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EDITORIAL



Friends,

Is tax planning an offence or not? From the Apex Court's decision in the case of Union of India vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC), it is transpired that once the transaction is genuine, merely because it was entered into with a motive to plan tax, it would not become a colourable device, nor does it earn any disqualification. However, the Courts have their way of distinguishing transactions. The same also depends upon the representations made. Let's understand the case of ASHA NIMMAGADDA Vs ASST. COMMISSIONER OF INCOME TAX [2023-VIL-1372- ITAT-HYD], at hand.

To plan payment (or non-payment) of tax on the capital gains arising out of sale of shares, a piece of land owned by the assessee is transferred to an LLP, which the assessee is controlling as a partner. The agricultural Land is transferred at a loss to such LLP by the assessee. The conversion of a Pvt. Ltd. Company to an LLP was made because section 45(3) of the Income tax Act is applicable only to a firm or other association of persons or body of individuals and its specifically excludes a company or a cooperative society. Possibly such a transaction does not furnish any meaning or purpose having regard to the timing. Possibly only to bring the transaction within the purview of section 45(3) of the Act, the conversion took place. However, the question is whether the tax laws or department or Courts prohibit tax planning and even otherwise, can they direct as to when to do or not to do a transaction?

It was argued by the revenue in this case that the Hon'ble Apex Court in the case of Sunil Siddharth Bhai vs. CIT [1985] 156 ITR 509 (SC) held that if the transfer of the personal asset by the assessee to a partnership in which she is or becomes a partner is merely a device or ruse for converting the asset into money which would

substantially remain available for his benefit without liability to income-tax on a capital gain, it will be open to the income tax authorities to go behind the transaction and examine whether the transaction of creating the partnership is a genuine or a sham transaction and, even where the partnership is genuine, the transaction of transferring the personal asset to the partnership firm represents a real attempt to contribute to the share capital of the partnership firm for the purpose of carrying on the partnership business or is nothing but a device or ruse to convert the personal asset into money substantially for the benefit of the assessee while evading tax on a capital gain.

The Court held in favour of the revenue.

However, it may be noted that post this decision in the case of Sunil Siddharth Bhai, Section 45(3) has been introduced in the Income-tax Act, 1961 (Act) by the Finance Act, 1987 w.e.f 01.04.1988. The reason for insertion of sub-section (3) in section 45 has been explained, inter alia, by CBDT in circular no. 495 dated 22.09.1987. A perusal of para 24.1 and 24.2 of the said circular would show that section 45(3) has been introduced in the statute apparently to legislatively overrule the decision rendered by the Hon'ble SC by way of a common judgment in Sunil Siddharth Bhai v. CIT and Kartikeya V. Sarabhai v. CIT.

Therefore, we may see this matter being contested in the higher forums on this ground going forward as the same case if invoked when the situation is reverse, may be against the revenue.

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

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TAX CALENDAR

Due Date	Form/Return/Challan	Reporting Period	Description
7 th November	TDS/TCS Deposit	October 2023	Due date for deposit of Tax deducted/collected for the month of October, 2023.
10 th November	GSTR-7	October 2023	Monthly return filed by individuals who deduct tax at source or TDS under the Goods and Services Tax (GST)
10 th November	GSTR-8	October 2023	Monthly return to be filed by e-commerce operators registered under the GST.
11 th November	GSTR-1	October 2023	Monthly Statement of Outward Supplies to be furnished by all normal registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.

INCOME TAX

NOTIFICATION

INDIA- SAINT VINCENT AND THE GRENADINES DTAA - AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, vide notification No. 96/2023 dated 01.11.2023 notified that whereas, an Agreement between the Government of the Republic of India and the Government of Saint Vincent and the Grenadines for the Exchange of Information and Assistance in collection with respect to taxes, was signed at Kingstown, Saint Vincent and the Grenadines on the 19th day of May of 2022, as set out in the Annexure to this notification (hereinafter referred to as the Agreement);

And whereas, the said Agreement entered into force on the 14th day of February, 2023, being the date of the later of the notifications of the completion of the procedures required by the respective laws of the contracting states for entry into force of the said agreement, in accordance with paragraphs 1 and 2 of Article 12 of the Agreement,

And whereas, paragraph 2 of Article 12 of the said Agreement also provides that the Agreement shall have effect forthwith after the date of entry into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement, as annexed hereto, shall be given effect to in the Union of India.

[For further details please refer the notification]

NOTIFICATION

PENSION FUND, NAMELY, BPC Penco XVII CORPORATION SPECIFIED U/S 10(23FE)

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, vide notification No. 95/2023 dated 01.10.2023 notified In exercise of the powers conferred by sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act), the Central Government hereby specifies the pension fund, namely,

BPC Penco XVII Corporation (PAN: AALCB4169R), (hereinafter referred to as the assessee) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as the said investments) subject to the fulfilment of the following conditions, namely:-

(i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(ii) the assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year, from an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act, as per the provisions of clause (vi) of rule 2DB of the Income-tax Rules, 1962;

(iii) the assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB, as per the provisions of clause (v) of rule 2DB of the Income-tax Rules, 1962;

(iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;

(v) the assessee shall continue to be regulated under the law of the Government of Ontario, Canada;

(vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

(vii) the earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in

INCOME TAX

clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;

(viii) the assessee shall not have any loans or borrowings [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India; and

(ix) the assessee shall not participate in the day to day operations of investee [as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act] but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.

2. Violation of any of the conditions as stipulated in the said clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

3. This notification shall come into force from the date of its publication in the Official Gazette.

[For further details please refer the notification]

NOTIFICATION

AMENDMENT IN FORM ITR-7[APPENDIX II] - INCOME-TAX (TWENTY-SEVENTH AMENDMENT) RULES

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, vide notification no. 94/2023 dated 20.10.2023 dated 31.10.2023 notified that In exercise of the powers by section 139 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 (Twenty-Seventh Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from 1st day of April, 2023.

2. In the Income-tax Rules, 1962, in Appendix II, in Form ITR-7, in PART-B for the assessment year commencing on the 1st day of April, 2023-

(a) in Part B-TI, the Part B1, for serial number 16 and entries relating thereto, the following serial number and entries thereto shall be substituted, namely:—

“16	Specified income chargeable u/s 115BBI, included in 13, to be taxed @ 30% (Sl. No 7 of Schedule 115BBI)	16
17	Aggregate income to be taxed at normal rates (13-14-15-16) (including income other than specified income under section 115BBI)	17”;

(b) in Part B-TTI, against serial number 1, for item a and entries relating thereto, the following item and entried thereto, shall be substituted, namely:—

“a	Tax at normal rates on [Sl. No. 17 of Part B1 of Part B-TI] OR [Sl. No. (13-14) of Part B2 of Part B-TI] OR [Sl. No. 13 of Part B3 of Part B-TI]	1a”.
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[For further details please refer the notification]

GST

NOTIFICATION

AMNESTY SCHEME FOR FILING OF APPEAL UNDER GST - FORM GST APL-01 NOTIFIED FOR TAXABLE PERSONS WHO COULD NOT FILE AN APPEAL ON OR BEFORE THE 31ST DAY OF MARCH, 2023 UNDER SECTION 73 OR 74 OF CGST ACT

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no. 53/2023-CGST dated 02.10.2023 notified In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[For further details please refer the notification]

CIRCULAR

CLARIFICATIONS REGARDING APPLICABILITY OF GST ON CERTAIN SERVICES

OUR COMMENTS: The CBIC, vide Circular No. 206/18/2023-GST dated 31.10.2023 issued Clarification relating to base on the recommendations of the GST Council in its 52nd meeting held on 7th October, 2023 ,at New Delhi, clarification, with reference to GST levy, related to the following issues are being issued through this circular.

i. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

ii. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

iii. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

iv. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

v. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption

GST

from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

2. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

2.1 Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

2.2 Same line of business as stated in the notification No. 11/2017- Central Tax (Rate) means "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".

2.3 It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

3.1 Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

3.2 It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

3.3 However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same

amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

4. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

4.1 References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

4.3 It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

5. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5.1 DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

5.2 These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free

GST

of charge and no consideration is realized from the beneficiaries by DMF against such services.

5.3 Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.1 Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

6.2 Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

6.3 Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

6.4 Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

7. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

[For further details please refer the Circular]

OUR COMMENTS: The CBIC, vide Circular No. 205/17/2023-GST dated 31.10.2023 issued Clarification regarding The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on imitation zari thread or yarn known by any name in trade parlance, following which Sl. No. 218AA had been inserted in Schedule I of notification no. 1/2017-Central Tax (Rate) dated 28.6.2017.

2. Doubts have been raised whether metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under Sl No. 218AA of Schedule I covering imitation zari thread or yarn, and attracting 5% GST, or under Sl No. 137 of Schedule III covering other metallised yarn attracting 12% GST. As per HS Explanatory Notes, the heading 5605 covers – (1) yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present (2) yarn of any textile material (including monofilament, strip and the like and paper yarn) covered with metal by any other process including yarn covered with metal by electro-deposition. The heading also covers products consisting of a core of metal foil (generally of aluminum) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.

3. In light of the above, the GST Council has recommended to clarify that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sl No. 218AA of Schedule I attracting 5% GST. The GST Council has also recommended that no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate. Requisite changes have been made in notification no. 5/2017- Central Tax (Rate) vide Notification no 20/223-Central Tax (Rate) dated 19.10.2023.

4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board

[For further details please refer the Circular]

CIRCULAR

CLARIFICATION REGARDING GST RATE ON IMITATION ZARI THREAD OR YARN BASED ON THE RECOMMENDATION OF THE GST COUNCIL IN ITS 52ND MEETING HELD

FEMA

CASE LAW

PROCEEDINGS UNDER FEMA - RECEIVING FOREIGN EXCHANGE IN LIEU OF ISSUANCE OF EQUITY SHARES/SHARE WARRANTS - WHETHER NO APPROVAL HAS BEEN GRANTED BY FOREIGN INVESTMENT PROMOTION BOARD (FIPB): MADRAS HIGH COURT

OUR COMMENTS: It was held that as clearly transpires without any semblance of doubt that the custodian general of foreign exchange is the Reserve Bank of India and any permission with regard to inflow of foreign exchange would definitely have to have the permission of the Reserve Bank of India.

In the case on hand, the permission is for receiving foreign exchange in lieu of issuance of equity shares and for the said purpose, the appropriate authority to grant permission is FIPB. Newbridge, the foreign investor, intended to invest in equity shares in the petitioner-company, with further downstream investment in the sister concern of the petitioner company for which necessary approval was granted by FIPB. In fact, the 1st respondent is also not disputing the approval granted to the petitioners for issuance of equity shares. However, the show cause notice was issued only on account of the petitioner company issuing share warrants, which was later converted into equity shares.

The sequence of events for obtaining approval have already been extracted above. In this regard, the initial approval was granted by FIPB on 27.12.2005. Thereafter, as there was certain errors in the number of equity shares, further approval was solicited, which was also granted by FIPB on 31.01.2006. There is no quarrel that equity shares were issued by the petitioner company in favour of Newbridge. However, for an amount of about Rs.243 Crores, share warrants were issued, which was subsequently converted into equity shares.

It has been the ratio of the Supreme Court even in LIC case [1985 (12) TMI 289 - SUPREME COURT] that RBI is the custodian general of foreign exchange. In the present case, the foreign investment was approved by FIPB.

Communication reveals that FIPB had nowhere said that the issuance of warrants at the point of time when it was issued by the petitioner company required permission. In fact, the order clearly spells out that there was no explicit policy at the material point of time with regard to issuance of warrants. The above stand of FIPB unequivocally speaks to the effect that there was no explicit policy with regard to warrants, which effectively could only mean that there was no prohibition on issuance of warrants.

The further stand of FIPB that no post facto approval is required as the warrants have since been converted into equity

shares should not be read in isolation and it should be read in conjunction with the earlier part of the order, where FIPB has intimated that there was no explicit policy with regard to issuance of warrants at the relevant point of time.

Omission to spell out warrants to be included in the term 'security' as defined u/s 2 (za) of FEMA cannot be taken mean that issuance of warrants is prohibited. Prohibition should be clearly spelt out either explicitly or even impliedly. There is neither an implicit nor an explicit prohibition. The mere omission of warrants, therefore, cannot be construed that it is a prohibited instrument and, therefore, it is a contravention of Section 6 (3) (b) of FEMA, 1999.

As on the relevant date when the share warrants were issued, there was no regulations bny the 2nd respondent prohibiting the issue of share warrants, which was the only reason the 2nd respondent had directed the petitioners to approach FIPB to obtain post facto approval. If really there were any regulations, or even implied prohibition in the issuance of share warrants, RBI being the custodian general of foreign exchange, would definitely have called upon the explanation of the petitioners.

When the 2nd respondent itself has accepted that there was no contravention of Section 6 (3) (b) of FEMA, 1999, the show cause notice issued by the 1st respondent to the petitioners alleging that there is no permission for issuance of share warrants is not only uncalled for, but is also an act usurping the powers of the 2nd respondent.

When FIPB, the authority, who is vested with power to grant approval has held that no post facto approval is required, interpreting the order in any other fashion, that too by an authority, who is not empowered to decide on the manner in which the said order has been passed, it does not lie in the mouth of the 1st respondent to claim that approval has not been obtained and such a finding is not only perverse, but arbitrary, illegal and unreasonable and, therefore, the impugned order passed as a consequence of the said finding deserves to be interfered with.

This Court is of the considered view that the writ petitions deserve to be allowed by setting aside the orders impugned herein. Accordingly, the impugned order passed by the 1st respondent is set aside and all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed.

CUSTOMS

NOTIFICATION

RATE OF EXCHANGE OF ONE UNIT OF FOREIGN CURRENCY EQUIVALENT TO INDIAN RUPEES

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 81/2023-Customs(N.T) dated 02.11.2023 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. 76/2023-Customs(N.T.), dated 19th October, 2023 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 3rd November, 2023, 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	
		(a)	(b)
(1)	(2)	(3)	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	54.85	52.45
2.	Bahraini Dinar	228.30	214.30
3.	Canadian Dollar	61.20	59.25
4.	Chinese Yuan	11.55	11.20
5.	Danish Kroner	12.00	11.65
6.	EURO	89.85	86.75
7.	Hong Kong Dollar	10.85	10.45
8.	Kuwaiti Dinar	278.00	261.40
9.	New Zealand Dollar	50.45	48.15
10.	Norwegian Kroner	7.60	7.35
11.	Pound Sterling	103.30	99.85
12.	Qatari Riyal	23.55	22.15
13.	Saudi Arabian Riyal	22.90	21.55
14.	Singapore Dollar	62.05	60.05
15.	South African Rand	4.65	4.35

16.	Swedish Kroner	7.60	7.35
17.	Swiss Franc	94.05	90.50
18.	Turkish Lira	3.05	2.85
19.	UAE Dirham	23.40	22.00
20.	US Dollar	84.15	82.40

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
		(a)	(b)
(1)	(2)	(3)	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	56.30	54.55
2.	Korean Won	6.40	6.00

[For further details please refer the notification]

NOTIFICATION

APPOINTMENT OF COMMON ADJUDICATING AUTHORITY FOR M/S. JUBILANT LIFE SCIENCES LTD. (NOW JUBILANT INGREVIA LTD.)

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 80/2023-Customs(N.T) dated 01.11.2023 In exercise of the powers conferred by sub-section (1) of section 4 read with Section 3 and sub-sections (1) and (1A) of Section 5 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs, hereby appoints the officer mentioned in column (4) of the Table below, to exercise the powers and discharge duties conferred or imposed on officers mentioned in column (3) of the said Table, for purpose of adjudication of the Show Cause Notices, mentioned in column No (2) of the said Table, in respect of the Noticee mentioned in column No (1) therein, namely:-

TABLE

Name of the Noticee(s) and Address (M/s.)	Show Cause Notice Number and Date	Name of Adjudicating Authorities	Common Adjudicating Authority
(1)	(2)	(3)	(4)
M/s	F.No.VIII/Cus/Adj/SCN-	Commissi	Commissi

CUSTOMS

Jubilant Life Sciences Ltd. (now Jubilant Ingrevia Ltd.) IEC-0588001651 located at Bhartigram, Gajraula, Dist. Amroha, U.P. 244223 and at Village Nimbut, Railway Station Nira, Dist. Pune, Maharashtra-412102.	Jubilant/03/DRIBengaluru/2022-23/4208 dt. 18.05.2022	Owner of Customs, ICE House, GST Bhavan, Sasoon Road, Pune.	Owner of Customs, Pune, GST Bhavan, Sasoon Road, Pune-411001.
	F.No.VIII(30)Cus./EPC/MBD/Jubilant/44/22-23 dt. 29.07.2022	Principal Commissioner of Customs, Noida Customs, Concor Complex, Greater Noida.	

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	842
2	1511 90 10	RBD Palm Oil	859
3	1511 90 90	Others – Palm Oil	851
4	1511 10 00	Crude Palmolein	863
5	1511 90 20	RBD Palmolein	866
6	1511 90 90	Others – Palmolein	865
7	1507 10 00	Crude Soya bean Oil	956
8	7404 00 22	Brass Scrap (all grades)	4591

TABLE-2

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	643 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	749 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	749 per kilogram

2. This notification shall come into force on the date of the publication in the official gazette.

[For further details please refer the notification]

NOTIFICATION

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

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 79/2023-Customs(N.T) dated 31.10.2023 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, here by 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:-

CUSTOMS

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 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	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>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.</p>	643 per 10 grams
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TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	8068(i.e., no change)"

2. This notification shall come into force with effect from the 01st day of November, 2023.

[For further details please refer the notification]

NOTIFICATION

EFFECTIVE RATE OF EXPORT DUTY ON ONION - NOTIFICATION PRESCRIBING RATE AS [40%] RESCINDED

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no G.S.R. 804(E) dated 28.10.2023 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 rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 48/2023- Customs, dated the 19th August, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 617 (E), dated the 19th August, 2023, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force from the 29th day of October, 2023.

[For further details please refer the notification]

NOTIFICATION

EXEMPTS EXPORT DUTY ON ONIONS W.E.F. 29.10.2023

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 62/2023-Cus dated 28.10.2023 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, on 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 in the Ministry of Finance (Department of Revenue), No. 27/2011-Customs, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely :-

In the said notification, in the TABLE, S. No. 1 shall be re-numbered as S. No. 1A, and before S. No. 1A as so re-numbered, the following serial number and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)
"1.0703 10	Onions	Nil";	

2. This notification shall come into force from the 29th day of October, 2023.

[For further details please refer the notification]

DGFT

NOTIFICATION

IMPOSITION OF MINIMUM EXPORT PRICE ON EXPORT OF ONIONS

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 42/2023 dated 28.10.2023 notified 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, 2023, the Central Government hereby amends the Export Policy of Onions under S.No.51 of Chapter 07 of Schedule 2 of the ITC (HS) Export Policy, as under:

S. No.	Tariff item	Unit	Item description	Export Policy	Policy condition
	HS Code				
51	0703 10 10 0712 20 00	KG	Onion (all varieties except Bangalore Rose onions and Krishnapuram onions) excluding cut, sliced or broken in powder form.	Free	Subject to a Minimum Export Price (MEP) of US \$ 800 F.O.B. per Metric Ton (MT), till 31st December, 2023."

2. The Notification will come into effect from 29th October, 2023.

3. The following consignments of onions will be allowed to be exported without MEP:

i. Where onions consignment has been handed over to the Customs before this Notification and is registered in their system / where onions consignment has entered the

Customs station for exportation before this Notification and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and time stamping of these commodities having entered the Customs Station prior to the issuance of this Notification. The period of export shall be upto 30th November, 2023.

ii. Export duty has been paid before the issuance of this Notification. Such export duty is non- refundable.

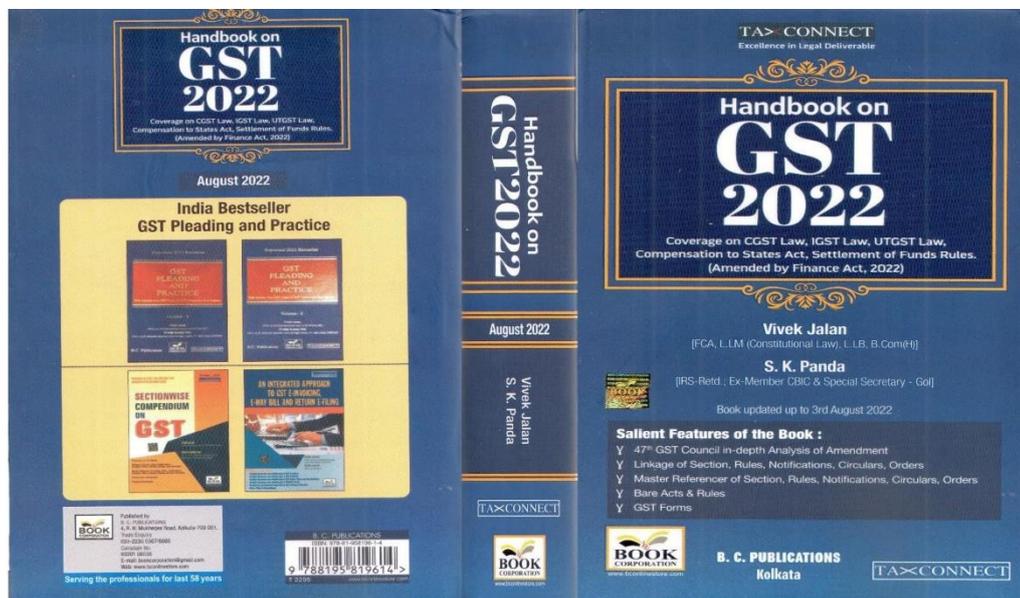
4. Effect of this Notification:

Export of onions is 'Free'. Minimum Export Price (MEP) of US \$ 800 F.O.B per Metric Ton (MT) is imposed till 31st December, 2023.

[For further details please refer the notification]

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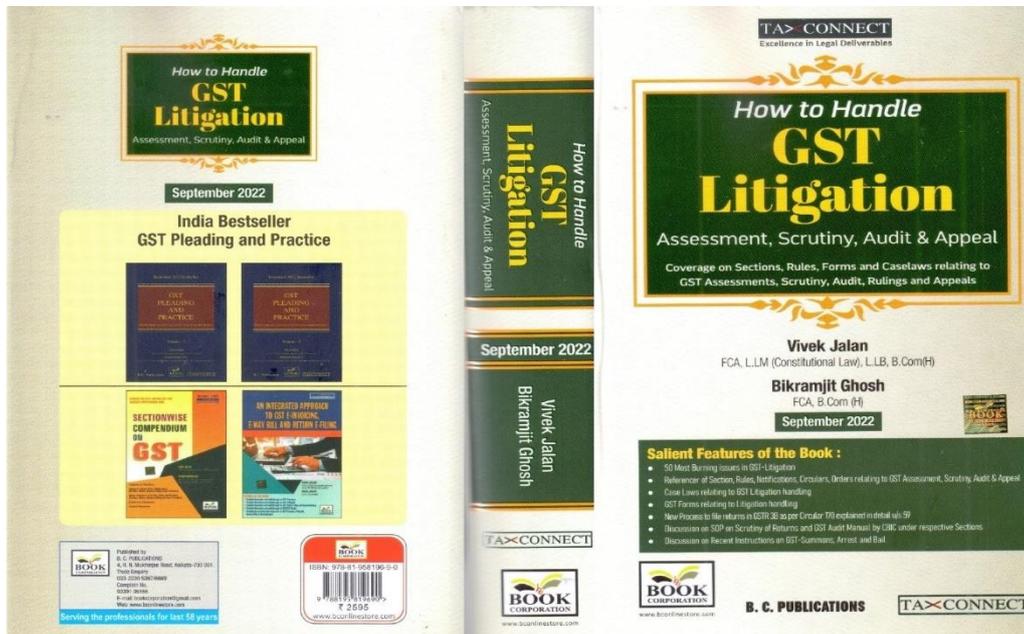
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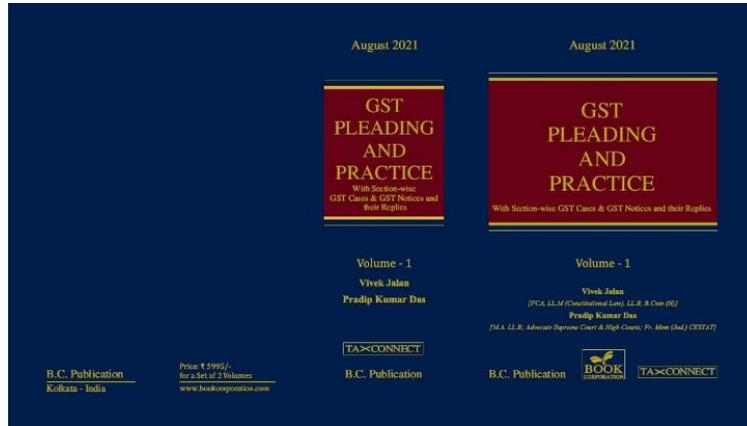
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