The Authority stated that to qualify a service as export of service, it should fulfill the conditions prescribed u/s 2(6) of the IGST Act. The place of supply is determined u/s 13 of the IGST Act. The goods on which technical testing is carried out are made available to the applicant in India and are not exported back to the recipient. Hence, the exclusionary clause u/s 13 is not applicable to the applicant. Hence, the place of supply of such service will be the location of the supplier of service i.e. Goa. Since, the place of supply is in India, so the service provided by the applicant does not fall within the category of export of service in terms of 2(6) of the IGST Act. Accordingly, the applicant is liable to pay CGST & SGST on the above said services.

4. Whether the supply of spare parts/accessories and repair service can be considered as composite supply wherein the principal supply is repair service

and hence the rate of tax for all the supplies, consisting of spare parts/accessories and repair service be taken as 18%?

Held: No

In the case of *M/s. Vista Marine & Hydraulics-AAR Kerala,* the applicant is engaged in the business of rendering repairing services of boats/vessels along with supply of spare parts and accessories. It had entered into a contract with Naval Ship Repair Yard for repairing of boats as per the rates mentioned in Repair Rate Contract on the basis of which necessary spare parts and accessories are also to be supplied by the applicant. Whenever, there is requirement for repair of the Volvo Penta Engine installed boats, the Naval Ship Yard raises a Repair Work Order as per the Repair Rate Contract. On completion of the work, the applicant raises invoice to the Naval Ship Yard indicating therein the value of spare parts/accessories and service charges separately as mentioned in the work order. The question raised by the applicant is whether the supply of spare parts/accessories and repair service can be considered as composite supply wherein the principal supply is repair service and hence the rate of GST applicable is the rate of repair service?

The Authority contended that from the analysis of the Repair Work Contract, it is clearly evident that the supply of spares/accessories and repair service are separately identifiable supplies for which the rates are quoted differently. The work orders are issued separately specifying the spares/accessories to be supplied and the services to be supplied. The applicant is also issuing invoices separately indicating the value of spares/accessories and the service charges. Further, in terms of the CBIC Circular No.47/21/2018-GST dated 08.06.2018, it is clarified that where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Hence, the supply of spare parts/accessories and repair service are distinct and separately identifiable supplies and cannot be considered as 'composite supply'.

5. **Whether goods purchased at one price and sold at a price lower than the original price and the difference amount being, reimbursed by way of commercial credit notes by vendor, attracts reversal of proportionate ITC on the differential portion for which credit note issued?**

Held: No.

In the case of M/S Santhosh Distributors -AAR Kerala, the applicant is an authorized distributor of M/s. Castrol India Ltd. for the supply of Castrol brand industrial and automotive lubricants. The Principal Co.'s software is mandatory to all the distributors and only through that software any distributor could conduct further supply of the products. The principal Co. is issuing invoices at a price to its distributors supplying the goods. The distributors issue invoices based on the various rate scheme pre-fixed by the principal Co. While, the distributor generate invoice to the dealers through the software designed by the principal company, the invoice value of the products will be displayed only with the value after deducting discount as per the pre fixed rate scheme. The applicant is bound to supply the products at the value shown in invoice. Such discount/rebate is subsequently reimbursed by the principal company by way of commercial credit notes. The applicant is paying the tax at the invoice value issued by the principal co. and availing the ITC shown in the inward invoice received by the applicant from the principal co. The question on which advance ruling is sought by the applicant is that whether the applicant is liable to reverse the proportionate ITC on the difference amount which is later on reimbursed by way of commercial credit notes?

The Authority stated that the value of taxable supply is governed by the provisions of section-15 of the GST Act. The deduction of discounts from the value of taxable supply is subject to the conditions prescribed in section-15(3) ibid. In the case of the applicant, the supplier of goods i.e. the principal co. is issuing commercial credit notes for the reimbursement of the scheme discount provided by the applicant to the customers as per the instructions of the supplier. Since, the commercial credit notes issued by the principal co. do not satisfy the conditions specified in section-15(3) of the GST Act, the principal co. is not eligible to reduce the original tax liability. As the supplier is not reducing the original tax liability, the applicant will be eligible to avail credit tax paid as per the invoice of the principal co. Hence, the applicant will not be liable to reverse the ITC on the difference amount reimbursed by way of commercial credit notes.

Note: The similar matter was also litigated under VAT regime in different States. However, the instant ruing is more or less in the similar line to the earlier orders passed under the State VAT law.

6. Whether resale of food & bakery products falls under restaurant services?

Held: No

In the case of *M/s Square One Homemade Treats - AAR Kerala,* the applicant is engaged in the business of reselling food products like cakes, baked items such as cookies, brownies, ready to eat homemade packed food, ready to eat snacks, hot and cold beverages through dispensing machine. All the food items sold are pre-packed and no cooking is done at the premises. In the bakery premises, the applicant has provided table for customers who would like to eat food items procured from the counter.

The applicant sought an advance ruling on whether the resale of food & bakery products falls under restaurant services or not?

The applicant added that they are purchasing and selling food products procured from other dealers. They have no kitchen facility to cook food at their premises. If the customers intend to eat food items at the shop, necessary facilities have been provided.

The Authority examined the matter in detail. It stated that a restaurant or an eatery, is a business that prepares and serves food and drinks to customers. Further, cooked packed foods are served from the counter and facility is given to customers to have it from the premises. The applicant is not having kitchen facility to cook food at the premises. Mere sitting facility provided by the applicant does not qualify it to be considered as a restaurant service provider.

Hence, resale of food & bakery products does not fall under restaurant services.

7. Whether commission agent, providing services in relation to sale or purchase of agricultural produce, is liable to obtain registration and is liable for tax under reverse charge mechanism on services provided in sale of raw cotton vide Notification No. 121/ST-2, dated 14-11-2017 as mended from time to time?

Held: Not liable for Exempted products but in case of Taxable Goods it is needed where the aggregate turnover exceeds the threshold limit of `20 lakhs during the financial year.

In the case of *M/s. Bhaktawar Mal Kamra& Sons-AAR Haryana*, the applicant is engaged in business of Commission agents wherein they are engaged in business of providing services to the farmers for selling the agricultural produce to various buyers being the traders, manufacturers or stockiest. The goods are also purchased by Government under various welfare schemes e.g., Paddy and/or wheat. The commission agents, having registrations under APMC Act, are pure agents who conduct the auction of agricultural produce on behalf of farmer. The consideration for goods is auction price and the consideration of services like cleaning, weighment is at

agreed price. The commission agent collects the payment from the buyer on behalf of the farmer and remits the same to the farmer.

The applicant contended that it is only supplying the services and delivery of goods is naturally bundled with provision of service which make this case as Composite supply and services of agent being predominant service is exempt and hence supply of such goods is tax free as far as commission agent is concerned due to services being exempt. The farmers had been exempt from the levy of tax on agricultural produce. Thus neither the farmer and nor the commission agent is liable to collect and pay tax. It also added that the Agriculturist supplies goods through commission agent and not supplying goods to commission agent. The recipient here means the buyer of goods and not the supplier of goods. The supplier is defined in Section 2(105) so as to include agent who is supplying the goods on the behalf of farmer and is to be treated as supplier and not the recipient and both the definitions i.e., of supplier and recipient are mutually exclusive, as the supplier needs to collect the consideration from the recipient on the behalf of supplier. Once the agent had fallen in-steps of supplier he is collecting the payment from recipient on behalf of the supplier. Further the definition of recipient makes person liable to pay consideration. The word 'consideration' is meant as any payment made in respect of supply of goods and for supply there is need to two people and one man cannot supply the goods to himself so as to treat him as recipient of the goods. The consideration is payable by the person who had taken the supply of goods and not by the person who had caused the supply of goods on the behalf of the farmer who had been exempted from the tax vide Section 23(l)(b). If the supply is to be considered as made by the commission agent, then there would have been no need of exempting the farmer. The law applicable on farmer will also be applicable on commission agent as per the concept of pure agent. Further for any two transactions - there is need of supplier and recipient.

The Authority stated that the services provided by commission agents so far as these related to sale or purchase of agricultural produce provided by commission agents are exempted under Notification No. 12/2017-C. T(Rate).Besides, the agricultural produce exempted from GST, the applicant was also providing services for sale and purchase of Raw Cotton. Since, the Government,' vide Notification No. 43/2017-Central Tax (Rate), dated 14-11-2017.had inserted Entry 4A in Notification No. 4/2017-Central Tax (Rate), dated 28-6-2017 to include raw cotton on which tax became payable under reverse charge mechanism by the recipient of supply, i.e., any registered person. It is in view of this amendment that the applicant wants a clarity on the issue whether they can be considered as recipient of supply for the purpose of paying tax on reverse charge on supply of raw cotton by way of providing their

services for sale and purchase of goods (raw cotton in this case) between the farmer and the registered purchasers. To understand the controversy, it is important to note the nature of transactions facilitated by the commission agents. In the above case, a commission agent (KachhaArhatia) under the APMC Act makes supplies on behalf of an agriculturist. Further, as per provisions of clause (b) of sub-section (1) of Section 23 of the CGST/HGST Act, 2017 an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore, cannot be regarded as Taxable Person' in terms of clause (vii) of Section 24 of the CGST/HGST Act, 2017. Thus, a commission agent who is making supplies on behalf of such agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of Section 24 of the Act ibid. However, vide Notification No. 12/2017-Central Tax (Rate), dated 24-6-2017 and the corresponding notification under the State Tax the services by the commission agents for sale or purchase of agricultural produce has been exempted. The term 'agricultural produce' has further been defined at clause 1(d) appended to the said notification. Therefore, the 'Services' provided by the commission agent for sale or purchase of such defined agricultural produce is exempted. Such commission agents, even when they qualify as agents under Schedule-I, are not liable to be registered according to sub-clause (a) of sub-section (1) of Section 23, if the supply of agricultural produce, and/or other goods or services supplied by them are not liable to tax or are wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agents shall be liable for registration if the aggregate turnover, in terms of Section 2(6) of the CGST/HGST Act, 2017, in a financial year exceeds 20 lakh rupees as per Section 22(1) of the said Act. If the said agent becomes liable for registration u/s 22 of the GST Act, then he shall also become liable to pay tax on supply of raw cotton by an agriculturist on reverse charge basis being a registered person.

8. Whether diagnostic services provided to hospitals are exempt?

Held: Yes

In the case of *M/s Matrix Imaging Solutions (I) Pvt. Ltd.-AAR Karnataka,* the applicant is engaged in the business of providing healthcare services and caters to the government hospitals only on PPP model for a limited contract period. The applicant had been allotted the contract of providing diagnostic services in the Government hospitals through a tender selection process. The applicant sought an advance ruling on the taxability of the above said services.

The applicant added that all the expenditure related to the services is borne by the applicant itself and the applicant receives the bills for the same by the vendors. It pays the expenses with GST. Also it does not take any services which come under the ambit of Reverse Charge Mechanism (RCM).

The Authority stated that the patients are liable to pay charges to the hospital and the applicant has nothing to do with that. The applicant only scrutinizes whether the payment is done or not and once the payment is done to the hospital, it carries out the diagnostic services to the patients. The service is thus, provided to the contractee hospital and not to the patients. The consideration is also payable by the contractee hospital to the applicant and hence the contractee hospital is the recipient of services by virtue of section-2(93) of the GST Act. Further, the applicant is setting up infrastructure for laboratory and other diagnostic requirements in the hospital itself and the services are provided in the hospital premises. The services are squarely covered with the meaning of 'health care services' as defined in the Notification No.12/2017-CT (Rate) dated 28.06.2017. Since, the applicant is offering diagnostic services; they would be covered within the definition of 'clinical establishment' for the purpose of the above said notification.

Hence, the diagnostic services provided by the applicant to hospitals are exempt under GST.

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IMPORTANT CASE LAWS UNDER THE COMPANIES ACT, CIRCULARS & NOTIFICATIONS

CA. ManishaMaheshwari
Chartered Accountant, Jaipur

Case Laws

HIGH COURT OF KARNATAKA

YashodharaShroff*vs.* Union of India

WRIT PETITION NO 52911 OF 2017 & OTHERS

JUNE 12, 2019

Subject:-

Disqualification of the directors

Relevant Sections:

Section 164 (2)(a) & section 167 (1) (a) of the Companies Act 2013

Decision:-

Where the disqualification of the petitioners is based by taking into consideration any financial year "prior to 01.04.2014 as well as subsequent thereto" while reckoning continuous period of three financial years under Section 164(2)(a) of the Act, irrespective of whether the petitioners are directors of public companies or private companies, such a disqualification being bad in law, the Writ Petitions are allowed and the impugned List is quashed to that extent only.

If the disqualification of the directors is based by taking into consideration three continuous financial years subsequent to 01.04.2014, irrespective of whether the petitioners are directors of public companies or private companies, they stand disqualified under the Act.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Alliance Commodities (P.)Ltd.

vs.

Office of Registrar of Companies

COMPANY APPEAL (AT) NO 20 OF 2019

JULY 9, 2019

Subject:-

Removal of name from register of ROC

Relevant Sections:
Section 248 & section 252 of the Companies Act 2013
Decision:-
Appellant company incorporated on 1-2-2008 had not filed its statutory returns and balance sheet since 2014, thus, ROC struck off name of appellant company from its register. Appellant raised a plea that its name was struck off without giving notice to all directors of company. Further, when its name was struck off it was carrying on its operation. It was noted that notice contemplated under section 248(1) was issued to appellant and its directors by speed post. Copy of notice was published in official website calling objections to proposed striking off and notice was published in two newspapers. Thus, it could be said that appellant company's name was struck off after following due procedure. It was also stated that appellant company was indulged in business activity not falling within ambit of object of company or not being incidental or ancillary thereto and thus, same could not be termed as legitimate business for demonstrating that company was in operation. Since, appellant had failed to make out a just ground warranting interference with impugned order passed by ROC, appeal against said order was to be dismissed.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
S. Gopakumar Nair
v.
OBO Bettermann India (P.)Ltd.
OMAPNY APPEAL (AT) NO 272 OF 2018†
JULY 9, 2019

Subject:-
Compromise, amalgamation etc. and Purchase of minority shareholding
Sections:
Section 236 & 241 of the Companies Act 2013
Decision:-
Sub-section (2) of section 236 clearly provides that the offer to the minority shareholders of the company for buying the equity shares held by shareholders has to be at a price determined on the basis of valuation, 'by a registered valuer' 'in accordance with such rules' as may be prescribed. Notice refers to the appellants not honouring call option notice. The admittedly the shares were not got valued from 'registered valuer' and valuation was obtained from the Chartered Accountant. The provision of section 236 has drastic nature of forcibly transferring the shares. When this is so the section 236 has to be strictly construed and applied. In the present case apart from the fact that section 236

could not have been invoked in the set of facts, even if it could have been resorted to, in the absence of valuation by registered valuer, shares could not have been deemed to be cancelled under sub-section (6) of section 236. The appellants have raised various grievances with regard to such valuation done by the respondents and same could not have been ignored.

Thus, the notices given by the respondents under section 236 and their subsequent act of cancelling the shares of the appellants were illegal and stand set aside.

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH-II

Shree Ram Lime Products (P.)Ltd.

v.

Gee Ispat (P.) Ltd

CA-64/C-II/2018 AND CP (IB) - 250/ND/2017

JULY 19, 2019

Subject:-

Investigation - Into affairs of company and Corporate Insolvency Resolution Process (CIRP)

Sections:

Section 210 of the Companies Act, 2013, read with sections 60 and 217 of the Insolvency and Bankruptcy Code, 2016

Decision:-

Resolution Professional filed application before NCLT on ground that Corporate Insolvency Resolution Process (CIRP) of corporate debtor had been initiated fraudulently and / or with for a purpose other than for resolution of insolvency or liquidation of corporate debtor. It was also stated that directors (currently in suspension) of corporate debtor had intentionally not disclosed information required from time to time by applicant in relation to state of affairs of corporate debtor and had indulged in falsification and destruction of books and records of corporate debtor and made wilful and material omissions from statements relating to its affairs and had also defrauded creditors of corporate debtor. Proceedings before Tribunal are summary in nature and it is not possible for NCLT to conduct an in-depth investigation and examine veracity of documents and vouchers filed by parties in support of their contentions. Without an in-depth investigation, it was not possible to arrive at a correct appraisal of state of affairs of corporate debtor and to adjudicate upon allegations made by Resolution Professional and, therefore, Central Government was directed to order an investigation into affairs of corporate debtor under section 210(2). Suspended directors of corporate debtor and operational creditor on whose application CIRP was initiated, might, if they consider

necessary, refer their grievances against Insolvency Professional to IBBI under section 217 of IBC.

HIGH COURT OF BOMBAY
Ratan N. Tata
v.
State of Maharashtra
WRIT PETITION NO 1238 OF 2019
JULY 22, 2019

Subject:-
Removal of Directors
Sections:
Section 169, read with section 115 of the Companies Act, 2013
Decision:-
A complaint was instituted by respondent No. 2, i.e., NusliWadia, for offence of defamation alleging that act of petitioner i.e., Ratan Tata, in issuing Special Notice under section 169(2), read with section 115 along with brief background about conduct of NusliWadia for his removal as director of relevant Tata Companies was defamatory statement. Magistrate by impugned order issued process against petitioners for offences punishable under sections 500 and 34 of Indian Penal Code. Imputation contained in Special Notice could not be viewed independent of purpose for which it was included in Special Notice and if petitioners had adopted a legal course permissible to be adopted under frame work of statute governing it, allegations could not be termed as 'per se defamatory'. Since, in instant case imputations were contained in a Special Notice was statutory in nature and it had ultimately resulted into removal of respondent No.2 as independent Director from three Tata Companies by requisite majority no justification was found in Metropolitan Magistrate issuing process to petitioners and holding that imputation contained in Special Notice was per se defamatory.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Morepen Laboratories Ltd.
v.
Regional Director, New Delhi (Northern Region)
COMPANY APPEAL (AT) NO 136 OF 2018
JULY 23, 2019

Subject:-
Deposits, Compromise and arrangement

Sections:
Section 230, read with sections 73 and 232, of the Companies Act, 2013/ Section 391, read with sections 58A and 394, of the Companies Act, 1956

Decision:-
Fixed deposit holders are a separate category of creditors and section 58A of Companies Act, 1956, makes a provision to protect interest of FD holders in case of default, thus, scheme of arrangement and compromise with FD holders is regulated by section 58A and is outside purview of section 391/394 of Companies Act, 1956

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
HSBC Daisy Investments (Mauritius) Ltd.
v.
Anil DhirubhaiAmbani
CONTEMPT CASE (AT) NOS. 14 OF 2018 & 3 OF 2019
COMPANY APPEAL (AT) NO.99 OF 2018
JULY 23, 2019

Subject:-
Power to punish for contempt

Sections:
Section 425 of the Companies Act, 2013

Decision:-
Pursuant to an application filed by petitioners under section 241 before NCLT, consent terms had been arrived between petitioners and contemnors i.e. Reliance Intratel& Others. Said consent terms had become final by an order passed by NCLAT dated 29-6-2018. Petitioners preferred contempt petitions under section 425 for initiating proceedings for contempt of disobedience of Appellate Tribunal's order dated 29-6-2018 alleging wilful breach of undertaking given by contemnors. Consent terms agreed upon by parties if not carried upon, can be a ground for execution of a compromise decree or 'Consent Terms' but it cannot be a ground for initiation of a contempt proceeding . No case was made out for initiation of contempt proceedings against any of alleged 'contemnors'-'respondents' and, therefore, contempt application was dismissed.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
DhananjayKrishnanathGaikwad
v.
Tulijabhavani Cold Storage (P.)Ltd.
COMPANY APPEAL (AT) NO 322 OF 2018†

JULY 25, 2019

Subject:-

Oppression and mismanagement

Sections:

Section 241, read with section 59, of the Companies Act, 2013

Decision:-

Appellant shareholder and director of R1 Company approached R2 for investment in equity shares of R1 Company and persuaded R2 to purchase majority shareholding of him and others for a consideration of Rs. 70 lakhs. Appellant handed over duly signed share certificates to R2 with assurance that register of members and register of transfer maintained by R1 Company were updated and necessary entries were affected therein. R2 filed oppression and mismanagement petition alleging that he was defrauded as these events were never recorded by appellant in record and appellant filed balance sheet and annual return of R1 Company wherein name of R2 was deliberately not reflected. It was a case of appellant that said oppression and mismanagement petition was barred by limitation and consideration amount of transferred shares was refunded to R2. It was noted that filing of statutory compliances suppressing material facts in regard to majority shareholding of R2 with fraudulent intention on part of appellant would constitute a continuous cause of action and thus filing of oppression and mismanagement petition was within period of limitation. Further, during hearing before Tribunal, a mutual settlement was recorded by virtue whereof cheques for Rs. 1.33 crores were delivered to R2. However, said cheques could not be encashed. Thus, plea raised by appellant that consideration amount of transferred shares was refunded to R2 was a bald assertion. Impugned order passed by Tribunal that appellant had been conducting company's affairs prejudicial to R2 was justified.

HIGH COURT OF KARNATAKA

Milestone Real Estate Fund

v.

Prisha Properties India (P.)Ltd.

COMPANY PETITION NO. 202 OF 2016

JULY 31, 2019

Subject:-

Transfer of certain pending proceedings

Sections:

Section 434 of the Companies Act, 2013, read with rule 5, of the Companies (Transfer of Pending Proceedings) Rules, 2016 / Section 647A of the Companies Act, 1956

Decision:-

Petitioner company was holding redeemable optionally fully convertible debentures of respondent company. According to petitioner, despite being called upon to pay redemption amount, respondent company failed to pay. Thus, petitioner filed petition for winding up of respondent company. Meanwhile, one financial creditor of respondent company filed an application for transfer of said winding up petition to NCLT. It was noted that proceedings relating to winding up of company could not be transferred to NCLT unless parties to proceedings make an application. Since, in instant case neither petitioner nor respondent company had made any such application for transfer; application for transfer of winding up petition to NCLT was to be dismissed. Further since, respondent company had admitted that it had no liquidity to discharge debt owed to petitioner, winding up petition was to be admitted.

CIRCULARS

GENERAL CIRCULAR NO: 7/2019 [F.NO. 01/22/2013-CL-V], DATED 27-6-2019

- The Ministry of Corporate Affairs has received representations from stakeholders expressing certain difficulties in filing e-form DIR-3 KYC in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014. Requests have also been made for extension of period for filing such form.

- The matter has been examined and it is hereby informed that it is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned. However, in case a person wishes to update his mobile no. or e-mail address, he would be required to file e-form DIR-3 KYC, as this facility of updation is not being proposed in the web-based service. In case of updation in any other personal detail, e-form DIR-6 may be filed for updation of the same before completion of KYC through the web-based service.

- The amendment in the relevant rules including the amendment related to extension of time (allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, is being notified shortly. Stakeholders are advised to take note of the same and file according to the revised notification.

Notification

NOTIFICATION NO: G.S.R. 411(E) [F.NO. 1/13/2013-CL-V, PART-I, VOL.III], DATED 7-6-2019
COMPANIES (INCORPORATION) SIXTH AMENDMENT RULES, 2019: Amendment in Rule 19, Form No. INC-11 & Form No: INC - 32 and substitution of Form No. INC-12.

NOTIFICATION NO: SO 2220(E) [F.NO.A-12023/04/2013-AD.IV], DATED 28-6-2019
SECTION 410 OF THE COMPANIES ACT, 2013 - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL - CONSTITUTION OF - NOTIFIED TECHNICAL MEMBER IN NCLAT

Rules

Companies (Incorporation) 6th Amendment Rules, 2019

They shall come into force with effect from 15th August, 2019

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IMPORTANT CASE LAWS, CIRCULARS AND NOTIFICATIONS ON FEMA AND ALLIED LAWS

CA. ANIL MATHUR
Chartered Accountant, Jaipur

CIRCULARS

- **A.P. (DIR SERIES) CIRCULAR NO. 2, DATED 11-7-2019**

EXIM BANK's GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 24.50 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

Export-Import Bank of India (Exim Bank) has entered into an agreement dated August 20, 2018 with the Government of the Republic of Senegal for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 24.5 million (USD Twenty Four Million and Five Hundred Thousand only) for the purpose of financing up-gradation and rehabilitation of Health Care System in the Republic of Senegal. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods and services of the value of at least 65 per cent of the contract price shall be supplied by the seller from India and the remaining 35 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India. The purchase of equipment should be from Indian manufacturers with provision for 3 years warranty plus 10 to 12 years of comprehensive maintenance contract, so as to ensure proper functioning for adequate period. Further, the drugs (preferably generic) should also be sourced from Indian manufacturers.

2. The Agreement under the LoC is effective from June 26, 2019. Under the LoC, the terminal utilization period is 60 months after the scheduled completion date of the contract.

3. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

- **A.P.(DIR SERIES) CIRCULAR NO. 3, DATED 25-7-2019**

EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 10 MILLION (AS FIRST TRANCHE OUT OF USD 50 MILLION) TO THE GOVERNMENT OF REPUBLIC OF SEYCHELLES

Export-Import Bank of India (Exim Bank) has entered into an agreement dated June 25, 2018 with the Government of Republic of Seychelles for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 10 million (USD Ten Million only) as the first tranche out of USD 50 million (USD Fifty million only) for financing procurement of goods and projects as per specified needs of Republic of Seychelles. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

2. The Agreement under the LoC is effective from June 24, 2019. Under the LOC, the terminal utilization period is 48 months after the scheduled completion date of the project and 72 months from execution of the LoC Agreement in case of supply contracts

3. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

- **A.P. (DIR SERIES) CIRCULAR NO. 4, DATED 30-7-2019**

EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY - RATIONALISATION OF END-USE PROVISIONS

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to paragraphs 2.1.(v) and 2.1.(viii) of Master Direction No.5, dated March 26, 2019 on the above subject in terms of which, inter alia, ECB proceeds cannot be utilised for working capital purposes, general corporate purposes and repayment of Rupee loans except when the ECB is availed from foreign equity holder for a minimum average maturity period of 5 years. Further, on-lending for these activities out of ECB proceeds is also prohibited.

2. Based on the feedback from stakeholders and with a view to further liberalise the ECB framework, it has been decided, in consultation with the Government of India, to relax the end-use restrictions. Accordingly, eligible borrowers will now be permitted to raise ECBs for the following purposes from recognised lenders, except foreign branches/ overseas subsidiaries of Indian banks, subject to paragraph 2.2 of the direction ibid:

i.	*ECBs with a minimum average maturity period of 10 years for working capital purposes and general corporate purposes. Borrowing by NBFCs for the above maturity for on lending for the above purposes is also permitted.*
ii.	*ECBs with a minimum average maturity period of 7 years can be availed by eligible borrowers for repayment of Rupee loans availed domestically for capital expenditure as also by NBFCs for on-lending for the same purpose. For repayment of Rupee loans availed domestically for purposes other than capital expenditure and for on-lending by NBFCs for the same, the minimum average maturity period of the ECB is required to be 10 years.*
iii.	*It has been decided to permit eligible corporate borrowers to avail ECB for repayment of Rupee loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as SMA-2 or NPA, under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework.*

3. The prescribed minimum average maturity provision, as above, for the aforesaid end-uses will have to be strictly complied with under all circumstances.

4. All other provisions of the ECB policy remain unchanged. AD Category - I banks should bring the contents of this circular to the notice of their constituents and customers.

5. The Master Direction No.5, dated March 26, 2019 is being updated to reflect the above changes.

6. The directions contained in this circular have been issued under sections 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

- **A.P. (DIR SERIES) CIRCULAR NO. 5, DATED 1-8-2019**

EXIMS BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 38 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE

Export-Import Bank of India (Exim Bank) has entered into an agreement dated March 20, 2019 with the Government of the Republic of Mozambique for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 38 million (USD Thirty Eight Million only) for the purpose of financing construction of 1600 Borewells with Handpumps and 8 small water systems in the Republic of Mozambique. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement and its amendments, if any, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

2. The Agreement under the LoC is effective from July 10, 2019. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project.

3. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

- **A.P. (DIR SERIES) CIRCULAR NO. 06, DATED 16-8-2019**

FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) (AMENDMENT) REGULATIONS, 2019 - ACCEPTANCE OF DEPOSITS BY ISSUE OF COMMERCIAL PAPERS

Attention of Authorised Dealers (ADs) is invited to the Foreign Exchange Management (Deposit) Regulations, 2016 notified *vide* Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time and the relevant directions issued thereunder.

2. We advise that Sub-regulation (3) of Regulation 6 of the above Regulations, in terms of which a Company may accept deposits through issue of Commercial Paper (CP), has been reviewed vis-à-vis other Statutes/Regulations – notably Section 45 U(b) of RBI Act, 1934 describing CP as one of the Money Market Instruments and Section 2(c) of Companies (Acceptance of Deposits), Rules 2014 which excludes any amount received against issue of, inter alia, CPs from definition of deposits. It has also been considered that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), already allow investments in CPs issued by the Indian Companies.

3. Therefore, with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs), we advise that sub-regulation (3) of Regulation 6 of FEMA 5(R)/2016-RB has been deleted vide GOI Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019.

4. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

NOTIFICATION

NOTIFICATION NO. G.S.R. 498 (E) [NO. FEMA 5(R) 2/2019-RB (F.NO. 1 / 31 / EM / 2015)], DATED 16-7-2019

FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) (AMENDMENT) REGULATIONS, 2019 - AMENDMENT IN REGULATION 6

In exercise of the powers conferred by clause (*f*) of sub-section (3) of Section 6 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999)

and in partial modification of its Notification No. FEMA 5(R)/2016-RB dated April 01, 2016, the Reserve Bank makes the following amendment in the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time, namely:—

Short title and commencement

2. (*i*) These Regulations may be called the Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019.

(*ii*) They shall come into force with effect from the date of their publication in the Official Gazette.

Amendment of the regulations

3. Sub-regulation 3 of regulation 6 including all the words and expressions contained therein shall be deleted.

- **NOTIFICATION NO S.O. 3722(E) [F.NO. 1/14/EM/2015], DATED 16-10-2019**

SECTION 6 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - CAPITAL ACCOUNT TRANSACTIONS - NOTIFIED DEBT INSTRUMENTS

In exercise of the powers conferred by sub-section (7) of section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby determines the following instruments as debt instruments, namely:—

(*i*)	Government bonds;
(*ii*)	corporate bonds;
(*iii*)	all tranches of securitisation structure which are not equity tranche;
(*iv*)	borrowings by Indian firms through loans;
(*v*)	depository receipts whose underlying securities are debt securities.

2. Instruments specified below shall be considered as non-debt instruments, namely:-

(*i*)	all investments in equity in incorporated entities (public, private, listed and unlisted);
(*ii*)	capital participation in Limited Liability Partnerships (LLPs);
(*iii*)	all instruments of investment as recognised in the FDI policy as notified from time to time;
(*iv*)	investment in units of Alternative Investment Funds (AIFs) and Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InVITs);
(*v*)	investment in units of mutual funds and Exchange-Traded Fund (ETFs)

		which invest more than fifty per cent in equity;
(*vi*)		the junior-most layer (i.e. equity tranche) of securitisation structure;
(*vii*)		acquisition, sale or dealing directly in immovable property;
(*viii*)		contribution to trusts;
(*ix*)		depository receipts issued against equity instruments.

3. All other instruments which are not specified in paragraphs (1) and (2) above, shall be deemed as debt instruments.

CASE LAWS

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE MANAGEMENT ACT, NEW DELHI

Amarjit Singh Aneja

vs.

Special Director, Directorate of Enforcement

FPA-FE-1072/DLI/2007

JULY 30, 2019

Applicable Sections:

Section 8 of the Foreign Exchange Management Act, 1999

Decision:-

Enforcement Directorate issued show cause notice to appellant alleging that approximately Rs. 2.05 crores were remitted by persons other than account holder without adhering to guidelines laid down by RBI. Appellant sent reply denying allegation against him. He also retracted from his confessional statement on ground that it was given under coersion and undue influence. Respondent -ED passed an order imposing penalty of Rs. 20 lakhs on appellant. However, writ petition filed by a co-noticee of show cause notice challenging same was allowed by quashing show cause notice. Adjudicating Authority had, in 52 similar cases against appellant, quashed penalty imposed against him. Further, there was no material on record to show any nexus of appellant with account holder. Since apart from retracted confessional statement of appellant, there was no independent evidence to corroborate retracted confessional statement, said statement could not be relied upon to impose penalty on appellant.

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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 AshishGhiya(L.L.B, C.S)

CASE LAWS

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

PRAKASH G SHARBIDRE V/S SHRI CONSTRUCTIONS

The complainant purchased apartment in the project of the respondent "Eden Garden Apartment" situated at Karwir, Kholapur and has already taken possession of the same. The complainant contended that the completion certificate for the project has not been obtained by the promoter yet. The other allottees living in the project have carried out illegal constructions in the project which is causing a lot of inconvenience. The complainant pleased that respondent to be directed to take measures to ensure that the illegal constructions are stopped.

The Ld. Counsel for the respondent submitted that the respondent has already written to the competent authority requesting them to take action against the unauthorized construction carried out by some allottees in the building. They are still waiting for their response.

Considering the above facts, the competent planning authority is hereby advised to take a due note of the letter submitted by respondent and take necessary action against the unauthorized work being carried out in some apartments of the building.

SKYLINE CONSTRUCTION CO. V/S MONICA SINGH

The complainant (promoter)is claiming the arrears of the consideration of the flat and interest under Section 19(6) and 19(7) of Real Estate(Regulation and Development) Act 2016 They are also seeking the direction directing the respondent (allottee) to execute the Agreement for sale under Section 13of the Real Estate (Regulation and Development) Act, 2016.

The learned advocate of the respondent brings to the notice of the authority that under Section4 of Maharashtra Ownership Flats Act which provides that the promoter shall not accept more than 20% of the sale price without entering into written agreement for sale. Section 13 of RERA also provides that the promoter cannot accept more than 10% of the cost of the apartment without first entering into written agreement for sale.
Also, the dispute arising out of Section 13cannot be adjudicated upon by Adjudicating Officer as the complaint is filed in Form B and hence, the complaint in the present form is not maintainable for seeking the said relief as per the learned advocate of respondent. After hearing both the sides, the authority concluded that though the complaint under Section 19 is not maintainable, the complainant under Section 13 r/w 37 is very well maintainable under RERA. Only because the complainants have filed the complaint by using Form-B, their complaint cannot be thrown away on technical ground. Therefore, the complaint is maintainable before for the contravention of Section 13 r/w Section 37 of RERA. Thus the authority ordered that the complaint shall proceed under Section 13 r/w Section 37 only.

MANOHAR AND PARAMJEET KAUR SOHAL V/S MONARCH SOLITAIRE LLP

The Complainants alleged that the Respondent has failed to hand over possession of the said apartment till date and therefore they intend to withdraw from the project as per the provisions of section 18 of the RERA, 2016. The Complainants also showed their willingness in continuing in the said project provided the Respondent was willing to shift him in another building which may be completed earlier and is also a part of the same project. The Respondent argued that no date of possession is mentioned in the said agreement which was executed on 30th Dec 2014. Further, he argued that the construction work of the project could not be completed because of reasons which were beyond the control. Finally, he submitted that the construction work is now in progress and possession of the said apartments will be handed over as per the timelines mentioned in their registration webpage.
After examining all the facts, the authority ordered Respondent shall, therefore, handover the possession of the said apartment, with Occupancy Certificate, to the Complainants before the period of March 31, 2020, failing which the Respondent shall be liable to pay interest to the complainant from April 1, 2020 till the actual date of possession on the entire amount paid by the Complainant to the Respondent.

BARODAWALA PROPERTIES PVT. LTD. V/S PENINSULA LAND LIMITED

The complainants prayed that the respondent should be directed to refund the entire amount paid by them along with interest and compensation as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016. as they proposed date of completion of the project as 31st December 2020 in their MahaRERA registration webpage instead of December 2018.
The advocate for the Respondent stated that they are willing to execute the agreement for sale and that the apartments will be handed over by December 2020 as stated in their MahaRERA registration webpage. As per the provisions of the Rule 4 of the Maharashtra Real Estate (Regulation and Development) Rules, 2017the revised date of possession for an ongoing project has to be commensurate with the extent of balance development and accordingly the timeline proposed by the Respondent is reasonable.
After hearing both the sides, the authority concluded that the Complainant is interested in continuing in the said project, are directed to execute the agreement for sale within 30 days from the date of this order. Also, The Respondent shall handover possession of the apartment, with Occupancy Certificate, to the Complainants before the period ending December 31st, 2020, failing which the Respondent shall be liable to pay interest to the Complainant from January 1, 2021 till the actual date of possession.

JANARDHAN KAVTHEKAR V/S XRBIA NORTH HINJEWADI DEVELOPERS PVT.LTD.

The complainant has filed complaint against respondent in respect of possession of flat as promised by the respondent in the Provisional Allotment Letter and to pay interest @ 18% until the possession of the flat is given to him by the respondent. The complainant argued that at the time of booking of the flat, the respondent promised to handover the flat having area of 418 sqft carpet area. However, in the registered Agreement executed, the respondent has mentioned different carpet area. The respondent disputed the claim of the complainant and stated that though he has not issued final allotment letter of the said area but executed the registered agreement of said flat. In the said Agreement, in para – 1, the area of flat was stated other than mentioned in Provisional Allotment Letter and the said Agreement was duly signed by the complainant. In view of above facts, the authority concluded that there is no provision in the RERA, 2016 wherein the complainant can claim such a relief. Hence the complaint stands dismissed for want of merits.

ASSET AUTO INDIA PVT. LTD. V/S OBEROI CONSTRUCTION LIMITED

The complainant has stated that as the parties failed to amicably decide on the terms and conditions of the agreement for sale, the respondent has cancelled the booking of the apartments booked by the complainant and refunded only a part of the booking amount. The Learned Counsel for the respondent contended that the respondent has refunded the amount paid by the complainant in accordance with the terms and conditions of the allotment letter.

Referring to Clause 18 of the Model Form annexed the Maharashtra Real Estate Rules, 2017, the authority concluded that the act of the respondent to forfeit a substantial quantum bulk of the booking amount and return only a part of the said amount, is not in keeping with the spirit of the model form of agreement. Thus the authority ordered the Respondent to refund the total booking amount paid by the Complainant, within 30 days from the date of this order

MADHYA PRADESH REAL ESTATE REGULATORY AUTHORITY

SHRI RAVINDER KUMAR JAIN V/S SHRI MOHAN HARKRISHAN DASCHANDAK

The complainant booked a plot through an agreement on 13.07.2011. It was alleged that full amount was paid by the applicant but no registry has been made therefore he requested the authority to direct the respondent to register the plot or refund the principle amount with interest and damage. The respondent never appeared before the authority. The authority decided to pass ex-party order. On verification of the receipts of payment by the authority, it was found that the receipts of Rs. 7, 00,821/- were available with the complainant against total claim of Rs. 10, 15,957. The authority doubted the cash payment made by the applicant and directed to explain whether the same has been disclosed in income tax return or not? As per RERA (Act) the applicant is entitled to get compensation but as discussed above the quantum of payment is not clear in absence of documents. Therefore, this case is transferred to adjudicator to decide the merit of case.

M.P.S. GULANI V/S HITESH AHUJA & S.K. AHUJA

Applicant alleged that the land shown in the proposed project as claimed by the complainant belongs to him and the power of attorney was given only for one year which expires on 04.10.2014. The applicant claimed that the joint venture agreement is no more in existence. Thus, the registration made null and void. Accordingly, the registration is liable to be cancelled and also required to impose penalty under the RERA (Act). After

considering all the facts of the case, it is found that applicant is a co- promoter. He is not the allottee under section 3 or section 4 of the Act. He has challenged the registration of the project under RERA (Act). The relation between the applicant and respondent is in nature of partnership. There is no relation between applicant and the respondent as allottee and promoter. Accordingly, the plaint is dismissed.

NOTIFICATIONS/CIRCULARS

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
NO.MAHARERA/SECY/FILE NO. 27/1066/2019
DATE: 01.11.2019

ADDITIONAL MANDATORY DOCUMENT ALONG WITH APPLICATION FOR REGISTRATION OF PROJECTS

Whereas, under Section 34 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the said Act), MahaRERA is vested with powers which includes functions to register and regulate real estate projects and to ensure compliance of the obligations cast upon promoters.

Whereas, in exercise of the powers vested with MahaRERA under Section 34 of the said Act, in order to ensure greater professionalism among promoters, bring a certain level of consistency in the practices of promoters, enforcement of code of conduct and to discourage fraudulent promoters, MahaRERA vide its Order No 10 dated 11th October 2019, introduced the procedure of registration of Self-Regulatory Organization (SROs) of promoters, in the real estate sector in Maharashtra.

Whereas, from December 1, 2019 through MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (GENERAL) (SECOND AMENDMENT) REGULATIONS, 2019, membership details of Promoter with MahaRERA registered SRO (Self-Regulatory Authority) has been introduced as additional disclosure by promoters on the website of MahaRERA.

Therefore, with affect from December 1, 2019 every promoter applying to MahaRERA the registration of their real estate project, shall have to mandatorily disclose their membership details with a MahaRERA registered SRO.

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JUDGMENTS

HIGH COURT OF GUJARAT

MS. HARSHA DEVANI AND MS SANGEETA K. VISHEN, JJ.
R/SPECIAL CIVIL APPLICATION NO. 15178 OF 2019
SEPTEMBER 24, 2019

India Logistics & Cargo Movers **…. Petitioner**

VERSUS
State of Gujarat **…. Respondents**

Section 130 of the Central Goods and Services Tax Act, 2017/Section 130 of the Gujarat Goods and Services Tax Act 2017 - Confiscation of goods or conveyances and levy of penalty - Assessee, a transporter, was transporting goods of 61 different customers in a vehicle - Competent Authority intercepted said vehicle and having found that e-way bills of three parties were not generated detained goods of three parties and also vehicle on spot on 16-5-2019 and issued a notice under section 130 for confiscation - Assessee agreed to pay tax and penalty as calculated on basis of transaction value in invoice as envisaged under section 129 - However, Competent Authority passed an order dated 28-5-2019 increasing value of goods by 20 per cent and confiscating goods under section 130 without assigning any reasons - Whether it was incumbent upon Competent Authority to give reasons in support of his conclusion that vehicle and goods contained therein were required to be confiscated - Held, yes - Whether in absence of assigning any reasons, impugned order passed under section 130 required to be quashed - Held, yes - Whether Competent Authority was to be directed to release vehicle along with goods contained therein - Held, yes [Paras 17 and 18] [In favour of assessee]

HON'BLE JUSTICE MS. HARSHA DEVANI
MS SANGEETA K. VISHEN, JJ.

JUDGMENT

Ms. Harsha Devani, J. - Rule. Ms. Maithili Mehta, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

2. Having regard to the controversy involved in the present petition and with the consent of the learned advocates for the respective parties, the matter was taken up for final hearing.

3. By this petition under article 226 of the Constitution of India, the petitioner has challenged the notice dated 16.5.2019 issued in Form GST MOV-10 (Annexure-A) as well as the detention/confiscation order dated 16.5.2019/28.5.2019 issued by the third respondent in Form GST MOV-11 and seeks a direction to the respondent authorities to forthwith release truck No.GJ-27-X-3752 along with the goods contained therein.

4. The facts stated briefly are that the petitioner, a sole proprietorship firm, which is inter alia engaged in the business of transport, procured about 61 different customers. On 16.5.2019 at 13:50 hours while the goods were in transit in vehicle No.GJ-27-X-3752, the third respondent - State Tax Officer, Mobile Squad, Enforcement, Division-2, Ahmedabad intercepted the vehicle at Narol Char Rasta and found that the e-way bills of three parties, namely, Anjani Synthetics Limited dated 30.4.2019, Neelam Fabrics dated 15.5.2019 and Bhansali Cotfab dated 16.5.2019 were not generated. The statement of the driver in charge of the vehicle came to be recorded in Form GST MOV-1. It appears that the goods in respect of 58 customers wherein there were valid e-way bills came to be released; however, the vehicle with the goods in respect of the above three parties came to be detained on the spot on 16.5.2019 by issuing a notice in Form GST MOV -10 under section 130 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") as well as the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the "GGST Act"). [Both the above Acts together are hereinafter referred to as the "GST Acts"]. It appears that the petitioner provided justification for not generating the above mentioned e-way bills; however, there was no response from the respondents. It further appears that the petitioner agreed to pay the tax and penalty as calculated on the basis of transaction value in the invoice as envisaged under section 129 of the GST Acts. However, the second respondent passed an order dated 28.5.2019 increasing the value of goods by 20% and confiscating the goods under section 130 of the GST Acts. Being

aggrieved by the continued detention/seizure of its goods, the petitioner has filed the present writ petition seeking the reliefs noted hereinabove.

5. Mr. Manasvi Thapar, learned advocate for the petitioner, submitted that the continued detention/seizure of the goods and vehicle of the petitioner, despite the petitioner having agreed to pay tax and penalty as stipulated under section 129 of the GST Acts, is wholly without jurisdiction, arbitrary and illegal. It was submitted that section 129(1) of the GST Acts clearly provides for release of any goods detained/seized under the section on payment of applicable tax and penalty equal to hundred percent. Therefore, non-release of the goods detained despite the petitioner having shown willingness to make such payment is wholly without jurisdiction, arbitrary and illegal. It was further submitted that the confiscation notice has directly been issued on 21.5.2019 in purported exercise of powers under section 130 of the GST Acts without completing the procedure under section 129 thereof and thereafter the third respondent has proceeded to pass the impugned order of confiscation dated 28.5.2019, which is wholly without jurisdiction and illegal.

5.1 It was further submitted that the impugned order of confiscation is pre-determined and without application of mind. It was urged that while admittedly the notice for confiscation is dated 16.5.2019, it was served upon the petitioner on 21.5.2019 and that despite the petitioner having made submissions objecting to the confiscation, in the impugned order of confiscation, it has been recorded that the petitioner has not filed any objections. It was submitted that this indicates that the impugned order has been passed in a pre-determined manner without application of mind and therefore also, the same is arbitrary and illegal is required to be set aside. It was further submitted that the goods were duly accompanied by tax invoice as well as transport receipt and only e-way bills of the above three customers could not be generated by the petitioner due to reasons which have been stated before the respondent authorities. It was submitted that there was no intention on the part of the petitioner to evade payment of tax under the GST Acts and hence, the continued detention of the goods and the truck is arbitrary and illegal. It was accordingly, urged that the impugned order of confiscation deserves to be quashed and set aside and that the respondents are required to be directed to release the goods as well as the conveyance.

6. Opposing the petition, Ms. Maithili Mehta, learned Assistant Government Pleader, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the third respondent wherein it is stated that the vehicle in question was confiscated on 16.5.2019 directly in exercise of powers under section 130 of the Goods and Services

Tax Act, 2017. The ground for confiscation of the said vehicle was that qua three e-way bills, Part-B was not found from the vehicle, meaning thereby, out of 61 consolidated e-way bills, Part-B was only for 58 consignments and Part-B of e-way bills of three consignments was not traceable. It is further submitted that the authorities could find invoices qua all 61 consignments but out of those 61 invoices, 14 invoices were quite doubtful as they did not bear the signatures of the authorized persons issuing the said invoices. [The details of the 14 invoices are set out in the affidavit-in-reply.] It was submitted that the authorities have, therefore, presumed that the said invoices are fake and are drawn with an intention to evade tax.

6.1 It is further submitted that the earlier representation dated 20.5.2019 was given by the petitioner who is the transporter and that neither the purchaser nor the suppliers have given any explanation in respect of the 14 invoices which do not bear any signature and that the explanations dated 20.5.2019 and 28.5.2019 are mainly qua non-possession of Part-B of the e-way bill. It is categorically averred in the affidavit-in-reply that mainly due to the fact that 14 invoices were not properly signed, the authorities have exercised powers under section 130 of the Goods and Services Tax Act, 2017 and calculated tax and penalty considering the provisions of section 130 of the Goods and Services Tax Act, 2017. The learned Assistant Government Pleader accordingly, urged that the authorities have duly followed the provisions of law and having found serious irregularities, have passed the order of confiscation under section 130 of the Goods and Services Tax Act, 2017 which is just legal and proper. It was accordingly, urged that the petition being devoid of merits deserves to be dismissed.

7. In the backdrop of the facts and contentions noted hereinabove, it is an admitted position that in this case no detention order under section 129 of the CGST Act/GGST Act has been made in this case and the respondents have directly resorted to the provisions of confiscation under section 130 of the said Acts.

8. A perusal of the notice dated 16.5.2019 issued under section 130 of the CGST Act/GGST Act whereby the third respondent proposes to confiscate the goods and conveyance, reveals that the vehicle in question was intercepted in exercise of powers under sub-section (3) of section 68 of the CGST Act/GGST Act as well as other statutory provisions and it was found that certain discrepancies as reproduced hereunder were noticed:

> "(*i*) After verification of documents, tendered during the movement of goods in vehicle, valid e-way bill not generated for the following bills.

a. Anjani Synthetic Limited bill no.F.1286/1920 dated: 30.04.2019

b. Neelam Fabrics bill no.55 dated 15.05.2019

c. Bhansali Cotfab bill no.211 dated 16.05.2019

(*ii*) Transporter is aware about consolidated e-way bill as he has generated the same for 58 transactions of which goods transported through the same truck, while he has not included above mentioned 3 transaction in that consolidated e-way bill. In addition to that documents tendered for the goods in movement there are 14 bill of supply found without authorized signature and no clarification received from taxable persons. So those invoices are not valid invoices because not bearing signatures of suppliers.

(*iii*) With reference to bill of M/s. Anjani Synthetics Ltd. Dated;30.04.2019, submitted that the goods was sent to transporter with bill of supply and e-way bill part - A on 30.04.2019, but confirmation was not received from recipient, so the goods was stored in godown of transporter till 16.05.2019 after receiving the confirmation goods was dispatched. But he has not provided any proof for supporting his submission. Also transporter has not included the same transaction in his consolidated e-way bill. So, it is presumed that he is also involved in evasion of the tax for the above bill.

(*iv*) The documents tendered for the transactions mentioned in (i) are not valid according to sec.68 of GGST Act, 2017 as there is no signature of authorized person.

(*v*) As per the above detail it is clear that taxable persons are evading tax by not generating e-way bill part-B.

(*vi*) No supplier came forward for the clarification for not generating e-way bill part-B and about bill of supply without authorized signature.

(*vii*) Value of goods are increased by 20% for the calculation of tax, penalty and fine u/s.130."

9. By the said notice, the petitioner was called upon to appear before the third respondent by 27.5.2019. It is the case of the petitioner that the notice dated 16.5.2019 was served upon it on 21.5.2019. It appears that in the meanwhile, the petitioner, by a communication dated 20.5.2019, requested the respondent to release the goods in respect of which there was no dispute, pursuant to which, the goods pertaining to 58 parties appear to have been released. The petitioner by a separate communication of the same date also offered explanations in respect of the goods of the three parties in respect of

which disputes were raised. By a communication dated 21.5.2019 one of the three parties, viz., Anjani Synthetics Limited, tendered its explanation for the deficiencies pointed out by the third respondent.

10. Thereafter, by the impugned order dated 28.5.2019, the following goods and conveyance came to be confiscated by the third respondent in exercise of powers vested under section 130 of the CGST Act/GGST Act and other statutory provisions whereby tax, penalty and fine in lieu of confiscation of goods and conveyance came to be imposed:

DETAILS OF GOODS CONFISCATED

Sl. No.	*Description of goods*	*HSN Code*	*Quantity*	*Value*
1	CLOTH A		7,291 MTR	Rs.6,79,301
2	CLOTH N		598.25 MTR	Rs. 65,580
3	CLOTH B		1,786.70 MTR	Rs.2,18,237

DETAILS OF CONVEYANCE CONFISCATED

Sl. No.	*Description*	*Details*
1	Conveyance Registration No.	GJ 27 X 3752
2	Vehicle Description	
3	Engine No.	
4	Chasis No.	

It appears that the petitioner has also given an explanation dated 28.5.2019.

11. A perusal of the impugned order dated 16.5.2019/28.5.2019 reveals that the notice in Form GST MOV-10 dated 16.5.2019 was issued on 21.5.2019. By virtue of the impugned order, goods in respect of only three parties and the conveyance have been confiscated. The goods confiscated are in respect of the three parties referred to hereinabove.

12. In the impugned order in paragraph 5, it has been recorded thus:

> "5. The person in charge has not filed any objections/the objections filed were found to be not acceptable for the reasons stated below:
>
> (*a*)** **

Thereafter, in paragraph 6, it has been recorded thus:—

"6. In view of the above, the following goods and conveyance are confiscated by the undersigned by exercising the powers vested under section 130 of the Central Goods and Services Tax Act and under section 130 of the State Goods and Services Tax Act/Section 21 of the Union Territory Goods and Services Tax Act or under section 20 of the Integrated Goods and Services Tax Act which are listed as under:"

Sl. No.	*Description of goods*	*HSN Code*	*Quantity*	*Value*
1	CLOTH A		7,291 MTR	Rs.6,79,30 1
2	CLOTH N		598.25 MTR	Rs. 65,580
3	CLOTH B		1,786.70 MTR	Rs.2,18,23 7

13. On reading the impugned order of confiscation in its entirety, it is manifest that the third respondent has not assigned any reason whatsoever as to why the goods and conveyance were required to be confiscated. Despite the fact that the petitioner and Anjani Synthetics Limited had submitted explanations in respect of the discrepancies noticed by the third respondent, there is no reference to the same in the impugned order. Thus, the third respondent without applying his mind to the facts of the case appears to have mechanically passed the impugned order without assigning any reasons worth the name for confiscating the goods and conveyance. The respondents should be aware that orders of confiscation under section 130 of the CGST Act/GGST Act have serious civil consequences for the transporter as well as the owner of the goods. Therefore, the least that is expected of the authorities discharging duties under these Acts is that they should properly apply their minds to the facts of the case before taking drastic action under the provisions of section 130 of the CGST Act/GGST Act. Passing orders in a perfunctory manner has been done in the present case without considering the explanations tendered by the affected parties and without assigning reasons therefore, amounts to abdication of duties on the part of the concerned officer and causes immense prejudice to the parties.

14. It may further be noted that while the impugned order is bereft of any reasons, in the affidavit-in-reply filed on behalf of the third respondent, it has been stated that Part-B of the e-way bill for three consignments was not traceable. Another ground put forth is that, in all, there were 61 consignments, and that out of 61 invoices, 14 invoices were doubtful as they did not bear the signature of the authorised person issuing the said invoices. However, a perusal of the details of the 14 invoices as reflected in the impugned order shows that none of them relate to the three parties whose goods are sought to be confiscated. It has been stated by the third respondent that none of the

purchasers/suppliers have given any explanation qua the 14 invoices which clearly indicates that even the affidavit-in-reply has been filed without proper application of mind, inasmuch as, the goods relating to the 14 invoices have not been confiscated. In the affidavit-in-reply, it has also been stated that mainly due to the fact that 14 invoices are not properly signed, the authorities have exercised powers under section 130 of the CGST Act and calculated tax, penalty and fine thereunder. If that be so, since none of the 14 invoices relate to the parties whose goods are confiscated, under the circumstances, the goods belonging to them could not have been confiscated by the respondent authorities.

15. In the light of the above discussion, it appears that the impugned order has been passed without any application of mind and without considering the explanation submitted by the petitioner and Anjani Synthetics Limited and in undue haste. Moreover, despite the fact that out of 61 consignments, the third respondent has noticed deficiencies only in respect of three consignments, the conveyance of the petitioner is also sought to be confiscated, that too without assigning any reasons as to how the petitioner has sought to evade payment of tax.

16. It may be noted that while there appears to be a format for an order under section 130 of the CGST Act, such format also provides a column for assigning reasons therefor. However, as noted hereinabove, that column has been left blank. At this juncture it may be apposite to refer to the decision of the Supreme Court in *Kranti Associates (P) Ltd.* v. *Masood Ahmed Khan*, [2010] 9 SCC 496, wherein the court in the context of necessity to give reasons, has held thus:

> '47. Summarising the above discussion, this Court holds:
>
> (*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (*b*) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (*c*) 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.
>
> (*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain*, (1994) 19 EHRR 553 and *Anya* v. *University of Oxford,* 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".'

17. Thus, it was incumbent upon the third respondent to give reasons in support of his conclusion that the goods in question and the conveyance are required to be confiscated. However, the impugned order is totally bereft of any reasons, in the absence of which the order stands vitiated due to non-application of mind on the part of the maker of the order. The impugned order dated 28.5.2019, therefore, cannot be sustained. Since the court is inclined to set aside the impugned order on the ground that it is a non-speaking order, ordinarily, it would remand the matter to the authority to decide the same afresh by assigning proper reasons. However, in the facts of the present case, the third respondent has filed an affidavit-in-reply which has been extensively referred to hereinabove. As discussed earlier, on the grounds set forth in the affidavit-in-reply, the goods in question could not have been confiscated. Under the circumstances, no useful purpose would be served in remanding the matter to the third respondent.

18. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 28.5.2019 passed by the third respondent in exercise of powers under section 130 of the CGST Act/GGST Act is hereby quashed and set aside. The respondents are directed to forthwith release the conveyance, namely, truck No.GJ-27-X-3752 along with the goods contained therein. Rule is made absolute accordingly.

s.k. jain

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 06.11.2019

W.P.(C) 6331/2019 & CM No. 26983/2019
M/S ARORA & CO ..... Petitioner

Through: Mr. Rajat Mittal, Adv.

versus

UNION OF INDIA & ORS . ..... Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr.Waize Ali Noor, Adv. for R-1.
Mr. Harpreet Singh, Sr. Standing counsel with
Ms.Suhani Mathur and Mr.Ankit Singh, Advs. for R-2, 3 and 4.

The Delhi High Court has directed Goods and Services Tax (GST) department to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically or to accept the same manually on or before 20.11.2019.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (Oral):

1. The present petition under Article 226 of the Constitution of India seeks the following reliefs:

"i) To issue writ of mandamus and/or any other appropriate writ(s) to allow the Petitioner to file declaration in form GST Tran 1, to enable it to claim transitional credit of excise duty in respect of inputs held in closing stock on the appointed day in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017;

ii) To issue a writ, order or direction quashing the Impugned Notice dated 30.03.2019 and Impugned Notice dated 30.04.2019

iii) To issue a writ, order, or direction declaring that the time limit to file Form TRAN 1 specified in Rule 117(1) & (1A) of the Central Goods and Service Tax Rules, 2017 as being ultra vires Section 140(3) of the Central Goods and Service Tax Act, 2017 as also being arbitrary and

unreasonable and violative of Article 14, 19(1)(g) and 265 of the Constitution of India.

iv) To issue writ, order or direction declaring that due date contemplated under the Rule 117 of the CGST Rules to claim the transitional credit within a specified period of time as being procedural in nature and thus merely directory and not a mandatory;

v) To issue a writ, order or direction declaring Section 164 of the Central Goods and Services Tax Act, 2017 as unconstitutional as it suffers from vice of excessive delegation

vi) to award for costs of this Petition; and

vii) to grant such further and other reliefs as the nature and circumstances of the case may require."

2. At the outset, learned counsel for the petitioner submits that if the Court were to issue directions as sought in prayers (ii) and (iii), he would not press the remaining prayers.

3. The case of the petitioner as stated in the petition is that it is engaged in the business of trading of steel pipes and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as „GST" Act). Before the introduction of the GST Act, as on 30.06.2017, the petitioner had a closing stock of pipes purchased from M/s Avon Steel Industries Private Limited of Rs. 71,35,431/- inclusive of excise duty of Rs.7,92,826/-. Petitioner was entitled to transition of credit of the amount of Excise duty in terms of Section 140 (iii) of the GST Act. In order to avail transition of credit, petitioner was required to submit a declaration in Form TRAN-1 on the GST Portal within the stipulated period of 90 days. Since a large number of taxpayers could not complete the process within the aforesaid period on account of technical glitches and difficulties faced by them, government extended the time period for filing TRAN-1 several times and lastly on the recommendation of GST Council, it was extended up to 27.12. 2017.

4. Pursuant to the aforesaid extension, petitioner filed Form TRAN-1 on the common portal before the deadline. However, it was unable to log in to the common portal between 24.12.2017 to 27.12.2017 and avail transition of credit, presumably because of low bandwidth, given the fact that large number of assessees all over India were trying to submit the declaration in Form TRAN-1 before the last date i.e. on 27.12.2017. Petitioner has annexed the screenshot of the Form TRAN-1, available on the common portal along with the petition.

5. Petitioner also relies upon on CBIC Circular No.39/13/2018-GST dated 03.04.2018 issued by the government to address the grievances of the tax payers who could not file the declaration due to technical glitches on GST Portal. Furthermore, petitioner also relies upon several communications exchanged with the respondents in the above context, including the e-mail received on 30.03.2019 from the respondent No. 2-Assistant Commissioner of Central Goods and Services Tax Division, stating that as per the information received from GSTN, petitioner‟s request for opening of portal had been approved, further requesting it to take immediate action for filing the declaration before the last date i.e. 31.03.2019. However, on the same date, respondents retracted the said approval.

6. Thereafter, petitioner engaged in further correspondence with respondent No. 2, but his representation was rejected vide letter dated 13.04.2019, to the following effect :

> "Please refer to your letter dated 31.03.2019 and 05.04.2019 on the above mentioned subject wherein you have requested for reconsideration of your request to allow you to upload TRAN 1 on common portal.
>
> In this regard, also refer to this office letter dated and email both dated 30.03.2019 wherein you were informed that your request was examined ITGRC of GSTN and the same was rejected by ITGRC with following remarks:-
>
> 'Cases in which TRAN 1 filing attempted for first time or revision was attempted but no error/ no valid error reported. As per GST system logs the taxpayer has tried for saving/ submitting for the first time or revision of TRAN 1 and there are no evidences of system error in the logs.'

Further, another opportunity was given to all such tax payers whose request for reopening of TRAN 1 window had been rejected by the competent authority to submit their representation latest by 31.03.2019 subject to the condition that they have some additional evidence to demonstrate the technical glitch. However, it is observed that vide your representation dated 31.03.2019, you did not provide any new evidence in this regard and therefore, your request was not reconsidered as the same had already been rejected by the Grievance Redressal Counsel on merit on the basis of evidence already on records."

7. Petitioner relies upon several decisions of this Court including ***M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors,* 2019 SCC OnLine 9250** and ***Sare Realty Projects Private Limited vs Union Of India,* W.P. (C) NO. 1300/2018,** decided on 01.08.2018 to urge that the Court has granted reliefs to several other parties who were in similar situation.

8. Mr. Harpreet Singh, learned Senior Standing counsel for GST submits that petitioner was given an opportunity to submit evidence to demonstrate technical glitch for re-considering his request, however, he failed to do so and thus his representation was rejected. He submits that as per GST system logs, there was no evidence of system error in the log and since the petitioner did not provide any new evidence, his request has been rightly rejected by the Grievance Redressal Committee.

9. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein is fully covered by the decision of this Court in ***M/s Blue Bird Pure Pvt. Ltd*** (supra) decided on 22.07.2019, wherein the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. The said decision has also been followed by us in ***M/s Aadinath Industries & Anr vs Union of India***, **W.P. (C) 9775/2019**, decided on 20.09.2019; ***Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors***, **W.P.(C) 3309/2019**, decided on 13.09.2019; ***Godrej & Boyce Mfg. Co. Ltd. Through its Branch Commercial Manager vs Union of India,* W.P.(C) 8075/2019**, decided on 15.10.2019.

10. The factual position in the present case is not any different and thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 20.11.2019.

11. Respondents are directed to process the petitioner‟s claim in accordance with law once the GST Form TRAN–I is filed. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J
SANJEEV NARULA, J

NOVEMBER 06, 2019 *Pallavi*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.09.2019.
Judgment pronounced on: 06.11.2019.

W.P.(CRL) 2686/2019
SUDHIR KUMAR AGGARWAL ..... Petitioner

Through:- Ms. Geeta Luthra, Sr. Adv. with Mr. Prateek Yadav, Adv.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE ..... Respondent

Through:- Mr. Harpreet Singh, Sr. St. Counsel.

The Delhi High Court has observed that, presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by the GST officers.
Disposing of the Petition, the Court also said that, the apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well-settled law now that no inquiry/ investigating officer has a right to use any method which is not approved by law to extract information from a witness/ suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J.

1. Vide this order, I shall dispose of an application for modification of order dated 20.09.2019 passed by this court, moved by petitioner under article 226 of the constitution of India read with section 482 of the code of criminal procedure, 1973 for writ of mandamus directing the respondents to not cause any physical, mental or verbal harassment to the petitioner during pendency of the investigation.

2. It was submitted by the learned counsel for the petitioner in his petition that the petitioner was a Director of M/s Dominion Expoventures Pvt. Ltd. since 14.05.2016, having its office at FF-35-36, Omex Pearl Tower, Netaji Subhash Place, Pitampura, New Delhi and engaged in the business of import of FMCG items and tobacco products.

3. It was further submitted that petitioner came to know that the Respondent agency, conducted a search on 11.09.2019 at the Petitioner's property bearing no. J5/101E, Rajokri Garden, New Delhi which was rented out to one Mr. Jaiswar@ Mr. Jaiswal, who was residing at the said premises with his wife. Mr Jaiswar@Mr. Jaiswal, was manhandled and was in state of trauma after having been illegally detained by the officers of the Respondent agency.

4. It was next submitted that an employee of the petitioner, namely one Mr. Garg was also, illegally detained by the officers of the Respondent and was manhandled, harassed mentally, physically and verbally by the officers of the Respondent agency.

5. It was next submitted that the petitioner had also come to know that search team of the respondent agency was also enquiring about him with regard to his Company namely, M/s Dominion Expoventures Pvt. Ltd. during their search on 11.09.2019. It was submitted that the petitioner was innocent and had nothing to do with the aforementioned case/investigation. He was willing to join the investigation if summons were sent to him.

6**.** It was further submitted that the petitioner apprehended that the respondent would cause physical, mental and/or verbal harassment to the petitioner as heard by him from various people who were recently summoned and detained by the respondent agency.

7. Learned Counsel for the petitioner had relied upon 1987(2) SCC 424 (Nandini Satpathy vs. P.L. Dani and Anr.), wherein the Hon'ble Supreme Court has held as under:

> "63. Lawyer's presence is a constitutional claim in some circumstances in our country also, and , in the context of Article 20 (3), is an assurance of awareness and observation of the right to silence. The Miranda decision has insisted that is an accused person asks for lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 2093) and Article 22(1) may, in a way, be telescoped by making prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and section 161(2) will be obviated by this requirement. We do not lay down that the

> police must secure the services of a lawyer. That will lead to police-station-lawyer system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will the project."

8. It was next submitted by Ld. Counsel that the maximum punishment that could be imposed under Section 132 of the CGST Act, 2017 was only an imprisonment for 5 years, apart from fine and that therefore, under Section 41 and 41-A of the Code of Criminal Procedure, after its amendment, a person could not be arrested so long as such person complied with the notice for his appearance. It was prayed that the Petitioner herein was ready and willing to join the investigation as and when called by the Respondent agency.

9. Ld. Counsel had also relied upon **'Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273**, wherein it was held that in criminal cases that are punishable with imprisonment of not more than seven years, the accused persons should not be remanded to custody unless the conditions specified therein are met.

10. It was next submitted in the petition that though the petitioner had not received any summons to appear from any of the respondent agency, however, he agrees to appear before the respondent provided, respondents do not cause any physical, mental or verbal harassment to the petitioner during pendency of the investigation. It was further submitted that the respondent was already in possession of all the documents relating to the petitioner's company and therefore, the respondent need not take any coercive steps in the present investigation. All the offences under the Act are compoundable under section 138 of the CGST Act and hence arrest was wholly unnecessary.

11. It was next submitted that petitioner was ready to submit himself to any condition/conditions, which the Court might impose to allay the fear of the respondent, of any kind of likely absence from the trial or investigation.

12. It was lastly submitted that the petitioner fears for his life, health and safety and apprehends, that the respondent may cause physical, mental and/or verbal harassment to the petitioner during pendency of the investigation and prayed that protection in the event

of receiving summons from the respondent authority may be granted and respondent be directed to interrogate the Petitioner in presence of his lawyer/attorney as laid down by Hon'ble Supreme Court in **„Nandini Satpathy Vs. Dani and Anr.(1978) 2 SCC 424"**.

13. I have heard the rival submissions and given my thoughts to the matter.

14. The petition was first listed for hearing on 22.09.2019 when the Ld. Counsel for the respondent had accepted the notice and submitted that respondent is duty bound to follow the mandate of Hon'ble Supreme Court laid down in '**Nandini Satpathy vs Dani (P.L.) and Anr, (1978) 2 SCC 424".** It was, however, submitted that the petitioner is required to join the investigation and cooperate in the investigation. It was agreed at that time that the petitioner would join the investigation as and when required. However, later on the instant application was moved by the Ld. Counsel for the respondent seeking modification of the said order on the ground that the investigation against the petitioner is in respect of fraudulent availment of Input Tax Credit of GST under the cover of fake invoices. It was submitted that this Court had disposed of the petition and allowed the prayer of the petitioner seeking presence of an advocate at the time of recording of statement by the respondent in view of the judgment in **Nandini Satpathy"s case (Supra)**. However, the facts of the said case are completely different from the present case in as much as GST officers are not police officers and the offence committed is also completely different and, therefore, **Nandini Satpathy"s case (Supra)** case cannot be relied upon in this matter.

15. At this juncture, it may be clarified that order dated 22.09.2015 was passed by this court on the assurance given by the Ld. Counsel for the respondent that **Nandini Satpathy"s case (supra)** case would be followed by the respondent and on this assurance, the petition was disposed of.

16. The Ld. Counsel for the respondent has now sought amendment in the order submitting that there is a subsequent judgment passed by Hon'ble Supreme Court in a case titled **„Pool Pandi vs. Superintendent, Central Excise and Ors. 1992 AIR 1795 (SC)",** in which the Hon"ble Court has noticed and distinguished the judgment of **Nandini Satpathy"s case (Supra)** case and has refused to allow the presence of a lawyer during questioning under Customs Act and the relevant para runs as under;

> 11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. **Mr. Salve was fair enough not to pursue his arguement with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the `just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us.** (Emphasis supplied).

17. Ld. Counsel for the respondent has submitted that in the above case, the Hon'ble Supreme Court has rejected the prayer of the petitioner seeking presence of a lawyer during investigation. It was next submitted that petitioner in the present case does not have clean antecedents also. Presently he is on conditional interim bail granted vide order

dated 24.05.2019 by the concerned Ld. Trial Court in a case which is being investigated by DRI and this fact has been concealed from this court.

18. It was next submitted that under **Section 70** of the **CGST Act, 2017** 'any person' whose attendance was considered necessary either to give evidence or to provide a document or anything in any inquiry can be summoned. It was submitted that petitioner was being called for the purpose of questioning. It was, therefore, prayed that order dated 20.09.2019 be modified wherein the prayer of petitioner seeking presence of lawyer during examination by the respondent was allowed as this will frustrate the very purpose of the inquiry.

19. Ld. Counsel for the petitioner has, however, opposed the above submission and submitted that the order dated 20.09.2019 passed by this court is in accordance with law. There are no grounds to modify the same. There are many judgments right from **„Nandini Satpathy"s case (Supra)** which provide for the presence of lawyer during investigation. There is no difference between investigation /interrogation by the Customs officers or Police Officers so far as presence of Lawyer during the said period is concerned.

20. I have considered the rival submissions. The Hon'ble Supreme Court in **Pool Pandi"s judgment (Supra),** has categorically stated that presence of a lawyer cannot be allowed during examination/ interrogation by a Customs Officer. It was held that relevant provisions of the Constitution in this regard have to be construed in the spirit in which they were made and benefit thereunder should not be extended to exploiters engaged in Tax Evasion at the cost of public exchequer. The submission of the petitioner regarding presence of lawyer in the interrogation was, therefore, declined by the Hon'ble Supreme Court. High Court of Delhi in a case titled **"Sudhir Gulati vs. UOI, 1998 (100) E.LT. 344 (Del)"** has also categorically held that assistance of lawyer cannot be allowed while examination of a person in the Customs Office. It was held as under;

> 10. In view of the aforesaid discussion, we are of the view that the petitioner is accused of an offence in respect of the FIR noticed hereinbefore within the meaning of Article 20(3) and cannot be compelled to be a witness against himself. **But the scope of offence under the aforesaid FIR and scope of enquiry under Customs Act, 1962 is different. An enquiry under Customs Act primarily relates to the smuggling of**

> **goods**. **Section 108 confers upon a Gazetted officer of the Customs the powers to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any enquiry which such officer is making in connection with the smuggling of goods.** The person so summoned is bound to attend and to state the truth upon any subject respecting which he is examined or makes statements and produce such documents and other things as may be required. Therefore, the impugned summons cannot be set aside. The petitioner is required to appear and answer such questions and give such information regarding himself which do not tend to incriminate him. **In our view the petitioner is also not entitled to assistance of a lawyer at the time of recording of his statement under Section 108 of the Customs Act**. (emphasis supplied)

21. Perusal of the above case law reveals that presence of a lawyer cannot be allowed at the time of examination of a person under the Customs Office. The petitioner in the present case has been summoned by the Officers under GST Act who are not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in **Pool Pandi"s case (Supra)**. So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/ investigating officer has a right to use any method which is not approved by law to extract information from a witness/ suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action. The order dated 20.09.2019 which is against the judgment passed by Hon'ble Supreme Court in **„Pool Pandi vs. Superintendent, Central Excise and Ors. 1992 AIR 1795 (SC)",** therefore, stands modified and it is clarified that presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by the officers of the respondent.

22. The application stands disposed of accordingly.

BRIJESH SETHI, J

NOVEMBER, 06, 2019

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16698 of 2019

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M/S ALFA ENTERPRISE
Versus
STATE OF GUJARAT

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Appearance:
MR VARIS V ISANI(3858) for the Petitioner(s) No. 1
MS MAITHILI MEHTA, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
Date : 01/10/2019

The Gujarat High Court has observed that, the order of attachment of bank account is prima facie without the authority of law and the order of blocking of credit is not backed by any statutory provision.
While allowing the petition, the Court also observed that, "the exercise of powers under section 83 of the CGST Act, whereby the bank account of the petitioner has been attached is totally without any authority of law. The order of attachment of bank account is prima facie without the authority of law and the order of blocking of credit is not backed by any statutory provision, the respondents are directed to forthwith withdraw the attachment of the bank account of the petitioner with the IDBI Bank".

ORAL ORDER
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this petition, the petitioner seeks a direction to the respondent authorities to forthwith withdraw bank attachment made on the IDBI Bank Limited, Prahladnagar Branch, Ahmedabad and Current Account No.1024102000009874, release of godown/office and to unblock credit under section 83 of the Central Goods and Services Tax Act, 2017.

2. Since the order of attachment of the bank account as well as godown/office and blocking of credit were not placed on record and were not made available to the petitioner, this court has perused the original file produced by the learned Assistant Government Pleader for the perusal of this court.

3. Upon a query raised by the court, the learned Assistant Government Pleader, under instructions, has stated before this court that the order of attachment under section 83 of the CGST Act attaching the bank account of the petitioner has not been communicated to the petitioner. Upon perusal of the order of attachment dated 3.8.2019 issued under section 83 of the CGST Act, it is found that the same has been issued by the Assistant Commissioner of State Tax, Unit-21, Ahmedabad in respect of proceedings launched against the petitioner under section 83 of the CGST Act.

4. Section 83 of the CGST Act provides for provisional attachment to protect revenue in certain cases and lays down that where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account belonging to the taxable person in such manner as may be prescribed. Thus, section 83 of the CGST Act empowers provisional attachment of property, subject to pendency of the proceedings under sections 62, 63, 64, 67, 73 or 74 of the CGST Act. The same does not contemplate, and rightfully so, provisional attachment pending any proceeding under section 83 of the CGST Act, inasmuch as, there can never be any proceeding pending under section 83 of the CGST Act as the same only empowers the State authorities to provisionally attach the property of a taxable person, subject to the provisions of section 83 being satisfied.

5. Under the circumstances, it appears that the exercise of powers under section 83 of the CGST Act, whereby the bank account of the petitioner has been attached is totally without any authority of law.

6. Insofar as blocking of the credit of Rs.6,63,51,380/- available in the electronic credit ledger of the petitioner on 1.8.2019 by the respondent authorities by making computer entry is concerned, upon a query by the court, the learned Assistant Government Pleader even with the assistance of the instructing officer is not in a position to point out any provision of law which empowers the respondent authorities to block the credit.

7. Insofar as the attachment of godown/office is concerned, the learned Assistant Government Pleader has submitted that the respondents would open the seal.

8. Having regard to the fact that the order of attachment of bank account is prima facie without authority of law, as discussed hereinabove, and the order of blocking of credit is not backed by any statutory provision, the respondents are directed to forthwith withdraw the attachment of the bank account of the petitioner with the IDBI Bank, Prahladnagar Branch bearing Current Account No. 1024102000009874 and to unblock the credit of Rs.6,63,51,380/- available in the electronic credit ledger forthwith.

9. Stand over to 17th October, 2019. Direct service is permitted today.

(HARSHA DEVANI, J)
(SANGEETA K. VISHEN,J)

Z.G. SHAIKH

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COMMERCIAL NEWS

CA RibhavGhiya
Jaipur

- **BUDGET 2020: FINANCE MINISTRY INVITES SUGGESTIONS FROM INDUSTRY AND TRADE ASSOCIATIONS FOR CHANGES IN DIRECT AND INDIRECT TAXES**

The Ministry of Finance has invited Suggestions from the Industry and Trade Associations for Budget 2020-21 regarding changes in direct and indirect taxes.
The Ministry has invited suggestions for changes in the duty structure, rates and broadening of tax base on both direct and indirect taxes giving economic justification for the same.

The Finance Ministry said that, suggestions and views may be supplemented and justified by relevant statistical information about the production, prices, revenue implication of the changes suggested and any other information to support your proposal. The request for correction of inverted duty structure, if any for a commodity, should necessarily be supported by value addition at each stage of manufacturing of the commodity. It would not be feasible to examine suggestions that are either not clearly explained or which are not supported by adequate justification/statistics.

The Ministry asked to sent suggestions and views may be emailed, as a word document in the form of separate attachments, in respect of Indirect Taxes [Customs and Central Excise [for commodities outside GST)] to budget-cbec@nic.in and Direct Taxes to ustp13@nic.in. Hard copies of the Pre-Budget proposals/ suggestions relating to Customs & Central Excise may be addressed to Shri G. D. Lohani, Joint Secretary (TRU-I), CBIC, while the suggestions relating to Direct Taxes may be addressed to Shri K. C. Varshney, Joint Secretary, Tax Policy and Legislation (TPL-I), CBDT. It would be appreciated if your views and suggestions reach us by the 21st of November 2019.
Reported by www.taxscan.in on 12th November, 2019

- **GSTR-9, GSTR-9C GETS SIMPLIFIED FURTHER, SUBMISSION DATES EXTENDED**

NEW DELHI: The Government has to extend the due dates of filing of Form GSTR-9 (Annual Return) and Form GSTR-9C (Reconciliation Statement) for Financial Year 2017- 18 to December 31, 2019 and for Financial Year 2018-19 to March 31, 2020. It has also decided to simplify these forms by making various fields of these forms as optional.

The Central Board of Indirect Taxes & Customs (CBIC) on Thursday notified the amendments regarding the simplification of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) which inter-alia allow the taxpayers to not to provide split of input tax credit availed on inputs, input services and capital goods and to not to provide HSN level information of outputs or inputs, etc. for the financial year 2017-18 and 2018-19.

CBIC expects that with these changes and the extension of deadlines, all the GST taxpayers would be able to file their Annual Returns along with Reconciliation Statement for the financial years 2017-18 and 2018-19 in time.

"Since the returns were not simplified, the extension is not a surprise. However, frequent extensions and delay in non-simplification has been a let down for businesses. Our sense is that businesses are ready to comply with GSTR-9 so they can move on and prepare for the new simplified return filing system," said Archit Gupta, Founder and CEO, ClearTax. Earlier the last date for filing of GSTR-9 and GSTR-9C for Financial Year 2017-18 was November 30, while that for Financial Year 2018- 19 was December 31.
Reported by www.economictimes.indiatimes.com on 15th November, 2019

- **WHISTLEBLOWERS ACCUSE INFOSYS CEO SALIL PAREKH OF 'UNETHICAL PRACTICES' TO BOOST PROFIT**

An anonymous whistleblower letter has alleged that Infosys Ltd. Chief Executive Officer Salil Parekh dressed up the company's books—accusations that could plunge the software services provider into its second leadership-related crisis in a little over two years.

The letter from a group of "Ethical Employees" accused Parekh of unethical practices in "recent quarters" to boost short-term revenue and profits, according to a copy published by Deccan Herald newspaper on its website. Employees were asked not to fully recognise costs like those for visas of employees to improve profits, according to the letter dated Sept. 20 addressed to the company's board and the U.S. Securities and Exchange.

An Infosys spokesperson confirmed having received the letter and its contents to BloombergQuint. In a separate response to emailed queries, the company said "whistleblower complaint has been placed before the audit committee as per the company's practice and will be dealt with in accordance with the company's whistleblowers policy".

Emailed queries to Parekh and Chief Financial Officer Nilanjan Roy, also named in the letter, and didn't elicit a response.

The allegations come two years after Vishal Sikka quit as CEO following a founder-led boardroom coup. He, too, faced whistleblower allegations and corporate governance concerns stemming from his salary and acquisitions and how much Infosys paid for them. Parekh's appointment had ended the uncertainty, and he led a revival by focusing on large deals and digital services.

The whistleblowers allegations, however, call some of that record into question. The letter alleged:

- Putting pressure on whistleblowers not to recognise reversals of $50 million of upfront payment in the quarter ended September.
- Revenue recognition in large contracts involving Verizon Communications Inc., Intel Corp., the company's joint venture in Japan as well as acquisition of Stater NV, a a subsidiary of ABN AMRO Bank NV, were "forced" and not as per accounting standards.
- Approvals for large deals have irregularities and the chief executive is bypassing reviews and approvals by instructing sales teams not to send mails for the same.
- Parekh and Chief Financial Officer Nilanjan Roy had asked the whistleblowers to show "more profits in treasury operations" by raising risks and changing policies.

The whistleblowers claim they have emails and voice recordings of the conversations on the matters discussed.

While on certain matters, the auditors refused to sign off because of which certain "issues" were postponed, matters relating to large deal information were asked to be withheld from the auditors. The whistleblowers said they were asked not to make specific disclosures in the company's annual report and share only "good and incomplete information" with investors and analysts.

Deloitte Haskins & Sells LLP is the company's statutory auditors, while EY LLP is its internal auditor. Its board audit committee is led by D. Sundaram as chairperson, and comprises financial expert Punita Kumar-Sinha and Roopa Kudva.

Kiran Mazumdar-Shaw, founder of Biocon Ltd. and an independent director on Infosys board who was part of the panel that selected Parekh, told BloombergQuint, "We will follow due process which will be according to the company's whistleblower policy."
bloombergquint.com on 21st October

- **TAX DEPARTMENT WANTS TO IMPOSE 18% GST ON CXO SALARIES**

MUMBAI: The tax department has started questioning top companies and banks if they were passing on some of the common costs like salaries of chief executives to their branch offices.

The department wants companies to proportionately distribute common costs from head office to branch offices and treat this as a supply. Once this is treated as a supply, 10% of it has to be added to the cost and 18% Goods and Services Tax (GST) could be levied on the total amount.

Some of the top companies headquartered in Pune, Mumbai and New Delhi have started receiving queries from the tax department on cross-charging. Under the GST framework, nothing is for free, including some of the common functions carried out at a company's or a bank's head office like human resource, IT functions, audit and legal fees paid.

"The interpretation adopted by the tax authorities is that an employee of an organisation should be considered as an employee of a particular office only (not the organisation as a whole) for GST-related purposes. Such an interpretation is legally and factually incorrect," said Rohit Jain, partner with law firm ELP.

So, for instance, if the chief executive officer of an organisation earns Rs 5 crore per annum, that amount would become a cost for the head office as that's where the executive is located. The tax department wants the organisation to cross-charge this cost proportionately to other branches and pay 18% GST on it. A part of Rs 5 crore will be passed on to other branches in different states and treated as supply of services from the head office to the branch offices.

Tax experts say that confusion around cross-charging could mean actual cost for the companies. In most of the organisations, this would have been ultimately revenue neutral but there is a catch. "Few sectors such as hospitals and power where no output GST is payable and in cases where the time period to avail credit has lapsed, this GST liability will lead to a significant cost," Jain said.

"Tax authorities have started issuing preliminary notices to companies and sought details about the methodology followed for distribution of such credits, though in either of the methods, the GST credit gets distributed as per the intent of the law. The taxpayer has been contending that the services are being consumed by the head office for carrying out its support functions and therefore require issuing a supply/crosscharge invoice," said RiteshKanodia, partner at Dhruva Advisors.

Reported by www.economictimes.indiatimes.com on 14th November, 2019

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- **The Blocking/Unblocking of E-Way Bill generation**

E-Way Bill system will have a new feature of blocking/unblocking of the taxpayers from next month, as per the rule. That is, if the GST taxpayer has not filed Return 3B for the last two successive months in GST Common portal, then that GSTIN will be blocked for generation of e-way bill either as consignor or consignee. Now, this month, the tax payer will be alerted with a cautionary message while generating the eWaybills, in case Return 3B for the past 2 successive months of the consignor/consignee GSTIN has not been filed. However, from next month onwards, such GSTINs will be blocked. On Filing of the Return-3B in the GST Common Portal, the GSTIN will get automatically updated as 'Unblock' within a day in the e-Waybill system and the tax payer can continue with e-way bill generation without any cautionary message. However, if the status is not updated in e-waybill system, then the taxpayer can do it by going to the e-Waybill portal

and clicking on option Search-> Update Block Status. Enter the GSTIN, followed by the CAPTCHA and click on GO.

As shown in the above figure, the GSTIN and the blocked status will be displayed. The user must now click on the button: 'Update Unblock Status from GST Common Portal'. This will fetch the status of filing from the GST Common Portal and if filed, the status in e-Waybill system will subsequently get updated.

Racket of issuance of fake invoices involving GST of Rs 22 crores busted

Central GST Delhi North Commissionerate has unearthed a racket of issuance of fake invoices without actual supply of goods and services. Shri Naveen Mutreja and Shri Keshav Ram have been arrested in this matter and remanded to judicial custody for 14 days by the Chief Metropolitan Magistrate (CMM), New Delhi at Patiala House Courts. The accused were found to be operating 42 fake firms created to facilitate fraudulent Input Tax Credit (ITC), thus defrauding the Exchequer. Prima facie fraudulent ITC of about Rs 22 crores has been passed on using invoices involving an amount of Rs 150 crores.

The modus operandi of the two accused, inter alia, involved obtaining GST registration of fake firms across Delhi NCR, Haryana, Rajasthan and Uttar Pradesh using documents of unsuspecting individuals and generating good-less invoices and e-way bills of these firms from a premise in Karol Bagh, Delhi. On preliminary scrutiny it appears that there is no nexus between inward and outward supplies of the errant firms. Further, the said firms have passed on fraudulent ITC to a range of buyers who have availed the same to discharge their GST liability on outward supplies, thus defrauding the Exchequer.

Therefore, the two accused have committed offences under the provisions of Section 132(1)(b) and (c) of the CGST Act 2017, which are cognizable and non-bailable under Section 132(5) being punishable under Section 132(1)(i) of the said Act. Accordingly, Shri Naveen Mutreja and Shri Keshav Ram were arrested on 14.11.19 and have been remanded to judicial custody for 14 days on 15.11.2019 by the CMM, New Delhi at Patiala House Courts. Investigations are underway to identify the key beneficiaries of this racket and to recover GST involved.

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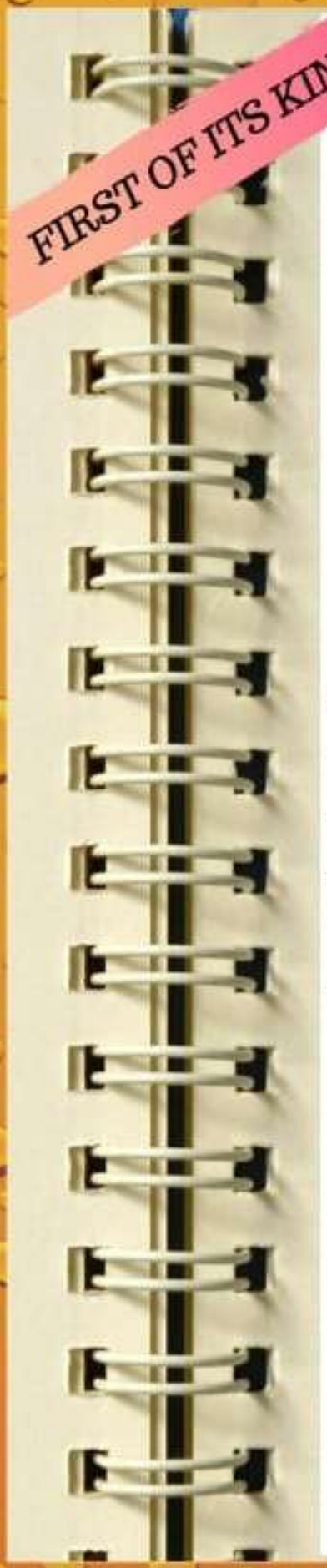

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