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CHARTERED
ACCOUNTANTS



Monthly E-Newsletter

BSC BEACON

TAX & REGULATORY INSIGHTS

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I. KEY RECOMMENDATIONS OF 57TH GST COUNCIL MEETING

The 57th meeting of the GST Council was held on October 8, 2026 in New Delhi, under the chairpersonship of the Union Finance Minister. It is the first Council meeting since the 56th GST Council meeting in September 2025, which delivered the GST 2.0 rate rationalization and reduction of rates.

With rates now settled, the GST council meeting turned to the working of the law. The Council made recommendations on process reforms covering registration, returns, refunds and adjudication, along with clarifications on rates and other trade facilitation measures. The headline items include withdrawal of arrest powers, a higher prosecution threshold, lower penalties and wider ITC and refund eligibility.

This alert summarises the key recommendations on dispute resolution, ITC, exports and ease of doing business. These are recommendations only. They will take effect through law amendments, rules, notifications and circulars, and the final text may differ.

Legislative Changes

I. Notices, Penalties and Appeals

There are several reforms that have been suggested to bring change in the dispute resolution mechanism:

- Circular to provide comprehensive guidelines on quality and timely issuance of notices and orders, fraud invocation only on merits, and personal hearings.

- Amendment to Sections 73, 74 and 74A of CGST Act:
 - to provide a minimum limit of INR 10,000 for issuing a show cause notice. Further, the pending notices and appeals involving tax amount below INR 10,000 be decided as if the threshold was in force on the SCN issuance date
 - to deem penalty as a 'charge' where tax, interest and penalty are voluntarily paid in time
 - to remove non-fraud penalty of INR 10,000
 - to reduce penalty at 5%, if tax and interest are paid within 30 days (Section 73) or 60 days (Section 74A) of the order
- General penalty under Section 125 of CGST Act to be reduced from INR 25,000 to INR 10,000.
- Amendment to provisos to Secs 107(6) and 112(8) of CGST Act, to provide an upper limit of INR 40 crore (CGST+SGST) on pre-deposit for appeals to the Appellate Authority and Tribunal where the order involves only penalty and no tax demand.

II. Refund of accumulated ITC on capital goods and input services

- Section 54(3) of the CGST Act to be amended to allow refund of accumulated ITC on capital goods used for zero-rated supply and inverted duty structure. The refund of ITC will be over 60 months for ITC availed on or after April 1, 2027.
- Refund of ITC availed on input services in case of inverted duty structure, to be made available on services received after November 1, 2026.

III. Blocked credits under Section 17(5) of CGST Act

- Amendment to Section 17(5) of the CGST Act, to remove the ITC restriction on outdoor catering, health and life insurance, telecom towers, pipelines outside factory premises, free samples, and goods written off on expiry of shelf life as required by law.

IV. Export of services and zero-rated supplies

- Section 2(6)(v) of the IGST Act to be omitted to remove the distinct person condition and allow the supply of services to foreign offices or branches to qualify as exports and allow refund of ITC.
- Circular to be issued to clarify issues on receipt of payment in foreign exchange or Indian rupees for export of goods and services
- Section 13(3)(a) of the IGST Act (pertaining to services rendered in relation to 'goods') to be omitted and the place of supply to be governed by Section 13(2) of the IGST Act, whereby the place of supply is the recipient's location. This will enable the supplier to claim export benefits.
- Explanation to Section 16(1) of IGST Act to be inserted to provide that the goods supplied to an overseas buyer but delivered in an SEZ / FTWZ, against foreign exchange or permitted INR payment, will be deemed to be a supply to an SEZ / FTWZ.

V. Arrest and prosecution

- Section 69 of the CGST Act be omitted for complete withdrawal of arrest powers.
- Prosecution thresholds should be raised from INR 1 crore to INR 5 crore and that punishment under Section 132 of the CGST Act, should be rationalized.
- Section 132(1) of the CGST Act, which lists the offences punishable with imprisonment, is to be amended as follows:
 - clause (i) is omitted,
 - in clause (e), the words "evades tax" are deleted,
 - in clause (h), the words "or in any other manner deals with" are deleted,
 - clause (c) is now restricted to fraudulent availment of ITC without receipt of goods or services, or without an invoice or bill.

VI. Transfer of title in IPR

As per Schedule II para 5©, temporary transfer or permitting the use or enjoyment of IPR as a supply of services; however permanent transfer is not expressly covered. Amendment is recommended to include permanent transfer of title in IPR.

Compliance Changes

I. Registration & Amendment of Registration

- Comprehensive circular to be issued listing the documents and information required for each field of the registration application, with FAQs.
- Amendment to FORM GST REG-01 to include drop-down boxes for selecting the prescribed documents, and the GST portal to provide clear navigation and contextual guidance.
- Rule 19 of CGST Rules, to be amended to allow automatic acceptance of amendments to existing registrations, except for change pertaining to Principal Place of Business (PPoB).
- For registrants under the automatic route under Rule 14A of CGST Rules, even PPoB changes will be accepted automatically.

II. Cancellation and revocation of registration

- FORM GST REG 16 to be accepted automatically by the system once all pending returns are filed and dues are paid, in a phased manner.
 - Phase 1:** FORM GST REG-16 to be accepted automatically once pending returns are filed and dues paid, where (a) ITC passed on never exceeded ₹2.5 lakh in any month since registration, or (b) ITC exceeding ₹2.5 lakh was passed on but FORM GSTR-10 is filed within the specified time.
 - Phase 2:** All FORM GST REG-16 applications to be accepted automatically once pending returns are filed and dues paid and the FORM GST REG-16 amended to carry FORM GSTR-10 details.
- Rule 21 of CGST Rules, to be amended to omit specific grounds on which an officer can suo moto initiate cancellation of registration. Separately, a new system-based mechanism will proceed to cancel registration for defaults in filing returns or furnishing bank account details and restore it automatically once the default is made good.
- Rules 21A and 22 of CGST Rules are to be amended, and Rule 23A is to be inserted, for accommodating the mechanism for system-based cancellation.

III. Simplified registration for small e-commerce sellers under new rule 14B of CGST Rules

- Simplified automatic registration for small suppliers of goods through ecommerce operators in States where they have no physical presence and intend to pass on ITC of not more than INR 2.5 lakh per month, excluding stock transfers between distinct persons. Such suppliers may declare the ecommerce

operator's warehouse in that State as the principal place of business and the registration will be automatically granted.

IV. Correction of liability and ITC in returns and reducing mismatches

- FORM GSTR-3B will be locked based on sales data flowing from GSTR-1 and ITC details from GSTR-2B. A prescribed mechanism will be provided for correcting and rectifying liability and ITC in return, supported by enhancements in GSTR-1/1A/IFF for better reconciliation.
- FORM GST DRC-03, used to pay tax voluntarily or against demand, will be amended to capture the invoice details for which the payment is made. This allows the payment to be linked to the specific invoice and the related ITC position.
- Insertion in CGST Rules
 - a. Rule 86D for statement of tax paid on reverse charge and ITC claimed
 - b. Rule 86C for statement of ITC reversed and reclaimed in FORM GSTR -3B
 - c. Rule 61(1A) and (1B) to allow correction of outward liability and ITC in GSTR-3B so it aligns with GSTR-1/1A/IFF and GSTR-2B
 - d. Rule 60(6A) to allow recipient to accept, reject or keep pending documents in the Invoice Management System before GSTR-2B is generated.
- The above mechanisms are proposed to apply with effect from April 2027 and clarificatory circulars to be issued in support of the above changes.

V. Other return-related changes

- Late fee waived on delayed returns under Sec 39(1) of the CGST Act, for taxpayers with turnover up to INR 5 crore in the preceding financial year, if the return is filed by the end of the month in which it was due.

VI. Faster, system-based refund processing

- Amendments in Section 54 of the CGST Act are proposed to move to a system-based mechanism in two phases:

Phase 1: Excess balance in the electronic cash ledger to be refunded automatically. Time limit for acknowledgement or deficiency memo to be reduced to 10 days from 15 days, failing which the application is deemed acknowledged. For low-risk zero-rated supply and inverted duty claims, 90% of the claim is sanctioned provisionally by the system.

Phase 2: Automatic acknowledgement after system validation, and full automatic refund for low-risk zero-rated claims.

- FORM GST RFD-01 to capture details in a system-readable form, eliminating scanned upload requirement.
- The restriction of 1.5 times value of like goods domestically supplied under Rule 89(4)(C) of CGST Rule is removed. INR 1,000 refund threshold applies to the total across all tax heads.
- Section 115 of the CGST Act is to be amended to make a standalone provision on the rate of interest for refund of pre-deposit made.

VII. Blocking of electronic credit ledger

- Amendment to Rule 86A of CGST Rules to allow taxpayer to raise objection on blocking of electronic credit ledger and get a personal hearing before the objection is decided.

VIII. Interception of goods in transit and e-way bill

Amendment to Sections 68, 129 and 130 of CGST Act are proposed to provide:

- A conveyance can be intercepted only on specific intelligence, with written authorization of an officer not below the rank of Joint Commissioner. Random checks are not allowed.
- Inspection, detention or seizure only if supplier or recipient is located/registered in the intercepting State and no interception in transit States.
- Where no e-way bill is generated or no document shows origin/destination, goods may be inspected, detained or seized irrespective of jurisdiction.
- Confiscation under Sec 130 of the CGST Act is not applicable to goods/conveyances in transit.



IX. ARQP scheme and circulars on specific issues

In principle approval of a concept note for an optional Annual Return Quarterly Payment (ARQP) scheme for taxpayers with turnover up to INR 5 crore in the preceding year who make only B2C supplies.

Other Measures

I. Amendments to streamline compliances

- Sections 16, 37 and 39 of the CGST Act are to be amended to align the time limits for GSTR-1 and GSTR 3B with the time limit for availing ITC under Section 16(4), i.e., 30 November after year-end or the annual return date, whichever is earlier, which should remove mismatches that lead to ITC disputes.
- Section 9(5) of CGST Act is to be amended to clarify that the ECO is liable to discharge tax liability irrespective of its business model, giving certainty to e-commerce platforms.
- A validation clause is to be introduced for notices held invalid by courts on the ground that they covered multiple financial years.
- E-invoicing extended to domestic supplies received from unregistered persons where tax is payable under reverse charge, and to import of services, for taxpayers with aggregate annual turnover of ₹5 crore and above.

Change of rate for Goods and Services

The Council recommended the following changes / clarifications relating to goods:

S.No.	Goods	Recommended change
1	Sublimation paper	Classified under heading 4809; past cases regularized on 'as is where is' basis.
2	Toys	Rate schedule entries cover all toys under heading 9503 (dolls, puzzles etc.), not only tricycles, scooters and pedal cars (Sr. No. 497 of Schedule I and Sr. No. 616 of Schedule II of Notification 09/2025-CTR).
3	Sea-weed extract bio-stimulants	Classifiable under heading 3101 as fertilisers where registered under Schedule VI of the Fertilizer (Control) Order, 1985, past cases regularized.
4	Second-hand vehicles supplied under the GST margin scheme	Clarified that ITC is allowed on inputs (other than second-hand vehicles) and input services, e.g., spares, repairs, technology, rent, marketing and advertisement. ITC bar applies only to tax on procured second-hand vehicles.
5	Waste and scrap	Reverse charge on plastic, e-waste, tyre waste/scrap and used cooking oil supplied by unregistered to registered persons 2% TDS on B2B supplies by registered persons.
6	Psyllium seeds (Isobgul / Isabgol)	Nil rate on Psyllium seeds (fresh, chilled, frozen or dried)
7	Re-treaded tractor tyres	Rate aligned with that applicable on new tractor tyres (anomaly corrected), Rate not specified in the press release

II. Alignment of GST Appellate Tribunal provisions

The CGST Act and the GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023 are to be amended to align with the Tribunals Reforms Act, 2026 and the related 2026 Rules. This should reduce the scope for challenges to GSTAT's constitution and support its stable functioning.

III. Circulars to be issued on the following matters, to remove ambiguities arising from varied interpretations by field formations

- ISD mechanism for distributing input service credit, bringing clarity for multi-location businesses.
- ITC availed by banks and financial institutions, including NBFCs, opting for Section 17(4) of the CGST Act, which allows 50% of eligible ITC every month, giving certainty on the credit available.
- Payment of pre-deposits, which should reduce procedural disputes at the appeal stage.
- ITC on demonstration vehicles in certain situations, which is relevant for automobile dealers.
- Rule 96(10) of the CGST Rules which restricted IGST refunds on exports where specified exemption or concessional benefits were availed on inputs, was omitted prospectively from October 8, 2024. The omission is now to be made effective from October 23, 2017, in line with the Hon'ble Supreme Court's decision in *Goodluck India Ltd. & Anr. v. Union of India & Ors.*

S.No.	Goods	Recommended change
8	Compensation cess (CSD)	Exemption of cess not levied by CSDs on two/four wheelers (1.7.2017–30.9.2022) and on aerated drinks by CSDs and unit run canteens (1.7.2017–31.3.2022).

The Council recommended the following changes / clarifications relating to services:

S.No.	Services	Recommended change
1	Passenger transport and rental of motor vehicles with operators, using electric vehicles	Option to pay 5% GST with restricted ITC where the service is supplied using an EV and battery charging cost is included in the consideration.
2(a)	Delivery services through ECOs	Delivery services (other than courier/postal) through ECOs by unregistered persons brought under Sec 9(5) at 5% without ITC and with the e-commerce platform made liable to pay the tax where the delivery partner is unregistered.
2(b)	Transportation of goods by a Goods Transport Agency to unregistered persons	Exemption under Entry 21A of Notification No. 12/2017-CT(R) to be excluded, where the services relate to goods supplied / ordered through an ECO
3	Motor vehicle leasing: recoveries by lessor from lessee (registration charges, road tax, insurance, FASTag)	GST treatment to be clarified
4	Section 17(5)	Restriction on ITC removed for • outdoor catering and for health and life insurance • telecommunication towers and pipelines laid outside factory premises • free samples and for goods destroyed or written off on expiry of shelf life as required by law Limited ITC in the same line of business for restaurant/outdoor catering services, hotel accommodation up to ₹7,500 per unit per day, and gym/fitness services, in the manner currently available for passenger transportation, tour operator and motor vehicle renting services.
5	Specific Exemptions	• Passenger transportation by helicopter on seat-sharing basis specifically from / to airports / helipads in the north-eastern States, Sikkim and Bagdogra (West Bengal) • Storage or warehousing of seeds meant for sowing • Curing of coffee by coffee curers for cultivators (agricultural support service) • Import of services by Indian establishment of a foreign shipping company from a related person or its establishment outside India, when made without consideration • Upfront/concession on the amount paid to NHAI under TOT highway projects.
9	Research and development services	For eligibility to exemption under Entry 44A of Notification No. 12/2017-CT(R) to provide self-certification by head of the institution that the activity is R&D and not consultancy
12	Operation and Maintenance services for highway projects under TOT model	Special procedure for valuation and time of payment of GST

II. DIRECT TAXATION:

A. DOMESTIC TAX

1. *CBDT circulars not binding on Courts; Tax Authorities not precluded from challenging interpretation contrary to own circular*

Samtex Fashions Limited (the Assessee) earned premium from transfer of export quota and claimed deduction under Section 80HHC of the Act. The AO rejected the claim, holding that the quota sale proceeds had no direct nexus with the export activity of the industrial undertaking, and that interest on margin money was assessable as "Income from Other Sources". The CIT(A) allowed the claim by relying upon a CBDT Office Memorandum ("O.M."), which treated premium on transfer of export quotas at par with export incentives covered under clauses (iiia), (iiib) and (iiic) of Section 28 of the Act, and the Hon'ble Delhi ITAT upheld the same. On further appeal, the Hon'ble Delhi HC, relying on the decision in the case of *CIT v. Nagesh Knitweaves P. Ltd.*¹, held that premium on sale of export quota did not fall within clauses (iiia) to (iiie) of Section 28 of the Act and denied the deduction under Section 80HHC of the Act. Aggrieved, the Assessee preferred an appeal before the Hon'ble Supreme Court.

The Assessee contended that the CBDT O.M. is binding on the Tax Authorities and, therefore, they could not challenge an interpretation consistent with the said O.M. The Hon'ble Supreme Court, relying on *CCE v. Ratan Melting & Wire Industries*², observed that departmental circulars bind the subordinate Tax Authorities and merely represent the Executive's understanding of a statutory provision but are not binding on the Hon'ble High Courts or the Hon'ble Supreme Court while interpreting law. It further observed that precluding the Tax Authorities from challenging an interpretation contrary to a CBDT circular would effectively prevent them from appealing an erroneous ITAT decision. The Hon'ble Supreme Court observed that the CBDT O.M., [by equating premium from sale of export quota with income covered under clauses (iiia) to (iiic) of Section 28 of the Act], created a legal fiction contrary to the statutory position. It further upheld the reasoning in *Nagesh Knitweaves P. Ltd.* (supra) that premium from sale of export quota could not be equated with income covered under clauses (iiia) to (iiie) of Section 28 of the Act. Accordingly, the Hon'ble Supreme Court declined to give effect to the CBDT O.M. and dismissed the Assessee's appeals.

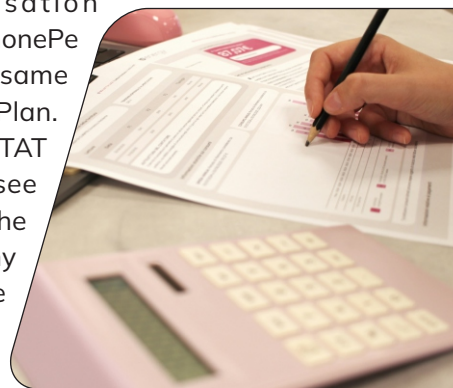
Samtex Fashions Limited [TS-1499-SC-2026]

2. *One-time voluntary compensation for diminution in value of unexercised ESOPs not taxable as perquisite*

Ankit Jain (the Assessee), an employee of Flipkart Internet Private Limited ("FIPL"), was granted Employee Stock Options ("ESOPs") by Flipkart Private Limited, Singapore ("FPS"), the ultimate holding company of FIPL, under the Flipkart Stock Option Plan. Pursuant to the divestment of the PhonePe business from the Flipkart Group, the value of the ESOPs diminished. FPS consequently made a one-time voluntary payment to the option holders based on the number of ESOPs held on the specified record date. The Assessee claimed that the compensation was a capital receipt not chargeable to tax. However, FPS deducted TDS under Section 192 of the Act and reported the payment as salary in Form 16. The AO held that the ESOPs were granted by reason of the Assessee's employment and treated the compensation as a perquisite taxable under Section 17(2) read with Section 15 of the Act. The CIT(A) upheld the addition. The CIT(A) alternatively held that the payment was taxable as "profits in lieu of salary" under Section 17(3) of the Act. Aggrieved, the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble Mumbai ITAT observed that the Hon'ble Delhi HC in the case of *Sanjay Baweja v. DCIT*³ had considered compensation arising from the same PhonePe divestment under the same Flipkart Stock Option Plan. The Hon'ble Mumbai ITAT noted that the Assessee had neither exercised the ESOPs nor received any shares against them. The Assessee had also not surrendered or relinquished the ESOPs

and continued to hold the same number of ESOPs after receiving the compensation. Further, FPS made the payment voluntarily without any statutory or contractual obligation. The Hon'ble Mumbai ITAT observed that the immediate cause of the payment was the corporate restructuring involving PhonePe and the consequent diminution in the value of the ESOPs, and not the Assessee's employment. Following the decision of the Hon'ble Delhi HC in the case of *Sanjay Baweja* (supra), also subsequently followed by the



¹ *CIT v. Nagesh Knitweaves P. Ltd.* (2012) 345 ITR 135 (Delhi)

² *CCE, Bolpur v. Ratan Melting & Wire Industries*, (2008) 13 SCC 1

³ *Sanjay Baweja v. DCIT* [TS-377-HC-2024(DEL)]

Hon'ble Karnataka HC in the case of *Manjeet Singh Chawla v. DCIT (TDS)*⁴, the Hon'ble Mumbai ITAT held that the compensation did not constitute a perquisite under Section 17(2)(vi) of the Act. It further rejected the alternative contention that the payment was taxable as "profits in lieu of salary" under Section 17(3) of the Act. The Hon'ble Mumbai ITAT also held that deduction of TDS under Section 192 of the Act and reporting of the payment as salary in Form 16 could not determine its taxability. Accordingly, the Hon'ble Mumbai ITAT directed the AO to delete the addition and allowed the Assessee's appeal.

Ankit Jain [TS-1414-ITAT-2026(Mum)]

3. *Bona fide belief based on ICAI Guidance Note constitutes reasonable cause; Penalty under Section 271B of the Act for failure to obtain tax audit deleted*

Manish Pushkar Dayal Singhal (the Assessee), an individual carrying on the business of manufacturing and selling packaging materials through a proprietary concern, reported sales below the threshold prescribed for tax audit under Section 44AB of the Act for AY 2022-23. During assessment proceedings, the AO observed from the Assessee's GSTR-1 that the total invoice value, inclusive of GST, exceeded the prescribed threshold. The AO held that GST was required to be included in sales for determining applicability of tax audit under Section 44AB of the Act. Accordingly, the AO levied penalty under Section 271B of the Act for failure to get the accounts audited. The CIT(A) upheld the penalty. Aggrieved, the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

The Assessee contended that he followed the exclusive method of accounting for GST and that his sales, excluding GST, were below the prescribed threshold. He relied on the ICAI Guidance Note on Tax Audit, which provides that where GST or any other tax is not included in the sale price, it should not form part of turnover. The Assessee therefore submitted that he was under a bona fide belief that GST collected and paid separately was not required to be included in turnover for determining applicability of tax audit under Section 44AB of the Act.

The Hon'ble Mumbai ITAT observed that the ICAI Guidance Note supports the

Assessee's understanding of turnover. It also noted that judicial precedents have accepted the meaning of "turnover" provided by the ICAI. The Hon'ble Mumbai ITAT held that where two views were possible, the Assessee's contention that he was under a bona fide belief that tax audit was not applicable

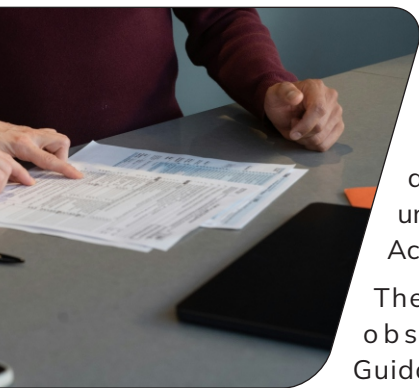
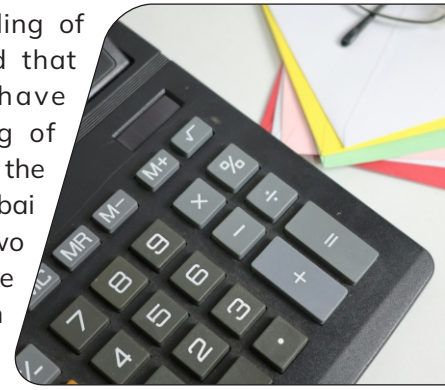
could not be disregarded. Further, the Tax Authorities had not brought anything on record to establish that the Assessee had deliberately or knowingly failed to comply with Section 44AB of the Act or that such failure was with mala fide intention. Accordingly, the Hon'ble ITAT held that the Assessee's bona fide belief constituted reasonable cause and directed the AO to delete the penalty levied under Section 271B of the Act.

Manish Pushkar Dayal Singhal [TS-1287-ITAT-2026(Mum)]

4. *Distinguished FCCDs from shares while interpreting provision of Section 56(2)(viib) of the Act and addition deleted.*

PH4 Food and Beverages Private Limited (the Assessee) is a private company engaged in the business of food and beverages. During the AY 2021-22, the Assessee issued equity shares in the form of Rights issue at INR 352 per share based on an internal DCF valuation. However, within a span of 6 months, the Assessee issued FCCDs (convertible only in March 2024) at the value of INR 704 per FCCD based on a valuation certificate issued by an independent registered valuer in accordance with International Valuation Standards.

During the assessment proceedings, the AO noted the substantial difference between the issue price of the rights issue and the FCCDs (i.e., INR 351.40 per FCCD) within the same FY. Accordingly, the AO made the addition in respect of the excess amount received on issue of the FCCDs as premium under Section 56(2)(x) of the Act. The Assessee contended that issue of rights issue was made in June 2020 when its business was adversely affected due to Covid-19 pandemic and funds were required mainly for survival. Whereas the issue of FCCDs was made of substantial amount (INR 18.15 Crore) for the purpose of investment in subsidiaries, business expansion and repayment of loans as well as emergency funding requirements. However, the AO made the addition of the difference between issue price of rights issue and FCCDs



⁴ *Manjeet Singh Chawla v. DCIT (TDS)* [TS-5466-HC-2025(Karnataka)-O]

amounting to INR 3.88 Crore. Aggrieved, the Assessee filed an appeal before the CIT(A). The Assessee contended that the AO neither adopted any prescribed method nor properly questioned the DCF valuation report submitted by the independent registered valuer. The FCCD valuation reflected improved business prospects, future earning potential and expected returns from the proposed expansion. FCCDs carried different commercial terms, including priority in repayment, fixed coupon return, and compulsory conversion. Therefore, the earlier valuation of rights issue could not be mechanically applied to subsequent FCCD issue. Further, the Assessee relied on the ruling of Hon'ble SC in case of CIT vs. Bharat Engineering and Construction Co⁵. to contend that capital receipts cannot be taxed unless specifically brought within the charging provisions of the Act. However, the CIT(A) relied on the ruling of Hon'ble SC in case of IFCI Ltd vs Sutanu Sinha⁶ wherein it was held that FCCDs are equity in nature. Resultantly, the CIT(A) confirmed the addition made by the AO. Aggrieved, the Assessee challenged the CIT(A) order before the Hon'ble Bangalore ITAT.

The Hon'ble ITAT noted that Section 56(2)(viib) of the Act as applicable for the AY 2021-22 was applicable for issue of shares. The provision does not use the expression "securities", "debentures", "convertible securities", etc. Therefore, this Section creates a charge by specifically referring to consideration received for issue of shares, and cannot include those financial securities which are compulsorily convertible in equity at a future date. Issue of FCCD and its subsequent conversion into equity shares are two separate events. The Hon'ble ITAT distinguished the decision of Hon'ble SC in case of IFCI Ltd (supra) by stating that Hon'ble SC dealt with the controversy in the context of CIRP under the IBC wherein the CCDs were matured and already converted into equity. The Hon'ble ITAT also referred to Hon'ble Mumbai ITAT in case of DCIT vs. Rankin Infrastructure (P) Ltd⁷ wherein convertible debentures were issued in an earlier year and were subsequently converted into preference shares. It was held that conversion of debentures into shares without fresh receipt of consideration could not by itself attract Section 56(2)(viib) of the Act.

Accordingly, the Hon'ble ITAT allowed the appeal and held that consideration received on issue of FCCDs during the year is outside the scope of Section 56(2)(viib) of the Act and directed the AO to delete the impugned addition.

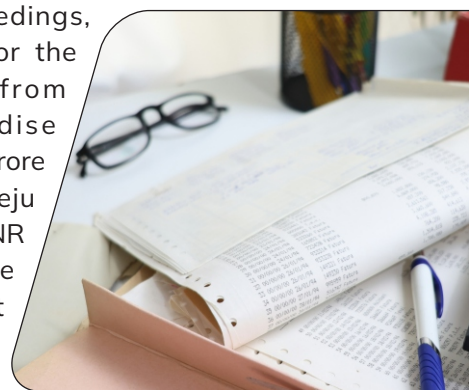
Ph4 Food and Beverages Private Limited [TS-1416-ITAT-2026(Bang)]

5. Commercial substance held to be of importance while determining genuineness of alleged unexplained credit transaction

Sanobar Infrastructure Private Limited (the Assessee) is a private company engaged in the business of investment and trading. During the AY 2011-12, the Assessee issued 30,000 shares at a price of Rs. 500 each (FV: Rs. 10 each). The Assessee filed the return for the said AY declaring income of Rs. 213. Based on the information received by the AO, reassessment proceedings were initiated. During the course of the reassessment proceedings, the AO has asked for the details of receipt from Ratnakar Merchandise (RM) of INR 1.765 Crore and investment in Teju Estate Pvt Ltd (TE) of INR 86.50 Lakhs. The Assessee clarified that receipt from RM represents issue of shares (including

premium) of INR 1.50 Lakhs, share application moneys of INR 11.50 Lakhs and balance amount of INR 15 Lakhs towards consideration on sale of part of investment held by the Assessee at cost. In this respect, the Assessee submitted substantive documentation in form of its bank statements, share application forms, share allotment letters, details of share application money, Form 2 filed with ROC, ITR-V along with extracts of bank statements and financial statements of RM, etc. The AO observed that ROI of RM disclosed total income of INR 377. The AO issued a notice under Section 133(6) of the Act to RM for verification of investment, but the notice was returned unserved by postal authorities with the remark "Not Known". Accordingly, the AO noted the low returned income of RM, financial position of the Assessee, absence of justification for charging the premium and made the addition in respect of receipt from RM and investment in TE as unexplained cash credit.

Aggrieved, the Assessee filed an appeal before the CIT(A). The CIT(A) held that the financial position of the Assessee and the investor did not justify the substantial share premium and therefore the genuineness of the transaction remained unproved. The CIT(A) opined that the Assessee failed to bring any element of commercial proximity or the relationship between the parties which could substantiate such otherwise improbable transaction. Hence, the CIT(A) confirmed the addition of INR 1.765 Crore but deleted the addition of INR 86.50 Lakhs as the transaction



⁵ [TS-5096-SC-1971-O] | ⁶ CIVIL APPEAL NO.4929/2023

⁷ [TS-5001-ITAT-2022(Mumbai)-O]

represented outflow of funds from the Assessee which could not be covered under Section 68 of the Act. Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT noted the contentions of the Assessee and the tax authorities. The Hon'ble ITAT concluded that there are certain unaddressed issues relating to the financials of the Assessee (e.g., nature of asset transferred for INR 15 lakhs, appropriate recording of sale of asset, mutual reconciliation of transfer form with ledger and actual consideration, subsequent treatment of share application money of INR 11.50 Lakhs). Similarly, the valuation approach adopted by the Assessee were not properly verified during the reassessment proceedings (i.e., type of valuation method, nature of financial information given to investor, basis of valuation of shares, justification for fixing the issue share price of Rs. 500). Further, the commercial rationale of the Assessee was not examined in detail (i.e., whether investment in shares was ancillary or incidental object connected with an infrastructure business, nature of tangible assets – infrastructure projects, fixed assets, employees, etc, prior approval on investment made by the Assessee, etc). Also, similar type of questions relating to



genuineness remained unanswered in case of funds raised by RM (identification of investment opportunity in Assessee, nature of return / commercial benefit expected, type of due diligence undertaken).

The Hon'ble ITAT observed that the substantive documentation furnished by the Assessee established the banking and accounting trail. However, it does not demonstrate the economic substance of the transaction. The Hon'ble ITAT observed that bank statement of RM shows that payment to Assessee were preceded by substantially corresponding credits from other entities, which leads to questions like nature of preceding credits, possibility of circular or reciprocal movement of funds, etc. Proper investigation was not made on whether an acceptable commercial rationale existed in the said transaction. The CIT(A) reproduced general principles governing Section 68 but did not answer the factual questions arising from the audited accounts and bank statements. Hence, the commercial rationale remained unexamined. In view of the above

circumstances, the Hon'ble ITAT restored the matter to the file of the AO citing the scope of restoration as neutral. It is neither intended to build a fresh case for tax authorities nor to presume the correctness of the Assessee's explanation. Accordingly, the appeal of the Assessee is allowed for statistical purposes.

Sanobar Infrastructure Private Limited TS-1453-ITAT-2026(Mum)

6. Absence of formal trust deed cannot be sole ground to deny renewal of registration under Section 12AB of the Act

Basilica of Our Lady of the Mount (the Assessee), a religious and charitable institution, was established in 1955 and was registered as a public trust under the Maharashtra Public Trusts Act, 1950. The Assessee had been enjoying registration under the Income-tax Act for several decades, including registration under the new regime vide Form No. 10AC dated 23-09-2021. The Assessee filed Form No. 10AB seeking renewal of registration under Section 12AB of the Act. During the proceedings, the Commissioner of Income-tax (Exemptions) called upon the Assessee to furnish a copy of the instrument of trust/MOA in terms of Rule 17A(2). The Assessee submitted that it had never been constituted under a written trust deed or MOA and furnished the application filed before the Charity Commissioner, registration certificate issued by the Charity Commissioner and other documents evidencing its creation and continued existence. The CIT(E) rejected the application on the ground that the Assessee failed to furnish the instrument of trust/MOA and held that the documents furnished did not constitute documents evidencing creation of the trust under Rule 17A(2)(b). Aggrieved, the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT observed that Rule 17A(2) contemplates two distinct situations, namely institutions created or established under an instrument and institutions created or established otherwise than under an instrument. The Hon'ble ITAT held that if production of a formal trust deed were mandatory in every case, clause (b) of Rule 17A(2) would have little or no independent purpose. Relying upon *Laxminarayan Maharaj and Another v. CIT and Others*⁸, *Tsurphu Labrang v. DIT (Exemption)*⁹ and *Merciful Jesus Church v. CIT (Exemption)*¹⁰, the Hon'ble ITAT observed that documents evidencing creation or establishment of a trust need not necessarily be a formal trust deed and may include evidentiary documents affording a logical basis for inferring the creation of the trust.

⁸ *Laxminarayan Maharaj and Another v. CIT and Others* [TS-5445-HC-1983(Madhya pradesh)-O]

⁹ *Tsurphu Labrang v. DIT (Exemption)* [TS-528-ITAT-2015(DEL)]

¹⁰ *Merciful Jesus Church v. CIT (Exemption)* [TS-6151-ITAT-2016(Cochin)-O]

The Hon'ble ITAT further observed that the Assessee had been registered as a public trust under the Maharashtra Public Trusts Act since 20-06-1955 and had furnished the application filed before the Charity Commissioner, the registration certificate issued by the Charity Commissioner, the registration granted under the Act and other documents evidencing its continued existence and activities. The Hon'ble ITAT held that these documents could not be discarded merely because they did not constitute a formal trust deed. The Hon'ble ITAT also noted that no adverse finding had been recorded regarding the charitable or religious objects of the Assessee or the genuineness of its activities. Following the co-ordinate bench decision in *St. Joseph's High School v. CIT(E)*¹¹, the Hon'ble ITAT held that the CIT(E) was not justified in rejecting renewal of registration merely on account of absence of a separate written trust deed or MOA. Accordingly, the Hon'ble ITAT set aside the order of the CIT(E) and directed grant of renewal of registration under Section 12AB of the Act.

Basilica of Our Lady of the Mount [TS-1425-ITAT-2026(Mum)]

7. Mere filing of Form 10-IC does not amount to a valid option under Section 115BAA of the Act; adjustment under Section 143(1) of the Act deleted

Kunstocom (India) Ltd. (the Assessee) filed its ROI for AY 2024-25 declaring total income of Rs. 3,67,63,080/- and claimed additional depreciation of Rs. 2,05,89,160/- under Section 32(1)(iia) of the Act in respect of new plant and machinery. The return was processed by the CPC under Section 143(1) of the Act, which disallowed the claim for additional depreciation on the ground that the Assessee had opted for the concessional tax regime under Section 115BAA of the Act by filing Form 10-IC. The AO rejected, Assessee's contention that it had not exercised a valid option under Section 115BAA of the Act as it had not fulfilled the conditions prescribed under

Section 115BAA(2) of the Act, continued to claim deductions prohibited under the concessional regime and consistently filed its ROI under the normal provisions in other assessment years as well. Being aggrieved, Assessee preferred an appeal before the CIT(A), who upheld the

adjustment. Aggrieved by the order of the CIT(A), the Assessee preferred an appeal before the Hon'ble Delhi ITAT.

The Hon'ble ITAT observed that Section 115BAA(2) of the Act prescribes mandatory conditions for availing the concessional tax regime, including the condition that additional depreciation under Section 32(1)(iia) of the Act cannot be claimed. The Hon'ble ITAT noted that the Assessee had continued to

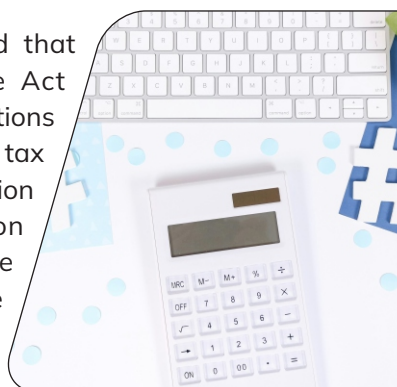
claim additional depreciation, computed tax under the normal provisions and that the tax audit report did not contain any reference to Section 115BAA of the Act. Relying upon *Brahmos Realty Private Limited v. ITO*¹², the Hon'ble ITAT held that mere filing of Form 10-IC does not amount to a valid exercise of the option under Section 115BAA of the Act where the mandatory conditions prescribed under the provision are not fulfilled. Accordingly, the Hon'ble ITAT held that the option under Section 115BAA of the Act was invalid for the relevant year.

The Hon'ble ITAT further held that the question whether the Assessee had validly exercised the option under Section 115BAA of the Act involved a debatable legal and factual issue. Such an issue falls outside the limited scope of adjustments permissible under Section 143(1) of the Act. Since the disallowance of additional depreciation was made on a disputed issue, the adjustment was held to be unsustainable. Accordingly, the Hon'ble ITAT deleted the adjustment made under Section 143(1) of the Act and allowed the appeal of the Assessee.

Kunstocom (India) Ltd. [TS-1477-ITAT-2026(Del)]

8. Non-deposit in the CGAS is a procedural lapse and cannot defeat a substantive claim of exemption under Section 54 of the Act if conditions are satisfied.

Seema Bano (the Assessee) sold a residential property for Rs. 68,49,000/- on 28.02.2020, earning long-term capital gains of Rs. 12,72,664/-. She did not originally file ROI for AY 2020-21 and, pursuant to notice under Section 148 of the Act dated 30.03.2024, filed ROI on 20.04.2024 claiming exemption under Section 54 of the Act. The Assessee had purchased a new residential property for Rs. 33,92,000/- on 01.10.2020 jointly with a co-owner, her 50% share being Rs. 16,96,000/-, exceeded the capital gains. Although the due date for filing the ROI had been extended to 30.11.2020 and the



¹¹ *St. Joseph's High School v. CIT(E)*, [TS-8621-ITAT-2026(Mumbai)-O]

¹² *Brahmos Realty Private Limited Vs ITO*, [TS-7885-ITAT-2025(Mumbai)-O]

investment was made before such extended due date, the AO denied the exemption for failure to deposit the unutilized capital gains in the CGAS before the due date under Section 139(1) of the Act. Aggrieved by the order, the Assessee preferred an appeal before the CIT(A), who upheld the disallowance. Aggrieved by the order of the CIT(A), the Assessee preferred an appeal before the Hon'ble Agra ITAT.

The Assessee contended that since the investment in the new residential property, exceeding the capital gains, was made before the extended due date, the substantive conditions of Section 54 of the Act stood fulfilled. The Hon'ble ITAT observed that Section 54 of the Act is a beneficial provision intended to encourage investment in residential housing and therefore warrants a liberal and purposive interpretation. It held that the essence of the provision is actual investment of the capital gain in acquisition or construction of a residential house within the prescribed period and, once the substantive requirement is fulfilled, non-

deposit in the CGAS constitutes only a procedural/technical lapse which cannot defeat the legitimate claim of exemption. The Hon'ble ITAT relied upon decisions of *Gurkanwal Kaur v. ITO*¹³, *Usha Rani Laxmeshwar v. NF AC*¹⁴, *PCIT v. Ms. Sarita Gupta*¹⁵.

Since the Assessee had invested Rs. 16,96,000/- in the new residential property before the due date under Section 139(1) of the Act, which exceeded the capital gains of Rs. 12,72,664/-, the Hon'ble ITAT held that assessee had substantively complied with Section 54 of the Act and was entitled to the exemption despite non-deposit of the capital gain in the CGAS. Accordingly, the disallowance/addition of Rs. 12,72,664/- was deleted and the appeal was allowed in favour of the Assessee.

Seema Bano [TS-1276-ITAT-2026 (AGR)]

9. Forex gain on ECB used for acquisition of assets in India not governed by Section 43A of the Act; taxable under Section 43AA of the Act

Umicore Autocat India Pvt. Ltd. (the Assessee) had obtained long-term foreign-currency denominated External Commercial Borrowings ("ECB"), which were utilised for acquisition of both imported and indigenous plant and machinery. During AY 2017-18, the Assessee

recognised an unrealised foreign-exchange gain of Rs. 7.12 crore on year-end reinstatement of the ECB liability. The Assessee contended that the gain was capital in nature since the ECB had been raised for acquisition of capital assets and, therefore, was not liable to tax. However, the AO observed that a portion of the ECB had been utilised for acquisition of indigenous assets and held that Section 43A of the Act was not applicable to such assets. Accordingly, the AO made an addition of Rs. 2.61 crore. Aggrieved by the assessment order, the Assessee preferred an appeal before the CIT(A), who upheld the addition. Aggrieved by the order of the CIT(A), the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

Before the Hon'ble Mumbai ITAT, the Assessee contended that the foreign-exchange gain was unrealised and capital in nature. It was further argued that Section 43A of the Act was merely a machinery provision and that the inability to adjust exchange differences against the cost of indigenous assets under Section 43A of the Act could not, by itself, convert a capital receipt into taxable income.

The Hon'ble Mumbai ITAT observed that Section 43A of the Act is a special provision applicable to foreign-currency liabilities incurred for acquisition of assets from outside India. The Hon'ble ITAT further observed that the source of funds, namely a foreign-currency ECB, cannot be equated with the situs of acquisition of the underlying assets. Therefore, merely because the borrowing was denominated in foreign currency, it could not be assumed that the assets were acquired from outside India. Since the assets corresponding to the disputed portion of the ECB were acquired in India, the statutory conditions prescribed under Section 43A of the Act were not satisfied.

The Hon'ble ITAT further observed that where a transaction falls outside the scope of Section 43A of the Act, the foreign-exchange fluctuation is required to be examined under Section 43AA of the Act, which specifically governs gains and losses arising on account of changes in foreign-exchange rates. Accordingly, the Hon'ble ITAT held that the foreign-exchange gain arising on reinstatement of the ECB liability utilised for acquisition of assets in India was liable to be considered under Section 43AA of the Act and rejected the Assessee's contention that the gain was not taxable. The addition made by the AO was therefore upheld and the appeal of the Assessee was dismissed.

Umicore Autocat India Private Limited [TS-1492-ITAT-2026(MUM)]

¹³ *Gurkanwal Kaur v ITO, Ward 1(3), Chandigarh, [TS-6387-ITAT-2026(Chandigarh)-O]*

¹⁴ *Usha Rani Laxmeshwar v. NFAC, [TS-8259-ITAT-2026(Indore)-O]*

¹⁵ *PCIT v. Ms Sarita Gupta, [TS-6837-HC-2024(Allahabad)-O]*

10. Amended Section 145A of the Act applicable to services; Disallowance of unpaid GST and Service Tax under Section 43B of the Act upheld

Naveen Tours Private Limited (the Assessee) had outstanding liabilities towards GST and Service Tax which remained unpaid as on the date of filing the return of income. The AO disallowed the same under Section 43B of the Act and the CIT(A) upheld the disallowance. Before the Hon'ble Delhi ITAT, the Assessee contended that GST and Service Tax were not routed through the Profit and Loss Account and no expenditure had been claimed in respect thereof and, therefore, Section 43B of the Act was not applicable. In support of its contention, the Assessee relied on the judicial precedents, *Allied Motors (P.) Ltd. v. CIT*¹⁶ and *CIT v. Noble & Hewitt (I) Pvt. Ltd.*¹⁷ which were rendered in the context of Service Tax under the pre-amended provisions of Section 145A of the Act.



The Hon'ble Delhi ITAT distinguished the above decisions by highlighting the amendment to Section 145A of the Act with effect from 01 April 2018. The Hon'ble Delhi ITAT observed that the pre-amended Section 145A of the Act did not cover valuation of services, whereas the amended Section 145A of the Act specifically requires valuation of purchase and sale of goods or services to be adjusted to include tax, duty, cess or fee.

Accordingly, the Hon'ble Delhi ITAT distinguished the decisions relied upon by the Assessee as they were rendered in the context of the pre-amended provisions and held that, under the amended Section 145A of the Act, GST relating to services was required to be considered while computing income. The Hon'ble Delhi ITAT further observed that the Assessee had not disputed that GST and Service Tax were collected from customers and were paid after filing the return of income. Accordingly, relying on the decision of Hon'ble Supreme Court in the case of *Chowringhee Sales Bureau (P.) Ltd. v. CIT*¹⁸, the Hon'ble Delhi ITAT upheld the disallowance under Section 43B of the Act.

The ruling emphasizes the significance of the amended Section 145A of the Act in cases involving indirect taxes relating to services and indicates that reliance on pre-amendment judicial precedents may not be sufficient where GST remains unpaid beyond the prescribed timeline under Section 43B of the Act.

Naveen Tours Private Limited [TS-1478-ITAT-2026(DEL)]

¹⁶ *Allied Motors (P.) Ltd. v. CIT* 224 ITR 677 (SC)

¹⁷ *CIT v. Noble & Hewitt (I) Pvt. Ltd.* 305 ITR 324 (Delhi)

¹⁸ *Chowringhee Sales Bureau (P.) Ltd. v. CIT* [1973] 87 ITR 542 (SC)

B. INTERNATIONAL TAXATION

1. Binding ITAT ruling cannot be disregarded merely because Tax Authorities have not accepted the ruling or propose to challenge it

GIA India Laboratory Private Limited (the Assessee), engaged in the business of grading diamonds, paid grading fees to its US parent, Gemological Institute of America, Inc. ("GIA US"). The Tax Authorities initiated proceedings under Section 201 of the Act for AY 2020-21 and treated the Assessee as an Assessee in default for failure to deduct tax at source under Section 195 of the Act on the ground that the Assessee constituted a PE of GIA US in India and, consequently, the grading fees were taxable in India. The Assessee contended that the Hon'ble ITAT had consistently held that GIA US did not have a PE in India and its grading fee income was not chargeable to tax in India. However, the AO (TDS) disregarded the rulings on the ground that the same had not been accepted by the Tax Authorities and had been challenged before the Hon'ble Bombay HC. Aggrieved, the Assessee filed a writ petition before the Hon'ble Bombay HC.

The Hon'ble Bombay HC observed that the facts for AY 2020-21 were identical to those considered in earlier years and that the Hon'ble Mumbai ITAT had consistently held that the Assessee was an independent legal entity carrying on its own business, bearing all commercial and client-related risks, and did not constitute a fixed place, service, or agency PE of GIA US in India. Further, the Hon'ble Bombay HC held that subordinate authorities are bound to follow appellate decisions unless such decisions are stayed or suspended by a competent court. Mere non-acceptance of a decision by the Tax Authorities or pendency of a proposed appeal cannot justify disregarding a binding precedent.

The Hon'ble Bombay HC held that the AO (TDS) acted without authority of law in passing an order contrary to the decisions of the Hon'ble Mumbai ITAT. It further rejected the contention that the Assessee ought to have made an application under Section 195(2) of the Act and, relying on the decision of Hon'ble Supreme Court in the case of *GE India Technology Centre (P.) Ltd. v. CIT*¹⁹, Hon'ble Bombay HC observed that Section 195 of the Act applies where the payment made to the non-resident is chargeable to tax in India, whereas Section 195(2) of the Act applies where the payer accepts that tax is payable on a part of the remittance but requires determination of the taxable portion. Since the payments to GIA US had already been held to be not

¹⁹ *GE India Technology Centre (P.) Ltd. v. CIT* [TS-201-SC-2010-O]

chargeable to tax in India, the Hon'ble Bombay HC held that there was no liability to deduct tax at source from such payments or to treat the Assessee as an assessee-in-default. Accordingly, the order passed under Section 201 of the Act was quashed.

GIA India Laboratory Private Limited TS-1451-HC-2026(BOM)

2. ESOP expenditure cross-charged by foreign holding company allowable as deduction under Section 37(1) of the Act

Zepto Private Limited (formerly Kiranakart Technologies Private Limited) (the Assessee) claimed deduction towards ESOP expenditure in respect of options granted by its Singapore holding company to the Assessee's employees and consultants. The Assessee was required to reimburse the attributable ESOP cost to its holding company on a cost-to-cost basis. During assessment proceedings, the AO treated the ESOP expenditure as a contingent liability, inter alia, on the grounds that the valuation report was prepared after the close of the financial year, no shares had been allotted, and the ESOPs were subject to vesting and forfeiture conditions. The AO also questioned the valuation in the absence of comparable listed companies. The CIT(A) upheld the disallowance, holding that the Assessee had not demonstrated a certain and crystallised liability as at the year-end. Aggrieved, the Assessee preferred an appeal before the Hon'ble Bangalore ITAT.

The Hon'ble Bangalore ITAT, relying on the decision of Hon'ble Karnataka HC in the case of *CIT v. Biocon Ltd.*²⁰, observed that ESOP expenditure represents employee compensation incurred to attract, retain and motivate employees and is therefore, incurred for the purposes of business. It held that the liability accrues over the vesting period as services are rendered and does not remain contingent merely because ESOPs may subsequently lapse, remain unvested or be exercised at a later date. The Hon'ble Bangalore ITAT further, observed that the subsequent date of the valuation report did not determine the year of accrual and that the absence of comparable listed companies could not, by itself, invalidate the valuation where a recognised valuation model was followed. Further, since the holding company granted the ESOPs for services rendered by the Assessee's employees and the corresponding cost was recoverable from the Assessee, the expenditure was not merely a voluntary or notional book entry. Accordingly, the Hon'ble Bangalore ITAT held that the ESOP expenditure attributable to the relevant year was allowable under

Section 37(1) of the Act.

Zepto Private Limited [TS-1484-ITAT-2026(Bang)]

3. Interest forming part of foreign arbitral award and subsequently enforced as Court decree constitutes 'judgment debt'; not taxable in India

Universal Tractor Holding LLC (the Assessee), a US tax resident having no business presence or Permanent Establishment ("PE") in India, had entered into an agreement in 2006 with another US company, Escorts Agri Machinery Mart Inc. ("EAMI"), for sale of its 49% membership interest in Beavers Creek Holding LLC for USD 1.2 million. EAMI defaulted on the payment of the balance consideration, resulting in arbitration proceedings. During the pendency of the proceedings, EAMI was taken over by Escorts Ltd., India, which was substituted as a party to the arbitration proceedings. The arbitral tribunal awarded damages of USD 475,000 together with interest at 11.25%, counsel fees and other expenses in favour of the Assessee. Since the award was not honoured, the Assessee sought enforcement before the Hon'ble Delhi High Court.

The Hon'ble Delhi High Court, vide order dated 13.07.2012, held the foreign arbitral award to be enforceable in India and deemed it to be a decree of the Court under Section 49 of the Arbitration and Conciliation Act, 1996. Thereafter, the Assessee applied for a NIL withholding tax certificate in respect of the decretal amount. However, the Tax Authorities directed deduction of tax at source on the damages and interest components of the award. Pursuant thereto, tax was deducted from the amount released to the Assessee and remitted to the Income-tax Department. The Assessee subsequently filed its ROI for AY 2019-20 declaring NIL income and contended that the damages and interest forming part of the decree were not chargeable to tax in India. In the draft assessment order, the AO sought to tax the entire amount received under the decree. On objections filed by the Assessee, the DRP accepted the Assessee's claim in respect of the damages component. However, it held that the interest component of Rs. 2.47 crore was taxable in India under Article 11 of the India-USA DTAA. Aggrieved by the findings of the DRP, the Assessee preferred an appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble Delhi ITAT, the Assessee contended that once the interest awarded by the arbitral tribunal merged into and formed part of the decree of the Hon'ble Delhi High Court, it ceased to retain its independent character as "interest" and assumed the character of a "judgment debt". Reliance was placed,

²⁰ *CIT v. Biocon Ltd.* [TS-5777-HC-2020(Karnataka)-O]

inter alia, on the decision of the Hon'ble Supreme Court in *Islamic Investment Co.*²¹, wherein it was held that once interest becomes part of a decree, the decretal amount is to be executed as a decree and cannot be treated independently as interest.

The Hon'ble Delhi ITAT observed that although the arbitral award used the nomenclature "interest", the amount received by the Assessee pursuant to enforcement of the award did not retain the character of "interest" for the purposes of section 2(28A) of the Act. The Hon'ble ITAT held that the damages, including the interest component, had merged into the decree and assumed the character of a judgment debt. Accordingly, the amount could not be taxed as interest either under the Act or under Article 11 of the India-USA DTAA. The Hon'ble ITAT therefore deleted the addition of Rs. 2.47 crore and allowed the appeal filed by the Assessee.

Universal Tractor Holding LLC, USA [TS-1475-ITAT-2026(DEL)]

4. Gain arising from indirect transfer of ownership in an Indian company held not taxable in India under Article 13 of the India-Ireland DTAA

FireEye Ireland Limited (the Assessee) is a company established in Ireland in 2013 and a tax resident of Ireland under the India-Ireland DTAA. The Assessee furnished a Tax Residency Certificate (TRC) in support of its residency. It is part of the FireEye Group, which sells its offerings to customers, including India. The Assessee had substantial business operations, with more than 150 employees in 2021, and also held investments in various group entities. During FY 2021-22, the Assessee sold standard cybersecurity software by way of restricted user licence or subscription, provided consulting services, and sold accessories to customers in India. The Assessee offered only the income from consulting services to tax in India. The Assessee claimed that it had no physical presence and no PE in India. For AY 2022-23, the Assessee filed its return of income declaring income of INR 13.12 Crore. During the year under consideration, the Assessee also sold its ownership in FE LLC as part of its internal restructuring. FE LLC owned an Indian company, Mandiant Cybersecurity Private Limited (MCPL).

On conclusion of the assessment proceedings, the AO passed a draft order proposing the following additions:

1. Consideration received on sale of software amounting to INR 52.06 Crore considering in the nature of FTS.
2. Capital gains on transfer of ownership in FE LLC amounting to INR 497.73 Crore.

The AO invoked Article 6(1) of the MLI based on the view that Section 90 of the Act grants benefit for avoidance of double taxation and not for creating opportunities for double non-taxation. Being aggrieved, the Assessee filed its objections against the draft assessment order before the DRP, which confirmed the additions. Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

On the software issue, the Hon'ble ITAT noted that the coordinate bench, in the Assessee's own case for AYs 2020-21 and 2021-22²², had held that consideration from software offerings was not taxable as FTS in India. The Ld. DR could not point to any material difference in facts, nature of services or revenue. The Hon'ble ITAT referred to the decisions of the Hon'ble Supreme Court and the Hon'ble Delhi High Court in the cases of *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT*²³ and *SFDC Ireland Limited v. CIT*²⁴, wherein it was held that sale of software could not be treated as taxable income/FTS. Accordingly, the consideration from sale of software and related support was held not to be taxable under the Act or the India-Ireland DTAA.

On the capital gains issue, the Hon'ble ITAT observed that the AO had imported the meaning of 'transfer' under Section 2(47) of the Act to interpret 'alienation' in Article 13, which had no legal basis. The Hon'ble ITAT noted that Article 13(5) applies only where shares of a company resident in a Contracting State are alienated, and that FE LLC is neither an Indian entity nor an Indian resident. Relying on judicial precedents,²⁵ the Hon'ble ITAT held that the deeming fiction in Explanation 5 to Section 9(1)(i) is a unilateral amendment to domestic law and cannot be read into the DTAA. The AO and the DRP had therefore interpreted Section 90(1)(b) incorrectly, and the gains fell under the residuary Article 13(6) and were taxable only in Ireland. The Hon'ble ITAT also held that the AO's invocation of Article 6(1) of the MLI was unsustainable, as no evidence of treaty abuse had been brought on record. The Assessee is an established entity with substantial operations and employees, and it was too narrow a view to say that the global restructuring was undertaken only to transfer the shares of MCPL. Accordingly, the appeal of the Assessee was allowed.

FireEye Ireland Limited IT(IT)A 1431/DEL/2025 (Del ITAT), order dated 30.09.2026

²¹ [TS-5246-HC-2002(Bombay)-O]

²² *FireEye Ireland Limited v. Revenue* [ITAT Delhi, ITA No. 825/Del/2023 (AY 2020-21) and ITA No. 3701/Del/2023 (AY 2021-22)].

²³ *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT* [Supreme Court, (2021) 125 taxmann.com 42].

²⁴ *SFDC Ireland Limited v. CIT* [Delhi High Court, (2024) 298 taxmann.com 403].

²⁵ *Sanofi Pasteur Holding SA v. Department of Revenue* [Andhra Pradesh High Court, (2013) 30 taxmann.com 222]; *Sofina S.A. v. ACIT (International Taxation)* [ITAT Mumbai, (2020) 116 taxmann.com 706]; *DIT v. New Skies Satellite BV* [Delhi High Court, (2016) 382 ITR 114, as affirmed by the Supreme Court in *Engineering Analysis* (supra note 2)]; and *CIT (International Taxation) v. Telstra Singapore Pte. Ltd.* [Delhi High Court, (2024) 165 taxmann.com 85].

III. TRANSFER PRICING

1. *Corporate guarantees given and received are separate transactions, cannot be aggregated for TP adjustment.*

Gluhend India Private Limited (the Assessee), is engaged in the business of manufacturing sand/die casted, investment cast, stamped and machined components from ferrous and non-ferrous metals using pressure die casting, sand casting and investment casting processes. During the AY 2021-22, the Assessee has entered into the transaction of providing corporate guarantee to its AE (being WOS). The Assessee did not charge guarantee commission to its AE as the corporate guarantee was given as a part of its shareholder/commercial activity. However, it recorded a notional income of INR 72.80 Lakhs as guarantee commission in compliance with accounting requirements under the Ind-AS. The said amount was neither charged to nor received from its AE.

During the assessment proceedings, the TPO obtained external bank guarantee rates ranging from 0.45% to 2.64% with a median of 1.50% and considered downward adjustment of 0.50% on account of difference between bank guarantees and corporate guarantees. Accordingly, the TPO considered the ALP of corporate guarantees commission at 1% and made adjustment of INR 72.80 Lakhs. The Assessee contended that if commission was to be charged, corresponding treatment should be given to guarantee commission (notional expense) of INR 3.51 Crore on account of corporate guarantee received by it. However, the TPO made an addition of INR 72.80 Lakhs. Aggrieved, the Assessee filed its objections before the Hon'ble DRP. The Hon'ble DRP upheld the order of the TPO and further refused the Assessee's plea to set-off the guarantee given income against separate guarantee received expense.

Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT. The Hon'ble Mumbai ITAT relying on the decision of jurisdictional Bombay High Court decision in *CIT v. Everest Kento Cylinders Ltd.*²⁶ noted that bank guarantee rates cannot become the starting point for determining the ALP by granting an estimated or ad hoc reduction therefrom. The Hon'ble ITAT observed that commercial circumstances, functions performed and risks assumed in a bank guarantee vis-à-vis corporate guarantee are different. The Hon'ble ITAT observed that the TPO has not performed any benchmarking exercise to determine the ALP of the transaction. Also, the TPO has not produced any comparable uncontrolled corporate guarantee transaction to demonstrate that an independent

enterprise would have charged 1% for a corporate guarantee of the nature similar to that of the Assessee. Accordingly, the Hon'ble ITAT directed the AO/TPO to adopt 0.50% as the arm's length rate as held in case of Everest Kento Cylinders (supra). The Hon'ble ITAT rejected the Assessee's view to set off the income on

guarantee given against the expense relating to guarantee received by treating the two transactions as separate transactions. Accordingly, the appeal of the Assessee was partly allowed.

Gluhend India Private Limited [TS-702-ITAT-2026(Mum)- TP]

2. *Recharacterization of CCDs as equity without prescribed procedure under Section 144BA (Chapter X-A) not sustainable and TP adjustment deleted.*

Eranthus Developers Pvt. Ltd. (the Assessee), is engaged in the business of developing, maintaining and leasing commercial property. During the AY 2022-23, the Assessee had incurred interest expenditure of INR 8.05 Crore on unsecured CCDs issued to its AE during FY 2017-18. The CCDs carried interest at 12% p.a. During the year under consideration, there was no fresh issue of CCDs and there was no change in the terms and conditions governing the CCDs. The Assessee reported the interest expenditure as an international transaction.

During the TP proceedings, the TPO treated the CCDs as equity, observing that the CCDs were mandatorily convertible into equity shares and there was no repayment of principal. Accordingly, the TPO determined the ALP of the interest at Nil, resulting in a TP adjustment of INR 8.05 Crore. On filing objections, the DRP upheld the approach of the TPO and relied on the FEMA Regulations, terms of the CCDs and their accounting treatment under Ind AS 32.

Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT. Before the Hon'ble ITAT, the Assessee contended that the TPO was required to determine the ALP of the international transaction as actually undertaken and could not substitute the transaction with another transaction by recharacterizing the CCDs as equity. The Assessee also relied on the decision of the Hon'ble Special Bench in *Hyderabad Infratech Pvt. Ltd.*²⁷ and the coordinate



²⁶ [TS-200-HC-2015(BOM)-TP]

²⁷ [D58TS-518-ITAT-2026(Mum)-TP]

Bench decisions in *Indorama Ventures Oxides Ankleshwar Pvt. Ltd. v. Assessment Unit/DCIT*²⁸ and *Goldman Sachs (India) Finance Pvt. Ltd. v. Assessment Unit*²⁹, and contended that CCDs continue to be debt instruments until conversion into equity. Further, the TPO cannot recharacterize CCDs as equity in the course of TP proceedings.

The Hon'ble ITAT noted the decisions relied by the Assessee and observed that CCDs continue to constitute debt instruments until their conversion into equity. The Hon'ble ITAT also noted that the coordinate benches held that the TPO could not recharacterize CCDs as equity for the purposes of determining the ALP of interest. The Hon'ble ITAT further observed that Chapter X-A of the Act expressly contemplates recharacterization of an arrangement, including treating equity as debt or vice versa, and that such exercise is accompanied by the specific procedure prescribed under Section 144BA of the Act. The Hon'ble ITAT took a note of the statutory procedure of reference by the AO to the Principal Commissioner/Commissioner, issuance of notice and opportunity of hearing to the Assessee. In case where the objection is not accepted, a subsequent reference to the Approving Panel is also prescribed. Since there was nothing on record to indicate that such procedure had been invoked in the present case, the Hon'ble ITAT held that the recharacterization of the CCDs as equity for determining the ALP of interest at Nil could not be sustained. Accordingly, the Hon'ble ITAT deleted the TP adjustment and allowed the appeal of the Assessee.

Eranthus Developers Pvt. Ltd. [TS-715-ITAT-2026(Mum)-TP]

IV. CIRCULAR / NOTIFICATION: I.F. NO. 225/128/2026/ITA-II CIRCULAR NO. 07/2026

Issue Date: 28th September, 2026

Extension of timelines for filing of various reports of audit and Income Tax

The CBDT has extended the due date for filing Income Tax Returns (ITRs) for taxpayers covered under Section 139(1) who are subject to audit requirements for Assessment Year (AY) 2026-27. The ITR filing due date has been extended from 31 October 2026 to 21 November 2026.

Consequently, the due date for furnishing the Tax Audit Report under Section 44AB has also been extended from 30 September 2026 to 21 October 2026.

²⁸ [TS-471-ITAT-2024(Mum)-TP]

²⁹ [TS-488-ITAT-2025(Mum)-TP]

V. GOODS & SERVICES TAX

I. GST – Case Laws

1. ***An SCN issued after the Section 73 limitation, which runs to the passing of the order, cannot be saved under Section 74 by bare allegations of suppression that are unsupported by foundational facts stated in the notice itself***

The Assessee, Tata Steel Ltd., faced audit observations of the Comptroller and Auditor General of India, raised on 27 May 2024, alleging ITC mismatches for 2018-19 to 2020-21 and short payment of tax for 2019-20. After replies and a call for documents, a SCN under Section 74 of the CGST Act, 2017 was issued on 13 June 2025. On 27 June 2025 it was transferred to the "call book", as the Department was contesting the audit objection before the Public Accounts

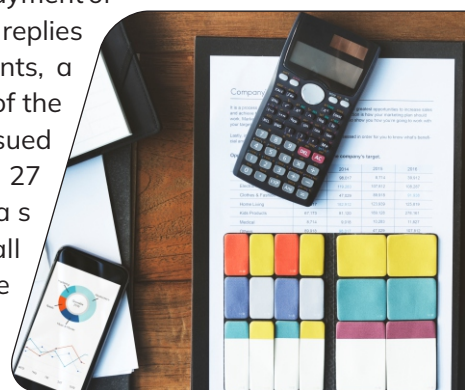
Committee, but on 1 July 2025 it was revived with a "protective demand", and an Order-in-Original followed on 26 December 2025. The Assessee appealed against the Jharkhand High Court's adverse judgment which was decided against the Assessee.

The issue before the Hon'ble Supreme Court was whether the SCN was time-barred under Section 73 and, if so, whether it could be sustained under the extended period in Section 74.

The Hon'ble Supreme Court explained that Section 73(10) requires an order to be issued within three years from the annual return due date, and Section 73(2) mentions the notice shall be issued three months earlier. In the present case, the extended due dates for the three years were 31 December 2020, 31 March 2021 and 28 February 2022. In the matter of *In Re: Cognizance for Extension of Limitation*³⁰, the Supreme Court had excluded the period from 15 March 2020 to 28 February 2022 from limitation. Even after this exclusion, the outer limit for all three years converged on 28 February 2025, and the SCN dated 13 June 2025, was beyond the extended time period. The plea that proceedings had begun within time failed, as the limitation governs the order, not the notice, and as per explanation 2 to Section 74 stood omitted with effect from 1 November 2024. Further, the protective assessment has no statutory sanction under GST.

The Hon'ble Supreme Court on issuance of SCN under

³⁰ *Suo Motu Writ Petition (C) No. 3 of 2020*



Section 74, held that proceedings require the Assessing Officer's own satisfaction, even on audit objections, and for the extended period, satisfaction of fraud, wilful misstatement or suppression which resulted in the mismatch or short payment. The referral to the Public Accounts Committee showed no such satisfaction, and the SCN merely asserted that ITC was availed "without documentary evidence and suppress the facts". The foundational facts must appear from the notice itself and such words cannot be recited mechanically to escape the normal limitation. Accordingly, the SCN and Order-in-Original were set aside and the High Court's judgment reversed, with liberty to the Department to initiate fresh Section 74 proceedings, stating the foundational facts in the notice, provided an order is passed before 28 February 2027.

Tata Steel Ltd. v. Union of India, Hon'ble Supreme Court, [TS-5186-SC-2026-O]

2. *Supreme Court declined to review its dismissal of the Revenue's SLPs against the ruling that telecommunication towers are movable property outside Section 17(5)(d), so ITC on them remains available*

The Revenue had filed Special Leave Petitions against a High Court judgment relating to the period 1 July 2017 to 31 March 2024, wherein it was held that telecommunication towers cannot be regarded as immovable property, following *Bharti Airtel Ltd. v. Commissioner of Central Excise*³¹. Since, they do not meet the test of permanency and cannot be said to be attached to the earth, they can be dismantled and moved and were never erected with the intent of conferring permanency and their placement on concrete bases serves only to withstand the vagaries of nature. The mere exclusion of telecommunication towers from the phrase "plant and machinery" does not automatically render them as immovable property. The towers therefore fall outside the purview of Section 17(5)(d) of the CGST Act, 2017, and the denial of ITC on this ground could not be sustained. The Hon'ble SC dismissed the SLPs while declining to exercise its discretion under Article 136 of the Constitution of India. The Revenue sought review of that order.

The issue before the Hon'ble Supreme Court was whether there was an error apparent on the face of the record in the order dismissing the SLPs that warranted its reconsideration.

After condoning the delay, the Hon'ble Supreme Court considered the review petitions and the grounds raised in them and concluded that there was no error apparent on the face of the record justifying

reconsideration of the impugned order. The Hon'ble Supreme Court dismissed them on the ground that it found no merit in the review petitions. The position that telecommunication towers are movable and that ITC on them is not blocked by Section 17(5)(d) therefore continues to hold good.

Commissioner, CGST

Appeal-1, Delhi Etc. v. Bharti Airtel Ltd., Hon'ble Supreme Court, Review Petition [TS-618-SC-2026-GST]

3. *Supreme Court issues notice on whether pre-deposit can be insisted upon for a GSTAT appeal where the SCN and Order-in-Original predate the pre-deposit amendment, and permits the appeal to be entertained without pre-deposit in the interim*

The Assessee, PVCON Engineering Co., a GST-registered construction contractor, was investigated for alleged irregular availment of ITC for FY 2017-18 and 2018-19. A SCN was issued and confirmed vide OIO dated 3 October 2024. The Assessee's appeal before the first appellate authority was dismissed on the ground of limitation. Aggrieved, the Assessee preferred a Writ Petition where the jurisdiction of the officer and alleged breach of natural justice were raised. The Hon'ble Madhya Pradesh High Court held that the option to file statutory appeal before the GSTAT under Section 112 of the CGST Act, 2017 was available, with a grace period of 30 days in terms of a Central Government circular, that the disputed issues were for the Tribunal to examine, and that Article 226 could not be invoked to bypass an efficacious remedy or avoid pre-deposit. The writ petition was dismissed with liberty to approach the Tribunal.

The Assessee filed an SLP where the issue before the Hon'ble Supreme Court was whether the condition of pre-deposit could be applied to the Assessee's appeal before the GSTAT, and whether the SCN had been issued by a proper officer.

Before the Hon'ble Supreme Court, the Assessee submitted that the amendment prescribing pre-deposit came into effect only from 1 October 2025, whereas both the SCN and the OIO were issued in 2024, and that the condition of pre-deposit therefore could not apply to its further appeal before the GSTAT. It was also urged that the SCN had not been issued by a proper officer. The Court issued notice and, in the meanwhile,



³¹ TS-551-SC-2024-NT

permitted the Assessee to file an appeal before the GSTAT, directing that the appeal be entertained without a pre-deposit, subject to the outcome of the Special Leave Petition. The matter was directed to be tagged with *M.M. Traders v. State of U.P.*³², which the Court is hearing along with the present petition.

PVCON Engineering Co. v. CGST and Central Excise, Bhopal, Hon'ble Supreme Court, SLP to Appeal (C) No(s). 28059 of 2026 (SC)

4. Supreme Court declines to interfere with the ruling that a SCN and order issued in the name of an amalgamating company that had ceased to exist on an NCLT-approved merger are void ab initio

The Assessee, Vodafone Idea Ltd., is the telecom company formed by the NCLT-approved merger of VMSL and Vodafone India with Idea Cellular, of which intimation was given to the GST authorities. After the merger, the Department issued an SCN in the name of VMSL and passed a consequential order. With respect to the jurisdiction, the Hon'ble Bombay High Court noted that the amalgamating entities ceased to exist upon approval of the merger, which had been disclosed to the Department. It held that the provision relating to amalgamation relied on by the Department applied only to the intervening period up to the date of approval and envisaged cancellation of the registrations thereafter and did not permit proceedings to be initiated or continued in the name of a non-existent amalgamating entity after the merger. The SCN and consequential orders were thus held as void ab initio and without jurisdiction. The Union of India challenged that decision by way of a Special Leave Petition.

The issue was whether any interference was warranted with the High Court's decision that proceedings initiated after the merger in the name of a non-existent amalgamating entity were without jurisdiction.

The Hon'ble Supreme Court declined to interfere with the impugned order of the High Court and dismissed the Special Leave Petition, thus, the High Court's ruling stood upheld.

Union of India v. Vodafone Idea Ltd., Hon'ble Supreme Court, [TS-686-SC-2026-GST]

5. A holding company's corporate guarantee for its subsidiary is a taxable supply even without consideration and that Rule 28(2) cannot apply for period before 26 October 2023

The Assessee, Torrent Power Ltd. and other holding companies, had furnished corporate guarantees to banks and financial institutions between 2012 and 2023, without consideration, for loans taken by their subsidiaries. Rule 28(2) of the CGST Rules, 2017, inserted with effect from 26 October 2023, deems the value of such a guarantee between related persons to be 1% of the amount guaranteed per annum, or the actual consideration, whichever is higher, as clarified by CBIC Circulars dated 27 October 2023 and 11 July 2024. The Department issued SCNs invoking extended period under Section 74 of the CGST Act, including periods before the rule was inserted. The Assessee challenged Rule 28(2) and Section 15(4) under Articles 14, 19(1)(g) and 265 of the Constitution, the Circulars and the Section 74 proceedings before the Hon'ble Gujarat High Court.

The question raised was whether a corporate guarantee given without consideration is a taxable supply and, if so, whether the deemed 1% valuation under Rule 28(2) is valid and can apply to earlier periods.

The Hon'ble Court held that the guarantee is a taxable supply. It distinguished *Commissioner of CGST and Central Excise v. Edelweiss Financial Services Ltd.*³³, where it was held that service tax was not leviable on such guarantees, because Section 65B(44) of the Finance Act, 1994 made consideration an essential part of "service". The Court also disagreed with *D P Jain & Co. Infrastructure (P.) Ltd. v. Union of India*³⁴ to the extent that it applied the decision of *Edelweiss*³⁵ under GST, since Section 7(1)(c) read with Schedule I- taxes supplies between related persons even without consideration. Following *DGGSIT (HQS) v. Gameskraft Technologies (P.) Ltd.*³⁶, wherein it was held that "supply" must receive a purposive and expansive interpretation, the Court found that the subsidiary is the "recipient" under Section 2(93). Further, it was observed that the guarantee is incidental to the holding company's business and is not an actionable claim, and that the share pledge merely secured the guarantee and the time of supply arises every year as per the provision of Section 13(2)(c).

Relying on *Gameskraft*, which upheld valuation rules framed on the GST Council's recommendation, the Court upheld Section 15(4) and Rule 28(2), but not the

³² SLP (Civil) Diary No. 28833 of 2026

³³ [TS-136-SC-2023-ST]

³⁴ [TS-333-HC(BOM)-2026-GST]

³⁵ [TS-136-SC-2023-ST]

³⁶ [TS-391-SC-2026-GST]

words “whichever is higher”. The GST Council had noted that commissions range from 0.5% to 3%. In *Wipro Limited v. Asstt. Collector of Customs*³⁷, it was held that a flat 1% of FOB value, applied even where actual charges were ascertainable, was arbitrary under Article 14, and read it down. In the present case, the actual commission was 0.25% to 0.3% and the expression was therefore held to violate Articles 14 and 19(1)(g) and was read down, so that the value is either the actual consideration or 1%.

Further, applying the valuation as 1% of the amount guaranteed per annum to periods before 26 October 2023 was held to be an unduly harsh retroactive levy, and the SCN concerning foreign subsidiaries was set aside as covered by Circular No. 225/19/2024-GST. The Hon'ble Court also observed that no discrimination in the Nil value assigned to directors' personal guarantees. The Court also placed reliance on the decision of *Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur*³⁸, where the Hon'ble Supreme Court held that a mere failure to declare is not wilful suppression when the facts are known to both sides, the Court held that invoking Section 74 in a genuine interpretational dispute was arbitrary. The writ petitions were partly allowed, with the following directions:

- i) Rule 28(2) and Section 15(4) are intra vires, except that “whichever is higher” is read down;
- ii) the levy on guarantees given before 26 October 2023 is unconstitutional, but it applies from that date to guarantees that continue;
- iii) the Section 74 action is quashed, and any excess GST is to be refunded or adjusted; and
- iv) the Circulars are set aside to the extent that they are contrary to the judgment.

Torrent Power Ltd. v. Union of India, Hon'ble Gujarat High Court, [TS-592-HC(GUJ)-2026-GST]

6. Arrest under Section 69 of the CGST Act, 2017 requires “reasons to believe”; where none are recorded regular bail is warranted

Jaswant Singh @ Rolly Babu, was arrested after summons and interrogation in a complaint case filed by the CGST authorities for offences under Section 132(1) of the CGST Act, 2017. He was alleged to have issued invoices to multiple firms without actual supply of goods, fraudulently availed ITC, falsified accounts, and

operated shell entities by controlling their GST credentials, banking and compliance, with a revenue implication of about Rs. 73.75 crores. In judicial custody since 26 May 2026, he sought regular bail, contending that the allegations rested only on statements of other firms' proprietors and a co-

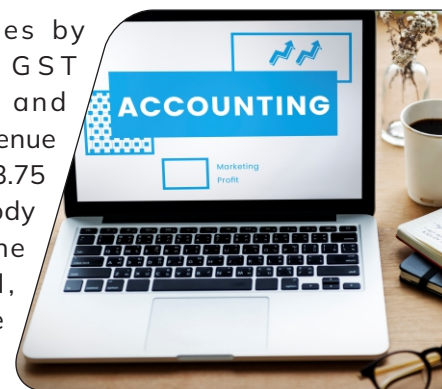
accused without cross-examination, that the search of his residence yielded nothing incriminating, and that he had been arrested on mere suspicion, the arrest memo not even specifying the monetary threshold under Section 132 of the CGST Act. The Revenue opposed bail, stressing the gravity of economic offences and the punishments prescribed.

The Hon'ble court was to decide whether Jaswant Singh was entitled to regular bail where his arrest was not supported by recorded reasons to believe and the investigation had culminated in a charge sheet.

The Hon'ble Court observed that on a conjoint reading of Sections 69 and 132, there must be a reason to believe that the person has committed tax evasion or satisfies the conditions specified in Section 132 before he can be arrested, and no such reason to believe was mentioned in the authorisation of arrest or the arrest memo. The decision of the Hon'ble SC in the matter of *Arnesh Kumar v. State of Bihar*³⁹ was relied upon, wherein it was directed that police officers should not arrest accused persons automatically or unnecessarily and that Magistrates should not authorise detention casually or mechanically. The accused also relied on *Satender Kumar Antil v. CBI*⁴⁰, where the Hon'ble SC took a similar view and emphasized that arrest is a discretionary measure to be applied on the facts of each case. The accused further pointed out that, with the charge sheet filed, his continued detention would serve no purpose and there was no chance of tampering with evidence.

The Hon'ble Court after hearing the matter, while dismissing the matter, enlarged the accused on bail in Complaint Case No. 49 of 2026 on his furnishing a bail bond with two sureties of the like amount each, to the satisfaction of the learned Special Judge, Economic Offence, or the court concerned.

Jaswant Singh @ Rolly Babu v. Union of India, Hon'ble Patna High Court, [TS-648-HC(PAT)-2026-GST]



³⁷ [TS-143-SC-2015-CUST]

³⁸ (2013) 9 SCC 753

³⁹ Criminal Appeal No. 1277 of 2014, dated 2-7-2014

⁴⁰ TS-448-SC-2021-NT

7. Rule 96(10) of the CGST Rules, 2017 was omitted without any saving or sunset clause and it cannot be invoked in pending proceedings to deny refund of IGST paid on exports

The Assessee, Maldeep Catalysta (P.) Ltd., challenged a communication dated 8 July 2025 that invoked the restriction under Rule 96(10) of the CGST Rules, against its claim for refund of IGST paid on exports. The Assessee contended that Rule 96(10) had been omitted by Notification No. 20/2024 with effect from 8 October 2024, before the impugned communication was issued, without any saving clause, so no proceedings survived. It also sought a writ prohibiting coercive action pursuant to communication.

The issue before the Hon'ble Court was whether the omission of Rule 96(10), without a saving or sunset clause, benefits an assessee in pending proceedings for refund of IGST paid on goods or services exported out of India.

The Hon'ble Court noted that the issue had been set at rest by *Goodluck India Ltd. v. Union of India*⁴¹, wherein had applied a Constitution Bench decision and observed that Rule 96(10) was omitted because it was leading to unnecessary complications without serving any intended benefit. Since no saving or sunset clause accompanied the omission, and the recommendation that the omission operate prospectively was only advisory and did not bind the rule-making authority, the Hon'ble Supreme Court held that the intention was to end those complications once and for all, not to keep them alive in pending proceedings. The Hon'ble Court had therefore declined to interfere with the High Court's judgment and directed that pending cases on the issue be listed expeditiously before the High Courts to bring quietus to the litigation.



Applying this ruling, the Hon'ble Court held that, absent any saving or sunset clause, the restriction under Rule 96(10) could not be kept alive for pending refund claims, and the benefit of the omission accrued to the Assessee. The writ petition was allowed, and the impugned communication dated

8 July 2025 was quashed and set aside.

Maldeep Catalysta (P.) Ltd. v. Union of India, Hon'ble Gujarat High Court, [TS-676-HC(GUJ)-2026-GST]

8. Where part of a demand is dropped in first appeal and the Department does not appeal, the assessee is entitled to an immediate proportionate refund of the pre-deposit

The Assessee, IBM India (P.) Ltd., was assessed to tax of Rs. 48,96,54,949 by an OIO dated 21 February 2024. On appeal, the Joint Commissioner of State Tax (Appeal-1), Mumbai vide order dated 17 March 2025, dropped about 64% of the demand, amounting to Rs. 31,45,84,219, and confirmed Rs. 17,50,70,729. The Department did not appeal the dropped portion and the Assessee applied in Form GST RFD-01 for refund of Rs. 3,14,58,422, the pre-deposit paid under Section 107 of the MGST Act, 2017 that was attributable to the dropped demand. The Deputy Commissioner of State Tax rejected the claim on 26 August 2025 as premature and stated that as the Assessee intended to approach the GSTAT, the pre-deposit was paid, further, the proceedings had not attained finality under Circular No. 125/44/2019-GST dated 18 November 2019.

The issue before the Hon'ble Court was whether refund of the pre-deposit relatable to the portion of the demand set aside in appeal could be withheld because the Assessee intended to challenge the portion that was sustained.

The Hon'ble Court held that the impugned order proceeded on an erroneous footing. The Assessee proposed to challenge only the confirmed demand of Rs. 17,50,70,729, and the proceedings had attained finality as regards the demand of Rs. 31,45,84,219. To that extent, the Assessee was squarely covered by the Circular dated 18 November 2019 and entitled to a proportionate refund, while any further appeal against the sustained demand would carry its own 10% pre-deposit. The Hon'ble Court drew on *Nelco Limited v. UOI*⁴², where it had been held under the erstwhile indirect tax regime that an amount paid as a condition precedent for hearing an appeal is not duty but a security deposit, which must be returned whether the appellant succeeds fully or partly. Once the demand was set aside, a statutory right to refund accrued, and continued retention of the amount was wholly unauthorised and offended Article 265 of the Constitution. Further, the Order-in-Appeal bound the adjudicating authority under Section 107(16), which could not refuse the consequential refund.

At the Hon'ble Court's request, the Assessee did not press its claim for interest under Section 115. The writ petition was allowed, the impugned order was quashed, and the refund of Rs. 3,14,58,422 was directed to be processed and paid within six weeks from communication of the order.

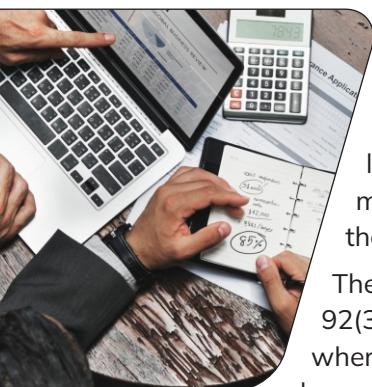
⁴¹ [TS-575-SC-2026-GST]

⁴² 2002 (144) E.L.T. 56 (Bom.), maintained in 2002 (144) E.L.T. A104 (S.C.)

IBM India (P.) Ltd. v. Union of India, Hon'ble Bombay High Court, [TS-657-HC(BOM)-2026-GST]

9. Refund claim cannot be rejected as time-barred through a deficiency memo under Rule 90(3), since limitation is not a curable deficiency

The Assessee, L.S. Pacific Wood Tech (P.) Ltd., filed an application for refund under Section 54 of the CGST Act, 2017 and the Tamil Nadu GST Act, 2017. At the acknowledgement stage, the Department issued a deficiency memo dated 16 April 2026 under Rule 90(3) of the CGST Rules, 2017, stating that the refund claim was time barred. The Assessee challenged the deficiency memo before the Hon'ble High Court, contending that a deficiency memo can be issued only where a remediable defect is pointed out, and that if the Department proposed to reject the claim wholly or in part, the proper course was to issue a SCN under Rule 92(3).



The issue before the Hon'ble Court was whether a refund application could be treated as deficient, and effectively rejected, on the ground of limitation by way of a deficiency memo issued under Rule 90(3) of the CGST Rules.

The Hon'ble Court noted that Rule 92(3) requires the proper officer, where he is satisfied for reasons to be recorded in writing that the whole or any part of the refund claimed is not admissible, to issue a notice in Form GST RFD-08, consider the reply in Form GST RFD-09 and then pass an order in Form GST RFD-06, and that its proviso forbids rejection of a refund without an opportunity of being heard. This, the Court observed, is the appropriate course whenever the Department is of the view that the claim is liable to be rejected in whole or in part. Rule 90(3), on the other hand, deals with deficiencies and contemplates that the applicant will file a fresh application after rectifying them; it is for that reason that its proviso excludes the intervening period while computing limitation under Section 54(1). The scheme of Rule 90(3) thus presupposes curable omissions and not an adjudication on limitation. Accepting the Assessee's contention, the Court held that a deficiency memo cannot be issued on the ground that the refund application is time barred.

The writ petition was accordingly disposed of, leaving it open to the Department to issue a SCN as per Rule

92(3), within two weeks from receipt of the order, if it intends to reject the refund application wholly or in part. The Court directed that no further action be taken pursuant to the impugned deficiency memo.

L.S. Pacific Wood Tech (P.) Ltd. v. Commercial Tax Officer, Hon'ble Madras High Court, [TS-702-HC(MAD)-2026-GST]

10. Refund of ITC on admitted exports under a Bill To Ship To arrangement cannot be denied on the basis of toll plaza data, which the law does not require

The Assessee, Agarwala's Bitumex Private Limited, a Siliguri-based supplier and exporter of iron and steel bars and bitumen, claimed refund of accumulated ITC of Rs. 11,41,828 and Rs. 27,65,697 for January and February 2025 under Section 54 of the CGST Act, 2017. The SCNs alleged that goods bought from its supplier, M/s KS Metals Private Limited of Kolkata, were never dispatched from West Bengal, as toll plaza data showed movement only in Bihar and Uttar Pradesh. It was further alleged that KS Metals had purchased from two suppliers whose registrations were cancelled ab initio. The claims were rejected but allowed in appeal on 12 September 2025. Before GSTAT, the Revenue also urged new grounds, including that the supplier lacked licences required for trading bitumen.

The issue raised was whether the refund could be denied on the basis of toll plaza data and the cancelled registrations of second-line suppliers, and whether the Revenue could raise fresh grounds in appeal.

The Hon'ble Tribunal noted that the SCNs admitted payment of tax as reflected in GSTR-1, GSTR-2B and GSTR-3B, and the refund application had been verified and the export was undisputed. The e-way bills showed a 'Bill To Ship To' model, under which KS Metals delivered the goods at the place of export on the Assessee's instructions, and that no provision requires goods to start from the supplier's registered place. The undisputed e-way bills, shipping bills, EGM details, transporter's certificate and bank statements proved that the goods were transported and exported. Thus, the conditions under Section 16(2)(a) to (d) were met. The Assessee placed on *Raghuvansh Agro Farms Ltd. v. State of U.P.*⁴³, wherein the Hon'ble Allahabad High Court passed a landmark ruling that "Toll plaza receipts not mandatory for justifying actual physical movement of goods under GST". It is a well settled that procedural or collateral discrepancies cannot override substantive documentary evidence proving actual supply and movement of the goods. Following it, the Tribunal held

⁴³ [TS-1054-HC(ALL)-2025-GST]

that toll plaza receipts are not mandatory for ITC. KS Metals held a valid registration, and the Assessee, having no connection with the second-line suppliers, could not be penalised for their irregularities. The new grounds were absent from the SCNs and unsupported by documents or any prayer for additional evidence and it was therefore barred by Rule 45(1) of the GSTAT (Procedure) Rules, 2025 and Rule 112(1) of the CGST Rules, 2017. The Revenue's appeals were dismissed in totality.

Anil Kumar Singh v. Agarwala's Bitumex (P.) Ltd., [TS-619-GSTAT-2026-GST]

Notifications, Circulars & Instructions – Custom

A. Circulars

1. Circular No. 36/2026-Customs dated 20 August 2026

This Circular extends the facilitative framework put in place to deal with the West Asia crisis, specifically the disruption to shipping caused by the Strait of Hormuz closure, building on Circulars No. 12/2026, No. 15/2026, and No. 25/2026-Customs. The Trade bodies had flagged that the operational problems from disrupted Gulf shipping routes were continuing, so CBIC has kept the transshipment facilitation going for both FCL and LCL cargo through all Indian seaports and airports.

For Liquid Bulk, Break Bulk, and Solid/Dry Bulk cargo specifically, jurisdictional Principal Commissioners/Commissioners can now permit temporary unloading, storage, and onward transshipment or re-export of cargo that gets diverted to Indian ports due to maritime security risks or route disruptions. This is allowed case-by-case, under full Customs supervision including ullage surveys, quantity checks, bonded storage, proper bonds/undertakings, and a strict condition that the cargo never enters the Domestic Tariff Area. In case of Solid/Dry Bulk cargo, the same safeguards as Break Bulk are to be followed. Further, repacking within the Customs area is also permitted where operationally needed, under supervision.

The existing procedures from Circular No. 14/2007-Cus. and the 2026 Circulars for multi-station transshipment (Nodal Officer consent process, sealed container movement, custodian responsibilities) continue to apply. This relaxation stays valid until 31 October 2026, with implementation issues to be reported to the Board.

2. Circular No. 38/2026-Customs dated 1 September 2026

This Circular rolls out the Sea Cargo Manifest and Transshipment Regulations (SCMTR), 2018, originally notified vide Notification No. 38/2018-Customs (N.T.), dated 11 May 2018, with effect from 1 September 2026, following Notification No. 73/2026-Customs (N.T.) issued the same day. With the electronic messaging system now developed and tested, but actual filing by stakeholders still low, CBIC has decided to operationalize SCMTR in a phased manner across ports as per the schedule at Annexure A, urging all stakeholders to start filing the required electronic messages on the Customs Automated System for smooth cargo clearance.

SEZ units are advised to use this transition period to onboard onto the SCMTR framework. Field formations are directed to issue Public Notices and run outreach to familiarize trade with SCMTR provisions, resolve system issues with DG Systems, and escalate policy issues to the Board. Importantly, no penal action is to be taken during this implementation phase. Any difficulties should be reported to the Board.



3. Circular No. 39/2026-Customs dated 3 September 2026

The CBIC has amended Circular No. 08/2026-Customs dated 28 February 2026, which was issued pursuant to Notification No. 12/2026-Customs (N.T.) dated 1 February 2026 and extended the facility of deferred payment of import duty under the proviso to Section 47(1) of the Customs Act, 1962 to "Eligible Manufacturer Importers" (EMI). Acting on representations from the trade, the Board has rationalised the data and documentary requirements for applications under the EMI Scheme in order to simplify the process and reduce the compliance burden.

The data elements in the application form at Appendix-I have been reduced substantially. Applicants will no longer be required to furnish, inter alia, details of EXIM documents filed during the previous financial year, GSTIN status, the declaration of manufacturing activity in FORM GST REG-01, GSTR-3B filing status, aggregate turnover and GST payment, date of commencement of business/GST registration, ITC-04 particulars, details of factory premises and property



holding rights, book value of plant and machinery, major raw materials and finished goods with HSN details, and particulars of job workers. Under Appendix-II, the requirement to upload copies of IEC, PAN, GST registration certificates, ITC-04 returns, GSTR-9C, audited financial statements for two years and premises documents

has been dispensed with; only the UDYAM Registration Certificate (where MSME status is claimed), a Chartered Accountant's certificate bearing UDIN in the prescribed format and an authorisation letter for the signatory are now required, reducing the documents from ten to three. Appendix-III is revised to require the CA to explain cases of negative net worth or negative net current assets.

These changes substantially reduce the compliance burden, with verification shifting to backend IT systems. Applications under the simplified format open from 15 September 2026.

4. Circular No. 40/2026-Customs dated 3 September 2026

The CBIC has issued checklists, provided by the Central Drugs Standard Control Organisation (CDSCO), of the mandatory compliances to be verified by Customs officers before granting out-of-charge for PGA facilitated Bills of Entry covering cosmetics, drugs and medical devices. These products require licences, permissions and registration certificates under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, and since the integration of these documents into SWIFT 2.0 is still under way, field formations have been asked to exercise due diligence while granting out-of-charge.

Seven checklists have been prescribed at Annexure-A: (I) Cosmetics; (II) Drugs (API and finished formulations); (III) import of drugs for personal use or of small quantities of new drugs by Government hospitals or autonomous medical institutions; (IV) drugs imported for examination, test or analysis; (V) medical devices, including in vitro diagnostic kits; (VI) medical devices for clinical investigation, test, evaluation, demonstration or training, investigational devices for Government hospitals and small quantities for personal use; and (VII) raw materials and components for manufacture of medical devices. The documents to be verified include self-certified copies of the relevant registration

certificate or licence (such as Form COS-2/COS-4A, Form 41 with Form 10, Form MD-15, MD-17/19/21 or MD-05/09), invoice, packing list, certificate of origin, certificate of analysis and storage licence, together with labelling requirements and importer undertakings.

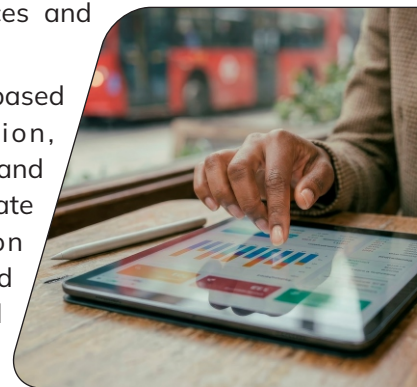
Specific substantive conditions are also prescribed. Cosmetics may not be imported unless the use-before/expiry date is not more than six months from the date of import, cosmetics containing hexachlorophene are barred, and a manufacturer's declaration that no animal testing was carried out is required. Drugs must have residual shelf life of more than 60% on the date of import, with API labels bearing a prescribed QR code, while medical devices must meet minimum residual shelf life of 40%, 50% or 60% depending on their total shelf life. Discrepancies are to be referred to the CDSCO port office. Field formations are to sensitise officers, and the trade is to be informed through public notices and asked to upload the documents on e-SANCHIT to facilitate expedited clearance.

5. Circular No. 41/2026-Customs dated 3 September 2026

In continuation to Circular No. 40/2020-Customs dated 4 September 2020, which rolled out faceless assessment and constituted National Assessment Centres (NACs) to secure uniformity in Customs assessment, the CBIC has launched the National Assessment Centre (NAC) Portal, accessible at naccustoms.gov.in through any secure web browser. The Portal is intended to serve as a transparent and readily accessible repository of NAC decisions, legal precedents, CAAR rulings, advisories and audit observations, with a view to promoting uniformity, certainty and predictability in assessment and reducing divergent practices and avoidable disputes.

The Portal provides role-based logins for administration, reporting and monitoring, and each NAC is to upload, update and manage information pertaining to its allocated commodities and functional domain, and to update the Portal regularly.

Information on commodities raised by stakeholders at CCFC/PTFC meetings for guidance or uniformity in assessment is to be uploaded on priority. The User Manual is available on icegate.gov.in, and field formations are to give wide publicity to the Circular through Trade/Public Notices.



B. Case Laws — Custom

1. *A Major Port Trust may validly be approved as custodian under Section 45(1) of the Customs Act, 1962 and is then liable under Section 45(3) for duty on goods pilfered in its custody, but not for pilferage before approval*

Between 1996 and 2000, the Revenue raised demands on the Board of Trustees of the Port of Bombay, a Major Port Trust under the Major Port Trusts Act, 1963, for duty under Section 45(3) of the Customs Act, 1962 on goods pilfered in its custody; these were confirmed in appeal. Meanwhile, by Notification dated 11 October 2000, the Commissioner of Customs (Import) approved the Mumbai Port Trust as custodian under Section 45(1). On 28 July 2009, the Hon'ble Bombay HC set aside the demands and held the Notification ultra vires, as the Port Trust's custody flowed from the Major Port Trusts Act.

The issue before the Hon'ble Supreme Court was whether, given the saving clause "save as otherwise provided in any law for the time being in force" in Section 45(1), a Port Trust could be approved as custodian and thereby made liable for duty on pilfered goods under Section 45(3).

The Revenue conceded that pre-11 October 2000 demands could not survive without approval under Section 45(1) of the Customs Act. On the Notification, the Hon'ble Supreme Court contrasted the saving clause in Section 45(1) with the non obstante clause in Section 45(3), relying on *Aswini Kumar Ghosh v. Arabinda Bose*⁴⁴, which held that a non obstante clause sets aside anything in existing laws inconsistent with the new enactment, and *Dominion of India v. Shrinbai A. Irani*⁴⁵, which held that such a clause cannot cut down the clear terms of the enacting part. As Section 13 absolves the importer of duty on pilfered goods, Parliament inserted Section 45(3) with effect from 26 May 1995 to cast that liability on the approved custodian.

The saving clause yields only to a law imposing a corresponding liability on the same footing. Sections 42 and 43 of the Major Port Trusts Act make the Board liable to the owner only as a bailee under the Indian Contract Act, 1872, and conditionally; that compensatory civil liability is distinct in source, nature and object from the absolute statutory liability to the Revenue under Section 45(3). Section 23 of the Customs Act treats pilferage as distinct from loss or destruction, and the Major Port Trusts Act imposes no duty liability for pilferage. Section 45(2) binds every custodian to keep records and prevent unauthorised

removal, and pilferage results from breach of those duties.

The Notification was held valid and the High Court's judgment set aside to that extent, while the quashing of pre-notification demands was left undisturbed.

Union of India & Ors. v. Board of Trustees of the Port of Bombay, Hon'ble Supreme Court, TS-281-SC-2026-NT

2. *Rule 16 of the Drawback Rules prescribes no limitation, recovery of drawback must begin within a reasonable time; a demand raised over ten years later, without any allegation of fraud or suppression, is unsustainable*

The Assessee, S.M. Apparels Private Limited, a garment exporter, availed drawback of Rs. 4,99,69,796 on 1583 shipping bills between 2004 and 2007. In 2018, a SCN was issued under Rule 16A(2) and (3) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for non-production of proof of realisation of export proceeds. Treating the SCN as served and unanswered, which the Assessee disputed, the Deputy Commissioner by order dated 30 November 2022 directed recovery of the entire amount, and the Assessee's bank account was attached. The Revenue urged that Rule 16 prescribes no limitation and that an appeal lay under Section 128(1) of the Customs Act, 1962.

The issue before the Hon'ble Court was whether recovery of drawback could be initiated more than ten years after the last payment where no fraud or suppression was alleged, and whether the writ petition was barred by the alternative remedy or by delay.

The Hon'ble Court held that where no limitation is prescribed, proceedings must still be initiated within a reasonable time, depending on the facts of each case. It distinguished *Rajbir Singh v. Union of India*⁴⁶, where the Delhi High Court declined to read a three-year limit into Rule 16 in a case of strongly suspected fraudulent availment, since fraud vitiates all acts irrespective of time but no fraud or suppression was alleged here. Instead, it followed the Co-ordinate Bench in the matter of *M/s. L&T Construction Equipment Ltd. v. Assistant Commissioner of Customs (Chennai-IV), Chennai*⁴⁷, which applied *Pratibha Syntex Ltd. v.*



⁴⁴ AIR 1952 SC 369; 1952 (10) TMI 32 - Supreme Court

⁴⁵ AIR 1954 SC 596; 1954 (5) TMI 23 - Supreme Court

⁴⁶ TS-568-HC-2025(DEL)-CUST

⁴⁷ W.P. No. 18552 of 2022, decided on 07.03.2025; 2025 (3) TMI 1513 - Madras High Court

*Union of India*⁴⁸, where the Gujarat High Court held three years to be the maximum reasonable period for recovering an amount erroneously paid. The last payment having been made on 28 December 2007, the SCN in 2018 and the order in 2022, with no explanation for either delay, the proceedings could not be sustained. As the order was passed beyond a reasonable period and without authority, the Assessee could not be relegated to appeal, and any delay in approaching the Court, which the Assessee attributed to learning of the order only when its account was frozen, did not bar relief. The order and the bank attachment were set aside, with liberty to seek de-freezing, and the writ petition was allowed.

S.M. Apparels Private Limited v. Principal Commissioner of Customs (Air Cargo) & Anr., Hon'ble Madras High Court, W.P. No. 11926 of 2026, decided on 19 August 2026

3. Notifications revising SEIS eligibility and reward rates for FY 2019-20 operate only prospectively, since Section 5 of the FTDR Act, 1992 does not permit retrospective withdrawal of accrued benefits

The Assessee, Oxane Partners India Private Limited, rendered Management Consulting Services under entry 865 of Appendix 3D, while the Assessee in the connected matter provided maritime support services

covered by Appendices 3D and 3E of the Foreign Trade Policy 2015-20; both parties availed benefits under the Service Exports from India Scheme (SEIS). As per Notification No. 57/2015-20 dated 31 March 2020, eligible services and reward rates for services rendered in FY 2019-20 would be notified separately in Appendix

3X. Some eighteen months later, Notification No. 29/2015-20 dated 23 September 2021 notified Appendix 3X, excluded Appendix 3E services for FY 2019-20 and capped entitlement at Rs. 5 crore per IEC. The Assessee, who had already exported services and earned foreign exchange in FY 2019-20, were not permitted to file SEIS applications and challenged the retrospective operation of both notifications.

The issue before the Hon'ble Court was whether these notifications could retrospectively deny SEIS benefits

already accrued to service exporters.

The parties agreed that the issue was covered by the Hon'ble Court's earlier judgment dated 5 February 2026 in Special Civil Application No. 17285 of 2025, which had quashed the retrospective foreclosure of a scheme and made the withdrawing notification effective only from its date of issue. That judgment rested on *Union of India v. Asian Food Industries*⁴⁹, where the Supreme Court held that a restriction under Section 5 operates only prospectively and cannot take away vested or accrued rights; on *Director General of Foreign Trade v. Kanak Exports*⁵⁰, where it held that Section 5 of the Foreign Trade (Development and Regulation) Act, as a delegated power, does not authorise retrospective amendments divesting exporters who had satisfied a scheme's conditions; and on *Viraj Impex Pvt. Ltd. v. Union of India*⁵¹, where a notification was held operative only from its publication in the Official Gazette.

Adopting that view, the Hon'ble Court held that the notifications dated 31 March 2020 and 23 September 2021 take effect from their respective dates of issue and quashed their retrospective effect. The Department was directed to process the applications, extend all benefits accruing until the impugned notification, including claims for the period for which the Assessee had been prevented from applying, and pay the amounts within 12 weeks of receipt of the order. The petitions were allowed to that extent.

Oxane Partners India Private Limited v. Union of India & Ors., Hon'ble Gujarat High Court, TS-345-HC-2026(GUJ)-FTP

4. A customs demand arising from a pre-CIRP import, not lodged before the Resolution Professional, stands extinguished on approval of the resolution plan under Section 31(1) of the IBC and cannot thereafter be adjudicated or enforced

The Assessee, Jaiprakash Associates Limited, imported Digital and Network Video Recorders under a Bill of Entry dated 15 September 2023, availing duty at 10% under Serial No. 499A of Notification No. 50/2017-Customs. The Corporate Insolvency Resolution Process (CIRP) commenced on 3 June 2024, and the public announcement fixed 17 June 2024 as the last date for claims and the Customs Department filed none. During the CIRP, a SCN dated 10 September 2025 was issued under Section 28(1) of the Customs Act, 1962, alleging a short levy of Rs. 5,89,366. The NCLT approved the resolution plan on 17 March 2026, Clause 4.12.1 of which extinguished unsubmitted pre-CIRP claims.

⁴⁸ 2013 (287) E.L.T. 290 (Guj.); 2013 (3) TMI 480 - Gujarat High Court

⁴⁹ 2006 (11) TMI 10 - Supreme Court

⁵⁰ TS-589-SC-2015-FTP

⁵¹ TS-9-SC-2026-FTP



Although these facts were placed before the adjudicating authority on 18 May 2026, the Order-in-Original dated 2 June 2026 confirmed the duty with interest and imposed a penalty of Rs. 4,00,000 under Section 117, holding that the Assessee had not shown the liability to have been placed before the Resolution Professional

or the NCLT.

The issue before the Hon'ble Court was whether a customs claim arising from a pre-CIRP transaction, not submitted during the CIRP, could be adjudicated and enforced after approval of the resolution plan.

The Hon'ble Court held that "claim" under Section 3(6) of the IBC covers a right to payment whether or not adjudicated, fixed or disputed, so the absence of adjudication did not take the liability outside it, nor could the later SCN convert it into a post-CIRP claim. After the public announcement, the onus of filing lay on the creditor, not on the corporate debtor to notify it. In *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*⁵², the Supreme Court held that on approval of a resolution plan all claims, including statutory dues, not forming part of it stand extinguished so that the resolution applicant starts on a clean slate; the plan thus bound the Department, and Section 238 gave the IBC overriding effect. *ABG Shipyard Liquidator v. CBIC*⁵³ was distinguished, as it recognised only a power to determine customs liability during insolvency, subject to the IBC. *Reliance on State Tax Officer v. Rainbow Papers Ltd.*⁵⁴ failed, since *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.*⁵⁵ had confined it to its own facts. The adjudicating authority's approach reversed the statutory scheme; a statement of willingness to pay could not confer jurisdiction; and, the issue going to jurisdiction, the alternative remedy was no bar. The Order-in-Original was quashed, without opinion on classification or eligibility under Serial No. 499A.

Jaiprakash Associates Limited v. Office of the Commissioner of Customs, Air Cargo Complex (Import) & Anr., Hon'ble Delhi High Court, W.P.(C) 10387/2026, decided on 2 September 2026

VI. REGULATORY UPDATES

1. Review of Circulars issued under Foreign Exchange Management Act, 1999 (FEMA)

Circular / Notification	RBI/2026-27/254; A.P. (DIR Series) Circular No. 21
Issue Date	08 September, 2026
Last Update on	08 September, 2026

RBI has withdrawn seven A.P. (DIR Series) circulars issued under FEMA which have ceased to be operative due to subsequent regulatory amendments, redundancy, overlap or supersession by newer directives. The withdrawn circulars relate to various matters including External Commercial Borrowings, issuance of Rupee-denominated bonds overseas, ECB in Indian Rupees, liberalisation of the definition of infrastructure sector, certain borrowing and lending in Rupees, import of services / technical know-how / licence fees under ECB policy, Money Transfer Service Scheme sub-agents and ECB by SIDBI. Authorised Persons are required to take note of the withdrawal and communicate the contents to the concerned constituents.

2. Commercial Banks – Minimum Capital Requirements for Market Risk Directions, 2026

Circular / Notification	RBI/DOR/2026-27/472; DOR.MRG.REC.227/21-01-002/2026-27
Issue Date	21 September, 2026
Effective date	01 April, 2027

RBI has issued comprehensive Directions prescribing minimum capital requirements for market risk for Commercial Banks. The framework defines the boundary between the banking book and trading book, provides restrictions on reclassification and prescribes treatment of internal risk transfers, including credit risk, general interest rate risk and eligible hedges for credit valuation adjustment risk. It also specifies the scope of market risk and the treatment of certain structural foreign exchange positions. Market risk capital requirements are prescribed for interest rate, equity and foreign exchange risks and for option risks, with detailed methodologies under the standardised approach. The Directions also prescribe disclosure and reporting requirements and will apply to Commercial Banks, other than Small Finance Banks, Payment Banks and Local Area Banks, from April 1, 2027.

⁵² [TS-36-SC-2022-CUST]
⁵⁴ TS-562-SC-2023-VAT

⁵³ (2023) 1 SCC 472
⁵⁵ (2023) 10 SCC 60

3. Novation of OTC Derivative Contracts

Circular / Notification	RBI/2026-27/263; FMRD.DIRD.No.04/14.03.066/2026-27
Issue Date	22 September, 2026
Effective date	22 September, 2026

RBI has finalised the instructions relating to novation of OTC derivative contracts after considering feedback received on the draft Directions issued in July 2025. The instructions have been incorporated into the respective regulatory Directions governing OTC foreign exchange, Rupee interest rate derivatives, forward contracts in Government securities and credit derivatives, with the objective of consolidating the applicable framework. The instructions apply to any novation undertaken on or after the date of issue of the circular.

4. Ease of Regulatory Compliances for FPIs Investing Only in Government Securities

Circular No.	HO/(485)2026-AFD- POD2/I/20296/2026
Date	07 September 2026

SEBI has introduced further ease of regulatory compliances for Foreign Portfolio Investors (FPIs) investing only in Government Securities, with a view to simplifying the regulatory requirements applicable to such FPIs.

The relaxation is applicable to FPIs whose investments are restricted exclusively to Government Securities under the Fully Accessible Route.

The key relaxations are as follows:

- FPIs that invest exclusively in Government Securities under the Fully Accessible Route (FAR) are not required to comply with the prescribed concentration limit and required to furnish investor group details.
- Such FPIs are provided relaxation from certain disclosure and reporting requirements that are otherwise applicable to regular FPIs, subject to the conditions specified by SEBI.

5. Commercial Banks – Investment Portfolio: Third Amendment Directions, 2026

Circular / Notification	RBI/2026-27/264; DOR.MRG.REC.No.228/00-00-001/2026-27
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Local Area Banks – Investment Portfolio: Second Amendment Directions, 2026

Circular / Notification	RBI/2026-27/265; DOR.MRG.REC.No.229/00-00-001/2026-27
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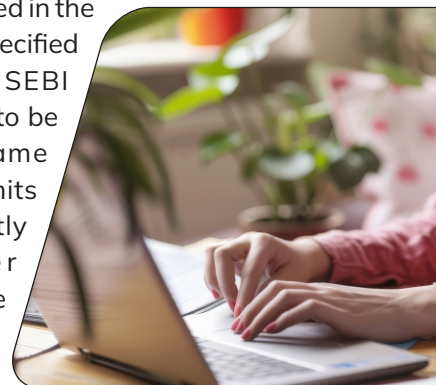
Small Finance Banks – Investment Portfolio: Second Amendment Directions, 2026

Circular / Notification	RBI/2026-27/266; DOR.MRG.REC.No.230/00-00-001/2026-27
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Issue Date	22 September, 2026
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Effective date	22 September, 2026
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RBI has amended the investment portfolio framework for Commercial Banks to prescribe valuation requirements for units and instruments issued by Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs). Quoted securities and units of InvITs / REITs are to be valued in accordance with the existing instructions applicable to quoted securities. Unquoted units are to be valued at the NAV disclosed by the relevant InvIT / REIT; where the NAV is not computed and disclosed in the manner and frequency specified under the applicable SEBI Regulations, the value is to be treated as ₹1. The same treatment applies to units classified as infrequently traded, while other unquoted instruments are to be valued using the methodology prescribed for such instruments.



6. Section 240A of Insolvency and Bankruptcy Code, 2016 - MSME Exception, Loophole or Lifeline

A Perspective on the Provision for Promoters of MSME

The Exemption:

Section 29A of the Insolvency and Bankruptcy Code, 2016 bars specified persons – mainly promoters, related parties and others connected to a corporate debtor's collapse – from submitting a resolution plan. Two of its disqualifications hit small businesses hardest:

Clause (c) bars a person whose account is classified as

a non-performing asset (NPA), unless overdue amounts are repaid before the plan is submitted.

Clause (h) bars a person whose guarantee to a creditor of the corporate debtor has been invoked and remains unpaid.

A defaulting company's promoter will almost always carry an NPA-classified account, and often an invoked guarantee as well. Applied without exception, Section 29A would disqualify the overwhelming majority of promoters from ever bidding to revive their own companies.



Section 240A exempts resolution applicants of Micro, Small and Medium Enterprises ("MSME") from clauses (c) and (h) alone – every other bar under Section 29A, including conviction and fraud, continues to apply in full.

Why MSMEs Needed a Separate Route:

Most MSMEs are single-promoter or family-run entities with no institutional ownership and no natural outside bidder; the business's relationships and operational knowledge sit almost entirely with the promoter. An automatic bar under Section 29A therefore usually leaves no credible resolution plan at all, and the case defaults to liquidation – employees lose jobs and creditors recover only liquidation value rather than going-concern value. Section 240A lets MSME promoters who are merely NPA-classified or guarantee-defaulters back into the process, provided they are not disqualified on more serious grounds.

Impact on the CIRP Process:

By keeping promoters eligible, Section 240A ensures the Committee of Creditors ("CoC") usually has at least one viable plan to consider, reducing the number of MSME cases that collapse into liquidation for want of a bidder and preserving businesses, supply chains and employment that would otherwise be lost.

Exemption removes only two of several eligibility bars, so scrutiny shifts rather than disappears. The CoC and Resolution Professional must still test other Section 29A disqualifications, whether the plan offers genuine value to creditors, and whether the promoter's return to control is commercially justified – often through enhanced disclosure, higher net-worth thresholds or performance guarantees.

The provision also carries a structural risk: MSME status is a formal registration obtainable at any stage, including after insolvency proceedings begin, giving a promoter facing near-certain default an incentive to register the company as an MSME purely to unlock Section 240A, whether or not it was ever operated as a small enterprise in substance.

Used genuinely, a promoter-led plan is often faster and recovers more for creditors than liquidation, since the promoter typically knows the business's assets, liabilities and revival prospects best. Used opportunistically, it invites challenge from dissenting creditors and forces tribunals to adjudicate the legitimacy of the MSME registration alongside the plan's commercial merits.

Loophole or Lifeline?

This duality is not accidental – it flows directly from the structure of the provision. As a lifeline, Section 240A recognises that promoter-led revival is often the only realistic outcome for an MSME, and that barring promoters for distress caused by the very insolvency the Code exists to resolve is self-defeating; in this role it serves the Code's objective of maximising value over default liquidation. As a loophole, the same flexibility lets promoters time MSME registration strategically to unlock eligibility that Section 29A was specifically designed to deny them, since registration is a discretionary act rather than a status fixed at the point of default.

Conclusion:

Section 240A is neither an unqualified loophole nor an unqualified lifeline – it is a calibrated policy exception that trades strict promoter accountability for a higher chance of MSME revival. Its real effect on any given CIRP turns less on the text of the provision and more on how rigorously the CoC and Resolution Professional scrutinise the applicant, the timing and genuineness of the MSME registration, and the substantive merit of the resolution plan. Used as intended, it can save viable small businesses from needless liquidation; its credibility depends on creditors and tribunals treating that scrutiny as mandatory, rather than allowing MSME status to function as a self-executing entitlement to bid.



VII. COMPLIANCE CALENDAR - OCTOBER 2026

A. Income tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Oct	September 2026	TDS / TCS Payment	Non-Government Deductors
02	15th Oct	Qtr. 2. (F.Y. 25-26) (July to September)	TCS Return	All deductors
03	15th Oct	Qtr. 2. (F.Y. 25-26) (July to September)	Form 121	No Deduction of TDS
04	31st Oct	Qtr. 2 (F.Y 25-26) (July to September)	TDS Return	All Assessee
05	21st Oct (Note)	Financial Year 2025-26	Filing the Income Tax Audit Report (other than Transfer pricing audit)	For All taxpayers to whom tax audit is applicable
06	31st Oct	Financial Year 2025-26	Filing of Tax Audit Report	Assesses covered under Transfer Pricing
07	31st Oct	Financial Year 2025-26	Report to be furnished in Form 3CEB	Assesses covered under Transfer Pricing
08	21st Nov (Note)	Financial Year 2025-26	ITR due date for corporate and tax audit taxpayers	For corporate taxpayers and other taxpayers, subject to tax audit (and not subject to Transfer Pricing provisions)

Note: As per the CBDT Circular dated 28.09.2026, the due date for furnishing the return of income for taxpayers subject to tax audit (excluding taxpayers who are subject to transfer pricing) has been extended from **31.10.2026 to 21.11.2026**. Further, the due date for furnishing the tax audit report (other than TP cases) has been extended from **30.09.2026 to 21.10.2026**.



B. Goods and Service Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Oct 2026	September 2026	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Oct 2026	September 2026	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Oct 2026	September 2026	GSTR 1	a) Taxable person having annual turnover > INR 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ INR 5 crores in FY 2024-25 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Oct 2026	July- September 2026	GSTR 1 IFF	Persons with turnover less than INR 5 Crores during the preceding year and who have opted for QRMP scheme.
05	13th Oct 2026	September 2026	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
06	13th Oct 2026	September 2026	GSTR – 6 (ISD)	Person registered as ISD
07	20th Oct 2026	September 2026	GSTR – 3B	a) Taxable persons having annual turnover > INR 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ INR 5 crores in FY 2024-25 and not opted for QRMP scheme
08	20th Oct 2026	September 2026	GSTR - 5A (OIDAR)	OIDAR services provider
09	22nd/ 24th Oct 2026	July- September 2026	GSTR – 3B	Quarterly return for persons who have opted for QRMP scheme



C. ROC Compliance

Sr No.	Compliance	Compliance Detail	Due Date / Timeline
01	Appointment of Auditor	Companies that appointed an auditor at the AGM held on 30/09/2026 are required to file Form ADT-1 within 15 days from date of appointment under section 139(1) of the Companies Act, 2013, read with Rule 4 of the Companies (Audit and Auditors) Rules, 2014	14/10/2026
02	Regularization of Director	Companies are required to file Form DIR-12 for regularization of Director within 30 days of regularization in AGM under section 170(2) of the Companies Act, 2013, read with Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014	29/10/2026
03	Filing of Financial Statements	Companies are required to file their audited financial statements along with Board's Report & Auditor's Report in Form AOC-4/XBRL within 30 days from the date of AGM under section 137 of Companies Act, 2013 read with Rule 12 of the Companies (Accounts) Rules, 2014)	29/10/2026
04	Statement of Account & solvency and Charge Filing	LLPs are required to submit Form 8 within 30 days after the expiry of six months from the end of the financial year.	29/10/2026
05	MSME	Companies are required to file Half-Yearly Return in Form MSME 1 to report outstanding payments due to Micro Small & Medium Enterprises (MSME) suppliers that exceed 45 days for the period of 01st April 2026 – 30th September 2026	31/10/2026



D. SEBI Compliance for Listed Entities

Sr No.	Compliance	Compliance Detail	Due Date / Timeline
01	Certificate on Demat/ Remat	Submission of Certificate under Regulation 74(5) of the SEBI (Depositories and Participants) Regulations, 2018 for the quarter ended 30 September 2026	15-10-2026
02	Shareholding Pattern	Submission of Shareholding Pattern under Regulation 31 of SEBI (LODR) Regulations, 2015 for the quarter ended 30 September 2026	21-10-2026
03	System Driven Disclosure (SDD)	Submission of SDD under Regulation 7(2) of PIT Regulations for the quarter ended 30 September 2026	21-10-2026
04	Integrated Governance Report	Submission of Statement of Integrated Filing – Governance (comprising Statement of Investor Grievances under Regulation 13(3), Compliance Report on Corporate Governance under Regulation 27(2), and specified disclosures under Regulation 30) for the quarter ended 30 September 2026	30-10-2026
05	Reconciliation of Share Capital Audit Report	Submission of Reconciliation of Share Capital Audit Report under Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 for the quarter ended 30 September 2026	30-10-2026
06	Certificate on Share Transfer Facility	Submission of Compliance Certificate under Regulation 7(3) of SEBI (LODR) Regulations, 2015 for the half-year ended 30 September 2026	30-10-2026



GLOSSARY

ABBREVIATION	FULL FORM
ALP	Arm's Length Price
AO	Assessing Officer
AY	Assessment Year
AE	Associated Enterprise
CGAS	Capital Gain Account Scheme
CBDT	Central Board Of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CDSCO	Central Drugs Standard Control Organisation
CGST	Central Goods And Service Tax
CIT(E)	Commissioner of Income Tax (Exemptions)
CIT	Commissioner Of Income-Tax
CIT(Appeals) / CIT(A)	Commissioner Of Income-Tax (Appeals)
CoC	Committee of Creditors
CCD	Compulsorily Convertible Debenture
CIRP	Corporate Insolvency Resolution Process
CAAR	Customs Authority for Advance Rulings
CCFC	Customs Clearance Facilitation Committee
DCIT	Deputy Commissioner of Income Tax
DCF	Discounted Cash Flow
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
EMI	Eligible Manufacturer Importers
ESOPs	Employee Stock Options
EXIM	Export-Import
ECB	External Commercial Borrowings
FTS	Fees for Technical Services.
FY	Financial Year
FPIs	Foreign Portfolio Investment
FOB	Free on Board
FCL	Full Container Load
FAR	Fully Accessible Route
FCCD	Fully Compulsorily Convertible Debenture
GST	Goods & Services Tax
GST-RFD	Goods and Services Tax – Refund
GSTAT	Goods and Services Tax Appellate Tribunal
GSTR	Goods and Services Tax Return
GSTIN	Goods and Services Tax Identification Number

GLOSSARY

ABBREVIATION	FULL FORM
HSN	Harmonized System of Nomenclature
HC	High Court
Hon'ble	Honourable
ITAT	Income Tax Appellate Tribunal
ITO	Income Tax Official
ITR	Income Tax Return
Act	Income-Tax Act, 1961
IND-AS	Indian Accounting Standard
INR	Indian Rupee
InvITs	Infrastructure Investment Trusts
ITC	Input Tax Credit
ISD	Input Service Distributor
IBC	Insolvency and Bankruptcy Code
ICAI	Institute of Chartered Accountants of India
IGST	Integrated Goods and Services Tax
LCL	Less than Container Load
LLC	Limited Liability Company
LLP	Limited Liability Partnership
MOA	Memorandum of Association
MSME	Micro, Small, and Medium Enterprises
NACs	National Assessment Centres
NFAC	National Faceless Assessment Centre
NCLT	National Company Law Tribunal
NAV	Net Asset Value
NPA	Non-Performing Asset
NRTP	Non-resident taxable person
OM	Office Memorandum
OIDAR	Online Information and Database Access or Retrieval
OIO	Order-in-Original
OTC	Over-the-Counter
PE	Permanent Establishment
PTFC	Permanent Trade Facilitation Committee
QRMP	Quarterly Return Monthly Payment
REITs	Real Estate Investment Trusts
ROC	Registrar of Companies
RBI	Reserve Bank of India
ROI	Return Of Income

GLOSSARY

ABBREVIATION	FULL FORM
SCMTR	Sea Cargo Manifest and Transshipment Regulations
SEIS	Service Exports from India Scheme
SCN	Show Cause Notice
SWIFT 2.0	Single Window Interface for Facilitating Trade 2.0
SLP	Special Leave Petition
SC	Supreme Court
TAR	Tax Audit Report
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TRC	Tax Residency Certificate
TP	Transfer Pricing
TPO	Transfer Pricing Officer
UDIN	Unique Document Identification Number
VAT	Value Added Tax
WOS	Wholly Owned Subsidiary

About us

Bhuta Shah & Co LLP (BSC) is a dynamic professional Chartered Accountants firm with a distinctive blend of skill sets, experience and expertise. Established in the year 1986, we operate from our Head Office in Nariman Point, Mumbai while having 6 offices across India in Mumbai, Pune, Ahmedabad and New Delhi.

We offer our clients a wide range of services including Audit & Assurance, Direct Taxation, Indirect Taxation, Transaction Advisory, Corporate Finance, Corporate Advisory, Risk Advisory, Cyber Security and Resolution & Insolvency Advisory.

We provide services to a diverse set of leading Indian and Multinational Clients, including FPIs, Mutual Funds, Large Banks, Broking Institutions, Listed Companies including Pharmaceutical Companies, Manufacturing Companies, Insurance Companies, Realty Companies, Jewellery Companies, Hospitals and several other Large and Medium Businesses.

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