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AUGUST 2024

Legal Updates, Insights and Summary Judgements

This update covers:

Insight and Foresight: our perspective on key global developments

Key Expectations from the 54th GST Council Meeting

With the 54th GST Council Meeting approaching on September 9, 2024, significant discussions are anticipated that could reshape India's GST framework.

Key focus areas include:

Rate Rationalization: Simplifying the tax structure to fuel growth and investment, with presentations led by the Group of Ministers.

Cross-Border Services: Clarifications on GST implications for foreign branches and long-standing service disputes.

Insurance Services: Addressing complexities around GST credits for hospital room rents and general insurance services for SEZ units.

This meeting will be pivotal in resolving critical taxation issues and setting the stage for further economic development.

To delve into the specifics, please review the information provided in the following link:

https://www.linkedin.com/feed/update/urn:li:activity:7231570683019882496

Google Found Guilty of Antitrust Violations

In a landmark ruling, U.S. District Judge Amit Mehta has determined that Google violated antitrust laws by leveraging its monopoly over online search to suppress competition and maintain its dominant market position.

Key Allegations:

Monopoly Practices: Google paid companies like Apple, Mozilla, and Verizon to set Google as the default search engine, stifling competition. Control Over Distribution: By monopolizing default search engine slots, Google ensured its dominance, stifling innovation and competition.

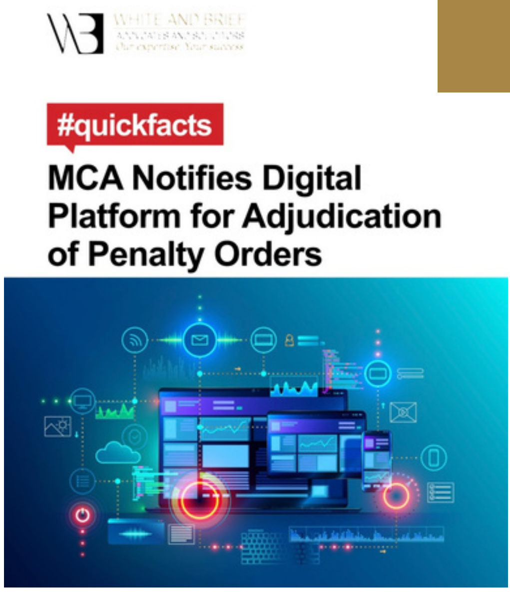
Implications for Google:

Advertising Rates: Google's monopoly allowed it to inflate advertising prices, significantly contributing to its $2 trillion valuation.
Remedy Phase: Potential remedies could include breaking up Google's business, nullifying exclusive contracts, or imposing regulations.
Appeals and Future Litigation: Google is expected to appeal, potentially taking the case to the Supreme Court.

Broader Impact:

Tech Industry: This ruling sets a precedent that could affect other major tech companies under investigation for similar issues. Market Innovation and **Competition:** Encourages companies to innovate and compete more effectively, fostering a competitive market environment. Industry-Wide Changes: Companies in agreements with Google may reconsider their strategies, potentially developing their own services.
To delve into the specifics, please review the information provided in the following link: https://www.linkedin.com/feed/update/urn:li:activity:7227292796909441024

MCA Launches Digital Platform for Penalty Adjudication



The Ministry of Corporate Affairs (MCA) has introduced new rules to digitize penalty adjudication, effective September 16, 2024.

Key features include:

Digital Platform: All activities, from notices to payments, will be online.
Issuance of Notices: Notices sent electronically to registered emails.
Online Submissions and Hearings: Conducted via virtual platforms.
Online Penalty Payments: Ensures quick and transparent transactions.

Benefits:

Efficiency: Faster case resolution.
Transparency: Clear record-keeping.
Accessibility: Easier process access.

Prepare by updating contact details, familiarizing with the platform, and ensuring compliance from the effective date.

To delve into the specifics, please review the information provided in the following link:
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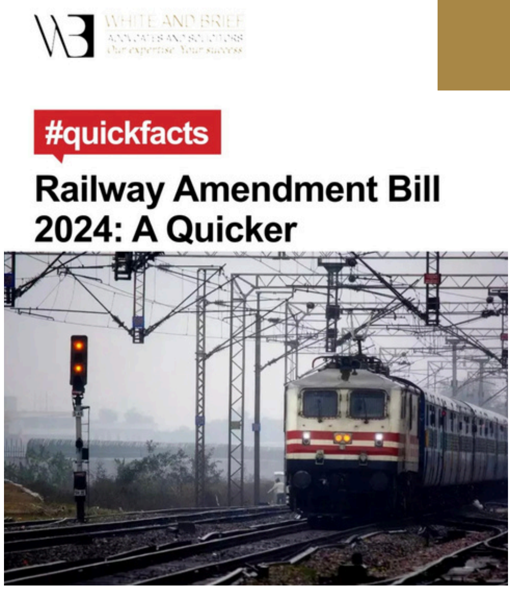
Quick Facts on the Railway Amendment Bill 2024

The Railway Amendment Bill 2024 is here to reshape India's railway sector!



Key highlights include:

Objective: Modernization, passenger safety, and sustainable development.
New Technologies: AI-based traffic management, predictive maintenance, digital services, and green energy.

Passenger Safety: Stricter penalties and real-time monitoring systems.
Infrastructure: Modernizing existing lines and creating 'Smart Stations.'

Private Sector: Public-private partnerships to enhance efficiency and investment.

Financial Reforms: New revenue streams and fare rationalization.

This bill is a significant step forward in aligning India's railway operations with sustainability, innovation, and growth.

To delve into the specifics, please review the information provided in the following

link:
https://www.linkedin.com/feed/update/urn:li:activity:7231561188642365441

Recent Judgements

CIVIL

Dell International Services India Private Limited V. Adeel Feroze and Ors (2024 SCC Online Del 4576)

In the instant case, the Hon'ble Delhi High Court has held that the WhatsApp Chats are inadmissible evidence in the absence of any proper certification to that effect.

The facts of the present case are that on 19.09.2022, one Mr. Adeel Feroze ("Respondent No. 1"), had filed a Consumer Complaint against the Dell International Services India Private Limited ("Petitioner") before the Hon'ble District Commission. On 16.11.2022, the Hon'ble District Commission issued summons. The said summons was received by the Petitioner on 23.12.2023. The Petitioner's contention was that the documents received by it were incomplete. Ultimately, on 31.01.2023, the Petitioner filed its Written Statement on the basis of the documents received by it. As there was delay in filing the said Written Statement, the Petitioner filed an application for condonation of delay of seven (7) days in filing the said Written Statement.

Thereafter, vide its order dated 04.07.2023, the Hon'ble District Commission refused to take on record the Written Statement filed by the Petitioner on the ground that the same was filed beyond the statutory time limit. Thereafter, being aggrieved, the Petitioner filed a Revision Petition No. 51 of 2023 before the Hon'ble Delhi State Consumer Dispute Redressal Commission ("State Commission") and challenged the order dated 04.07.2023 passed by the Hon'ble District Commission. Vide its order dated 12.12.2023, the Hon'ble State Commission upheld the order passed by the Hon'ble District Commission and refused to exercise its revisional jurisdiction. Being aggrieved, the Petitioner approached the Hon'ble Delhi Court.

In the proceedings before the Hon'ble Delhi High Court, the Petitioner attempted to use the WhatsApp chats to demonstrate that the complete set of documents with the summons had not been received by it. The Hon'ble Delhi High Court held that under the Evidence Act, 1872, electronic records such as WhatsApp chats require a certificate under Section 65B to be admissible in the Court. In the instant case, the Petitioner failed to provide the necessary Section 65B certification. Therefore, the Hon'ble Delhi High Court ruled that the WhatsApp chats cannot be considered as valid evidence. The Hon'ble Court further concluded that the Petitioner did not present the said chats before the Hon'ble State Commission and the order passed by the Hon'ble State Commission was also silent as regards the presence of the said WhatsApp Chats. Hence, introducing completely new evidence at a belated stage of the proceedings especially in a Writ Petition, and the same not being a part of the earlier proceedings before the Hon'ble State Commissions and without proper certification, undermines the judicial process and procedural fairness.

Hence, the Hon'ble Delhi High Court dismissed the Writ Petition, upholding the decision of the Hon'ble District Commission and the State Commission.

Uniworld Logistics Private Limited V. Indev Logistics Private Limited (2024 INSC 515)

In the instant case, the Hon'ble Supreme Court has ruled that separate suits can be filed for possession and recovery of dues when the causes of action are different and the Plaintiff has reserved their rights to claim the outstanding amounts separately.

On 25.11.2008, a Leave and License Agreement was entered into between the Uniworld Logistics Private Limited ("Appellant") and Indev Logistics Private Limited ("Respondent"). The said Leave and License Agreement was superseded by another agreement dated 1.12.2010 whereby the Appellant became the licensee in respect of the warehouse on a monthly license fee of Rs. 30,00,000/- (Rupees Thirty Lakhs) with an escalation clause.

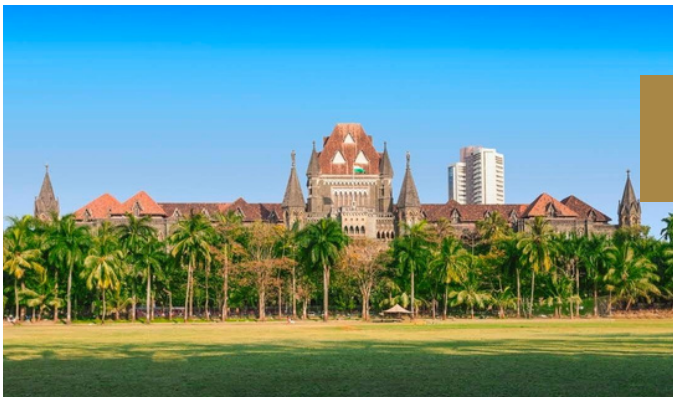
Thereafter, the Appellant defaulted on the payment of storage charges. As such, vide its notice dated 27.11.2014, ("Termination Notice") the Respondent terminated the said license claiming dues towards storage charges, damages and directing the Appellant to vacate the warehouse premises within a period of two (2) months from the date of the receipt of the said notice. Vide its letter dated 18.12.2014, the Appellant replied to the aforesaid Termination Notice and refuted the claims and allegations made therein. Consequently, the Respondent filed a suit before the Court of District Munsif, Sriperumbudur ("Trial Court") for permanent injunction and possession of the warehouse premises, reserving its right to claim the outstanding dues separately.

Subsequently, Respondent sought leave under Order II Rule 2(3) of the Civil Procedure Code, 1908 ("CPC") to file a separate suit for the recovery of the arrears which was granted by the Ld. Trial Court by its order dated 24.11.2015. Thereafter, the Appellant challenged the said order dated 24.11.2015 (granting leave) in the Hon'ble Madra High Court contending that the second suit was barred under Order II Rule 2(2) of CPC. However, the Ld. Trial Court and the Hon'ble Madras High Court found that the two suits were based on different causes of action and that the Respondent neither relinquished its claim nor omitted to seek relief.

The Hon'ble Supreme Court relied on its judgment in the matter of Bharat Petroleum Corporation Limited V. ATM Constructions Private Limited and held that a suit for possession and a suit for claiming damages for use and occupation of the property are based on different causes of action. Furthermore, Respondent had reserved its rights regarding its claim for outstanding dues in the first suit and had obtained leave to filed a separate suit. Hence, the second suit filed by the Respondent was maintainable. Accordingly, the Hon'ble Supreme Court dismissed the Appeal.

ARBITRATION

Ambrish H. Soni v. Chetan Narendra Dhakan, 2024 SCC OnLine Bom 2280 (16th July 2024)



In the present matter, the Bombay High Court held that the Court has the power to grant interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 ("A&C Act") even after an Arbitral Tribunal is constituted, if circumstances so warrant. The dispute involved partners of a construction firm wherein one partner ("Petitioner") invoked arbitration under the partnership Deed dated 21.10.2021 against other 2 partners ("Respondents") of the firm mainly on the ground that that the Respondents were dealing with the business of the firm and firm's property to the detriment of the Petitioner.

The Petitioner filed a petition under Section 9 and also an Application under Section 11 of the A&C Act for appointment of an Arbitrator.

Subsequently, the Petitioner was able to secure a status quo order in Section 9 petition and the Petition was disposed of. The Court also appointed a Sole Arbitrator and directed that status quo order would continue to operate until the Arbitrator makes and renders the final award.Thereafter, the Petitioner was constrained to file an Application under Section 17 of the A&C Act since Respondent No. 1 was not complying with the order and had resumed construction activities in collusion with Respondent No. 2. Since the Petitioner could not get relief under Section 17 of the A&C Act, the Petitioner filed this Section 9 petition for the appointment of a Court Receiver.

The court observed after considering various cases, that it would not interfere with the exercise of discretion by the Arbitral Tribunal and substitute its own view except when the Arbitral Tribunal has acted arbitrarily, capriciously, or ignored well-settled principles of law regulating the grant or refusal of interlocutory injunctions. Also, the court cannot reassess the material on which the Tribunal has based its decision as long as the Tribunal has taken a plausible view and exercised its discretion reasonably and judiciously. However, the court allowed this Petition, stating that Respondent No. 1 had acted with impunity and in brazen disregard of the Tribunal's order. Citing the Hon'ble Supreme Court case of Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd., the court observed that a harmonious reading of Sections 9(1) and 9(3) of the Arbitration Act indicates that the court is not deprived of its power to grant interim relief when an Arbitral Tribunal is constituted. The court must examine whether the Applicant has an efficacious remedy under Section 17 of the A&C Act. In such circumstances, the court has the discretion to entertain an application for interim relief under Section 9 of the Arbitration Act.

In light of the above, the court correctly exercised its power and appointed a Court Receiver, granting the said relief to Petitioner under Section 9.

ASF Buildtech (P) Ltd. v. Shapoorjipallonji & Co. (P) Ltd., 2024 SCC OnLine Del 4530 – Delhi High Court (4th July 2024)

In a recent decision, the Delhi High Court held that notice under Section 21 of the Arbitration and Conciliation Act is not required if a claim is filed as a counterclaim for which reference has already been made by the court.

In the captioned case, the Appellant being ASF Insignia SEZ Private Ltd. ("AISPL"), engaged in real estate and construction, had entered into a work contract with Shapoorji Pallonji and Company Private Ltd. ("SPCPL"). This contract was later amended through a Tripartite Novation Agreement, replacing AISPL with M/s Black Canyon SEZ Private Ltd. ("BCSPL") in all responsibilities and obligations. Furthermore, AISPL issued a Letter of Comfort, ensuring payment by BCSPL if they defaulted under the Work Contract. Due to delays, BCSPL and SPCPL agreed to foreclose the Work Contract, leading to a Settlement Agreement, which didn't include AISPL as a party.

Thereafter, AISPL received a demand notice from SPCPL under Section 8 of Insolvency and Bankruptcy Code, 2016 demanding payment from AISPL by mischaracterizing AISPL as a Corporate Guarantor based on the Letter of Comfort. NCLT dismissed SPCPL's application against AISPL stating that AISPL could not be treated as a Corporate Guarantor but despite NCLT's order, SPCPL issued notice for invocation of arbitration.

Furthermore, Section 14 petition was filed by BCSPL, seeking termination of the mandate of the Sole Arbitrator on the grounds that he had become de jure incapable of performing his functions in respect of the arbitral proceedings arising out of the Works Contract, the Novation Agreement, and the Settlement Agreement. SPCPL filed its Statement of Defence ("SoD") but did not file Counter Claim and instead filed a Statement of Claim ("SoC") naming BCSPL, AISPL and ASF Buildtech Private Ltd. ("ABPL") as Respondents without due permission from the ld. Sole Arbitrator. In response, BCSPL filed an application under Section 16 contending that SPCPL has forfeited or failed to file its counterclaim and that arbitrator does not have jurisdiction to decide the SoC presented by SPCPL, which was dismissed by the Arbitrator via Order dated 23rd May, 2023. Thus, formal noticed on the SoC of SPCPL were issued to the two other Respondents, AISPL and ABPL, to appear before the ld. Arbitral Tribunal and file their respective SoDs within six weeks. After which both AISPL and ABPL filed their respective applications under Section 16 challenging the authority of the ld. Sole Arbitrator which was rejected by the Arbitrator vide Order dated 17th October, 2023.

The arbitrator had also bifurcated the arbitral proceedings by Order dated 7th July, 2023 into two cases:

i.Case – 1: For the disputes from the BCSPL's SoC, with SPCPL as the sole contesting Respondent.
ii.Case – 2: For the disputed from the SPCPL's SoC, with BCSPL, AISPL and ABPL as Respondents.

Thereafter, a batch of two appeals under Section 37(2) of the Arbitration and Conciliation Act, 1996, along with a petition under Section 14 of the Act, was filed, seeking to set aside the orders dated 23.05.2023 and 17.10.2023 issued by the Sole Arbitrator.

In its analysis, the Hon'ble Delhi Court noted that AISPL and BCSPL, are entities within the ASF group, were under the same management. The Court observed that SPCPL's filing of a separate SoC instead of a counterclaim was unconventional but permissible under the circumstances. Further, the Court set aside the delineation of cases 1 and 2 and stated that for all practical purposes, the case pending before the Sole Arbitrator is to be treated as one case arising out of reference order dated 22-07-2022.
The Delhi High Court concluded that no separate notice under Section 21 of the Arbitration and Conciliation Act was required if the claim was filed as a counterclaim. The Court upheld the Arbitrator's decisions and rejected the termination of the Arbitrator's mandate. The Court also affirmed that the claims against AISPL and ABPL were maintainable under the Group of Companies doctrine to avoid multiplicity of proceedings and ensure consistent findings.

GENERAL CORPORATE

Analysing whether Holding Companie Can Claim Subsidiary's Assets in Resolution Plans in Light of Latest SC Ruling.

[BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr., (2024 SCC OnLine SC 548)]

The Supreme Court recently settled significant issues relating to the interplay between corporate guarantees, the Insolvency and Bankruptcy Code, 2016 (for short, 'the IBC'), and the Indian Contract Act, 1872 (for short, 'the Contract Act'). The Court clarified the legal position on the liability of corporate debtors and guarantors in insolvency proceedings.

The facts of the case which led to the dispute involved a loan of Rs. 100 crores which was granted by SREI Infrastructure Finance Ltd. (financial creditor) to Gujarat Hydrocarbon and Power SEZ Limited (corporate debtor). This loan was secured by a corporate guarantee from Assam Company India Limited (ACIL) which is the holding company of the corporate debtor. After several defaults, insolvency proceedings were initiated against ACIL. The appellant, BRS Ventures Investments Ltd., became the successful resolution applicant for ACIL and paid Rs. 38.87 crores to the financial creditor as per the approved resolution plan. Subsequently, the financial creditor initiated insolvency proceedings against the corporate debtor for the remaining loan amount.

The Supreme Court, after analyzing rival submissions by the parties, dismissed the appeal. The Apex Court placed reliance on the judgment of Lalit Kumar Jain v. Union of India & Ors (2021) 9 SCC 321 and held that the approval of a resolution plan for a corporate guarantor does not ipso facto discharge the liability of the principal borrower.

After placing reliance on Laxmi Pat Surana v. Union of India & Anr. (2021) 8 SCC, the Court emphasized that the liability of the principal borrower and the guarantor is co-extensive, and the creditor can proceed against either or both simultaneously under the IBC. In other words, it was clarified that as per Section 128 of the Contract Act, seeking repayment from either party will not exhaust remedies against the other.

The Apex Court further clarified that the assets of a subsidiary company cannot be included in the resolution plan of the holding company and The financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well. This interpretation was based on Sections 18 and 36 of the IBC, which explicitly exclude the assets of Indian subsidiaries from the definition of 'assets' in insolvency proceedings.

Further, the court noted that under Section 140 of the Contract Act, when a guarantor pays a part payment for the entire outstanding amount payable to the creditor, the equitable right of subrogation is limited to the extent of the debt cleared. In this case, the appellant's right of subrogation was limited to the Rs. 38.87 crores paid on behalf of the corporate guarantor. The subrogation will be only to the extent of the amount recovered by the creditor from the surety. Even after the subrogation to the extent of the amount paid on behalf of the corporate guarantor by the resolution applicant, the right of the financial creditor to recover the balance debt payable by the corporate debtor is in no way extinguished.
The Apex Court reaffirmed that a holding company and its subsidiary are always distinct legal entities. The holding company would own shares of the subsidiary company. In the case of Vodafone International Holdings BV v. Union of India & Anr (2012) 6 SCC 613, this Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator. That does not make the holding company the owner of the subsidiary's assets. On this basis, the court rejected the appellant's argument that the corporate debtor's assets were part of ACIL's insolvency proceedings.

The Supreme Court's ruling provides clarity on several critical aspects of insolvency law and corporate guarantees.

It upholds the principle of co-extensive liability of the principal borrower and guarantor while maintaining the separation of corporate entities. The judgment also offers a nuanced interpretation of the right of subrogation, balancing equitable principles with the literal interpretation of the Contract Act.

This decision will have significant implications for future insolvency proceedings involving corporate guarantees and holding subsidiary relationships. It reinforces the rights of creditors to pursue claims against both principal borrowers and guarantors, even after the resolution of one entity's insolvency. The judgment also provides valuable guidance on the interpretation of key provisions of the IBC and the Contract Act in the context of corporate insolvencies.

Analysing the recent split judgment by SC on the Union Government's approval to release genetically modified mustard.

Gene Campaign & Another v. Union of India & Others
[WP (C) No. 115/2004]

The supreme court's division bench comprising Justices BV Nagarathna and Sanjay Karol delivered a split verdict in a batch of public interest litigation challenging the 2022 decision of the Genetic Engineering Appraisal Committee (GEAC) which granted conditional approval for the environmental release of transgenic mustard hybrid, 'Dhara Mustard Hybrid-11 (DMH-11)' to the Centre.

Justice Nagarathna has delivered the judgment against the GEAC's approval, thereby quashing the same and Justice Karol gave judgment in favor of the approval for the field trials of DMH-11. However, both the judges agreed upon some points and issued directions in that regard, and the matter is now placed before the Chief Justice of India to constitute a larger bench.

The Genetic Engineering Appraisal Committee (GEAC) granted conditional approval for the environmental release of DMH-11 based on the views of various committees, sub-committees, and expert reviews. The primary legal issues revolve around the regulatory framework, public participation, environmental and health safety, and the application of the precautionary principle. The petitioners, including Gene Campaign, contended the approval process for the environmental release of DMH-11, citing deficiencies in the regulatory framework, lack of public participation, and potential environmental and health risks. It was the case of the petitioners that the Rules for Manufacture, Use, Import, Export and the Storage of Hazardous Micro-organisations, Genetically Engineered Organisms or Cells, 1989 under the Environment (Protection) Act, 1986 are not in conformity with the Articles 14, 19, 21, 38, 47, 48, 48A read with 51A(g) of the Indian Constitution and India's international obligations under the 1992 UN Convention on Biological Diversity and the Cartagena Protocol on Biosafety in terms of health safeguards, precautionary principles, sustainable development, polluter pay principle and intergenerational equity doctrine.

Moreover, concerns were raised regarding the lack of public consent and participation since the 1989 Rules do not allow the public to access information despite the technology of Genetically Modified Organisms (GMOs) having possible adverse effects on human and animal health, socio-economic conditions, and the environment. The trial of GMOs has been going on in the Supreme Court since 2004. The court has issued directions from time to time and in 2006, it permitted planting DMH-11 for environmental purposes in specifically identified fields. A Technical Expert Committee (TEC) was also instituted in 2012, which submitted its report highlighting various concerns on GMOs and suggesting more field trials to address the issues related to tests. Based on the report and the concerns raised, the Union Government halted the release of GMOs in 2016 and sought public opinion. The court was subsequently informed that no decision on the plantation of GM Mustard had been taken. However, in 2022, the GEAC granted conditional approval for conducting trials of DMH-11 which led to the present proceedings.

Justice Nagarathna in her opinion opined that that the biosafety dossier for the DMH-11 was not available for public inspection. This was contrary to the earlier process, wherein the biosafety dossier regarding Bt cotton and Bt brinjal was put in the public domain after the Court's directions. This allowed critical examination of the same by national and international experts. This led to the approval given by GEAC having to be put on hold by the Ministry, as it became apparent that GEAC had not complied with the regulatory mechanism. However, by not making the DMH-11 dossier available violated the court's direction issued in 2008.

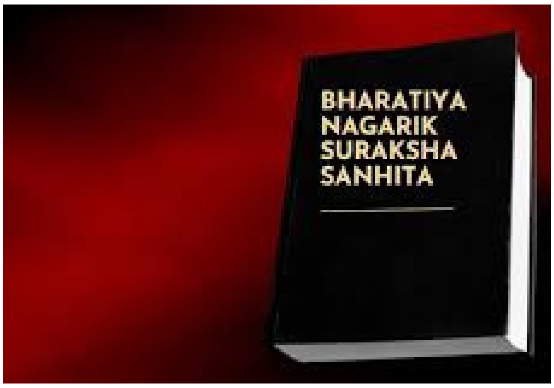
After taking note of the flaws in the procedure adopted by GEAC for DMH-11 and the approval by MoEF&CC, she held that the MoEF&CC has no role to play in approving the decision of GEAC. Moreover, the approval was made without consulting States which is mandatory since agriculture is a State subject under Entry 4, List II. Further, she has pointed out the lack of involvement of health experts. Justice Nagarathna emphasized that requisite environmental information formed a part of the right to information in the instant case which was denied to the citizens since it was not disclosed. Given the fact that the unanticipated consequences of the environmental release of DMH-11 remain in the sphere of uncertainty, she took the decision not to allow the release of DMH-11. On precautionary principles, she observed that the apprehensions of the petitioners that HT crops would exert a highly adverse impact over time on sustainable agriculture, rural livelihoods, and the environment are not unfounded. It is reasonable to infer that there is a potential of loss of species of Indigenous mustard crop, as India is the center of origin and diversity. The precautionary principle was upheld by the Supreme Court as an essential feature of sustainable development in Vellore Citizens Welfare Forum vs UOI 1996 5 SCR 241. Justice Nagarathna ultimately issued certain directions for the future environmental release of the DMH-11. She stated that they should take a decision on whether transgenic mustard hybrid DMH-11 is an HT crop or not, by having a wide and meaningful consultation on the report of TEC submitted to this Court with all stakeholders. For that, MoEF&CC must publish an official report, with adequate publicity. She directed GEAC to upload the biosafety dossier on the website. After concluding that that transgenic mustard hybrid DMH-11 is a HT crop, the nature of risk that would be caused by the said plant must be researched and deliberated upon by GEAC and MoEF&CC.

Justice Karol took the opposite opinion and held that the decision of GEAC does not suffer from the non-application of mind since it was based on multiple documents, not on the comments of the expert committee alone. He further denied the contention raised by the petitioners that the 1989 Rules, under which the GEAC is constituted, is unconstitutional primarily because the GEAC consists of executive members stating that members were made to sign a declaration of independence by the government. On the issue of the precautionary principle, Justice Karol held that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". The approval of DHM-11 is in line with a developmental approach of a scientific temper. However, he refused to issue directions on whether DMH-11 is an HT crop or not, expressing the court's lack of expertise.

The division bench agreed on the necessity of National Policy with regard to GM crops in the realm of research, cultivation, trade, and commerce in the country and directed the respondent-Union of India to evolve the same. The respondents were directed to ensure that the said National Policy shall be formulated in consultation with all stakeholders, such as, experts in the field of agriculture, biotechnology, State Governments, representatives of the farmers, etc. The decision reinforces the application of the precautionary principle in environmental decision-making, ensuring that potential risks are adequately assessed and mitigated.

CRIMINAL

Analysing a "possible interpretation" of Section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 in light of Delhi High Court's views.



Shri S. Rabban Alam v. CBI Though Its Director
CRL.A. 578/2024

The Delhi High Court recently provided a possible interpretation for Section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 regarding pending appeals. Justice Bhambhani noted that a plain reading of this section suggests that if an appeal, application, trial, inquiry, or investigation was pending before the BNSS came into force, it should be continued under the Code of Criminal Procedure (CrPC). However, the court highlighted a possible interpretation that only appeals pending before the BNSS's enforcement would continue under the CrPC. he further noted that the general principle is that an appeal is considered a continuation of the trial. This principle seems to conflict with the potential interpretation of Section 531(2)(a) BNSS.

Given the complexity of the issue, the court left open the question of whether the present appeal should be entertained under Section 374 of the CrPC or Section 415 of the BNSS for future consideration. The appeal was filed under BNSS, challenging the conviction under the Prevention of Corruption Act, 1988. The investigation and trial were conducted under the old CrPC. The court suspended the appellant's sentence when the appeal was pending, considering factors such as his age, health condition, and the nature of the sentence.

This judgment highlights the challenges in transitioning from the old criminal law system to the BNSS. The court's cautious approach in leaving the interpretation question open reflects the complexity of applying new procedural laws to cases that began under the old system.

The court's interpretation of Section 531(2)(a) BNSS, if adopted more broadly, could have significant implications for pending and future appeals. It suggests that the timing of filing an appeal could determine which law applies, potentially creating a complex landscape for cases straddling the transition period.

Analyzing Section 294 CrPC and the Boundaries of Self-Incrimination in light of the recent SC ruling.

ASHOK DAGA Versus DIRECTORATE OF ENFORCEMENT
Special Leave to Appeal (Crl.) No(s).8535/2024

The Supreme Court of India while dealing with the issue of an accused being called upon to admit or deny the genuineness of documents produced by the prosecution under Section 294 of the Code of Criminal Procedure (CrPC) held that that asking an accused to admit or deny the genuineness of documents produced by the prosecution along with the list under Section 294 of CrPC is not prejudicial to the rights of the accused. The court further clarified that such a requirement does not amount to compelling the accused to be a witness against himself, which is protected under Article 20(3) of the Constitution of India.

Article 20(3) of the Constitution protects an individual from being compelled to be a witness against himself. Whereas, Section 294 of CrPC aims to accelerate the pace of the trial proceedings by reading into the relevant piece of evidence in the trial, leaving aside unnecessary material. It states that where the genuineness of any document is admitted or its formal proof is dispensed with, the same may be read in evidence.

The facts that gave rise to the instant suit involved the petitioner challenging an order where the trial court had observed that deliberate denial of the genuineness of documents by the accused could be considered an 'aggravating circumstance' while determining the quantum of sentence if convicted.

The Supreme Court, while upholding the overall order, directed the deletion of this specific observation made in paragraph 56 of the impugned order. Therefore, the court in the instant case held that calling the accused to admit/deny the genuineness of the documents produced by the prosecution will not amount to a violation of the right against self-incrimination. However, the adverse observation recorded against the accused was deleted by the Court.

The court emphasized that the petitioner-accused retains the liberty to raise all legally permissible contentions during the course of the trial. This ruling strikes a balance between the procedural requirements of criminal trials and the constitutional protections afforded to accused persons.

This judgment provides clarity on the application of Section 294 of CrPC in relation to document verification, potentially streamlining trial procedures while safeguarding the rights of the accused.

TAX

Aarush Enterprises v. Commissioner [(2024) 165 taxmann.com 599 (Telangana)]

In the present case, the Petitioner’s bank account was provisionally attached vide order dated 19.05.2023. The singular submission of the Petitioner was that according to the provisions of Section 83(2) the validity of attachment of property is only up to 1 year from the date of the order. And since that period has hence expired, the order may be directed to be set aside on completion of one year from said date.

The respondents submitted that there were internal discussions on the extension of the period of provisional attachment. However, there was no finality to such discussions and there was no passing of fresh orders of extension. The Hon’ble Telangana High Court thus held that an order for provisional attachment ceases to have validity upon expiry of the period of 1 year from the date of issuance of order.

W&B Comments: The Court’s decision underscores the importance of adhering to the statutory time limits imposed under Section 83(2) of the CGST Act, 2017, which restricts the validity of a provisional attachment order to one year. The ruling emphasizes that, despite internal discussions on the extension, the failure to pass a fresh order within the stipulated timeframe results in the automatic cessation of the attachment's validity. This judgment aligns with prior decisions that aim to prevent the potential abuse of the provisional attachment power, reinforcing that such measures must strictly comply with the procedural safeguards outlined in the law to protect taxpayers' rights.

National Plasto Moulding v. State of Assam & Ors. [2024-VIL-804-GAU]

In the present matter, a Writ Petition was instituted before the Hon'ble Gauhati High Court, raising the issue of whether Input Tax Credit (ITC) can be denied to purchasing dealers when the selling dealer fails to remit the collected tax to the authorities.

The Hon'ble High Court observed that the facts of the instant case were analogous to those in the case of On Quest Merchandising India Private Limited v. Government of NCT of Delhi & Ors.[1] as decided by the Delhi High Court. The provisions under scrutiny in the current petition were found to be substantially similar to those challenged in the aforementioned Delhi High Court case, wherein it was unequivocally held that a purchasing dealer cannot be penalized for the default of the selling dealer, particularly when the selling dealer has failed to deposit the tax collected.

The Hon'ble Gauhati High Court relied heavily on the precedent set by the Delhi High Court, which held that Section 9(2)(g) of the Delhi Value Added Tax Act, 2004, could be read down, and that demands raised against purchasing dealers involved in bona fide transactions could not be sustained unless there was evidence of collusion. It was determined that actions against purchasing dealers should be contingent on proof of such collusion.

W&B Comments: The subject of ITC in instances of non-remittance by the selling dealer remains contentious. The provisions of Section 9(2)(g) of the Delhi VAT Act bear a significant resemblance to those of Section 16(2)(c) of the GST Act. In light of multiple judgments affirming the constitutional validity of provisions that restrict ITC claims, this judgment offers substantial relief to bona fide purchasers. Notably, this is one of the first judgments to acknowledge and apply the principles established in the On Quest Merchandising case, which provided significant protection to bona fide purchasers under the Delhi VAT regime. This precedent is likely to be beneficial in addressing similar issues under the GST framework in the future.

Indian Medical Association v. Union of India And Ors [2024 (7) TMI 1448]

In the present matter, the Indian Medical Association filed a Writ Petition before the Hon'ble High Court of Kerala, seeking a declaration that the retrospective amendment to Section 7(1)(aa) is unconstitutional and violative of Articles 14, 19(1)(g), 265, and 300A of the Constitution of India.

The petitioner, an association of medical professionals, argued that its members pool resources, and the common funds are utilized for various schemes for the benefit of the members. It was contended that the doctrine of mutuality should apply in this case, as the association merely constitutes a group of individuals serving themselves, and under the doctrine of mutuality, there is no service rendered by one person to another. Consequently, the petitioner asserted that the activities conducted by the association do not constitute a supply of goods or services, and therefore, no GST is payable on the activities of the petitioner association.

The Hon'ble High Court, placing reliance on Karnataka Bank Ltd v. State of Andhra Pradesh[1], observed that amending the definition of the term 'person' to include any Society, Club, or Association falls squarely within the legislative competence and does not necessitate a constitutional amendment. The Court dismissed the petitioner's reliance on State of West Bengal v. Calcutta Club[2], noting that while Article 366(29A) does not expressly provide for the levy of service tax on incorporated associations, the legislature is empowered to alter or remove the basis of a judicial decision by appropriate amendments. Thus, the Court held that the impugned insertion of Section 7(1) (aa) is within the legislative authority of the State.

However, the High Court further noted that the doctrine of mutuality was a well-established principle in the context of taxation on the supply of goods and services by clubs or associations to their members prior to the amendment to Section 7. The Court held that the amendment could not have been given retrospective effect and that its application is limited to the date it was notified, i.e.,01.01.2022.

W&B Comments: In the Calcutta Club judgment, the Hon'ble Supreme Court held that transactions between a club and its members are essentially transactions with oneself, thereby not constituting a "service" as contemplated under the law. Consequently, it was held that an incorporated club rendering services to its members was not liable for service tax. Furthermore, a plain reading of Article 366(29A) indicates that the provision does not extend the scope of taxation to include an incorporated association or body of persons. However, the present case underscores that the amendment to the statute, redefining the term 'person' to include societies, clubs, or associations, falls within the legislative competence of the State and is not ultra vires the Constitution. This represents a novel approach to interpreting the provision of services rendered by an association to its members. Nonetheless, the Hon'ble High Court has emphasized that the supply of services by an association or club has traditionally been governed by the doctrine of mutuality. Accordingly, the Court held that it is impermissible to apply the amendment to Section 7(1)(aa) retrospectively, and that such an amendment should only have prospective effect from the date of its notification.

[1] (2008) 2 SCC 254
[2]2019 (29) GSTL 545 (SC)

Anil Rice Mill v. State of U.P

In the present matter the petitioner filed a writ petition before the Hon'ble Allahabad High Court against a show-cause notice and subsequently an order under section 74 of the Goods and Services Tax (GST) Act, 2017 (GST Act), for the months of June, July, August and September 2020–21 for availing wrong ITC. The Revenue authorities contended that the taxpayer has wrongly claimed the ITC by using forged tax invoices, without proving actual physical movement of goods or genuineness of the transaction. In addition, the taxpayer has failed to discharge the burden of proof. The taxpayer was required to give details, i.e., number of the vehicle used for transportation of goods, payment of freight charged, acknowledgement of taking delivery of goods and payment, etc.

The petitioner argued that the tax payer is entitled to ITC as the conditions prescribed under Section 16 have been complied with and that the tax has been charged by the selling dealer. The petitioner is no way in control over the actions of the selling dealer and ITC cannot be denied on the grounds that the selling dealer has not shown the purchases in his returns or deposited the tax.

The Hon'ble High Court dismissed the writ petition filed by the taxpayer on the basis that the petitioner has failed to prove and establish the actual physical movement of goods and genuineness of transactions between the selling dealer and thereby has opened himself to litigation and scrutiny.

The Hon'ble High Court relied on the Hon'ble Supreme Court's judgment in the case of M/s Ecom Gill Coffee Trading Private Limited[1] where the Hon'ble Supreme Court held that the onus lied upon the petitioner to prove the validity of a transaction beyond reasonable doubt in order to be eligible to claim ITC. The Hon'ble High Court also relied upon its own ruling in a similar case of M/s Shiv Trading v State of Uttar Pradesh[2] to strengthen its stance. It laid down the view that mere payments or invoices are not sufficient to discharge the burden of proof.

W&B Comments: The Court reiterated that claiming ITC under Section 16 of the U.P. GST Act requires strict adherence to statutory conditions, similar to previous rulings like State of Karnataka v. M/s Ecom Gill Coffee Trading Pvt. Ltd. However, this judgment further clarifies that merely presenting tax invoices and e-way bills is insufficient; dealers must also provide comprehensive proof of the physical movement of goods. The decision underscores that the burden of proof remains firmly on the dealer, highlighting both the continuity in legal principles and the increasing emphasis on thorough documentation for ITC claims.

This ruling serves as a critical reminder to dealers of the importance of maintaining detailed and complete records to substantiate ITC claims, as the failure to do so can lead to the disallowance of ITC and potential legal hurdles. The High Court's decision to dismiss the writ petition reinforces the principle that ITC is a statutory concession, not an inherent right, and must be claimed in full compliance with the law.

[1] 2023 (3) TMI 533
[2] Writ Tax No.1421/2022

Ashoka Fabricast Private Limited vs. Union of India [(2024) 20 Centax 105 (Raj.)]

In this present case the petitioner was served with a notice for conducting audit after cancellation of registration. It filed writ petition to challenge the audit notice issued after cancellation of GST registration & subsequent assessment order and submitted that Section 65 of CGST Act, 2017, applies only to registered persons. It was also contended that since the foundation of the proceedings was contrary to the mandate of the CGST Act, any assessment order passed in pursuance thereof, deserves to be quashed.

The petitioner argued that since they had cancelled their GST registration, they were no longer liable to undergo an audit under Section 65 of the CGST Act, which applies only to registered persons. The petitioners also placed reliance on Tvl. Raja Stores v. The Assistant Commissioner (ST).[1] However, the respondents contended that the cancellation of registration does not absolve the petitioner from their tax liabilities accrued during the registration period.

The Hon'ble High Court examined Section 65(1) of the CGST Act, which empowers authorities to audit any registered person for a specified period. It also considered Section 29(3), which clarifies that cancellation of registration does not discharge liabilities incurred before cancellation to deny the applicability of the Tvl Raja Stores case relied upon by the petitioners. The respondents asserted that the audit was valid as it pertained to the period when the petitioner was registered.

The judgment highlighted that despite cancellation, liabilities for the period of registration persist under the CGST Act. It was noted that the audit process was duly followed, including issuing a show cause notice and considering the petitioner's objections. It cited precedents and legislative intent to affirm that audit rights extend to periods when the entity was registered, regardless of subsequent registration cancellation.

W&B Comments:

This instant case provides much needed clarity on whether an audit can be initiated against an entity whose registration has now been cancelled. The Hon'ble Rajasthan High Court has expressly clarified the interpretation of Section 29 of the CGST Act and has concluded that regardless of the present status of the registration of the taxpayer, it does not absolve or eliminate the requirements to remit the existing tax dues. And since the audit is pertaining to a period when the petitioner did indeed hold a valid registration, conducting an audit for that period is well within the rights of the department.

[1] MANU/TN/6752/2023

Articles

GST Council Recommends Amendment to Rule 142: Simplifying Pre-Deposit Mechanism for Filing Appeals

53rd GST Council meeting recommended an amendment to Rule 142 of the Central Goods and Services Tax (CGST) Rules. This amendment introduces a mechanism for adjusting amounts paid towards a demand through Form GST DRC-03 against the pre-deposit amount required for filing an appeal.

I. Background: The Appeals Process Under GST

Under GST, appellants must pay 100% of admitted tax and a percentage of disputed tax as pre-deposit when filing appeals. This is typically done at the time of filing of Form GST APL-01 on the GST portal. Issues arise when taxpayers make payments during audits or face technical problems with APL-01 hence making them resort to Form GST DRC-03. Earlier the CBIC has clarified in CBIC-240137/14/2022-Service Tax Section-CBIC, dated 28.10.2022 that pre-deposits are neither duty nor arrears, and that DRC-03 is not a valid form for making pre-deposits. Later, vide CBIC-240137/14/2022-Service Tax Section-CBEC dated 18.04.2023 it was clarified that aforementioned restriction was exclusively intended for the cases of appeals belonging to the Central Excise/Service Tax only and not for appeals under GST. The Courts have also been addressing cases where appeals were rejected due to payment of pre-deposit made through Form GST DRC-03 in the case of technical error on the portal (Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC) [2024] 159 taxmann.com 514). These situations underscored the need for clearer guidelines and flexibility in the appeal process to address genuine technical challenges.

II. Rule 142 and Form GST DRC-03: Current Framework

Rule 142 of the CGST Rules outlines the process for issuing demand notices and recovering dues from taxpayers. Form GST DRC-03 is used by taxpayers to voluntarily make payments towards tax, interest, penalty, and other amounts before or after the issuance of a show-cause notice. There is no provision for adjusting amounts paid through Form GST DRC-03 against the pre-deposit required for filing an appeal. This often leads to duplication of payments and financial strain on taxpayers.

III. The Amendment: A New Adjustment Mechanism

The recommended amendment to Rule 142 and the issuance of a circular aim to address this issue by prescribing a mechanism for such adjustments. Accordingly, vide the Circular No. 224/18/2024 - GST dated 11.07.2024, a new mechanism is provided. Notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and Form GST DRC-03A have been inserted to the CGST Rules, provides mechanism for cases where an assessee to pay tax, interest and penalty under relevant provisions (Section 52, 73, 74, 76, 122, 123, 124, 125, 127, 129, 130 of CGST Act) inadvertently through Form GST DRC-03 under sub-rule (2) of Rule 142.

Such assessee will have to file an application in Form GST DRC-03A, electronically on the GST portal, and the amount so paid and intimated through the Form GST DRC-03 will be adjusted as if the said payment was made towards the said demand on the date of such intimation through Form GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per Section 107 (6) and Section 112 (9) of CGST Act.

IV. Benefits of the Amendment

1. **Financial Relief for Taxpayers:** This change prevents the need for double payments for the same tax demand, easing the financial burden on businesses.
2. **Encouragement for Genuine Appeals:** The simplified process encourages taxpayers to pursue genuine appeals without the deterrent of additional financial strain.
3. **Administrative Efficiency:** For tax authorities, the amendment reduces redundancy and simplifies the process of tracking and managing payments.
4. **Legal Clarity:** The circular providing detailed guidelines on the adjustment mechanism will help eliminate ambiguities and ensure consistent application of the rules.
5. **Under protest payment to arrest the interest meter:** The mechanism also benefits where taxpayer voluntary paid the demand in full or in part under protest during the investigation stage to stop the interest meter. Through this new mechanism, such aggrieved taxpayers will now be able to seek by adjusting their voluntary under-protest payments against the mandatory pre-deposit while challenging the demand in appeal.

V. Conclusion

The recommendation to amend Rule 142 of the CGST Rules and introduce a mechanism for adjusting payments made through Form GST DRC-03 against pre-deposit amounts for appeals is a progressive step towards refining the GST framework. The amendment specifically addresses and provides a mechanism for adjusting amounts paid through Form GST DRC-03 against the pre-deposit required for filing an appeal. Therefore, taxpayers who have not utilized Form GST DRC-03 to make such payments will not benefit from this adjustment mechanism. They will need to follow the standard procedures and use the prescribed forms, such as Form GST APL-01, for making pre-deposits.

GST Council Recommends Amendments to Sections 73 and 74 of CGST Act: Streamlining Demand Notice Timelines and Penalty Provisions

In an effort to simplify and harmonize the Goods and Services Tax (GST) framework, the 53rd GST Council meeting proposed significant amendments to Sections 73 and 74 of the Central Goods and Services Tax (CGST) Act, 2017. These amendments, including the insertion of a new Section 74A, aim to standardize the time limits for issuing demand notices and orders, regardless of whether fraud or willful misstatement is involved. Additionally, the Council recommended extending the time limit for taxpayers to avail of reduced penalty benefits.

I. Background

The different time limits for issuance of show cause notices and adjudication of demands have led to confusion and legal disputes. There have been instances where notices issued under Section 74 (fraud cases) beyond the three years but within the five-year limit have been challenged. If the charges of fraud or suppression were not sustained, these notices had to be dropped as time-barred, resulting in legal uncertainty and numerous court cases. Garg Rice Mills v. State of Punjab [2024] challenged the legality of extending the due date for issuing notices under Section 73, arguing it was time-barred. In Titan Company Ltd. v. Joint Commissioner of GST & Central Excise [2024] where the department has issued show cause notices by bunching up notices for multiple assessment years, for a period for the time limit is already exhausted, the Hon'ble Madras High Court emphasized that the limitation period is applicable separately for each assessment year. The challenge in K. R. Pulp Papers Ltd. v. Goods and Services Tax Council [2024] regarding the extension of time for issuing notices reflects issues similar to those addressed by the proposed amendment.

II. Current Framework: Sections 73 and 74 of the CGST Act

Under the current provisions, Sections 73 and 74 of the CGST Act govern the issuance of demand notices and orders for tax, interest, and penalties:

- Section 73 deals with cases where there is no fraud, suppression of facts, or willful misstatement. The time limit for issuance of an order under the provision is three years from the due date for filing the annual return for the relevant financial year. Therefore, the show cause notice has to be issued at least three months prior to the expiry of time limit of passing of the adjudication order.
- Section 74 addresses cases involving fraud, suppression of facts, or willful misstatement. The time limit for issuance of an order under the provision is five years from the due date for filing the annual return for the relevant financial year. Therefore, the show cause notice has to be issued at least six months prior to the expiry of time limit of passing of the adjudication order.

III.Proposed Amendments: A Common Time Limit

The GST Council has recommended the following key changes:

1. **Common Time Limit for Demand Notices and Orders:** The proposed amendments seek to provide a common time limit for the issuance of demand notices and orders, irrespective of whether the case involves fraud, suppression, willful misstatement, or not. This change will apply to demands for the financial year 2024-25 onwards.
2. **Extended Time Limit for Reduced Penalty:** Currently, taxpayers must pay the tax demanded along with interest within 30 days to benefit from a reduced penalty. The proposed amendment extends this period to 60 days.
3. **Insertion of New Section 74A:** A new Section 74A will be introduced to streamline the implementation further, encapsulating the common time limit provisions

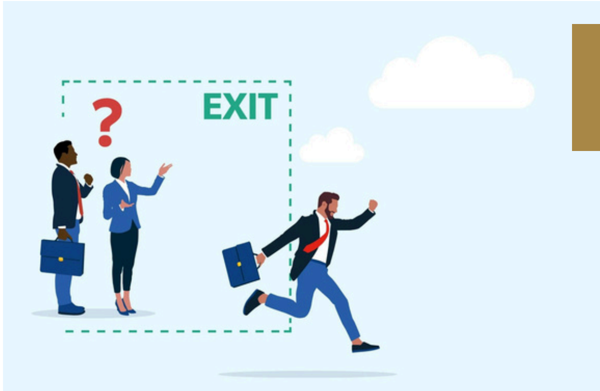
IV. Implications of the Amendments

1. **Clarity and Consistency:** Introducing a common time limit simplifies the GST compliance framework, making it easier for taxpayers to understand and adhere to the timelines for demand notices and orders.
2. **Ease of Compliance:** The extended period for availing of reduced penalty benefits offers taxpayers additional time to settle their dues, easing the compliance burden and potentially reducing litigation.
3. **Administrative Efficiency:** A uniform timeline streamlines the process of issuing demand notices and orders for tax authorities, enhancing administrative efficiency and resource management.
4. **Legal Certainty:** Clear and consistent timelines help establish legal certainty and foster a more predictable tax environment. This can encourage better compliance and reduce the scope for disputes and litigations.

V .Conclusion

The proposed amendments to Sections 73 and 74 of the CGST Act, along with the introduction of Section 74A, represent a significant step towards simplifying the GST framework. With the amended provisions, the proper officer can determine fraudulent intent during proceedings. The recommendation is only to align the time limit of both provisions, however, it will bring a genuine taxpayer and a fraudulent one at par which is inconsistent with the legislative intent. A similar provision is also included in the Central Excise Bill, 2024. The time limit for taxpayers to avail reduced penalties is proposed to increase from 30 to 60 days, providing more time for compliance. It must be noted that Taxpayers with cases from financial years before 2024-25 will not benefit from the new common timeline and will be subject to the existing time limits. Taxpayers with notices already time-barred under the current law will not gain retroactive benefits from the new provisions. Taxpayers against whom fraud, suppression, or willful misstatement is proven will still face the prescribed penalties and consequences.

Legal Aspects of Exit Strategies for Private Equity Investments in India



Exit strategy forms an integral part of the investment process which helps investors in realizing returns from their investments. In India, there are various exit strategies for private equity investments, each having certain legal implications that the investors and companies need to consider. These primarily include Exit through Initial Public Offerings (IPOs), Secondary Sales, Mergers and Acquisitions (M&A), Exit through Share Buybacks, and Exit through Put Option.

An IPO is the first sale of shares by a private company to the public and allows companies to raise capital. Large private companies with strong growth records often use an IPO as an exit strategy. This exit strategy can provide substantial returns for investors but involves extensive regulatory compliance and legal processes. The Securities and Exchange Board of India (SEBI) regulates IPOs under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. Companies must comply with disclosure norms, submit a draft prospectus, and undergo a rigorous review process. Existing shareholders, including private equity investors, are typically subject to a lock-in period, usually ranging from six months to a year, during which they cannot sell their shares. Accurate and comprehensive disclosure in the prospectus is crucial to avoid legal repercussions. The prospectus must provide detailed information about the company's financials, business operations, and risk factors.

Secondary sales are sales of shares by existing shareholders of a company to other investors. Secondary sales can be used to provide liquidity without going for a public listing. Secondary sales must comply with SEBI regulations and, if the company is unlisted, the Companies Act, of 2013. roper filings with the Registrar of Companies (RoC) and compliance with the Foreign Exchange Management Act (FEMA) have to be followed for foreign investors. Shareholders' Agreement (SHA) should specify the terms and conditions of secondary sales, including pricing mechanisms, transfer restrictions, and right of first refusal (ROFR) provisions.

Both the buyer and seller would be subject to tax implications on secondary sale including withholding taxes, and capital gains taxes.

M&A transactions involve the sale of a company or its assets to another entity. This exit strategy can yield high returns but requires solid legal groundwork. M&A transactions often require approval from regulatory bodies such as SEBI (for listed companies), the Competition Commission of India (CCI), and, in some cases, the Foreign Investment Promotion Board (FIPB) if foreign investors are involved. Extensive due diligence must be conducted to uncover any legal or regulatory roadblocks that could curtail the transaction. This includes reviewing contracts, intellectual property rights, and labor law compliance, etc. The exit structure i.e., whether it should be an asset purchase or share purchase should be designed meticulously taking into account tax implications and potential liabilities.

Share buybacks refer to the process of a company buying back its shares from the shareholders. It is a way of providing liquidity and is beneficial when a company has excess cash. In India, Share Buybacks are regulated by the Companies Act, of 2013. The formalities and conditions as mentioned in the Act need to be followed by companies for considering share buybacks i.e. Board approval, compliance with respect to the buyback limits, etc., are required to be adhered to and necessary documents need to be filed with the RoC and if it is a listed company then SEBI regulations also needs to be complied with. Apart from that, Companies are also required to file relevant documents with the RoC and follow SEBI regulations if the company is listed. The buyback may affect the valuation of the company and the interests of the remaining shareholders. Legal advice is crucial to ensure fair treatment of all shareholders.

Put options are rights given to investors to sell their shares in the Company or to the other shareholders at a pre-determined price. Put options are regulated by SEBI and FEMA. Previously, put options that provided for an assured return were generally not considered valid, but recent regulatory changes now permit them subject to certain conditions. The terms of the put option, including when it will be triggered and how pricing will be determined, etc., should be clearly set out in the SHA. Enforcement of put options may require litigation if disputes arise. The exercise of put options may have tax implications, including capital gains tax and other applicable taxes.

In Cruz City Mauritius Holdings v. Unitech Ltd (2017) (3) ARBLR 20 (Delhi) the honorable Delhi High Court held that so long as the put option that offered an assured rate of return was exercisable only in the event of a breach of the contractual assurances, it was not violative of FEMA. Similarly, in the case of NTT Docomo Inc. v Tata Sons Ltd (2017) SCC OnLine Del 8078 a provision was put in place where the unique feature was that the put option had to be exercised in case, Tata Teleservices Limited was unable to achieve certain performance benchmarks. This clause was held to be enforceable because there was no fixed price at which the option holder could exit the SHA making the option more akin to a 'downside protection' option as against FEMA's downright 'assured return'. Thus, now the general impression has been created in their favor to enforce put option contracts although there are no guarantees of assured returns.

However, there are problems associated with these exit strategies. Some of the problems include Uncertainties in the market that affect the possibility of the exit and the time it is done.

Conclusion and analyses

It has been observed that there has been a considerable increase in PE exits as well as PE investments in India in the first quarter of 2024. PE exits in India rose in Q1 2024, there were 50 exits worth $ 3. 6 billion. These were 11 exits in Q1 2023. This represents a 354. 5% increase in the number of exits and a nearly five-fold increase in the amount of exits values. Open market exits were particularly outstanding, with value increases from $121. Given such facts, it is imperative that Investors look for exit strategies long before they seal an investment deal that touches their desired company so that they leave as smoothly as they got in once the time arises. Contrary to what used to be the case some time time ago, exits are no longer occasioned by the poor performance of a company. It has made them a norm in the investment lifecycle; they are now tangible indices of success.

Analysis of Budget 2024 on the Renewable Energy Sector

The Indian government has consistently prioritized renewable energy in its national agenda, aiming to transition towards a more sustainable and resilient energy framework. India is targeting 175 GW of renewable energy capacity by 2022, and 500 GW by 2030. With an allocation of Rs 19,100 crore, the Union Budget 2024 underscores the government's ongoing commitment to energy security and the development of the renewable energy sector, which is crucial for India's goal of becoming a net-zero economy by 2070.

A key highlight of this Budget is the substantial allocation of Rs 10,000 crore to the solar energy sector, marking a 110% increase from the previous year's allocation. This boost is primarily due to the introduction of the PM Surya Ghar Muft Bijli Yojana (PM-SGMBY), which aims to increase the penetration of rooftop solar (RTS) installations.

Despite this significant increase in funding, challenges persist in the RTS sector. These include delays in subsidy disbursement, issues with net-metering regulations, and the financial health of power distribution companies (DISCOMS). The Budget has been silent on any further specific initiatives for RTS (apart from PM-SGMBY). This raises concerns about future challenges and their redressal.

Although the budget has unlocked the potential of this sector in many ways, there have been certain missed opportunities. The bioenergy sector, despite its potential, did not attract much attention in this Budget. The government had previously laid the groundwork for expanding the use of Compressed Biogas (CBG) with an ambitious target of 750 CBG projects by 2028–29. However, the Union Budget 2024-25 did not introduce any significant new measures for bioenergy. This raises concerns among the industry stakeholders about the sector's future growth.

One notable missed opportunity is the lack of support for bio-slurry, a by-product of CBG production, which could enhance the economic viability of bioenergy projects. The Budget did not address the need for biomass banks as well, which are essential for ensuring a year-round supply of feedstock.

The absence of these measures may cause the bioenergy sector to face challenges in achieving its full potential.
India's dependence on imported critical minerals, essential for renewable energy technologies, has been a concerning issue. The Budget's announcement of an exemption from Basic Customs Duty (BCD) on imports of 25 critical minerals is a strategic move to secure these vital resources. However, this measure alone may not be sufficient to address the broader challenges of developing a self-reliant supply chain for critical minerals.

While the exemption is a welcome step for the short term, in the long term, we must focus on becoming self-sufficient as the dependency on imports cannot be a solution forever. For this, the government needs to complement the importing capacity with increased investments in domestic research and development, as well as initiatives to recycle and reuse materials from end-of-life products. Establishing a robust recycling ecosystem could not only reduce India's dependence on imports but also create significant job opportunities. This way it will lead to multiplier effects.

The wind energy sector, despite its potential, did not receive the boost that many industry stakeholders had hoped for in this Budget and which the sector deserves. There were no new allocations or capacity additions announced, leaving the sector in a state of uncertainty. This is particularly concerning because of the challenges the sector has faced, including policy inconsistencies and aging infrastructure.

This was another missed opportunity since the budget allocations would have been utilized for investment in repowering older wind turbines, more efficient models that could significantly increase energy production. However, the lack of supportive policies and the existing constraints from state utilities like TANGEDCO continue to hinder progress in this area.

To address the stagnation of renewable energy sources, the Budget proposes a shining energy storage solution, “pumped hydro storage” which can meet peak energy demand and support the growing renewable energy infrastructure. The government plans to develop a policy on Pumped Hydro Storage.

The Budget smartly recognized the potential of small modular nuclear reactors (SMRs) as a clean energy source for which collaboration with the private sector to develop Bharat Small Reactors is a forward-looking initiative that could diversify India's energy mix and support the production of green hydrogen.

The budget also saw the introduction of a new climate finance taxonomy aimed at facilitating access to preferential financing for green projects. This can mitigate the risks of greenwashing and attract international climate investments.

Conclusion and analyses

India had RE capacity of 191 GW as of May 2024, including 85 GW of solar power. This growth has been fueled by government initiatives like the National Solar Mission. The Indian government's renewable energy transition is supported by key initiatives like the Pradhan Mantri Sahaj Bijli Har Ghar Yojana (SAUBHAGYA), ensuring universal household electrification, and the Green Energy Corridor (GEC), which strengthens the renewable energy transmission network. The National Smart Grid Mission (NSGM) and Smart Meter National Programme focus on modernizing energy distribution, while the Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles (FAME) scheme promotes electric vehicle usage. Internationally, India leads the International Solar Alliance (ISA), and domestically, the Surya Ghar Muft Bijli Yojana provides free solar power to homes. India’s boost for renewable energy is marked by necessity. We import over 80% of oil needs, making it vulnerable to global price fluctuations and geopolitical tensions. India's solar capacity growth to 85 GW in 2023 has already started reducing our dependence on fossil fuel imports. It is also useful because of its Economic Competitiveness. As per December 2020 data, Gujarat Urja Vikas Nigam's (GUVNL) (Phase XI) auction for 500 MW of solar projects made a record for the lowest tariff of ₹1.99 (~USD0.025)/kWh. This sector holds capability of addressing unique challenges including water crisis since Thermal power plants require significant water resources. Maharashtra's push for solar power is partly driven by recurring droughts affecting thermal power generation capacity. Global investors are increasingly prioritizing Environmental, Social, and Governance (ESG) factors. This makes it pertinent that future is renewable energy and India must make efforts now to compete with the world in future. The budget was “A Mixed Bag with Potential” that addressed various issues but failed to recognize several fruitful regimes. We saw significant allocations to solar energy, critical minerals, and energy storage solutions. However, the lack of targeted support for sectors like bioenergy and wind energy left the sector vulnerable in various aspects. This may have an effect on the overall coherence of the renewable energy strategy. Regardless of missed opportunities, the measures outlined in this Budget will play a crucial role in shaping the country's energy landscape. However, to fully realize this vision, the government will need to address the gaps identified in this Budget and ensure that all segments of the renewable energy sector receive the support they need to thrive.

Cross-border acquisitions: Recent trends

As to the data provided by the Institute for Mergers, Acquisitions, and Alliances (IMAA), there was a general increase in cross-border M&A deals from 472 in 1985 to 8,500 in 2023. India's deal value in M&A activity decreased by 27% in 2023 compared to 2022. This indicates that the value of M&A deals in India decreased from US$186 billion in 2022 to US$136 billion in 2023.

There have been several decisions by the courts and tribunals creating certainty around the permissibility of cross-border transactions.

The Companies Act, of 2013 formally recognized cross-border mergers in 2017 by notifying Section 234 on 'Merger or Amalgamation of Company with Foreign Company'. However, such schemes require prior RBI approval and are limited to specific jurisdictions. Accordingly, In 2018, the RBI notified the Foreign Exchange Management (Cross Border Merger) Regulations to implement cross-border mergers. Despite these changes, legal uncertainty remained due to conflicting NCLT rulings on cross-border demergers.

In 2018, the NCLT Ahmedabad approved an inbound demerger of a foreign company with an Indian company interpreting a broad definition of ‘mergers and amalgamations’ under Section 234 of the Companies Act.

However, the same NCLT in 2019 in the case of Morgan Stanley, denied an outbound demerger of Indian undertakings to an overseas subsidiary and said that Section 234 and the related rules do not allow demergers, thereby leaving general cross-border demergers in uncertainity.

To ease, these transactions, in August 2022, the Indian government notified new Foreign Exchange Management (Overseas Investment) Rules and Regulations, replacing the previous 2004 regulations which aimed to simplify the legal framework for overseas investments by Indian entities. These Rules try to create a more conducive environment for Indian entities to invest abroad.

They explicitly classify demergers as a permissible route for overseas investments. This potentially reopens the discussion on cross-border demergers and signals the RBI's willingness to allow such transactions from a foreign exchange perspective. Nevertheless, following objections raised by the NCLT with reference to the literal interpretation of Section 234 of the Companies Act remained undiscussed.

But the trend does indicate that NCLT have somewhat restricted itself in challenging schemes, which were supported by commercial wisdom and majority approvals. Creditors of the Zee group, including the likes of Axis Finance and Yes Bank objected to a merger between Zee Entertainment Enterprises Limited (ZEEL) and India operations boards which basically represents Sony's Indian arm — Culver Max Entertainment Private Limited. The oppositions primarily revolved around two crucial issues – the INR 1,100 crore non-compete fee given by a Sony entity to an arm of Zee (Essel Mauritius) with allegations that it was nothing but a fraudulent device to defraud creditors and the appointment of Punit Goenka as CEO of the merged company despite SEBI order censuring him from holding directorial positions.

The NCLT rejected these objections saying the creditors who raised them were owed by other Zee group entities and not by Zee Entertainment itself. Hence they lacked locus standi to object. In addition, the outstanding amounts were contested and not liquidated. The NCLT had said the deal valued Jet at less than half its liquidation value but found that the interests of creditors would be protected as net worth gets transferred with the merged entity. Furthermore, under sections 230-232 of the Companies Act, 2013, objections to a scheme require creditors to meet certain thresholds (5% debt or 10% shareholding), which the objectors failed to meet.

Citing precedent from Miheer H. Mafatlal v. Mafatlal Industries Ltd.JT 1996 (8) 205 (SC), the NCLT noted that it could not interfere with a scheme unless it was "unconscionable, illegal, unfair or unjust." The NCLT noted that since the majority of shareholders and creditors have approved the scheme, there shouldn't be any intervention on their part. The objection to the appointment for Goenka, NCLT approved of it however his role was subject to be decided by the board and SEBI rulings in the future.

Another decision by NCLT suggests another trend emphasizing the importance of public interest. In the case of Wiki Kids Limited v. Regional Director and Others [Company Appeal (AT) No. 285 of 2017], the National Company Law Appellate Tribunal (NCLAT) upheld the National Company Law Tribunal's (NCLT) decision to reject a scheme of amalgamation since no evident public interest was involved.

It observed that Wiki Kids was incorporated in 2004 and does not have any commercial operations or income except for the interest received from fixed deposits. Which had used almost all its paid-up capital — thereby reducing it net worth to INR 22 lakh. Under the newly proposed share exchange ratio, Wiki Kids shareholders were to get 4 lakh Avantel shares translating into ~INR 12.4 crores in value for transfer of business though compared to net worth of only INR~1 crore on Wiki kids books! Since the promoters of Avantel were owning 99.9% Wiki Kids, NCLT observed that it was a clear scheme to benefit the promoters financially by INR 12 crores and hence against public interest.

On appeal, the Appellants argued that the scheme was in compliance with all legal requirements, and that no objections had been raised by authorities like the Securities and Exchange Board of India (SEBI) or the Income Tax Department. They also claimed that the share exchange ratio was fair, based on expert valuations and potential future business growth. However, the NCLAT rejected these arguments, emphasizing the disclaimer in the valuation report, which disclaimed the accuracy of the information provided by the management. The NCLAT ruled that schemes of amalgamation must benefit all shareholders and not just a few. It also affirmed the NCLT’s jurisdiction to assess whether a scheme is fair, even if detailed mathematical analysis is not involved. The tribunal distinguished the case from precedents such as M/s Miheer H. Mafatlal v. Mafatlal Industries Ltd. (supra) and Hindustan Lever Employees' Union v. Hindustan Lever Ltd.(civil) No. 11006 of 1994 (SC), stating that the facts were different, and the scheme in question unduly favored the promoters. It is notable that courts, relying on the ruling of the SC in Miheer H Mafatlal have generally held that the scope of judicial review in such matters is highly limited, and not appealable in nature.

As long as there are no objections to a scheme no fault or illegality has been pointed out, and relevant documents have been placed before concerned parties at the relevant time, courts have been held not to be in a position to interfere with schemes of arrangement. This is because such schemes are based on the wishes of concerned shareholders, creditors, experts, and professionals, apart from competent authorities, after scrutiny of the accounts and affairs of the companies.

Conclusion and analyses

As India continues to present attractive investment opportunities due to its strong economic growth and large domestic market, cross-border acquisitions are likely to increase. But, a lack of regulatory clarity around cross-border demergers and further liberalization in policies will be needed to realize this potential. The stable GDP growth of the country along with a well-regulated inflation rate has been appealing for overseas investors in any sector. Recent NCLT decisions have highlighted two important trends: A limited scope for challenging schemes backed by commercial wisdom and majority approvals, as seen in the Zee-Sony merger case and An emphasis on public interest in approving schemes of amalgamation, as demonstrated in the Wiki Kids Limited case. Greater clarity in regulations and a more friendly regulatory environment for cross-border M&A would result in higher FDI inflows. When carried out as envisaged, cross-border M&As can spur economic growth by introducing new technologies, know-how and capital.

Analyzing SEBI regulations on empowering Alternative Investment Funds, pledging equity, and managing unliquidated investments.

The Securities and Exchange Board of India (SEBI) has amended the borrowing norms for Category I and II Alternative Investment Funds (AIFs) to give them more operational flexibility and promote ease of doing business. AIFs can now borrow to bridge shortfalls in drawdown commitments. The move is expected to help AIFs with liquidity concerns due to delayed capital contributions from investors.

Earlier, Category I and II AIFs were not allowed to borrow except for meeting temporary needs or covering operational expenses. Borrowing for this purpose was restricted to a period of 30 days for not more than four times a year. However, as per the new norms issued by SEBI, Category I and II AIFs are permitted to borrow funds specifically to meet drawdown shortfalls subject to certain conditions.

However, there are certain prerequisites. AIF shall disclose the intention to borrow for drawdown shortfalls in its PPM. Borrowing shall only be allowed in case of emergency where an investment opportunity is on the horizon and despite best efforts, the manager has not been able to obtain the required drawdown amount. The borrowed amount cannot exceed:

- 20% of the investment in the investee company,
- 10% of the AIF scheme's investable funds,
- Or the undrawn commitment from other investors (excluding delinquent investors).

The costs of the borrowings are for the account solely of the investors who have not made their committed drawdown amount available. AIFs must maintain a 30-day cooling-off period between borrowing periods. The details relating to borrowings and lending, including, where relevant, amounts borrowed and details on the use and investment of monies borrowed or raised through leverage, shall be disclosed at least once a year to all investors.

These are intended to make sure that borrowing is resorted to as a last measure and it does not become an undue burden on the compliant investors. This in-built mechanism also addresses risks such as over dependence on borrowed funds and ensures that AIFs adopt a more balanced approach to liquidity management, which may not be possible if the incentives are stacked heavily in favour of short term returns.

The new regulations strike a balance between providing AIFs with the flexibility to manage liquidity challenges and maintaining investor protection. There are various Managing risks associated with borrowing, such as higher costs for delinquent investors and administrative complexities. SEBI’s move brings Indian AIFs closer to international standards.

SEBI’s relaxation of borrowing rules for Category I and II AIFs represents a pivotal shift in India's regulatory framework for alternative investments. By enabling funds to address drawdown shortfalls through borrowing, the regulator has provided a solution to time-sensitive investment opportunities while ensuring that the burden of such borrowing falls squarely on delinquent investors.

One more significant development happened on February 2, 2024, when SEBI issued a consultation paper proposing that Category I and II AIFs be allowed to create an encumbrance on their equity holdings in infrastructure sector investee companies. The objective is to facilitate the raising of debt by these companies, which often require equity pledges to secure loans for capital-intensive projects.

Infrastructure projects, especially those in sectors such as transport, energy and telecommunications, are characterized by high leverage. However, lenders usually seek equity collateral to safeguard themselves from undue risks associated with these projects. AIFs, specifically those focused on infrastructure assets have been constrained by the extant regulations which prohibit the use of equity collateral by AIFs to raise debt for investment in their investee companies.

Earlier, SEBI prevented Category I and II AIF from pledging shares to obtain loans as investors of AIF may lose money in the fund if investee companies default on loan repayment. However, it says it will allow Alternative Investment Funds (AIF) to pledge equity shares of investee companies in the infrastructure sector in order to provide ease of doing business for Alternative Investment Funds (AIFs) and to foster an ecosystem wherein private capital effectively complements the various modes available for infrastructure financing.

A Closer Look at Our Recent Features

Infosys May Not Be Liable for Rs 32,000 Crore GST Demand — Here's Why

We are delighted to share that our partner, Prateek Bansal was featured in today's NDTV Profit article titled "Infosys May Not Be Liable for Rs 32,000 Crore GST Demand — Here's Why."

In his comment, Prateek Bansal addresses how the new GST guidance might apply retroactively to clarify existing rules.

To read the full article, please click on the link.

https://www.ndtvprofit.com/profit-insights/infosys-tax-demand-why-the-company-may-not-be-liable-to-pay-rs-32000-crore

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Amendment in Section 140(7) of the CGST Act: Transitional Credit for Input Service Distributors.

We are pleased to share an insightful article authored by our partner, Prateek Bansal published in Republic World titled "Amendment in Section 140(7) of the CGST Act: Transitional Credit for Input Service Distributors."

Key points discussed in the article include:

- Retrospective amendment to Section 140(7) of the CGST Act from July 1, 2017.

- Addresses transitional credit for ISDs for pre-GST services provided and received before the appointed date.

- Previous provisions missed invoices received before the appointed date, causing credit claim gaps.
- Amendment clarifies legal basis for claiming transitional credit.

- Ensures fairness, reduces legal disputes, and facilitates compliance.

- Retrospective amendment requires revising past GST returns.

- Positive financial impact on businesses by allowing credit adjustment against GST liabilities.

Click on the link to read to full article –
https://www.republicworld.com/initiatives/amendment-in-section-1407-of-the-cgst-act-transitional-credit-for-input-service-distributors#google_vignette

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Taxability Of Loans Between Related Persons Or Group Companies – Impact Assessment W.r.t. 53rd GST Council Meeting.

We are pleased to share an insightful article authored by our partner, Prateek Bansal published in Outlook Publishing (India) Pvt. Ltd. titled "Taxability Of Loans Between Related Persons Or Group Companies – Impact Assessment W.r.t. 53rd GST Council Meeting."

Key points discussed in the article include:

- Interest on loans between related persons or group companies remains exempt from GST.

- The value of supply between related persons should be based on open market value or similar goods/services.

- Interest charged should reflect the arm's length price.

- Processing and administrative charges are subject to GST.

- Clarification ensures no GST on the interest component of related-party loans.

- No proportionate reversal of input tax credit is required for exempt services.

Click on the link to read the full article – https://www.outlookindia.com/hub4business/taxability-of-loans-between-related-persons-or-group-companies-impact-assessment-wrt-53rd-gst-council-meeting

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mint

Prateek Bansal
Partner

Tax Lawyers stare at robotic faceless assessments

“There had been various instances where taxpayers’ submission was not considered on merit, and a request for personal hearing was not approved, increasing challenges to these orders in courts. Taxpayers cannot physically file submissions, but they have to ensure the same is taken into account before passing any order. This can be problematic if the taxpayer faces an adverse outcome due to their advocates’ poor drafting, as there is no room to furnish clarifications. This leads to Writ Petitions in Courts on the grounds of violation of principles of natural justice. Assessing officers should permit physical submissions or hearings depending on the complexity involved.”

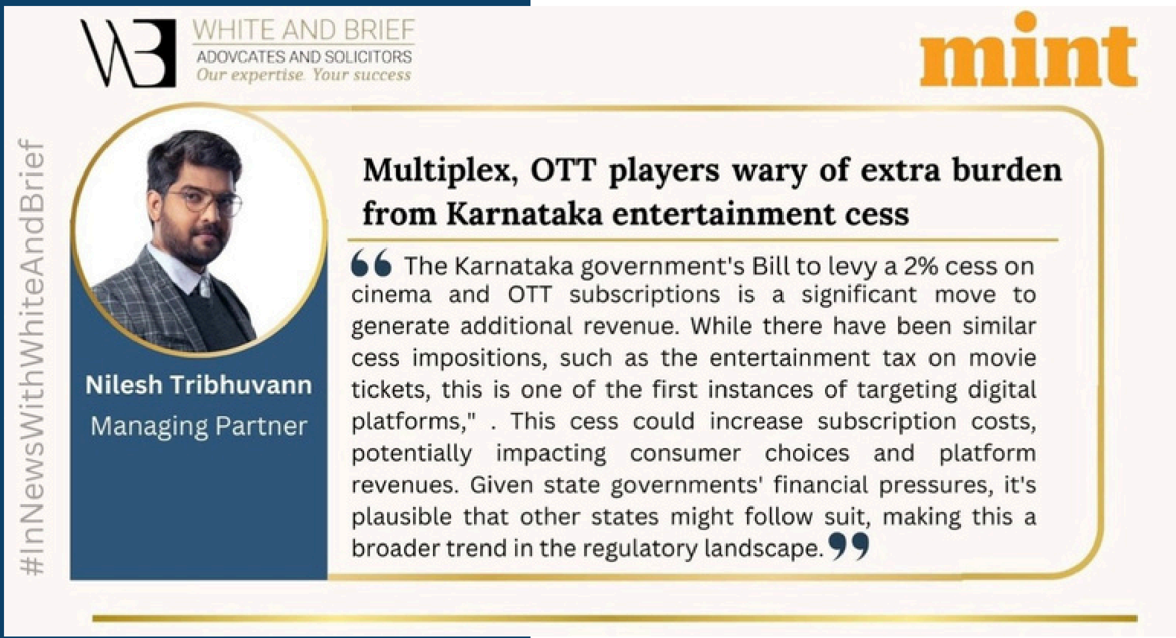
Tax Lawyers Face Challenges with Robotic Faceless Assessments.

We are delighted to share that our partner, Prateek Bansal has been featured in aLiveMint article titled "Tax Lawyers Face Challenges with Robotic Faceless Assessments."

In this insightful article, Prateek quoted, "The absence of physical hearings can result in taxpayer submissions being overlooked, leading to unfair outcomes and legal challenges. Assessing officers should permit physical submissions or hearings depending on the complexity involved."

This feature is available in both print and online editions.

To read the full article, please click the link.
https://www.livemint.com/companies/tax-lawyers-upsets-with-problems-in-faceless-assessment-scheme-11722418220330.html



Multiplex, OTT Players Wary of Extra Burden from Karnataka Entertainment Cess.

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been featured in a LiveMint article titled '"Multiplex, OTT Players Wary of Extra Burden from Karnataka Entertainment Cess."

He commented: "The Karnataka government's 2% cess on cinema and OTT subscriptions could raise costs and impact consumer choices. This move might set a trend for other states under financial pressure."

Read the full article here:
https://www.livemint.com/industry/media/multiplex-ott-players-wary-of-extra-burden-from-karnataka-entertainment-cess-11722755986349.html

Glimpse of the Budget 2024 discussions on CNN-News18

We are delighted to share that our Partner, Mr. Prateek Bansal was a distinguished speaker at the Grand Masters 2024 Summit hosted by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs this summit stands as a beacon of knowledge and innovation in the legal and corporate sectors.

Mr. Prateek contributed significantly to the panel discussion titled- "India Inc. 2.0 - The Great Indian Regulatory Drive", where he offered insightful perspectives on "7 Years of GST: Rising Confidence and Future Challenges" and "The Reverse Flip Strategy: Legal & Tax Secrets for Startups".

In addition to his contributions, Mr. Prateek emphasized the importance of adapting to the evolving regulatory environment and leveraging it for sustainable growth. His thoughts resonated with the audience, providing them with actionable insights and a deeper understanding of the current and future challenges in the legal and corporate spheres.

He shared the stage with:

- Rajiv Mohapatra, Global Lead Legal Compliance, Mastercard (Moderator)
- Kaushik Mukherjee, President, Legal, Sammaan Capital Limited
- Sujeet Jain, Chief Legal & Regulatory Officer, Nykaa
- Suvarna Mandal Mandal, Partner, Saikrishna & Associates

This event was a true confluence of thought leaders and innovators, addressing the pressing issues and opportunities in India's corporate governance and legal ecosystem.

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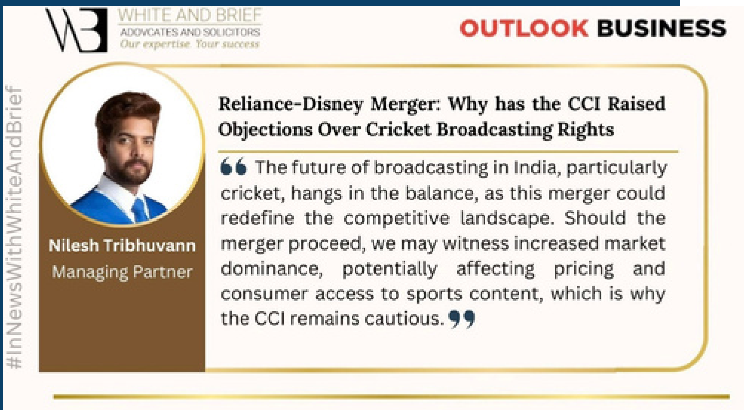

Reliance-Disney Merger: Why has the CCI Raised Objections Over Cricket Broadcasting Rights

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN, has been featured in an Outlook Business article titled "Reliance-Disney Merger: Why has the CCI Raised Objections Over Cricket Broadcasting Rights."

Read the full article here : https://www.outlookbusiness.com/explainers/reliance-disney-merger-why-has-the-cci-raised-objections-over-cricket-broadcasting-rights

Operational creditors continue to get little of insolvency proceeds

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN, has been featured in an Financial Express (India) article titled - Operational creditors continue to get little of insolvency proceeds.

Read the full article here : https://www.financialexpress.com/business/banking-finance-operational-creditors-continue-to-get-little-of-insolvency-proceeds-3587975/

Sebi proposes permitting tights issues without merchant bankers and allotment shares to specific investors

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been featured inLiveMint article titled - "Sebi proposes permitting tights issues without merchant bankers and allotment shares to specific investors "

Read the full article here : https://www.livemint.com/market/stock-market-news/sebi-proposes-permitting-rights-issues-without-merchant-bankers-and-allotment-shares-to-specific-investors-11724162554172.html

Religare upsets investors by delaying AGM

We are delighted to share that our Managing Partner NILESH TRIBHUVANN has been featured in aLiveMint article titled "Religare upsets investors by delaying AGM "

This feature is available in both print and online editions.

To read the full article, please click the link.
https://www.livemint.com/companies/news/religare-enterprises-agm-delay-shareholders-rashmi-saluja-investors-burman-family-dabur-11724591594022.html

Bangalore Grand Masters 2024 Summit

We are delighted to share that our Associate Partner, Ms. Kanan Chawda , was a distinguished speaker at the Bangalore Grand Masters 2024 Summit, hosted by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs . The summit is a key event, highlighting the latest in legal and corporate sectors.

Ms. Kanan Chawda contributed to the panel on "Mediation Act and Challenges"and the "Art of Contracting." She discussed the pros and cons of the Mediation Act, the effective use of mediation in corporate contexts, and essential contract drafting techniques to minimize disputes. Ms. Chawda also offered valuable takeaways for the audience.

She shared the stage with:

- Shujath Bin Ali, Global General Counsel & Chief Compliance Officer, Re Sustainability
- Maneesha Kongovi, Partner, IndusLaw
- Anandh Venkataramani, Advocate, Office of the Attorney General for India
- Rajnikandh, Head Legal & Compliance, Metro Cash & Carry India
- Shreekanth Katti , Head- Legal, Compliance and Data Privacy, Merck Group

SEBI rights issue plan may hit merchant bankers revenue

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been featured inFinancial Express (India) article titled - "SEBI rights issue plan may hit merchant bankers revenue "

Read the full article here : https://www.financialexpress.com/market/sebi-rights-issue-plan-may-hit-merchant-bankers-revenue-3594117/

Online Skill-Based Courses Could Need New UGC Regulations

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been featured in article titled - "Online Skill-Based Courses Could Need New UGC Regulations"

Read the full article here : https://www.ndtvprofit.com/law-and-policy/online-skill-based-courses-could-need-new-ugc-regulations

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Three- tier GST rate up for debate ; maintaining revenue-neutrality a challenge , say experts

We are delighted to share that our Partner, Prateek Bansal , has been featured inETLegalWorld article titled - "Three- tier GST rate up for debate ; maintaining revenue-neutrality a challenge , say experts "

Read the full article here : https://legal.economictimes.indiatimes.com/news/law-policy/three-tier-gst-rate-up-for-debate-maintaining-revenue-neutrality-a-challenge-say-experts/112954135

Reliance Industries and Walt Disney merger approved by fompetition commissiom of India

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been featured inThe Economic Times article titled - "Reliance Industries and Walt Disney merger approved by fompetition commissiom of India "

Read the full article here : https://economictimes.indiatimes.com/industry/media/entertainment/media/reliance-industries-and-walt-disney-merger-approved-by-competition-commission-of-india/articleshow/112875499.cms?from=mdr

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The 13th Annual Legal Era India Conclave 2024

We are delighted to announce that our Partner and Co-Founder at White and Brief's Sidebar, Purusharth Singh, was a distinguished speaker at the 13th Annual Legal Era India Conclave 2024.

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