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NEWSLETTER

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Compiled By: CA. Arun Bhargav
CA. Mohit Pathak

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Corporate Laws

Latest update, New and Judgments

1. **An award couldn't be set aside merely on ground of non-existence of arbitration clause in agreement: HC**
   Executive Engineer, Rural Works Department v. Anil Sharma - *[2020] 120 taxmann.com 421 (Jharkhand)*

Under an agreement, the claimant-respondent was awarded work by the appellant-department for improvement of roads, construction of drains and embankments of road, etc. Because of disturbances in the smooth progress of work like land disputes, heavy rains, and lack of laborers, work allotted was not likely to be completed within a stipulated period and, therefore, the appellant, on request of the respondent, allowed an extension of time.

The claimant-respondent, investing his own money, purchased required bitumen and completed work allotted within an extended period but the appellant-department did not issue a completion certificate and did not release payment on basis of final bills raised by claimant-respondent.

On claimant's application under section 11(6) of the Arbitration and Conciliation Act, 1996, the designated court-appointed sole arbitrator who held that claimant's claim for compensation in respect of loss and damages suffered by him during the idle period was legitimate and in that respect, awarded a sum as compensation amount paid by him to another contractor for hire and purchase of tools, machinery and equipment and a further sum towards the escalation of price of bitumen.

On being aggrieved, the appellant challenged the said order of arbitrator on the ground that he did not have any jurisdiction in absence of any express terms in agreement between parties for referring the matter for arbitration and also in absence of any clause for price escalation and compensation for the delay, idling charges and hire charges, awarding of different amount of compensation under such heads was beyond terms and conditions of the agreement.

Since the objections of the appellant against prayer for appointment of an arbitrator in a matter of an application under section 11(6) of the Act were not accepted by

the designated Judge and the appellant even remained unsuccessful in review application filed by it challenging said order, impugned arbitral award could not be set aside on the ground of non-existence of arbitration clause in an agreement between parties as arbitral tribunal on an appreciation of evidence on record had reasonably held that work suffered apparently on account of lack of promptness on part of concerned officers of the appellant to resolve a dispute, it was well within his jurisdiction to award compensation for the delay, idling charges and hire charges even though there was no specific term in that respect in an agreement entered into by the parties.

2. **Govt. amends Arbitration Law; Now Courts can grant unconditional stay on arbitral awards induced by fraud**
   Ordinance No. 14 of 2020, Dated 04.11.2020

   The Government has made amendment to the Arbitration law through the Ordinance route. The objective of the amendment is to ensure that stakeholder parties can seek an unconditional stay on enforcement of arbitral awards in cases where the arbitration agreement or contract is induced by fraud or corruption. The President has promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2020 on November 04, 2020 whereby amendment has been made to the Section 36 of the Act which deals with the enforcement of arbitral awards.

   The Ordinance introduces a new proviso to the Section 36 which states that if the Court is satisfied that a prima facie case is made out that the arbitration agreement or contract which is the basis of the award was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge made to the award under Section 34 (application for setting aside arbitral award).

   Further, it has been clarified that the new amendment would apply to all Court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015. The amendment is retroactively effective from October 23, 2015.

3. **SEBI specifies a list of documents required at the time of entering into a debenture trustee agreement**
   Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218, Dated 03.11. 2020

   In order to secure the interest of investors in listed debt securities and to enable debenture trustee(s) to perform their duties effectively, the SEBI has specified the list documents and details which are required at the time of entering into debenture trustee agreement. Now, an issuer is required to disclose a proposal to create security and type of charge in the offer document or private placement memorandum or information memorandum. Moreover, the debenture trustee shall enter into a written agreement with the issuer before the debenture trustee agrees to act as a debenture trustee of the debt securities.

   Furthermore, to enable the debenture trustee to exercise due diligence with respect to the creation of security, the Issuer at the time of entering into a debenture trustee agreement shall provide necessary information to the debenture trustee.

4. **Real Estate Appellate Tribunal should be made full functional with financial autonomy, rules High Court Orissa**
   Bimalendu Pradhan v. State of Odisha - *[2020] 121 taxmann.com 16 (Orissa)*

   Due to the non-functioning of the Real Estate Appellate Tribunal, appeals from the order of RERA were not adjudicated and writ petitioners were facing difficulties. The case of writ petitioners was that benefits/remedy under the statute could not be availed by petitioners as a consequence of which they had been deprived of their statutory rights.

   Thereafter, the respondent-State submitted that Chairperson of Tribunal and two other members had already been appointed, but it could not be able to function as financial autonomy had not been given to it; proposal for the creation of different posts in Tribunal had not been done and, as such, discussion in high-level committee meeting had already been held to that extent, but because of intervening Covid-19 pandemic, there was some delay in implementation thereof. However, the grievance of writ petitioners would be meted out in the event Real Estate Appellate Tribunal would be made fully functional with financial autonomy.

Keeping the above aspects in view, appropriate directions were issued and the opposite party-State should make all endeavor to ensure compliance of each of the directions within fifteen days to enable Real Estate Appellate Tribunal to function smoothly in the interest of litigants, failing which it would be construed as contempt of Court.

5. **Transaction of sale of assets of co. carried out only to whisk away assets by co. wasn't allowed to be registered: HC**
Reserve Bank of India v. JVG Finance Ltd. - *[2020] 121 taxmann.com 18 (Delhi)*

The Applicant purchased certain lands from five companies of JVG Group through one 'V' who was authorized signatory and ex-director of JVG Group of companies during the period from May 2002 to July 2002. The Entire consideration had been paid in cash allegedly to 'V' and the agreement to sell was duly registered with appropriate authorities during that period.

Thereafter, the seller companies had gone into liquidation and on 03-9-2002, the court directed that prior to affecting any sale, alienation, transfer, or creation of any third party interest in any assets of said companies, the permission of the court should be obtained. Hence, the applicant filed an application for a grant of permission to the applicant to complete the process of registration/execution of sale deeds.

As a result, the Court appointed a one-man committee (Thareja Committee) for verifying the claim of the applicant and the said Thareja committee report concluded that relevant documents, namely, cash book, ledger, etc., had not been placed on records and transaction lacked bona fide.

Further, SFIO also investigated the matter and found that 'V' was never authorized to effect said transaction on behalf of five companies, and secondly, he had acted fraudulently and had sought to siphon off funds of said companies by indulging in those transactions. Since on facts it was clear that said transaction was carried out only to whisk away valuable assets of JVG Group of companies which at that time were likely to go under winding up proceedings, an application filed by the applicant was liable to be dismissed.

6. **Due date of defaulting LLPs to file belated documents under LLP settlement scheme extended: MCA**
   General Circular No. 37/2020, Dated 09.11.2020

   The Ministry of Corporate Affairs had introduced the LLP Settlement Scheme, 2020 with a one-time condonation of defaults in regulatory filings along with a reduction in the applicable late fees. Because of the large scale disruption caused by the COVID-19 pandemic and after due consideration, the MCA has decided to extend the date (from August 31, 2020, to Nov 30, 2020) on applicability to defaulting LLPs to file belated documents under the Limited Liability Partnership Scheme, 2020.

   In addition to the above, MCA has clarified that if a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of the financial year but not later than 30th November 2020, the same shall not be deemed as non-compliance.

7. **Corporate debtor to be liquidated when CoC in their commercial wisdom resolved to liquidate with 100% voting share**
   Sunil S. Kakkad v. Atrium Infocom (P.) Ltd. - *[2020] 121 taxmann.com 46 (NCL-AT)*

   The Corporate Insolvency Resolution Process (CIRP) was triggered against corporate debtor company and during CIRP, Insolvency Resolution Professional (IRP) formed the Committee of Creditors (CoC). The CoC passed a resolution plan that corporate debtor company was not working for the last five years and there was no possibility/hope of resolution plan; therefore it has decided to liquidate corporate debtor. Moreover, the CoC with 100 percent vote resolved to apply for liquidation of the corporate debtor.

   Based on the unanimous decision of CoC, IRP applied for liquidation of the corporate debtor, and the same was allowed by Adjudicating Authority. Since CoC in their commercial wisdom with 100 percent voting share resolved for liquidation of the corporate debtor company, there was no illegality in the decision of CoC in liquidating corporate debtor without inviting EoI for submission of a resolution

plan. As a result, the impugned order passed by Adjudicating Authority in liquidating corporate debtor company was not to be interfered with.

8. **No abuse of dominance by OP-company due to presence of other players in market: CCI**
SOWIL Ltd. v. Hexagon Geosystems India (P.) Ltd. - *[2020] 121 taxmann.com 94 (CCI)*

In the given case, the informant was a small scale company empaneled by the Ministry of Road Transport & Highways for providing engineering consultancy services for highway development works, railway works, bridges, structures, tunneling, building, water resources, and buildings and OP was a subsidiary of a foreign company, i.e., Hexagon AB, Sweden and was inter alia engaged in the distribution of Safe Rail System, a ground-penetrating radar ('GPR') system for rail track ballast health monitoring manufactured by IDS, Italy (a subsidiary of Hexagon AB, Sweden).

The Informant stated that the Ministry of Railways, Research Designs and Standards Organization ('RDSO') invited sealed tenders for Project of Monitoring the health of ballast bed with help of GPR technology. As the 'Safe Rail system' of IDS marketed in India by OP was the only GPR system in the world that met technical eligibility criteria of aforementioned tender and as required by RDSO, the informant asked OP to give a quotation of SRS Safe Rail System with GPR for purpose of bidding in RDSO tender

As a result, OP quoted a price that was 200 percent higher than the price given by IDS elsewhere in the world. The Informant filed applicant under sections 3 and 4 of the Competition Act alleging that OP had abused its dominant position by charging a profit margin of 200 percent and placing a silent embargo for international users of a system to partner Indian companies for work in relation to impugned tender, thereby creating a non-competitive environment for said tender/bid in violation of provisions of section 3 and section 4 of the Act.

However, the Informant alleged that various international companies using IDS's Safe Rail system had been advised by IDS not to participate in this tender else they would lose IDS support for all their works in the future and that said directive had

been given by IDS to leverage its dominant position and enable OP to be a successful bidder in the RDSO tender and to keep the service rate abnormally high.

In view of market structure and the number of global players operating in the market, OP did not appear to command any market power and, therefore, it was unnecessary to delve further into alleged abusive behavior in terms of provisions of section 4 of the Act. Therefore, the information filed by the informant was to be closed.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **GST Revenue Collections for the month of October, 2020 is Rs. 1,05,155 crores**
   Press Release Dated November 1, 2020

   The gross GST revenue collected in the month of October, 2020 is Rs.1,05,155 crores. Out of which CGST is Rs.19,193 crores, SGST is Rs.25,411 crores, IGST is Rs.52,540 crores (including Rs.23,375 crores collected on import of goods) and Cess is Rs.8,011 crores (including Rs.932 crores collected on import of goods).

   The revenues for the month are 10% higher than the GST revenues in the same month last year. During the month, revenues from import of goods was 9% higher and the revenues from domestic transaction (including import of services) are11% higher that the revenues from these sources during the same month last year.

   The total number of GSTR-3B returns filed for the month of October upto 31stOctober, 2020 is Rs.80 lakhs.

2. **Food supplied to Govt. / Pvt. Hospitals on outsourcing basis is chargeable @ 5% GST: Telangana AAR**
   Authority for Advance Rulings, Telangana Navneeth Kumar Talla, In re - *[2020] 120 taxmann.com 453 (AAR- TELANGANA)*

   The assessee was engaged in the supply of food to the patients of the hospital on out sourcing basis.The consideration for such supply was not received from the consumers directly but received from the hospital on monthly basis on the coupons collected. The assessee sought an advance ruling to determine whether GST would be chargeable on food supplied to hospitals on outsourcing basis.

   The Authority for Advance Ruling ('AAR') observed that Health care services provided by the clinical establishments are exempt from GST. Health care services will include food supplied to the patients. If such food prepared by the canteens run by the hospitals then such supply would be exempt and no ITC shall be claimed in

respect of the inputs received. If such food would be outsourced by the Hospitals to outdoor caterers then the supplier shall charge tax as applicable and hospital shall not be eligible for claim the input tax credit.

Therefore, it was held that GST would be levied on supply of food to the patients of the hospital on out sourcing basis.

3. **Authority can't issue confiscation notice, if assessee complied with High Court order for release of detained goods**
ABB India Ltd, In re - *[2020] 120 taxmann.com 302 (Gujarat)*

The competent authority detained goods as well as vehicle of assessee and passed the order to impose tax and penalty upon it. A writ petition filed by assessee and the honorable High Court passed ad-interim order. It was directed that assessee had to deposit tax amount with department and furnish bank guarantee for penalty amount and further directed Competent Authority to release goods and vehicle on deposit of requisite amount and penalty. Assessee fully complied with order of HC.

After passing of order by HC, Competent Authority issued a notice u/s 129(6) of Central Goods and Services Tax Act on ground that assessee ought to have deposited amount towards tax and penalty within 14 days and failure to deposit such amount would entail consequence of notice. The assessee further filed petition before the High Court.

The High Court observed that there was no question of looking into Section 129(6) of CGST Act specifically when the court had passed a specific order. Therefore, the High Court quashed and set aside the impugned notice issued to assessee.

4. **Arrest memo is mandatory & key safeguard against illegal arrest after completion of search and seizure: Gujarat - HC**
Vimal Yashwantgiri Goswami, In re - *[2020] 121 taxmann.com 3 (Gujarat)*

The petitioner was the proprietor of a Proprietary concern. It was engaged in the business of trading and/or supply of the stainless steel and scrap thereof. The authority visited the premises of the petitionerto carry out search proceedings and issued a summon to appear before the authority with the provisional balance sheet. The petitioner did not appear and the authority completed the search and seized the

purchase and sale files, laptop, etc. The petitioner filed writ petition apprehending that if they approached the authority, they would be arrested u/s 69 of the Central Goods and Services Tax Act.
The department submitted that that the power to arrest vests with the authorities and therefore, once the power and jurisdiction of a concerned authority was established, the writ of prohibition ought not to be granted.

The Honorable High Court observed that unlike the powers of the police to lodge and register F.I.R. at the police station, the authorized officer under the GST can only lodge a complaint in writing before the Court concerned. A person arrested would be produced before the Magistrate and the Magistrate may thereafter remand the arrested person to judicial custody after looking into the arrest memo.

There is no doubt that the arrest memo is a key safeguard against illegal arrest and a crucial component of the legal procedure of arrest. Full and consistent compliance is a responsibility of both, the officers of the GST as well as the Magistrate. The GST department shall prescribe a standardized format for the arrest memo. The format must contain all the mandatory requirements and necessary additions. The gist of the offence alleged to have been committed must be incorporated in the arrest memo. It would be the duty of the concerned Magistrate to check that an arrest memo has been prepared and duly filled. If Magistrate finds that arrest memo is absent or improperly filled or bereft of necessary particulars, then Magistrate should decline production of arrested person. Therefore, it was held that communication of the grounds of arrest to the accused and preparation of arrest memo would be mandatory.

5. **Refund allowed to assessee after wrong reversal of proportionate credit on exempted services: Chennai- CESTAT**
In Rockey Marketing (Chennai) (P.) Ltd., In re - [2020] 121 taxmann.com 51 (Chennai - CESTAT)

The applicant had entered into a Business Solutions Agreement and Business Promotion Agreement with M/s. Amazon Ltd. Amazon was providing Business support service ('BSS') and warehousing services to the applicant and collected service tax. The applicant had to sell different products at the prices fixed by M/s.

Amazon and the profit forgone by the applicant was compensated by M/s. Amazon. The applicant was paying service tax on the compensation received by them. The applicant utilized input services provided by M/s. Amazon for engaging in trading as well as providing taxable service.

The department issued notice claiming that, they were not eligible to avail credit on such service tax paid to M/s. Amazon and therefore they reversed the credit by making cash payment along with interest for the input tax credit availed by them. Since the applicant had utilized the input services for trading (exempted services) as well as taxable output services, they opted for reversal of proportionate credit. As the credit reversed was in excess of the proportionate credit to be reversed, they filed refund on account of excess credit wrongly reversed but it was rejected. The applicant filed appeal to CESTAT.

The CESTAT observed that the applicant had not followed the procedure of intimating the department with regard to option exercised. However, procedural lapse is condonable and denial of substantive right is unjustified. It was held that the applicant would be eligible for refund after reversal/paying of proportionate credit on exempted services.

6. Service tax Audit can be done in GST regime: Delhi HC
In Vianaar Homes (P.) Ltd., In re - *[2020] 121 taxmann.com 54 (Delhi)*

The Petitioner was a company engaged in the business of construction of residential complexes. It claimed to be a regular and timely taxpayer under both the Service Tax and GST regime. It was never been subjected to any general or special audit by either the Service Tax or the GST authorities. On 21-1-2020, officers of Central Goods and Service Tax ('CGST'), Audit-II visited the business premises of the Petitioner three times, directed the production of certain documents and sought information in relation to the disputed period of service tax regime. The Petitioner challenged audit/verification, on the ground that the same was void ab initio, being wholly without jurisdiction as well as without any statutory or legal authority.

The High Court observed that the audit/verification is a process prior to adjudication. If audit/verification would lead to any tax not paid or short paid, the adjudicatory process would necessarily follow. The Petitioner was wrong in contending that no obligation or liability would have been accrued or incurred by it. The obligation to pay service tax arose at the time of rendering taxable service, which fell during the disputed period, at which time Chapter V was very much in force. The service tax was levied on providing of taxable service and to be paid by the assessee on self-assessment basis. Therefore, the liability and obligation to pay tax accrued in terms of the provisions of the Finance Act whenever a taxable event occurred. If service tax was not paid or short paid, the Service Tax Department would acquire the right to recover the said tax. The Honorable High Court also held that the audit/verification contemplated under Rule 5A is saved despite the repeal of Chapter V of Finance Act, 1994 in CGST Act as per the language used in the saving clause of the CGST Act as well as Sections 6 and 24 of the General Clauses Act.

7. **Madras HC permitted assesee to resubmit GST Returns**
   M/s Sun Dye Chem vs. Assistant Commissioner (ST) W.P. No.29676 of 2019

The petitioner was a partnership firm and filed returns for the period of August 2017 to December 2017 on the GST Portal. However, an inadvertent mistake was committed while filing Form GSTR-1 and an Intra-state sales was erroneously reported as inter-state sales due to which the CGST and SGST credit reflected in the IGST column of GSTR 2A of the customer. This was brought to the notice of Petitioner by customer when they faced difficulty in availing credits. The petitioner submitted the request for amendment on 12.08.2019 but rejected on the ground that the time limit for amendment extended to 31.03.2019 for the period of F.Y. 2017-18 was already lapsed. It filed writ petition before the Madras High Court.

The Honorable High Court observed that in the absence of an enabling mechanism, the assessees should not be prejudiced from availing credit that they would be otherwise legitimately entitled to. The error committed by the petitioner was an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.

Therefore, it was held that the petitioner would be permitted to re-submit the annexures to Form GSTR-3B with the correct distribution of credit between IGST, CGST & SGST.

8. **Rajasthan selected option-1 to meet the GST Implementation Shortfall through Special borrowing window**
Press Release Dated November 5, 2020

The Government of Rajasthan has communicated its acceptance for Option-1 out of the two options suggested by the Ministry of Finance to meet the shortfall in revenue arising out of GST implementation through Special borrowing window. The State has now joined 21 other States and 3 Union Territories who have opted for Option-1. The window has been operationalised now and the Government of India borrowed amount of Rs.12,000 crores on behalf of the States in two installments and has passed it on to 21 States and 3 Union Territories on 23.10.2020 and 2.11.2020. The next installment of borrowings is likely to be released on 9.11.2020.

9. **Maharashtra AAR issued guidelines for online e-hearing due to pandemic Covid-19**
Trade Circular ARA-01 T of 2020 Dated November 6, 2020

The Authority for Advance Ruling ('AAR') under Maharashtra GST Act, 2017 decided to initiate online e-hearing in respect of applications filed due to the current situation under pandemic of Covid-19.

The online process includes application filed along with payment of fees, conduct of E-hearing with the use of Microsoft Teams Application, etc. The submission of documents shall be made through the postal services or courier. The service of advance ruling order will be done through e-mail only. In case, it is necessary for hearing in person, the AAR officer may opt to conduct personal hearing by physical presence.

10. **<u>ST can't be imposed on Bariatric surgery as it is not a cosmetic surgery</u>**
<u>Mohak Hi Tech Speciality Hospital, In re - *[2020] 121 taxmann.com 120 (New Delhi - CESTAT)*</u>

The appellant was performing bariatric surgery on patients suffering from morbid obesity coupled with life-taking diseases like Type-II diabetes and hypertension. The department issued show cause notice to the appellant to answer why it did not pay service tax on the service provided through surgeries performed to cure obesity, which would be classifiable under cosmetic surgery or plastic surgery.

The appellant claimed that since bariatric surgery is performed to treat obesity and other associated medical ailments, it would not be a cosmetic surgery or plastic surgery and therefore it did not pay service tax. The department alleged that surgeries were performed with the sole motive of weight reduction and had no relation with reconstruction or restoring anatomy or function of body affected due to congenital defects, development abnormalities, degenerative diseases, injury or trauma. The appellant filed appeal before the CESTAT.

11. **<u>The CESTAT observed that Health Care Services provided by the Clinical Establishment were exempt from Service Tax.</u>**

The bariatric surgery is distinct from the plastic or cosmetic surgery. Also, the services proposed to be taxed were cosmetic surgery and plastic surgery undertaken to preserve or enhance physical appearance or beauty. The Medical Council of India also noted that bariatric surgery is not cosmetic or plastic surgery as the cosmetic surgery is done to improve the looks of a person, but bariatric surgery is done to correct the metabolic and hormonal state of the diseased body along with weight loss.
Therefore, it was held that bariatric surgery performed by the appellant on patients cannot be held as plastic surgery or cosmetic surgery and cannot not be subjected to service tax.

12. **Joy rides in amusement parks to be classified under Heading 99969, taxable at 18%- Guj AAR**
Superstar Amusement (P.) Ltd., In re - *[2020] 121 taxmann.com 133 (AAR - GUJARAT)*

The applicant was running Amusement park with the support of Ahmedabad Municipal Corporation. It installed more than 15 joy rides for children as well as for adults. It was charging fees at the entry point and giving right for unlimited rides within their premises to visitors, except 2-3 big rides in their premises and the visitor, who wanted to enjoy those 2-3 big rides, would be charged extra money for per ride enjoyment. The applicant was collecting GST and paying regularly to the Govt. on the monthly basis on the basis of circular that for every joy rides GST would be applicable @18% only which was 28% at initial level. The GST Department instructed them to pay GST on 18% for individual rides and 28% on initial entry fees. The applicant sought an advance ruling to determine what rate of tax would be applicable when they would be giving access/right to visitor for individual joy rides in their amusement park?

The Authority for Advance Ruling ('AAR') observed that GST rate on services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go-rounds, go- carting and ballet was 28 per cent but it was reduced to 18% on the recommendation of GST Council.

It was held that the HSC code for the supply of amusement services in Amusement Park like merry-go rounds and other rides shall be 99969/999691 & the applicable rate of GST would be 18%.

13. **Govt. issued clarification on 'Filing Quarterly Return with monthly GST Payment' for small taxpayers**
Circular No. 143/13/2020- GST Dated 10th November, 2020

Every registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the Quarterly Return Monthly Payment Scheme (QRMP) Scheme. This new Scheme will be effective from 01.01.2021. The facility to avail the Scheme on the common portal would be available throughout the year.

14. **Govt. amends CGST Rules; time and manner of filing GST returns prescribed**
Notification No. 82/2020- Central Tax Dated 10th November, 2020

The Government has made several amendments to CGST Rules. The form and manner of furnishing details of outward supplies, form and manner of ascertaining details of inward supplies and time limit manner of furnishing of GST return have been amended. Also, the new manner of opting for furnishing quarterly return is prescribed.

15. **Govt. notifies time limit for filing GSTR-1 w.e.f 01.01.2021**
Notification No. 83/2020- Central Tax Dated 10th November, 2020

The Government has notified the due dates for furnishing the details of outward supplies in FORM GSTR-1. These new dates shall be applicable w.e.f 01.01.2021. The monthly GSTR-1 shall be filed on or before 11th day of next month and quarterly GSTR-1 shall be filed on or before 13th day of next month after ending such quarter.

16. **Time limit of filing Form ITC-04 for period July to Sep 2020 extended to 30.11.2020**
Notification No. 87/2020- Central Tax Dated 10th November, 2020

The Government has extended the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th day of November, 2020.

17. **Threshold for mandatory E-invoice to be Rs. 100 Crores w.e.f 01.01.2021**
Notification No. 88/2020- Central Tax Dated 10th November, 2020

With effect from 01.01.2021, the notified registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 100 crore rupees shall prepare e-invoice in FORM GST INV-01 after obtaining an Invoice Reference Number. Currently, this threshold limit is 500 crore rupees.

18. Mere mismatch in GST Returns is not conclusive for any suppression of tax Appellate Authority - GST, ANDHRA PRADESH Sri Kali Krishna Industries, In re - *[2020] 121 taxmann.com 149 (AA - GST - AP)*

The assessing authority conducted scrutiny of GST returns of the appellant for the tax period from July, 2017 to June, 2018. On such scrutiny, the assessing authority noticed that the appellant's declared turnover in GSTR-3B did not equal to the GSTR-1. Accordingly, the assessing authority determined under declared tax. Aggrieved by the orders passed by the assessing authority, the appellant filed appeal to the Appellate Authority.

The appellant submitted that due to unknown problems in GSTN network software, it attempted to file GSTR-3B return for the month of October, 2017 but it automatically conceived 'NIL' return and it could not file any return for this month afterwards since no pending return shown in the GSTN login. But, without appraising these facts, the assessing authority unilaterally determined under declared tax merely basing on mismatch between GSTR-1 and GSTR-3B.

The Appellate Authority observed that mismatch reports is indicative in nature, but cannot be seen as final to conceive any suppression of turnover/tax. The assessing authority ought to have examined the appellant contentions submitted in response to the show cause notice, which assessing authority failed to do so. Therefore, the tax levied basing on mismatch reports annulled & the appellant contentions were found sustainable with reference to rational arguments and corroborative evidence.

19. Four persons arrested for fraudulent ITC by Directorate General of GST Intelligence, Mumbai
Press Release Dated November 11, 2020

Four persons arrested by the Mumbai Zonal Unit of Directorate General of GST Intelligence. The arrested persons, who are Director of M/s. Rane Mega structure Private Limited, Proprietor of M/s. ACS Hardware and Networking, Director/promoter of M/s Keshariya Metal Pvt. Ltd. & its group companies and Managing Director of M/s Shailaja Commercial Trade Frenzy Ltd. have availed and passed on fictitious Input Tax Credit amounting to a total of Rs. 408.67 Crore.

Income Tax

Latest Updates, News and Judgments

1. **No sec. 194C TDS if Co. has control over advertisement space with exclusive rights either to retain it or resell it**
Times VPL Ltd. v. CIT - *[2020] 120 taxmann.com 356 (Karnataka)*

Assessee was engaged in the business of printing and publishing newspapers. Assessee agreed to bulk purchase of advertisement space in a daily newspaper on a principal to principal basis by transfer of rights therein. Case of assessee was taken up for scrutiny and same was completed by accepting the return of income. Assessing Officer (AO) issued a notice proposing to rectify assessment order on account of failure by assessee to deduct TDS under Section 194C on cost of advertisement space. Assessee submitted that tax was not deductible on said payment. On being satisfied, AO did not pass any rectification order.

Thereafter, Commissioner of Income-tax (CIT) issued notice under section 263 on the ground that since tax wasn't deducted at source under section 194C, the amount required to be disallowed under section 40(a)(ia). He set aside the assessment order passed by AO.

On appeal, Karnataka HC held that in determining the question whether a contract constitutes one for work or is a contract for sale, intention and object of parties has to bear in mind, which is to be examined in the lights of terms of contact. In case of State of Andhra Pradesh v. Kone Elevators (India) Ltd. - [2005] 2005 taxmann.com 1542 (SC), the Supreme Court has held that the main object in a contract of sale is the transfer of property and delivery of possession of the property, whereas the main object in a contract for work is not the transfer of the property, but it is one for work and labour.

In assessee's case, it had entered into an agreement for bulk sale of advertising space with its holding company on a principal to principal basis by transfer of rights therein. Under the agreement, it purchases the advertisement space and exercises control over such space with the right to either sell it to others or retain it for itself. It is a transfer of advertising space to the assessee who in turn sells it to others. Thus, the aforesaid contract was a contract for sale and not a contract for

work. Accordingly, order passed by CIT and ITAT was set aside and it was held that the provisions of Section 194C were not applicable.

2. CBDT authorises CIT to condone the delay in filing audit report in Form No. 10BB Circular no. 19/2020, dated 03-11-2020

Section 10(23C) of the Income-tax Act, 1961 provides that if the total income of a fund, trust, institution, university or any other institution exceeds the maximum amount not chargeable without giving effect to provisions referred to in sub-clause (iv), (v), (vi) or (via), such entity shall get its accounts audited and furnish report in Form No. 10BB before the specified rate referred to in section 44AB.

As per Rule 12, said report is to be furnished electronically. Failure to file such report along with return of income results in dis-entitlement of such entity from claiming exemption under section 10(23C).

The CBDT has received representations stating that Form No. 10BB could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No 10BB may be condoned.

In order to expedite the disposal of such request, the CBDT has directed that:

a) The Commissioners of Income-tax (CITs) are authorised to admit the application for condonation of delay in filing of Form No. 10BB for years prior to AY 2018-19.
b) CIT will while entertaining shall satisfy themselves that the applicant was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed of by 31.03.2021.
c) In case there is delay of upto 365 days for Assessment Year 2018-19 or any subsequent Assessment Years, the CITs are authorized to admit such belated applications of condonation of delay under section 119(2) of the Income-tax Act, 1961 and decide on merits.

3. **Sum paid to clear encumbrance of inherited property to be treated as part of cost of acquisition**
N.Rajarajan v. ACIT - [2020] 120 taxmann.com 402 (Madras)

Assessee inherited certain land from his grandmother. Said land was mortgaged with the State Bank of India (SBI). Assessee claimed that certain part of settlement amount which was agreed in One Time Settlement (OTS) for clearing the dues of SBI was paid by him. He claimed that said amount forms part of the cost of acquisition or cost of improvement under Section 48 read with Section 49 and same was liable to be deducted from the sale value of the land while computing the capital gains tax liability. Assessing Officer (AO) disallowed assessee's claim.

On appeal, Madras HC held that the Hon'ble Supreme court in case of R.M. Arunachalam v. CIT [1997] 93 Taxman 423 (SC), held that by discharging the mortgage debt, heir who has inherited the property with the charge of mortgage, acquires the interest of the mortgagee on the property. Therefore, said payment has to be regarded as the cost of acquisition under Section 55(2). However, where the mortgage is created by the owner or heir himself after acquiring the property, payment to redeem the mortgage will not be considered as the cost of acquisition or improvement.

Therefore, if the encumbrance, whether by way of direct mortgage or as collateral security, has to be cleared off by the legal heir or person in whose favour the property has been settled, the amount paid to clear that encumbrance has to be treated as part of cost of acquisition or cost of improvement under section 48 read with section 49.

4. **Provision of up-linking and broadcasting programmes in electronic media does not amount to technical services**
CIT v. Media World Wide (P.) Ltd. - *[2020] 120 taxmann.com 423 (Calcutta)*

Assessee was engaged in the business of media broadcasting and telecasting. It entered into an Up-linking Service Agreement for Up-linking and Bandwith services. Another agreement was entered for Air Time service charges. While making payment to such parties, assessee deducted tax under Section 194C. A survey was conducted at assessee's office premises. All the documents and records called by Assessing Officer (AO) were supplied by assessee. AO passed

assessment order by holding that the payments made by assessee related to up-linking and downlinking charges, Bandwith and air time charges were in nature of fees for professional and technical services and covered by Section 194J. Assessee was held responsible for short deduction.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) held that the services of Up-linking, Band with Services, Air time services were related to broadcasting and telecasting which is covered specifically by the definition of "work" in Section 194C. Such services required use of sophisticated equipment for transmission of assessee's programmes and such equipments were made available to assessee for which payments were made after deducting TDS under section 194C.

On appeal, Calcutta HC held that the deductee had simply carried out a contractual work of up-linking and broadcasting programmes made or produced by assessee in the electronic media by permitting assessee to avail the benefit of requisite electronic set up against payment of a fee. It was purely contractual in nature and assessee had the right to use the set up as long as contact subsists. Facilities offered by deductee did not amount to providing 'technical services' and hence payments received from assessee couldn't be termed as 'fee for technical services'. Therefore, section 194J was not attracted. Further, the definition of "work" under Section 194C is inclusive and specifically includes broadcasting and telecasting. Assessee rightly deducted tax at source at the rate prescribed under Section 194C and there was no short deduction.

5. **Excise duty couldn't be included while valuing closing stock of goods manufactured and lying in stock**
CIT v. SPR Group Holdings (P.) Ltd. - *[2020] 120 taxmann.com 432 (Karnataka)*

Assessee was engaged in the business of manufacture of Indian Made Foreign Liquor. Assessee filed return of income wherein value of closing stock of finished goods did not include the excise duty leviable at the time of their removal from the premises. Assessment was completed accepting the valuation of closing stock. Subsequently, Commissioner of Income-tax (CIT) ordered revision of assessment by passing an order under Section 263. Assessing Officer (AO) was directed to

reframe the assessment after including the value of excise duty on the finished goods in the value of closing stock of finished goods and also apply the provisions of Section 43B. AO passed an order after complying with the directions issued by CIT.

Assessee preferred an appeal before ITAT. The ITAT held that the excise duty payable on goods manufactured but not removed and shown as closing stock of finished goods, need not be part of finished goods valuation. ITAT relied on the decision of Supreme Court in case of CCE v. Polyset Corporation [2000] 2000 taxmann.com 925 (SC), held that till date of clearance of goods, excise duty payable on such goods does not get crystallized and assessee cannot be said to have incurred the excise duty liability. Thus, in respect of the excise goods not being removed, no liability is accrued and there is no question of payment of excise duty.

On revenue's appeal, Karnataka HC held that section 16(3) of the Karnataka State Excise Act, 1965 provides that without the sanction of the State Government, no intoxicants shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed, unless the duty, if any, imposed under this Act has been paid or a bond has been executed for the payment thereof.

Thus, it was evident that assessee's liability to pay duty on the goods manufactured arises only at the time of removal of the same from its premises, be it distillery, or a warehouse or any other place of storage established or licensed under the Karnataka State Excise Act and not at any time earlier. Therefore, in respect of excisable goods manufactured and lying in stock, excise duty element was not to be included in valuation of closing stock.

6. **No refund of tax on prior period income which is declared in subsequent year: HC**
Visalakshi Anandkumar v. Assistant Commissioner of Income Tax - *[2020] 121 taxmann.com 97 (Madras)*

Assessee filed return of income admitting the income towards capital gains and paid the tax on the advice of the Auditor. Assessing Officer (AO) passed an assessment order which was confirmed by CIT(A). Assessee filed appeal against

such order before ITAT. ITAT held that the transfer as contemplated in Section 2(47) had happened in the earlier year, and not in the year in tax was paid.

AO while giving effect to the ITAT's order re-determined the income and passed the revised assessment order. Thereafter, assessee filed a Miscellaneous Petition and submitted that the disputed transfer had taken place in an earlier year and capital gains were assessable only in that year and not in the year in which he admitted the income and paid tax on it. Hence, voluntary admission made by him on wrong advice shall be ignored and taxes paid by him should be refunded.

On writ, the High Court held that though capital gains were not assessed in the relevant assessment year, assessee filed the returns on self-assessment and admitted the income and paid the tax with interest. Whether returns were filed for the admitted income on wrong advice or right advice, what was imperative was that payment of tax was mandatory.

Merely because, the returns for earlier year was accepted and an assessment order was passed without demanding the tax on capital gains, in view of Section 53-A of Transfer of Property Act, for the completed transaction, it will not entitle the assessee to avoid tax. There was a huge difference between tax planning and tax avoidance. Not paying the tax taking refuge under one pretext or other, is illegal and no law permits a citizen from sulking away from discharging the duty expected by law. If a person omits to perform the duty cast upon him or evades to pay tax, it is tax avoidance.

Assessee paid the admittedly payable tax. Even the setting aside of assessment order will not have any impact on the self-assessment made by the assessee. Merely because, there was an observation that the relevant year of assessment was earlier year, in view of Section 53A of Transfer of Property Act, it will not confer any legal right on the assessee to claim refund. Admittedly, the income was assessable to tax and it was not assessed due to the statement made by the assessee that the transfer was not complete in terms of the sale agreement. The assessee couldn't blow hot and cold or approbate and reprobate that what was not paid on due date couldn't be assessed at all.

7. A comparable Co. Couldn't be selected as comparable if it becomes AE of assessee during year
Lonsen Kiri Chemical Industries Ltd. v. DCIT - [2020] 120 taxmann.com 396 (Ahmedabad - Trib.)

Assessee was a joint-venture of two companies namely, Well Prospering Ltd, a Chinese company and Kiri Dyes and Chemicals Ltd, an Indian company which was entered as on 04-02-2010. The Indian company belongs to Dyestar Group of companies. In other words, the Dyestar group of companies became associated enterprises (AE) with effect from 04-02-2010.

During the year, assessee had entered into certain international transactions, export of finished goods, with its AE namely Dyestar Group and Well Prospering Ltd. Assessee while working out the ALP for the international transactions for the export of goods with its AE, i.e., Well Prospering Limited China had considered only the average price of the transactions carried out it with its non-AEs entities.

However, Transfer Pricing Officer (TPO) worked out revised ALP of the comparables after considering price charged from Dyestar Group before acquisition i.e. 04-02-2010 along with price charged from other non-AE. The assessee contended that for the AE namely Well Prospering Ltd, Dyestar group of companies being associated enterprise couldn't be considered as comparables. TPO rejected assessee's contention and made upward additions.

On further appeal, the Tribunal held that the Dyestar Group of companies became the AE in the year under consideration dated 04-02-2010. The provisions of section 92A(2) clearly state that a company shall become AE of another company at any time during the year under consideration if it meets the criteria provided under section 92A of the Act. Once the comparable company becomes the AE of the assessee in the year under consideration, then such company cannot be considered for the purpose of comparable.

8. **Loss on account of settlement of forward contracts allowable even if no actual payment was made**
CIT v. JSW Steel Ltd - [2020] 121 taxmann.com 39 (Karnataka)

Assessee's case was selected for scrutiny. Assessing Officer (AO) held that assessee had only entered into forward contracts with dealers for future purchase of plant and machinery at a specified rate to safeguard its interest from foreign exchange fluctuation. Accordingly loss claimed by assessee on account of settlement of forward contracts was disallowed by AO. CIT(A) upheld the order passed by AO.

Aggrieved by the order of AO and CIT(A) assessee preferred an appeal before ITAT. ITAT held that adjustment of liability had to be allowed even in a case where payment was not actually made. Such adjustment could be made only in the previous year in which foreign account was settled by assessee.

On revenue's appeal, the Karnataka HC held that Section 43A as it stood before the amendment required an assessee to revalue the foreign exchange liability at the end of every previous year and provide for increase or decrease as a result of foreign exchange fluctuation. Aforesaid adjustment was to be made even in a case where the payment was not actually made and adjustment have to be made based on the liability as on the last day of the previous year. Amendment made in the year 2002 inserted the requirement of making payment. However, under un-amended provisions, assessee was entitled to claim loss on account of settlement of forward contract. Accordingly, HC upheld the order passed by ITAT.

9. **Assessee controlled by Govt. & not having profit as dominant objective is eligible for sec. 11 exemption**
Karnataka Industrial Area Development Board v. ADIT - [2020] 121 taxmann.com 88 (Karnataka)

Assessee was a statutory body constituted under the Karnataka Industrial Area Development Act, 1966 (KIAD). Assessing Officer (AO) held that assessee had earned profits systematically over the last few years and activity of assessee amounted to commercial in nature as it was engaged in the sale of land and providing services. It was further held that the Director of Income-tax had cancelled the registration granted under Section 12A. Therefore, the income of

assessee could be computed under the normal provision of Act. AO denied exemption by invoking provisions of Section 2(15) and concluded the assessment.

On appeal, ITAT held that the primary and dominant object of the assessee was not profit-making. Assessee was established to promote the rapid and orderly development of industries in the State and to assist in the implementation of the policy of the Government within the purview of the KIAD Act, to facilitate in establishing infrastructure projects and to function on 'No Profit-No Loss' basis. It had also been held that the State Government acquires the land for the scheme of the assessee and hand over the same to the assessee after the acquisition for the development of the industrial area.

It was further held that the profit-making was not the driving force or objective of the assessee. The ITAT, therefore, recorded the conclusion that the assessee was engaged in the charitable activity through the advancement of an object of general public utility and therefore, concluded that the Proviso to section 2(15) did not apply to the case of the assessee. Therefore assessee was entitled to benefit of Section 11. On further appeal, Karnataka HC upheld the order passed by ITAT.

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KEY TEAM

Adv. Vivek Aggarwal
(Senior Partner)

CS. Kumkum Gupta
(Senior Partner)

Adv. Ritika Sharma
(Senior Associate)

Adv. Amar Phogat
(Senior Associate)

CA. Mukesh Aggarwal
(Senior Advisor)

Adv. Lata Goswami
(Advisor)

CA. Sachin Singhal
(Advisor)

Vinay Gupta
(Advisor)

CA Anjavi Pandya
(Advisor)

CA. Divya Madan
(Advisor)

CA. Vinit Agarwal
(Advisor)

CA. Arun Bhargav
(Advisor)

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CONTACT US

www.aalawcorp.com

Email: aalawcorp@gmail.com