

MONTHLY NEWSLETTER

JULY 2021

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from RBI, FEMA, Foreign Trade, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Trade & Indirect Taxes and Customs, Intellectual Property Laws, Environmental Laws etc.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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RBI & FEMA

(1) RBI EXTENDS THE INTEREST EQUALIZATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT



The Reserve Bank of India (RBI) has extended the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit, with the same scope and coverage, for a further period of three months, i.e., up to September 30, 2021. The extension takes effect from July 01, 2021, and ends on September 30, 2021, covering a period of three months. The scheme, announced in April 2015, gives subsidies on interest provided on pre-and post-shipment export credit varying between 3% and 5% to exporters.

The banks give credit at lower interest rates to exporters and the differential amount is later refunded by the government.

(Source: RBI Notification No. RBI/2021-22/65 DOR.CRE(DIR).REC.28/04.02.001/2021-22 dated 01-07-2021)

(2) RBI INCLUDES RETAIL AND WHOLESALE TRADE UNDER MSME

RBI has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal.

The beneficiary segments of the change in norm would be wholesale and retail trade and repair of motor vehicles and motorcycles, wholesale trade except of motor vehicles and motorcycles, and retail trade except of motor vehicles and motorcycles.

The above Enterprises having Udyog Aadhaar Memorandum (UAM) are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

(Source: RBI Notification No. RBI/2021-2022/67 FIDD.MSME & NFS.BC.No.13/06.02.31/2021-22 dated 07-07-2021)

(3) RBI ANNOUNCES RETAIL DIRECT SCHEME ALLOWING INVESTORS TO OPEN RETAIL DIRECT GILT ACCOUNTS

RBI has issued the 'RBI Retail Direct' scheme which is one-stop solution to increase retail participation in government securities. The scheme was first announced in the Statement of Developmental and Regulatory Policies dated February 05, 2021. The date of commencement of the scheme will be announced later. This allows the retail investors to open and maintain Retail Direct Gilt Account (RDG Account) with RBI through an Online Portal. Retail investors, if they have Rupee savings bank account maintained in India, Permanent Account Number (PAN) issued by the Income Tax Department, any OVD for KYC purpose, valid email id and Registered mobile number, can register under this scheme to open and maintain RDG Account. Non-Resident retail investors eligible to invest in Government Securities under Foreign Exchange Management Act, 1999 are also eligible under the scheme. The RDG

account can be opened singly or jointly with another retail investor who meets the eligibility criteria. The scheme also provides facilities including access to primary issuance of Government securities and NDS- OM. The investor services include account statement, nomination facility, pledge/lien, gift transactions and grievance redressal. No fee will be charged for opening and maintaining RDG Account or for submitting bids in primary auctions.

(Source: RBI Press Release No 2021-2022/518 dated 12-07-2021)

(4) RBI INVITES COMMENTS ON THE DRAFT CIRCULAR ON 'ISSUE OF SHARE CAPITAL AND SECURITIES- PRIMARY (URBAN) CO-OPERATIVE BANKS'

The RBI has released 'Draft Circular' on 'Issue of Share capital and Securities- Primary (Urban) Co-operative Banks' and has invited comments from Urban Co-operative Banks (UCBs), sector participants and other interested participants by 31st August, 2021. The circular is based on the changes brought by the Banking Regulation (Amendment) Act, 2020 notified on 29th September, 2020. The Act have come into force for State Co-operative Banks (SCBs) and District Central Co-operative Banks (DCCBs) from April 01, 2021.

UCBs are permitted to raise equity share capital, as hitherto, by way of (i) issue of equity shares to persons within their area of operation enrolled as members, in accordance with the provisions of their bye-laws, and (ii) issue of additional equity shares to the existing members. UCBs shall ensure that all the publicity material / offer documents, application forms and other communication with the investors should clearly state in bold letters (Arial font, size 14, equivalent size in English / Vernacular version) how a PNCPS / PCPS / RNCPS / RCPS / PDI / LTSB, as the case may be, is different from a fixed deposit, and that these instruments are not covered by deposit insurance.

(Source: RBI Press Release No. 2021-2022/527 dated 14-07-2021)

(5) RBI ALLOWS NON-BANKS TO PARTICIPATE IN CENTRALISED PAYMENT SYSTEM

RBI vide its Notification has allowed non-banks to participate in its Centralised Payment Systems (CPS) through Real Time Gross Settlement (RTGS) and National Electronic Fund Transfer (NEFT) systems, in a phased manner.

Non-banks include entities like Payment System Providers (PSPs) and Non-Banking Financial Companies (NBFCs) that are regulated by RBI as also entities that are under the remit of other financial sector regulators like PFRDA, IRDAI, SEBI, etc.

The Access to non-banks in CPS will be enabled in a phased manner and in the first phase only the following authorised non-bank PSPs shall be provided access –

1. Prepaid Payment Instrument (PPI) Issuers;
2. Card Networks; and
3. White Label ATM Operators.

For access to CPS the non-bank PSPs shall have a Valid Certificate of Authorisation (CoA) from RBI under the Payment and Settlement Systems Act, 2007 (**PSS Act**) and a Net-worth of ₹25 crores or as prescribed as per CoA, whichever is higher and it shall be Incorporated in India under the Companies Act, 1956 / 2013.

Entities not fulfilling this requirement shall empower their Indian subsidiary / associate to enter into valid agreements with RBI. Entities incorporated outside India shall empower their local offices to carry out all operations in respect of CPS, but the responsibility for all operations and management of any contingency, including settlement obligations, shall remain with the foreign parent institution, which has taken authorisation as PSP.

The Non-bank entities shall choose the type of access to the RTGS system, i.e., SFMS member interface, Web service interface or Payment originator module through INFINET, as per their convenience and requirement in consultation with Indian Financial Technology & Allied Services (IFTAS) and RBI.

(Source: RBI Notification No. RBI/2021-22/73 DPSS.CO.LVPD No.S290/04.04.009/2021-22 dated 28-07-2021)

FOREIGN TRADE

(1) DGFT EXTENDS THE PERIOD OF MODIFICATION OF IEC TILL 31ST JULY 2021

The Directorate General of Foreign Trade (DGFT) has extended the last date for updating of Importer-Exporter Code (IEC) on annual basis for the current financial year 2021 upto 31st July 2021.

An IEC holder has to ensure that details in its IEC is updated electronically every year, during April-June period. However, for the current year only, this period is extended by another month i.e. till 31st July, 2021. In cases where there are no changes in IEC details same also needs to be confirmed online.

Further no fee shall be charged on modifications carried out in IEC during the period upto 31st July, 2021.

(Source: Trade Notice No. 11/2015-2020 dated 01-07-2021)

(2) DGFT INVITES SUGGESTIONS FOR THE NEW FOREIGN TRADE POLICY 2021-26

DGFT has issued circular inviting suggestions regarding New Foreign Trade Policy (“FTP”) 2021-26. The Foreign Trade Policy (2015-2020), was extended till September 30, 2021 and in order to prepare a new five-year Foreign Trade Policy, suggestions/inputs are invited from various stakeholders. To collate, analyze, and for ease of processing the suggestions/inputs received, a Google Form has been created on the following link: <https://bit.ly/3khHEI2>. The link shall be valid upto 31st July 2021.

The New foreign trade policy aims to boost the exports of both services & goods and to

improve the infrastructure for the operations of domestic services & manufacturing sectors to correct the trade imbalance in India.

(Source: Trade Notice No. 09/2021-22 dated 16-07-2021)

(3) DGFT EXTENDS TIME LIMIT FOR FILING CLAIMS UNDER TMA SCHEME

DGFT vide its Notification has extended the time limit for filing claims under the Transport Marketing Assistance (TMA) scheme for specified agricultural products, through an amendment to para 7A.01(d) of the Handbook of Procedures (2015-20). The Application for refund of claims under the TMA Scheme for specified agricultural products for the quarter ending 31st March, 2020 and 30th June, 2020 may be filed upto 30th September, 2021.

(Source: Public Notice No. 14/2015-2020 dated 13-07-2021)

CORPORATE LAWS

(1) MCA ENLISTS VARIOUS MEASURES TAKEN TO FIGHT COVID-19 PANDEMIC



The Ministry of Corporate Affairs (MCA) has announced various measures taken by the ministry to fight against Covid-19 pandemic. The relief measures include the following:

1. The companies have been allowed to hold Extraordinary General Meetings (EGMs) through Video Conferencing (VC) or other audio-visual means (OAVM) complemented with e-Voting facility/simplified voting through registered emails till 30th June, 2021. Considering the second wave of COVID-19,

the Ministry has extended the aforesaid time limit to 31st December, 2021.

2. The companies have been allowed to conduct their Annual General Meetings (AGMs) by Video Conferencing (VC) or other audio-visual means (OAVM) whose AGMs were due to be held in the year 2020 or become due in the year 2021 to conduct their AGMs on or before 31.12.2021. Owing to the difficulties in sending physical copies of the financial statements, the companies are also allowed to send the financial statements, along with Board's reports, Auditor's reports and other documents required to be attached therewith, only through email.
3. Quality of disclosures strengthened through amendments made in the formats of financial statements, Companies (Accounts) Rules, Companies (Audit and Auditor's) Rules and the Companies (Auditor's Report) Order, 2020. The Companies (Auditor's Report) Order, 2020 has now been made applicable from the audit of financial statements for the financial year 2021-22 to ease the compliance requirement by auditors and the companies.

(Source: Press Release ID No. 1737223 dated 20-07-2021)

(2) MCA NOTIFIES NEW RULES FOR ALLOTMENT OF NEW NAME FOR AN EXISTING COMPANY

MCA has published the Companies (Incorporation) Fifth Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014 which shall come into force from 1st September 2021.

The Amendment notifies new rule 33A which deals with the allotment of a new name to the existing company.

As per the rule, in case if a company fails to change its name or new name, in accordance with the direction issued under sub-section (1) of Section 16 of the Act within a period of three months from the date of issue of such direction, the letters "ORDNC" ("Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new

name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C.

However the above rule shall not apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

Further, a company whose name has been changed, shall at once make necessary compliance with the provisions of Section 12(Application for incorporation) of the Act and the statement, "Order of Regional Director Not Complied" shall be mentioned in brackets below the name of the company, wherever its name is printed, affixed or engraved, Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of Section 13 of the Act."

(Source: MCA Notification No. G.S.R. 503(E) dated 22-07-2021)

(3) CASE LAW (SC): THE FIRST PROVISO TO SECTION 184(1) OF THE FINANCE ACT, 2017, INTRODUCED BY SECTION 12 OF THE TRIBUNALS REFORMS (RATIONALISATION AND CONDITIONS OF SERVICE) ORDINANCE, 2021 IS HEREBY DECLARED VOID AND INOPERATIVE

- The Madras Bar Association had filed Writ Petition seeking a declaration that Sections 12 and 13 of the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 and Sections 184 and 186 (2) of the Finance Act, 2017 as amended by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 as ultra vires Articles 14, 21 and 50 of the Constitution of India inasmuch as these are violative of the principles of separation of powers and independence of judiciary. The Petitioner seeks a further direction to Respondent No.2 for establishment of a separate wing to cater to the requirements of tribunals in India. Sections 184 and 186 of the Finance Act 2017 give Central Government rule-making power in relation to the mode of appointment, terms of service, allowances of members etc., of various Tribunals.

- The doctrine of separation of powers defines the Indian constitutional structure and is an essential constituent of rule of law. Though, there is no rigid separation of governmental powers between the executive, legislative and judiciary, it is clear from the judicial pronouncements and literature that separation of powers forms part of the basic structure of the Constitution. Violation of separation of powers would result in infringement of Article 14 of the Constitution. A legislation can be declared as unconstitutional if it is in violation of the principle of separation of powers.
- The constitutional mandate is that the legislature should adhere to the principles laid down in Part IV of the Constitution of India while enacting legislations. No provision shall be made in legislative acts which would have the tendency of making inroads into the judicial sphere. Any such encroachment by the legislature would amount to violating the principles of separation of powers, judicial independence and the rule of law. Independence of courts from the executive and the legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution.
- The first proviso and the second proviso, read with the third proviso, to Section 184 overriding the judgment of this Court in MBA-III in respect of fixing 50 years as minimum age for appointment and payment of HRA, Section 184(7) relating to recommendation of two names for each post by the SC and further, requiring the decision to be taken by the Government preferably within three months are declared to be unconstitutional. Section 184(11) prescribing tenure of four years is contrary to the principles of separation of powers, independence of judiciary, rule of law and Article 14 of the Constitution of India. Though, the Supreme Court has upheld the proviso to Section 184(11), the appointments made to the CESTAT pursuant to the interim orders passed by this Court shall be governed by the relevant statute and the rules framed thereunder that existed prior to 26.05.2017. Already taken notice of the notification dated 30.06.21 by way of which Rule 15 of the 2020 Rules dealing with HRA has been amended in conformity with the Courts directions in MBA-III.
- The Petitioner continues its relentless struggle in its endeavour to make tribunals effective avenues of administration of justice. The endeavour of the Petitioner is to extricate the tribunals from the clutches of the executive in the interest of independence of judiciary. Security of tenure, adequate remuneration and other conditions of service are necessary to ensure that Members of tribunals would feel secured during their tenure. The judgment in MBA-III was passed after a detailed dialogue with the learned Attorney General. Existence of large number of vacancies of Members and Chairpersons and the inordinate delay caused in filling them up has resulted in emasculation of the tribunals. The main reason for tribunalisation, which is to provide speedy justice, is not achieved as tribunals are wilting under the unbearable weight of the exploding docket. Undoubtedly, the legislature is free to exercise its power to make laws and the executive is the best judge to decide policy matters. However, it is high time that a serious effort is made by all concerned to ensure that all the vacancies in the tribunals are filled up without delay. Access to justice and confidence of the litigant public in impartial justice being administered by tribunals need to be restored.
- It was held that there was violation as the express direction given in an earlier judgment that the term of tribunal members should be 5 years. Accordingly, the bench set aside those provisions. Supreme Court stated that its provisions will not apply to appointments made prior to February 4, 2021 (the date when the Ordinance was notified).

(Source: Madras Bar Association Vs UOI Writ Petition (Civil) 502 of 2021 dated 14-07-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SEBI ISSUES SOP FOR LISTED SUBSIDIARY COMPANY GETTING DELISTED BY SCHEME OF ARRANGEMENT

The Securities and Exchange Board of India (SEBI) has notified the Standard Operating Procedure for listed subsidiary company desirous of getting delisted through a Scheme of Arrangement wherein the listed parent holding company and the listed subsidiary are in the same line of business.

SEBI for the purpose of defining “same line of business” has notified the following criteria to be fulfilled by the listed holding company and the listed subsidiary company.

The principal economic activities of both Holding company and Subsidiary Company are under the same Group (3-digit numeric code) under the National Industrial Classification (NIC) Code 2008.

At least 50% of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business and at least 50% of the net tangible assets of the listed holding company and the listed subsidiary must be invested in the same line of business.

Further in case of change of name of the listed entities, within the last one year, at least fifty percent of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name.

The listed holding company and the listed subsidiary have to provide self-certification with respect to both the companies being in the same line of business.

(Source: Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0585 dated 06-07-2021)

(2) SEBI EXTENDS TIMELINE FOR COMPLIANCE WITH REGULATORY REQUIREMENTS BY DEBENTURE TRUSTEES

SEBI has extended the timelines for compliance with the regulatory requirements by debenture

trustees for the quarter/half year/ year ending March 31, 2021. The timelines for following compliance are extended:

1. The due date for submission of Asset Cover Certificate, a statement of value of pledged securities and a statement of value for Debt Service Reserve Account (DSRA) or any other form of security offered is extended from July 15, 2021 to 31st August, 2021.
2. The due date for submission of net worth certificate of guarantor (secured by way of personal guarantee), Financials/value of guarantor prepared on basis of audited financial statement etc. of the guarantor (secured by way of corporate guarantee) and Valuation report and title search report for the immovable/ movable assets, as applicable is extended from July 15, 2021 to 31st October, 2021.
3. The due date for disclosure on the website of Monitoring of asset cover certificate and quarterly compliance report of the listed entity, Monitoring of utilization certificate, Status of information regarding breach of covenants/terms of the issue, if any action taken by debenture trustee and Status regarding maintenance of accounts maintained under supervision of debenture trustee is extended from July 15, 2021 to 31st August, 2021.

(Source: SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2021/597 dated 20-07-2021)

(3) SEBI EXTENDS THE TIME FOR HOLDING ANNUAL GENERAL MEETING BY TOP 100 LISTED ENTITIES BY MARKET CAPITALIZATION.

SEBI vide its Notification has decided to extend the timeline for conducting AGM by top-100 listed entities by market capitalization. The entities shall hold their AGM within a period of six months from the date of closing of the financial year for 2020-21. As per regulation 44(5), the top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their AGMs within a period of five months from the date of closing of the financial year. However, based on the receipt of representations from listed entities and the Institute of Company Secretaries of India (ICSI)

requesting an extension of time, SEBI has extended the time limit for holding the AGM.

(Source: SEBI Circular No. SEBI/HO/CFD/CMD/CMD1/P/CIR/2021/602 dated 23-07-2021)

(4) SEBI RELAXES TIMELINES FOR COMPLIANCES BY TRADING MEMBERS / CLEARING MEMBERS & KYC REGISTRATION AGENCIES

SEBI through Circular has extended the timelines for compliances by Trading members/Clearing Members & KYC Registration Agencies. The due date for the following compliances are extended from July 31, 2021 to September 30, 2021:

1. KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.
2. Submission of Internal Audit Report for Half year ended
3. System Audit /Cyber Audit Report – Algo / Type III Members for the period ended March 31, 2021.
4. Submission of System Audit Report for the period ended March 2021.
5. Submission of Cyber Security & Cyber Resilience Audit Report for the period ended March 2021.
6. Reporting of Risk Based Supervision.
7. Maintaining call recordings of orders / instructions received from clients.

The due date to operate the trading terminals from designated alternate locations is extended from July 31, 2021 till December 31, 2021.

(Source: SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/607 dated 30-07-2021)

COMPETITION LAWS

(1) CCI RECEIVES NOTICE RELATING TO ACQUISITION BY DHAMPUR BIO ORGANICS LIMITED (DBOL) OF CERTAIN UNDERTAKING OF DHAMPUR SUGAR MILLS LIMITED UNDER GREEN CHANNEL

The Competition Commission of India (CCI) receives notice under Green Channel filed under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) read with regulation 5A of the CCI (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (**Combination Regulations**) and is deemed approved. The Proposed Combination envisages a series of inter-connected steps pursuant to which GV Promoter Group will hold stake only in/comparatively greater stake in DSML (which will hold the Dhampur and Rajpura units); and GT Promoter Group will hold stake only in/comparatively greater stake in DBOL (which will hold the Asmoli, Mansurpur and Meerganj units).

(Source: PRESS RELEASE No. 24/2021-222 dated 30-07-2021)

(2) CCI APPROVES ACQUISITION BY BAJAJ SEVASHRAM PRIVATE LIMITED (BSPL), BACHHARAJ & COMPANY PRIVATE LIMITED (BCOPL), BACHHARAJ FACTORIES PRIVATE LIMITED (BFPL) AND SANRAJ NAYAN INVESTMENTS PRIVATE LIMITED (SNIPL) OF MUKUND LIMITED (TARGET) UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The CCI approves acquisition by Bajaj Sevashram Private Limited (BSPL), Bachhraj & Company Private Limited (BCOPL), Bachhraj Factories Private Limited (BFPL) and Sanraj Nayan Investments Private Limited (SNIPL) (collectively referred to as 'Acquirers') of Mukund Limited (Target) under Section 31(1) of the Competition Act, 2002.

The Proposed Combination envisages the acquisition of up to 16.57% of the equity share capital of the Target by the Acquirers, who are all part of the Bajaj Group of companies, from the Sellers, who are also the co-promoters of Target along with the Bajaj Group.

The acquisition is in addition to around 57.70% of the issued and paid-up equity share capital of ML presently held by the Bajaj Group. BSPL, BFPL and SNIPL are all unregistered core investment companies. BCOPL is registered as a non-banking finance company (NBFC) with the Reserve Bank of India.

The Acquirers are investment and lending companies and are not engaged in the manufacturing or trading of any goods. The Target is engaged in the business of manufacturing, marketing, selling, exporting, distribution etc. of specialty steel long products and heavy machinery.

(Source: Press Release No. 23/2021-22 dated 20-07-2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) THE DELHI GOODS AND SERVICES TAX (ELEVENTH AMENDMENT) RULES, 2020

The Government of NCT Delhi through its Circular has issued the Delhi Goods and Services Tax (Eleventh Amendment) Rules, 2020. The amendment provides that in case, invoice is issued in the manner prescribed under sub-rule (4) of Rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

These rules shall be applicable retrospectively from the 30th day of September, 2020.

(Source: Notification No. 72/2020- State Tax, dated 07-07-2021)

(2) THE DELHI GOODS AND SERVICES TAX (AMENDMENT) BILL, 2021

The Government of Delhi through Gazette notification has issued the Delhi Goods and Services Tax (Amendment) Bill, 2021. The amendment is introduced with a view to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Government of National Capital Territory of Delhi.

The following are the major objectives of the bill:

1. To ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an

individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

2. To provide input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
3. To remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.
4. To remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis.
5. To charge interest on net cash liability retrospectively with effect from the 1st July, 2017.

(Source: Notification No. F. No. 21/6/GST(A)/2021/LAS-VII/Leg./372, dated 30-07-2021)

(3) CASE LAW - HC: MADRAS HC ORDER HOLDING RWA LIABLE TO GST ONLY ON MEMBER'S CONTRIBUTION EXCEEDING RS. 7500

- The Assessee being Resident Welfare Associations (RWA), have been following the methodology given by the GST Department in the collection of resident member's contributions and levy of GST i.e. 'GST would be applicable only on the amount in excess of Rs.7,500' and has been availing the benefit of exemption provisions, granted in Entry 77(c) of the Notification No. 12/2017-C.T.(R) dated June 28, 2017 as amended, from 2017 to 2019.
- Since contributions solicited from members of RWA were on some occasions more than Rs.7,500/- as well, one of the questions that arose was whether, in a case where the contribution exceeded the amount of Rs.7,500/-, the resident in that RWA would lose the entitlement to exemption altogether, as a result whether the entire contribution

would be liable to GST or whether the exemption would still continue to be available upto to a sum of Rs.7,500/- and only the difference (excess) becomes exigible to tax.

- Hence, Assessee (TVH Lumbini Square Owners Association) approached the Tamil Nadu AAR which issued an adverse order that “the grant of exemption was conditional upon the contribution being an amount of Rs.7,500/- or less. If the contribution exceeded the sum of Rs.7,500/-, then the very entitlement of that RWA to exemption would stand defeated and the entirety of the amount collected would have to be brought to tax”. Subsequently, CBIC issued Circular No.109/28/2019-GST which towed the line of AAR and expanded the same position as taken by the AAR. Hence, Assessee moved the Writ Court assailing the AAR ruling as well as the Circular.
- Madras HC holds that “it is only contributions to RWA in excess of Rs.7,500/- that would be taxable under GST Act” and “the AAR as well as the Circular to the effect that any contribution above Rs.7,500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry”.
- The Assessee vehemently challenges on two primary basis, that-
 - (i) such interpretation is contrary to the express language as well as the intendment of exemption granted in Entry 77(c) of Notification No.12/2017-C.T.(Rate) as amended vide Notification No. 2/2018-C.T.(Rate) w.e.f. January 25, 2018,
 - (ii) withdrawal of a statutory exemption by way of a Circular is contrary to the provisions of Article 13(3) of Constitution which excludes ‘Circulars.Whereas Revenue relies on landmark judgment in Dilip Kumar to aver that as per Section 15 of CGST Act, transaction value is liable to GST which in this case is represented by the member’s contribution and in entirety, be taken into account for levying tax.
- Court forms the view that said SC ruling is not applicable in present case as there is no ambiguity in language of exemption provision. The High Court elucidates that the words ‘upto’ in Entry 77 is interchangeable with word ‘till’ and can only be interpreted to state that any contribution in excess of the same would be liable to tax and till the ceiling of Rs.7,500 would be exempt for the purposes of GST;

(Source: Greenwood Owners Association Vs Union of India W.P Nos. 5518 & 1555 of 2020, dated 01-07-2021)

II. CUSTOMS

(1) THE CBIC IGST RATE FOR RE-IMPORT OF GOODS SENT ABROAD FOR REPAIRS

The Ministry of Finance has released circular clarifying the applicability of Integrated Goods and Services Tax (IGST) on repair cost, insurance and freight on goods re-imported after being exported for repairs based on the recommendations of the GST Council. The clarification is provided in consonance with the decision of GST Council in its 43rd Meeting held on the 28th May, 2021.

It is clarified that re-import of goods sent abroad for repairs attracts IGST on a value equal to the repair value, insurance and freight and not on the entire value of goods imported.

(Source: Circular No. 16/2021 - Customs, dated 19-07-2021)

(2) THE CBIC REDUCES COMPLIANCE BURDEN BY ABOLISHING RENEWALS OF LICENSES/REGISTRATIONS

The Central Board of Indirect Taxes and Customs has abolished the requirement of periodic renewals of Licence/Registration issued to Customs Brokers and Authorised Carriers with effect from 23rd July 2021 by amending the Customs Brokers Licensing Regulations, 2018 and Sea Cargo Manifest and Transshipment Regulations, 2018.

The life-long validity of licenses/registrations is expected to provide a major relief to the trade by reducing their compliance burden and promoting the Ease of Doing Business in India. Removing the requirement of seeking periodic renewals also reduces the interface between the Customs and the trade, which is a deliverable of the CBIC’s “Contactless Customs” initiative, a critical component of its flagship Truant Customs programme.

Further, a provision has been made to invalidate licences/registrations that are inactive for more than a year, which would prevent misuse of dormant licences/registrations by unscrupulous persons who falsely declare import or export or wrongly obtain export refunds/incentives and when caught, put the burden on the original license/registration holder.

(Source: Press Release No. 1738684, dated 24-07-2021)

(3) THE CBIC APPOINTS 1ST AUGUST 2021 FOR ENFORCING SECTION 110 AND 111 OF THE FINANCE ACT 2021

The CBIC vide its Notification has appointed 1st August 2021 as the date on which the provisions of sections 110 and 111 of the Finance Act, 2021 shall come into force.

Section 111 of the Finance Act, 2021 seeks to amend section 44 of the Central Goods and Services Tax Act. The section shall be substituted, namely *“Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed. Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section. Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force”*.

Section 110 of the Finance Act, 2021 omitted section 35 of the Central Goods and Services Tax Act.

(Source: Notification No. 29/2021-Central Tax, dated 30-07-2021)

INTELLECTUAL PROPERTY RIGHTS

(1) IPAB ISSUE FINALLY COMES TO A CONCLUSION: DELHI HC CREATES SPECIALIST IP DIVISION

The Delhi High Court issued a press release stating that it will create an Intellectual Property Division (hereinafter IPD) in the Delhi High Court. According to the roster sheet, the judges that have been nominated for IPD are Justice Suresh Kumar Kait, Justice Jayant Nath, Justice Anu Malhotra, Justice C. Hari Shankar and Justice Sanjeev Narula. The court is in the process of formulating comprehensive rules for this division. Under Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance 2021, the IPAB's powers in respect of pending as well as fresh patents, trademarks, GI and Plant Varieties matters were transferred to the High Courts, while in case of copyright they were transferred to the Commercial Courts.

According to the press release, this ordinance meant that the approximately 3000 pending IPAB cases concerning appeals from IP offices and revocation matters would be transferred to the Delhi High Court. And this was in addition to the already pending infringement matters, writ petitions, appeals from commercial courts etc. before the court. In order to find a way to deal with such a huge number of IP cases, a two-member committee consisting of Justice Prathiba M. Singh and Justice Sanjeev Narula, had been constituted by Justice D.N. Patel. Based on the committee's recommendations, the IPD has been created. The press release provides that the IPD will also be handling 'Writ Petitions (Civil), CMM, RFA, FAO relating to Intellectual Property Rights disputes (except those which are required to be dealt with by the Division Bench).' This move is in line with practices in other countries such as the UK, Japan, Malaysia, Thailand, China etc.

(Source: Office Order No. 667/Original Side/DHC, dated 07-07-2021)

**(2) CASE LAW – VEMPATI RAVI SHANKAR
COPYRIGHT DISPUTE: ISSUES ON
MORAL RIGHT AND POSTHUMOUS
ENFORCEMENT OF CELEBRITY
RIGHTS**

- Recently, a copyright infringement suit had been filed before the District Court, Trivandrum, against Facebook India. (CNR Number: KLTV010019372021) The reason for filing the suit was that certain unknown people had posted without authorisation original sound recordings created by Vempati Ravi Shankar (the plaintiff's late husband) on the defendant's social media platforms – Facebook and Instagram. Being his sole legal heir, the copyright in these works is held by Sweety Priyanka Vempati Ravi Shankar. (hereinafter Priyanka) She had notified Facebook and Instagram regarding the presence of infringing sound recordings on their platform, but they failed to take it down and hence, the present suit was filed. On 2nd July, the court granted an ad-interim injunction in the plaintiff's favour, ordering the removal of the infringing content.
- The profile of Vempati Ravi Shankar: He was a Kuchipudi artist who had participated solo in various national and international festivals and had been conferred with multiple titles and awards, such as 'Kala Ratna'. He was the son and disciple of Padma Bhushan Vempati Chinna Satyam (a renowned Kuchipudi artist). He was credited with the creation of many musical compositions and choreographies.
- A copyright holder has the exclusive right to communicate his work to the public and as the plaintiff's sound recordings were used without authorisation, copyright infringement could be easily proved. In addition to copyright infringement, the plaintiff also claimed violation of moral rights and infringement of posthumous celebrity rights.

(Source: Sweety Priyanka Vempati Ravi Shankar Vs Facebook India Online Service Pvt. Ltd. I.A. No. 01/2021 in O.S.No. 06/2021, dated 02-07-2021)

ENVIRONMENT LAWS

**(1) THE MINISTRY OF FISHERIES, ANIMAL
HUSBANDRY & DAIRYING DECIDES TO
IMPLEMENT SPECIAL LIVESTOCK
SECTOR PACKAGE.**

The Ministry of Fisheries, Animal Husbandry & Dairying on 15th July 2021 has decided to implement a Special Livestock Sector Package consisting of several activities by revising and realigning various components of Government of India's schemes for next 5 years starting from 2021-22.

As per this, all the schemes of the Department will be merged into three broad categories as Development Programmes, Disease Control Programme and Infrastructure Development Fund wherein, the Animal Husbandry Infrastructure Development fund (AHIDF) and the Dairy Infrastructure Development Fund (DIDF), a scheme for support to Dairy Cooperatives and Farmer Producer Organizations engaged in Dairy activities, are merged, and included in this third category.

(Source: Ministry of Environment, Forest and Climate Change Press Release No.1735928, dated 15.07.2021)

[End of Newsletter]
