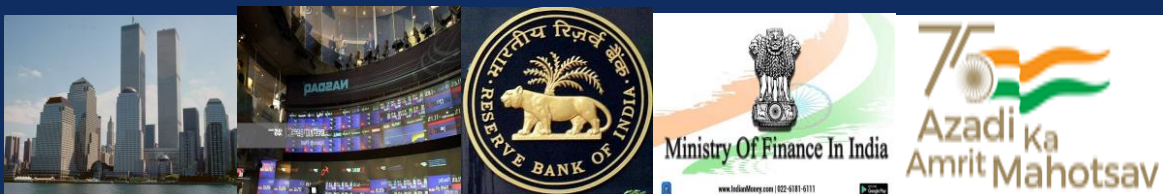


TAX CONNECT

Knowledge Partner:



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TAX CONNECT

Mumbai :Unit No. 312, Omega Business Park, Near-Kaamgar Hospital, Road No. 33,Wagle Industrial Estate, Thane(West), Maharashtra – 400604

Bangalore:H. No.- 2102, 8th Cross, 15th Main, Kodihalli, HAL 3rdStage, Bengaluru, Karnataka- 560008

New Delhi:B-139, 2ndFloor, Transport Nagar, Noida-201301 (U.P)

Kolkata :1, Old Court House Corner, "Tobacco House" 1st Floor, Room No.-13 (N), Kolkata-700001

:Room No. 119, 1stFloor, "Diamond Arcade" 1/72, Cal Jessore Road, Kolkata – 700055

Dubai:AziziFeirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact: +91 9830661254

Website: www.taxconnect.co.in

Email: info@taxconnect.co.in

EDITORIAL



Friends,

The GST revenue collections keeps showing a substantial increase over last year and now Rs 1.4 trillion per month is the new normal collection. This is even amidst a concern of global slowdown. Among other things, it also reflects the impact of the GST rate increases due to the decisions taken by the GST Council in its 47th Meeting, which was implemented from 18th July 2022. The GST rates in almost all sectors - food grains, dairy, solar equipment, printing ink, leather items, capital goods, infrastructure, real estate, hotels, hospitals, etc. were increased.

Now the State GST Departments are also getting aggressive for collections as the period for Compensation Cess is already over and states would no more be compensated by the Centre for a shortfall in the revenues. Industry-wise action, have of late been an area of interest to the revenue authorities. For instance, in recent massive investigations in a state investigation, authorities are disputing the classification of 'fly ash blocks' by trying to distinguish them to artificially related them to concrete blocks. Therefore, it is imperative for Industry Captains to have a close watch on developments in their industry

It is understood that revenue targets have been set for the state officers also which they would now try to achieve. Again, it is important to note that even if a Dealer is registered with the Centre, the State can still investigate it on a specific issue and vice versa.

Further, It is rare that the Apex Court turns down a judgement of both, the ITAT and The High Court on the same lines. However, sometimes the Apex Court also gets into the facts incase the matter of law is hidden in the facts of the case. Writing off an advance is allowed only when the ingredients of both Section 36(1)(vii) and Section 36(2) of the Income Tax Act are satisfied. Where the loan/advance made is bereft of any material as to the terms of the loan/ advance, the conditions of repayment or interest; Where the accounts of the assessee nowhere showed that the advance was made by it in the ordinary course of business or there was no material to substantiate this submission that the amount was given for the purpose of purchasing certain goods/ services - the Deduction of writing off of an advance is not "on sound and reasonable basis" and hence would not be allowed. An alternate argument generally taken, was also made by The Counsel in this case, i.e. if a claim for deduction under a particular Section in PGBP is not allowed, the possibility of its exclusion under Section 37 cannot be ruled out. In our view this matter on application of Section 37 may have been dealt with in greater detail by The Hon'ble Apex Court as there are counter arguments to the judgement of The Apex Court in this respect on which assesseees may rely in future cases.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

Editor:

Vivek Jalan

Partner - Tax Connect Advisory Services LLP

Co-Editors:

Rohit Sharma

Senior Manager – Tax Connect Advisory Services LLP

Rajani Kant Choudhary

Senior Manager – Tax Connect Advisory Services LLP

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TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
7 th September	Challan No. 281	August 2022	Due date for deposit of Tax deducted/collected for the month of August, 2022.
10 th September	GSTR -7	August 2022	Summary of Tax Deducted at Source (TDS) and deposited under GST laws
10 th September	GSTR -8	August 2022	Summary of Tax Collected at Source (TCS) and deposited by e-commerce operators under GST laws

INCOME TAX

NOTIFICATION

PROVISO TO RULE 114BB OF THE INCOME-TAX RULES, 1962, HAS BEEN INSERTED WITH RESTROSPECTIVE EFFECT

OUR COMMENTS: The Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, vide Notification No. 105/2022 dated 01.09.2022 notified Income-tax (29th Amendment) Rules, 2022.

In exercise of the powers conferred by section 139A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. Short title and commencement-

(1) These rules may be called the Income-tax (29th Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 9th day of July, 2022.

2. In the Income-tax Rules, 1962, in rule 114BB, after sub-rule (1), the following proviso shall be inserted, namely: -

“Provided that the provisions of this sub-rule shall not apply in a case where the person, depositing the money as per Sl. No. 1 of column (2) or withdrawing money as per Sl. No. 2 of column (2) or opening a current account or cash credit account as per Sl. No. 3 of column (2) of the Table above, is the Central Government, the State Government or the Consular Office.”.

[For further details please refer the Notification]

CASE LAW

SUBSTANTIVE LAW, NO RETROSPECTIVE APPLICATION: HON'BLE SUPREME COURT OF INDIA

OUR COMMENTS: Late Mr. Jaitley explained in Parliament as to why the Government opted for amending the Original Act instead of enacting a fresh legislation. He stated that “Anybody will know that a law can be made retrospective, but under Article 20 of the Constitution of India, penal laws cannot be made retrospective. The simple answer to the question why we did not bring a new law is that a new law

would have meant giving immunity to everybody from the penal provisions during the period 1988 to 2016 and giving a 28-year immunity would not have been in larger public interest, particularly if large amounts of unaccounted black money have been used to transact those transactions.”

The Supreme Court in the case of UNION OF INDIA & ANR. Vs M/s GANPATI DEALCOM PVT. LTD. [2022-VIL-18-SC-DT] held against the same ground that Benami Transactions (Prohibition) Amendment Act, 2016 does not have retrospective application and the authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the legislation. The Apex court ruled that section 3(2) and section 5 of the Benami Transactions (Prohibition) Act, 1988 are vague and arbitrary.

The Apex Court did not agree with the erstwhile Finance Minister and held that Article 20(1) mandates that no law mandating a punitive provision can be enacted/re-enacted retrospectively. It thus firewalled the benami properties transacted between 1988 and 2016. It declared the provision of the law dealing with a three-year jail term and a penalty as “unconstitutional”. The Court ruled that such implied intrusion into the rights to property cannot be permitted to operate retroactively because that would be unduly “harsh and arbitrary”.

GST

INSTRUCTION

GUIDELINES FOR LAUNCHING OF PROSECUTION UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

OUR COMMENTS: The GST-Investigation Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance issued instruction vide instruction no. 04/2022-23 [GST – Investigation] dated 01.09.2022

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender.

2. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.

3. Sanction of prosecution:

3.1 Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

3.2. Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for

committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

4. Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of **Radheshyam Kejriwal [2011 (266) ELT 294 (SC)]** has, inter-alia, observed the following:

- (i) Adjudication proceedings and criminal proceedings can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017,

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prosecution complaint may be filed even before issuance of the Show Cause Notice.

5. Monetary limits:

5.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than **Five Hundred Lakh rupees**. However, in following cases, the said monetary limit shall not be applicable:

(i) Habitual evaders: Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

(ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

6. Authority to sanction prosecution:

6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.

6.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/Hqrs.

7. Procedure for sanction of prosecution:

7.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:

7.1.1 Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in **Annexure-I**, should be forwarded to the Pr. Commissioner/Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.

7.1.2 In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.

7.1.3 The Additional/ Joint Commissioner or Additional / Joint Director in the case of DGGI, must ensure that all the documents/ evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/ Commissioner or Pr. ADG/ ADG of DGGI.

7.2 In case of filing of prosecution against legal person, including natural person:

7.2.1 Section 137 (1) of the Act provides that *where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly*. Section 137 (2) of the Act provides that *where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly*. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

GST

7.2.2 Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

7.2.3 In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.

7.2.4 In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs.

7.2.5 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.

7.2.6 Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.

7.2.7 An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in **Annexure-I**, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/ Assistant Director,

endorsed by the supervising Additional/ Joint Director and sent to the Pr. Additional Director General/ Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 7.1.1.

7.2.8 Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General, by the officer authorised for filing of the complaint.

7.2.9 In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/ Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.

8. Appeal against Court order in case of inadequate punishment/acquittal:

8.1 The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/ Commissioner. Where Pr. Commissioner/ Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/ Commissioner.

8.2 In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/ Additional Director General who shall

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take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.

9. Procedure for withdrawal of prosecution:

9.1 Procedure for withdrawal of sanction-order of prosecution:

9.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/ Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.

9.1.2 In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.

9.2 Procedure for withdrawal of complaint already filed for prosecution:

9.2.1 Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of **Radheshyam Kejriwal, supra**. Hon'ble Supreme Court in para 43 have observed as below:

"In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/

Commissioner or Pr. Additional Director General/ Additional Director General after taking approval of Pr. Chief Commissioner/ Chief Commissioner or Pr. Director General/ Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

10. General guidelines:

10.1 It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/ Commissioner or the Pr. Additional Director General/ Additional Director General of DGGI by the Additional/ Joint Commissioner in charge of the Commissionerate or Additional/ Joint Director of DGGI, responsible for filing of the complaint.

10.2 Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/ revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.

10.3 The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/ Hqrs. of DGGI shall also follow up the status of adjudication of the

GST

case from the concerned Commissionerate or adjudicating authority.

11. Publication of names of persons convicted:

11.1 Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

12. Monitoring of prosecution:

12.1 Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/Commissioner of CGST or Pr. Additional Director General/ Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/ Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/ Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/ Joint Commissioner or Additional/ Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

13. Compounding of offence:

13.1 Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/ Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/ Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

14. Transitional Provisions:

14.1 All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where

prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

15. Inspection of prosecution work by the Directorate General of Performance Management:

15.1 Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly exercise should also be carried out in DGGI.

16. Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

17. To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrests etc. from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner / Commissioner or Pr. ADG/ ADG of DGGI should judiciously sponsor officers for such courses.

18. These instructions/guidelines may be circulated to all the formations under your charge for strict compliance. Difficulties, if any, in implementation of the aforesaid instructions/guidelines may be brought to the notice of the Board.

19. Receipt of this Instruction may please be acknowledged. Hindi version will follow.

[For further details please refer the instruction]

FEMA

CASE LAW

VIOLATION OF THE PROVISIONS OF THE FERA – PROCEEDINGS TO BE INITIATED WITHIN A PARTICULAR PERIOD PROVIDED UNDER THE STATUTE: HON'BLE SUPREME COURT OF INDIA

OUR COMMENTS: The Supreme Court of India held that it is a settled proposition of law that when the proceedings are required to be initiated within a particular period provided under the Statute, the same are required to be initiated within the said period. However, where no such period has been provided in the Statute, the authorities are required to initiate the said proceeding within a reasonable period. No doubt that what would be a reasonable period would depend upon the facts and circumstances of each case.

Admittedly, in the present cases, the alleged transactions had taken place during the financial years 1992 and 1993. Show cause notices for the said transactions were issued in the year 2002 and that too just before the sunset period of FERA was to expire, i.e., on 1st June 2002. We are therefore of the considered view that show cause notices and the proceedings continued thereunder are liable to be set aside on this short ground.

As per provisions of Rules 2, 3 and 4 of the said Rules every Banking Company to preserve records stated in Rule 2 for five years and eight years for records mentioned in Rule 3 respectively. No doubt that under Rule 4 of the said Rules, the RBI, having regard to the factors specified in subsection (1) of Section 35A, by an order in writing, is empowered to direct any banking company to preserve any of the books, accounts or other documents, etc. for a period longer than the period specified under the said Rules.

Undisputedly, no such order has been placed on record which required the respondents-Banks to preserve records concerning the transactions in question for a period longer than eight years. It could thus be seen that even under the said Rules, the Banks are required to preserve the record for five years and eight years respectively. On this ground also, permitting the show cause notices and the proceedings continued thereunder of the transactions which have taken place much prior to eight years would be unfair and unreasonable.

The show cause notices issued in the year 2002, i.e., after a period of almost one decade from the date of the alleged transactions of 1992-1993, were not tenable in law.

We find no error in the impugned judgments of the learned Single Judge as well as the Division Bench of the High Court of Delhi.

The Civil Appeals as also the Criminal Appeals are therefore dismissed.

CUSTOMS

NOTIFICATION

AMENDMENT IN NOTIFICATION REGARDING EXEMPTION FROM ADDITIONAL DUTY ON SPECIFIED GOODS BY DESIGNATED AIRLINES WHEN IMPORTED FROM SPECIFIED CUSTOMERS

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 45/2022-Customs dated 31.08.2022 notified In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No.130/2010-CUSTOMS, dated the 23rd December, 2010, published in the Gazette of India Extraordinary Part II, Section 3, Sub-Section (i), vide number G.S.R. 1008 (E), dated the 23rd December, 2010, namely: -

In the said notification, in the TABLE –

(i) against S.No. 1, in Column (3), item (ii) and entries relating thereto shall be omitted;

(ii) S.No. 7 and the entries relating thereto shall be omitted;

(iii) against S.No. 9, in Column (3), for the entries, the following entries shall be substituted, namely: -

(3)
“(i) American Airlines
(ii) United Airlines”;

(iv) against S.No. 10, in Column (3), item (iii) and entries relating thereto shall be omitted;

(v) S.No. 12 and the entries relating thereto shall be omitted;

(vi) against S.No. 13, in Column (3), item (i) and entries relating thereto shall be omitted;

(vii) against S.No. 14, in Column (3), items (ii) and (iii) and entries relating thereto shall be omitted;

(viii) against S.No. 16, in Column (3), item (ii) and entries relating thereto shall be omitted;

(ix) against S.No. 18, in Column (3), item (i) and entries relating thereto shall be omitted;

(x) S.No. 28 and the entries relating thereto shall be omitted;

(xi) against S.No. 31, in Column (3), item (i) and entries relating thereto shall be omitted;

(xii) S.No. 38 and the entries relating thereto shall be omitted;

(xiii) against S.No. 40, in Column (3), item (ii) and entries relating thereto shall be omitted;

(xiv) S.No. 41 and the entries relating thereto shall be omitted.

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN THE EXISTING CONCESSIONAL IMPORT DUTIES ON SPECIFIED EDIBLE OILS UP TO AND INCLUSIVE OF THE 31ST MARCH, 2023

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 46/2022-Customs dated 31.08.2022 notified -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby amends the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entries in column (3) of the said Table, namely:-

TABLE

S. No.	Notification No. and Date	Amendments
(1)	(2)	(3)
1.	48/2021-Customs, dated the 13 th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section	In the said notification, in paragraph 2, for the figures, letters and word “30th September, 2022”, the figures, letters and word “31st March, 2023” shall be

CUSTOMS

	(i), vide number G.S.R. 733(E), dated the 13 th October, 2021	substituted;
2.	49/2021-Customs, dated the 13 th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 734(E), dated the 13 th October, 2021	In the said notification, in paragraph 2, the words, figures, and letters "Provided that nothing contained in this notification shall apply to the goods specified against serial numbers 1, 2 and 3 of the Table above on or after the 1st day of October, 2022" shall be omitted.

3	1511 90 90	Others - Palm Oil	1229
4	1511 10 00	Crude Palmolein	1278
5	1511 90 20	RBD Palmolein	1281
6	1511 90 90	Others - Palmolein	1280
7	1507 10 00	Crude Soya bean Oil	1500
8	7404 00 22	Brass Scrap (all grades)	4798

TABLE-2

[For further details please refer the Notification]

NOTIFICATION	
FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAPE, ARECA NUT, GOLD AND SILVER	

OUR COMMENTS: The Ministry of Finance (Department of Revenue) , Central Board of Indirect Taxes and Customs vide notification no. 72/2022-CUSTOMS (N.T) dated 31.08.2022 notified In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1192
2	1511 90 10	RBD Palm Oil	1266

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	557 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	609 per kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other	609 per kilogram

CUSTOMS

		than imports of such goods through post, courier or baggage.	
		Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	
4.	71	(i) Gold bars, other than 557 per tola bars, bearing 10 grams manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6853 (i.e., no change)"

2. This notification shall come into force with effect from the 01th day of September, 2022.

[For further details please refer the Notification]

NOTIFICATION

RATE OF EXCHANGE OF CONVERSION OF FOREIGN CURRENCIES INTO INDIAN CURRENCY OR VICE VERSA

OUR COMMENTS: The Ministry of Finance (Department of Revenue) , Central Board of Indirect Taxes and Customs vide notification no. 73/2022-CUSTOMS (N.T) dated 01.09.2022 notified In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 70/2022-Customs(N.T.), dated 18th August, 2022 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 2nd September, 2022, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	55.45	53.10
2.	Bahraini Dinar	217.70	204.65
3.	Canadian Dollar	61.50	59.45
4.	Chinese Yuan	11.70	11.35
5.	Danish Kroner	10.90	10.55
6.	EURO	81.25	78.25
7.	Hong Kong Dollar	10.30	9.95
8.	Kuwaiti Dinar	266.40	250.20
9.	New Zealand Dollar	49.85	47.55
10.	Norwegian Kroner	8.10	7.85
11.	Pound Sterling	93.80	90.60

CUSTOMS

12.	Qatari Riyal	22.30	20.95
13.	Saudi Arabian Riyal	21.85	20.50
14.	Singapore Dollar	57.75	55.90
15.	South African Rand	4.80	4.50
16.	Swedish Kroner	7.55	7.30
17.	Swiss Franc	82.75	79.70
18.	Turkish Lira	4.50	4.25
19.	UAE Dirham	22.35	21.00
20.	US Dollar	80.45	78.70

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	57.95	56.10
2.	Korean Won	6.05	5.70

[For further details please refer the Notification]

DGFT

NOTIFICATION

WITHDRAWAL OF THE EXEMPTION ON WHEAT OR MESLIN FLOUR (HS CODE 1101) FROM EXPORT RESTRICTIONS/ BAN

OUR COMMENTS: Ministry of Commerce and Industry vide Notification no. 29/2015-2020 dated 27.08.2022 notified Amendment in Export Policy of items under HS Code 1101. In partial modification of the Notification No. 31 (RE-2012)/2009-2014 dated 4th February, 2013, the Central Government, in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby withdraws the exemption on Wheat or Meslin Flour (HS Code 1101) from export restrictions/ ban.

Effect of this Notification: Wheat or Meslin Flour under HS Code 1101 is no longer exempted from export restrictions / ban. The status of other 9 items in Notification No.31 (RE-2012)/2009-2014 dated 4th February, 2013 remains unchanged.

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF WHEAT OR MESLIN FLOUR(ATTI), MAIDA, SAMOLINA (RAVA /SIRGI), WHOLE MEAL ATTAAND RESULTANT ATTA

OUR COMMENTS: Ministry of Commerce and Industry vide notification no. 30/2015-2020 dated 27.08.2022 notified Whereas there is a sudden spike in the global prices of Wheat or Meslin Flour (Atta), Maida, Samolina (Rava / Sirgi), Wholemeal atta and resultant atta arising out of many factors, as a result of which the food security of India, neighboring countries and other vulnerable countries is at risk;

Whereas, the Government of India is committed to providing for the food security requirements of India, neighboring and other vulnerable developing countries which are adversely affected by the sudden changes in the global market for Wheat or Meslin Flour (Atta), Maida, Samolina (Rava / Sirgi), Wholemeal atta and resultant atta and are unable to access adequate wheat supplies;

Therefore, in order to manage the overall food security of the country and to support the needs of the neighboring and other vulnerable countries, the Central Government, in

exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends export policy of items under S.No.64 of Chapter 11 under HS code 1101 of ITC (HS), Schedule – II, 2018 as under:

S. No.	ITC HS Codes	Description	Existing Export Policy	Revised Export Policy
64	1101	Wheat or Meslin Flour (Atta), Maida, Samolina (Rava / Sirgi), Wholemeal atta and resultant atta	Free. However, export of all items is subject to recommendation of Inter-Ministerial Committee (IMC) constituted for allowing export of wheat. Export of all the shipments approved by IMC shall be allowed subject to issuance of Quality Certificate by Export Inspection Council (EIC) or its EIAs at Delhi, Mumbai, Chennai and Kolkata.	Prohibited

2. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under this Notification. The export of above items, however, shall be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their Government.

3. Effect of this Notification: Export Policy of items [Wheat or Meslin Flour (Atta), Maida, Samolina (Rava / Sirgi), Wholemeal atta and resultant atta] under HS Code 1101 is amended from 'Free' to 'Prohibited'. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under this Notification. Export of the above items shall, however, be allowed subject to permission of Government of India in certain cases as at Para 2 above.

[For further details please refer the notification]

DGFT

PUBLIC NOTICE

AMENDMENT IN PARA 2.107 (TRQ UNDER FTA/CECA) OF HANDBOOK OF PROCEDURE 2015-2020

OUR COMMENTS: Ministry of Commerce and Industry vide public notice no. 23/2015-2020 dated 29.08.2022 notified in exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy, 2015-20, as amended from time to time, the Directorate General of Foreign Trade hereby amends condition(o) of Annexure-IV of Appendix-2A notified earlier vide Public Notice No. 06/2015-20 dated 01.05.2022, in sync with Department of Revenue vide Notification no. 43/2022-Customs dated 20th July 2022.

2. In the said Public Notice, Condition (o) in Annexure IV of Appendix 2A, shall be substituted as under:

Existing Provision	Revised Provision
In addition to the requirements as above, the TRQ authorization for items under Tariff head 7108, shall also contain Importer Exporter Code (IEC) of the nominated agency/IFSCA, GST Identification Number (GSTIN) of the jewellery manufacturer to whom TRQ is being issued. The said TRQ importer shall follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.	In addition to the requirements as above, the TRQ authorization for items under Tariff head 7108, shall also contain Importer Exporter Code (IEC) of the nominated agencies as notified by RBI (in case of banks) or DGFT (for other agencies) or qualified jewellers as notified by International Financial Services Centres Authority (IFSCA), GST Identification Number (GSTIN) of the jewellery manufacturer to whom TRQ is being issued. The said TRQ importer shall follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Effect of this Public Notice : TRQ imports under ITC(HS) 71081200 under India-UAE CEPA may also be affected through qualified jewellers as notified by International Financial Services Centres Authority(IFSCA)using the India International Bullion Exchange.

[For further details please refer the public notice]

PUBLIC NOTICE

PROPOSED AMENDMENT IN CATEGORY 5B OF SCOMET LIST RELATED TO EXPORT OF DRONES/UAVS AND GENERAL AUTHORIZATION FOR EXPORT OF DRONES/UAVS (GAED), A SCOMET ITEM FOR PUBLIC/INDUSTRY

OUR COMMENTS: Ministry of Commerce and Industry vide public notice dated 30.08.2022 issued Circulation of proposed amendment in Category 5B of SCOMET List related to export of Drones/UAVs and General Authorization for Export of Drones/UAVs (GAED), a SCOMET item for public/Industry comments.

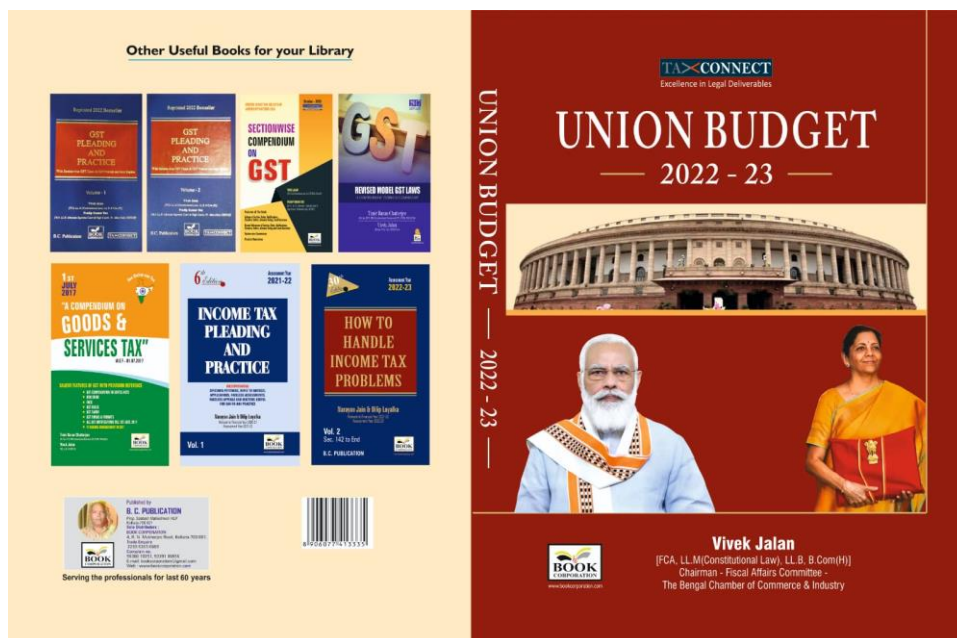
With the aim to simplify the policy of Unmanned Aerial Vehicles (UAVs)/Drones under SCOMET list, a draft policy amendment of the Category 5B of SCOMET List and the General Authorization for Export of Drones/UAVs (Excluding Software and Technology) for specific types of drones/UAVs is proposed. The same is being circulated for the public/Industry comments and feedback.

The comments on the draft Policy and GAED procedure are invited and may be sent to scomet-dgft@nic.in by 15.09.2022

[For further details please refer the public notice]

:IN STANDS

UNION BUDGET 2022-23



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Authors:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL.B, B.Com(H)]

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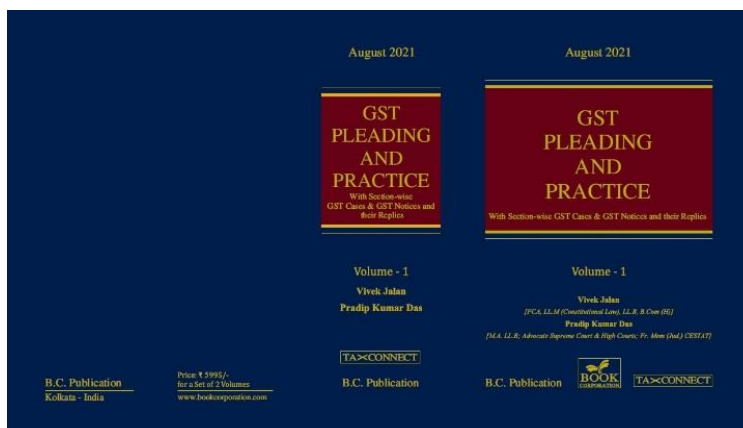
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Authors:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL.B, B.Com(H)]

Pradip Kumar Das

[M.A. LL.B; Advocate Supreme Court & High Courts; Fr. Mem (Jud.) CESTAT]

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OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person: Rajani Kant Choudhary.

Email:
rajnikant.choudhary@taxconnect.co.in

BANGALORE

H. NO.- 2102, 8th Cross, 15th Main, Kodihalli, HAL 3rd Stage, Bengaluru, Karnataka-560008

Contact Person: Poonam Khemka

Email: poonam.khemka@taxconnect.co.in

DELHI

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Poonam Khemka

Email:
poonam.khemka@taxconnect.co.in

KOLKATA

1, Old Court House Corner, "Tobacco House", 1st Floor, Room No. 13 (N), Kolkata-700001

Contact Person: Govind Agarwal

Email: govind.agarwal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessor Road; Kolkata – 700055

Contact Person: Uttam Kumar Singh

Email:
uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Rohit Sharma

Email:
rohit.sharma@taxconnect.co.in

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