

# TAX CONNECT

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## EDITORIAL



**Friends,**

Ordinarily, SCNs may be challenged at High Courts on account of

- 
- A. SCN issued without jurisdiction.
- B. Even if one proceeds on the basis that statements in the SCN are correct, no case is made out for the threatened action.
- C. There is a gross violation of natural justice or a right of the taxpayer.

*The question is whether a case can be said to be made out by merely alleging “fraud / suppression / misrepresentation” without mentioning the reasons of the allegation. Is a nonspeaking order w.r.t. invocation of larger period of limitation, not a violation of the right of the taxpayer.*

In a very brief order in the case of M/s ABT LIMITED Vs THE ADDITIONAL COMMISSIONER OF GST & CENTRAL EXCISE, O/o. THE COMMISSIONER OF GST & CENTRAL EXCISE (AUDIT), COIMBATORE, The Hon’ble Madras High Court has ruled that there is nothing in the language of Section 65 to indicate that the audit report should contain such findings which prove fraud / suppression / misrepresentation. The proper officer has the “option” to mere allege the taxpayer with “fraud / suppression / misrepresentation” initiates action under Section 74.

**“Section 65(7) reads as under –**

*65(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74.”*

*This means that the SCNs w.r.t. FY 17-18 and 18-19 are still not time barred as all SCNs can be issued u/s 74 given the wide meaning given to the word ‘suppression’ in explanation 2 to Section 74 of the CGST Act 2017.*

*Explanation 2 to Section 74 states as follows —For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the Proper Officer.*

Hence, the following would mean suppression –

1. A mere non-declaration, an exempt supply in the return which may result in short payment of tax.
2. A mere non-compliance of Circular 170 of 2022 read with Notification 14/2022 w.r.t. declaration of “permanent or temporary reversals or reclaimed amounts of ITC” which may result in taking ineligible ITC
3. An error in the invoice as against Rule 46 of CGST Rules which may result in the invoice being alleged as a defective invoice.
4. Non-furnishing of even one document required by the audit officer where the officer may do a best judgement.

We have already seen widespread use of Section 74 of the erstwhile Finance Act 1994 in the Service Tax regime. Now, equipped with this definition as well as this judgement of The Hon’ble Madras High Court, time will tell whether the SCNs w.r.t. FY 17-18 and 18-19 are yet time barred or not.

To the rescue of the taxpayers, the decision in the case of Uniworth Textiles Limited v. Commissioner of Central Excise [(2013) 9 SCC 753 – 2013-VIL-09-SC-CU] may require consideration where the Hon’ble Apex Court held that the show cause notice must fulfil the requirement of the proviso to Section 28 of the Customs Act, 1962 (as was in that case) which finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show-cause notice, which requirement in that the show cause notice in that case failed to meet.

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

**Editor:**

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# TAX CALENDAR

| Due Date                  | Form/Return /Challan | Reporting Period | Description                                                                                                                                                                                                    |
|---------------------------|----------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11 <sup>th</sup> February | GSTR-1               | January' 2024    | 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. |
| 13 <sup>th</sup> February | GSTR-1 (IFF)         | January' 2024    | Details of B2B Supply of a registered person with turnover upto INR 5 Crores during the preceding year and who has opted for quarterly filing of return under QRMP.                                            |
| 13 <sup>th</sup> February | GSTR-6               | January' 2024    | Details of Input Tax Credit (ITC) received and distributed by an Input Service Distributors (ISD).                                                                                                             |
| 13 <sup>th</sup> February | GSTR-5               | January' 2024    | Summary of outward taxable supplies and tax payable by a non-resident taxable person.                                                                                                                          |
| 14 <sup>th</sup> February | TDS Certificate      | December' 2023   | Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of December, 2023                                                                                 |
| 15 <sup>th</sup> February | FORM 24G             | January' 2024    | Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2024 has been paid without the production of a challan                                              |
| 15 <sup>th</sup> February | TDS Certificate      | Oct-Dec' 2023    | Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2023                                                                                 |

# INCOME TAX

## NOTIFICATION

### AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF SAMOA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 21/2024 dated 07.02.2024 Whereas, an agreement between the Government of Republic of India and Government of Samoa for exchange of information with respect to taxes, was signed at Apia, Samoa on 12th day of March, 2020, as set out in the Annexure to this notification (hereinafter referred to as the "Agreement");

And, whereas, the said Agreement came into force on the 12th day of September, 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 said Agreement,

And, whereas, paragraph 2 of Article 12 of the said Agreement 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 the said Agreement, as annexed hereto, shall be given effect to in the Union of India.

### ANNEXURE "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND GOVERNMENT OF SAMOA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of the Republic of India and the Government of Samoa desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

#### Article 1

##### Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include

information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

#### Article 2 Jurisdiction

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Party. However, a requested Party is not obliged to provide information which is neither held by its authorities nor is in the possession or control of persons who are within its territorial jurisdiction.

#### Article 3 Taxes Covered

1. The taxes which are the subject of this Agreement are:

a) in India, taxes of every kind and description imposed by the Central Government or the Governments of political subdivisions or local authorities, irrespective of the manner in which they are levied;

b) in Samoa, taxes of every kind and description imposed by the Central/Federal Government or the Governments of political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

#### Article 4 Definitions

1. For the purposes of this Agreement, unless otherwise defined:

a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance

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with international law, including the U.N. Convention on the Law of the Sea;

b) the term "Samoa" means the Independent State of Samoa, including the territorial waters thereof;

c) the term "Contracting Party" means India or Samoa as the context requires;

d) the term "competent authority" means

i) in the case of India, the Finance Minister, Government of India, or its authorized representative;

ii) in the case of Samoa, the Minister for Revenue or an authorised representative of the Minister for Revenue;

e) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;

f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

i) the term "recognised stock exchange" means -

i) the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognised by the Securities and Exchange Board of India;

ii) any other stock exchange which the competent authorities agree to recognise for the purposes of this Agreement.

j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form;

k) the term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or o

ther interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

l) the term "tax" means any tax to which this Agreement applies;

m) the term "requesting Party" means the Contracting Party-

i) submitting a request for information to, or

ii) having received information from the Requested party

n) the term "requested Party" means the Contracting Party-

i) which is requested to provide information, or

ii) which has provided information

o) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

p) the term "information" means any fact, statement, document or record in whatever form;

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 11 of this Agreement, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 5

### Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the requesting Party with the information requested,



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notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations.

5. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it ;
- (d) the tax purpose for which the information is sought;

(e) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(f) to the extent known, the name and address of any person believed to be in possession or control of the requested information;

(g) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

(a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

(b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## Article 6 Tax Examinations Abroad

1. At the request of the competent authority of the requesting Party, the requested Party may allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

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2. At the request of the competent authority of the requesting Party, the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party, in which case the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## Article 7

### Possibility of Declining a Request for information

1. The competent authority of the requested Party may decline to assist:

(a) where the request is not made in conformity with this Agreement; or

(b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

(c) where disclosure of the information would be contrary to public policy (ordre public) of the requested Party.

2. This Agreement shall not impose on a Contracting Party the obligation:

(i) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph; or

(ii) to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

(a) produced for the purposes of seeking or providing legal advice or

(b) produced for the purposes of use in existing or contemplated legal proceedings; or

(iii) to carry out administrative measures at variance with its laws and administrative practices, provided nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.

5. The requested Party shall not decline to provide information solely because the request does not include all the information required under Article 5 if the information can otherwise be provided according to the law of the requested Party.

## Article 8

### Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceeding or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

## Article 9

### Costs

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance shall, if they exceed 500 US Dollars, be borne by the requesting Party.

2. The competent authorities will consult each other, in advance, in any particular case where extraordinary costs are likely to exceed 500 US Dollars to determine whether the requesting Party will continue to pursue the request and bear the cost.



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3. The competent authorities shall consult from time to time with regard to this Article.

4. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requested Party. Examples of extraordinary costs incurred in providing assistance include, but are not limited to the following:

- a) reasonable fees charged by third parties for copying documents on behalf of the requested Party;
- b) reasonable costs of engaging interpreters, translators or other agreed experts;
- c) reasonable costs of conveying documents to the requesting Party;
- d) reasonable litigation costs of the requested Party in relation to a specific request for information; and
- e) reasonable costs for obtaining depositions or testimony.

## Article 10 Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement. Such legislation shall be enacted within six months of entry into force of this Agreement.

## Article 11 Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement. In addition, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9 of this Agreement.

2. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

## Article 12 Entry into Force

1. The Contracting Parties shall notify each other in writing, through diplomatic channels, of the completion of the

procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith.

## Article 13 Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.

2. Either Contracting Party may, after the expiry of five years from the date of its entry into force, terminate the Agreement by serving a written notice of termination to the other Contracting Party through diplomatic channels.

3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Apia, Samoa on 12 March 2020, each in the Hindi and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

|                                                                                                                                                                                       |                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>For the Government of the Republic of India</b><br/><b>Sd/-</b><br/><b>(Muktesh Kumar Pardeshi)</b><br/><b>High Commissioner of India to the Independent State of Samoa</b></p> | <p><b>For the Government of Samoa</b><br/><b>Sd/-</b><br/><b>(Tuilaepa Lufesoliai Neioti Aiono Sailele Malieleagaoi)</b><br/><b>Prime Minister of Independent State of Samoa"</b></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

[For further details please refer the notification]

| NOTIFICATION                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AMENDMENT IN NOTIFICATION NO. 106/2022 DATED 2ND SEPTEMBER, 2022 - CONTROL OF INCOME-TAX AUTHORITIES U/S 118 OF IT ACT 1961 - SUBORDINATE POSITIONS TO PCIT AND CCIT. |

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 20/2024 dated 06.02.2024 notified In exercise of

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the powers conferred by section 118 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs to make the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes number S.O.4156 (E) dated 2nd September, 2022 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) dated the 5th September, 2022, namely:-

In the said notification,-

(i) in the clause (a), for the words “Schedule below”, the words “First Schedule” shall be substituted;

(ii) in clause (b), for the brackets, figure and words “(4) of the said Schedule”, the brackets, figure and words “(4) of the First Schedule” shall be substituted;

(iii) after clause (b), the following clause shall be inserted, namely:-

“(c) Commissioner of Income-tax (Appeals) Unit as specified in column (3) of the Second Schedule shall be subordinate to the Principal Chief Commissioner of Income-tax specified in column (2) of the said Schedule:

Provided that no order shall be issued so as to interfere with the discretion of the Commissioner of Income-tax (Appeals) in exercise of his appellate functions.”;

(iv) after clause (c) as so inserted, for the heading “SCHEDULE”, the heading “FIRST SCHEDULE” shall be substituted;

(v) in the First Schedule, serial numbers 100, 101, 107, 108, 109, 128, 134, 135, 136, 137, 138, 139, 143, 152, 153, 154, 247, 259 and 260 and the entries relating thereto in columns (2) to (4) shall be omitted;

(vi) after the FIRST SCHEDULE, the following Schedule shall be inserted, namely:-

## “SECOND SCHEDULE”

| Sl.No. | Principal Chief Commissioner of Income-tax (Headquarters) | Commissioner of Income-tax (Appeals) Unit, (Headquarters)        |
|--------|-----------------------------------------------------------|------------------------------------------------------------------|
| (1)    | (2)                                                       | (3)                                                              |
| 1      | Principal Chief Commissioner of                           | Commissioner of Income-tax (Appeals) Unit-1, Guwahati (Guwahati) |

|    |                                                                   |                                                                                      |
|----|-------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 2  | Income-tax, NER (Guwahati)                                        | Commissioner of Income-tax (Appeals) Unit-2, Guwahati (Guwahati)                     |
| 3  |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Jorhat (Jorhat)                         |
| 4  |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Dibrugarh (Dibrugarh)                   |
| 5  |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Shillong (Shillong)                     |
| 6  | Principal Chief Commissioner of Income-tax, Kerala (Kochi)        | Commissioner of Income-tax (Appeals) Unit-1, Kochi (Kochi)                           |
| 7  |                                                                   | Commissioner of Income-tax (Appeals) Unit-2, Kochi (Kochi)                           |
| 8  |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Kozhikode (Kozhikode)                   |
| 9  |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Thrissur (Thrissur)                     |
| 10 |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Kottayam (Kottayam)                     |
| 11 | Principal Chief Commissioner of Income-tax, Odisha (Bhubaneshwar) | Commissioner of Income-tax (Appeals) Unit-1, Thiruvananthapuram (Thiruvananthapuram) |
| 12 |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Bhubaneshwar (Bhubaneshwar)             |
| 13 |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Cuttack (Cuttack)                       |
| 14 | Principal Chief Commissioner of Income-tax, Nagpur (Nagpur)       | Commissioner of Income-tax (Appeals) Unit-1, Sambalpur (Sambalpur)                   |
| 15 |                                                                   | Commissioner of Income-tax (Appeals) Unit-1, Nagpur (Nagpur)                         |
| 16 |                                                                   | Commissioner of Income-tax (Appeals) Unit-2, Nagpur (Nagpur).”                       |

2. This notification shall come into force from 22.01.2024.

**[For further details please refer the notification]**

## GST

## CASE LAW

**VIOLATION OF PRINCIPLES OF NATURAL JUSTICE - ALTHOUGH THE NOTICE THAT PRECEDED THE IMPUGNED ORDER WAS SENT BY THE RESPONDENT ON THE COMMON PORTAL WAS RECEIVED BY THE PETITIONER, THE PETITIONER WAS UNAWARE OF THE SAME - RECOVERY OF INPUT TAX CREDIT ALONGWITH INTEREST AND PENALTY : MADRAS HIGH COURT**

**OUR COMMENTS:** It was held that Section 169 of the respective GST enactments is a progressive provision intended to integrate technology with the assessment proceedings under the provisions of the respective GST Enactments. Section 169 of the respective GST Enactment is a step to modernize the tax administration in the country by taking advantage of available technology.

At the same time, the Court cannot loose sight of the fact that although there is advancement in the technology and it is omnipresent everywhere and Section 169(1)(c) of the respective GST Enactments has statutorily recognized communication through e-mail, all men of commerce from the business community particularly small traders, small service provider and small manufacturers may not be ready to receive and respond. They may be technologically challenged which may impair them to respond autonomously to emails sent to them in the dash board of GST Web portal on their computer screen or Tab or smart phones.

As a matter of prudence, it is advisable for the department to serve notice on such assesseees through other mode of communications prescribed when they fail to respond to the summons, orders, notices and other communications etc., sent to them through email under Section 169 (1) (c) of the respective GST Enactments - there has to be some amount of flexibility. Rigidity in the administration of tax in such matters may not serve the purpose and can be counter productive. There has to be a proper communication as otherwise exparte decisions are susceptible to be successfully challenged and declared as arbitrary for violation of principles of natural justice.

The impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits in accordance with law preferably within a period of 45 days from date of receipt of this order - Petition allowed.

## CASE LAW

**VALUATION U/S 15(3) - VALIDITY OF GST ON VOLUME DISCOUNT - DEMAND OF GST ON VOLUME DISCOUNT WOULD BE DOUBLE TAXATION : MADRAS HIGH COURT**

**OUR COMMENTS:** It was held that Although the Court exercising its jurisdiction under Article 226 of the Constitution, Section 7 of the TNGST Act, 2017 would ordinarily refrain from entertaining a writ petition against an assessment order, where the petitioner has an effective and an alternate remedy, the Court is of the view that this is a fit case for entertaining this writ petition - This Court is of the view that the impugned orders are liable to be quashed and the cases deserve to be remitted back to pass a de-novo order in the light of the observation contained herein.

The Hon'ble Supreme Court held that clarification of the Board are not binding on the Courts though they may bind the Assessing Officers and field formations - Under the scheme of the respective GST Enactments, 2017 each instance of supply of goods or services are chargeable to tax under Section 9. The expression "supply" has been defined in Section 7 if the respective GST Enactments, 2017.

The discount offered to the petitioner can impact only the "transaction value" of the supplier of the petitioner. As far as the "transaction value" of the petitioner is concerned, it is the price which has been paid or actually payable for the supply of the goods - there is no scope for confusing the discount offered to the petitioner and the discounted price at which the petitioner effects further sale to its customers. They are two independent transactions and there is no scope for intermingling them for demanding tax from the petitioner. The discounted price at which the petitioner sells the goods is relevant only for determining the "transaction value" adopted by the petitioner - Unless, the discounted price itself was on account of the subsidy as a result of which while the supplier would have been compensated without including into the "transaction value" in the invoice, question of adding such value to the transaction value of the petitioner cannot be countenanced.

The cases are remitted back to the respondent. The respondent is directed to pass order on merits in accordance with law, within a period of three (3) months from the date of receipt of copy of this order - Petition allowed.

## FEMA

## CASE LAW

**EXTENSION OF THE USANCE PERIOD OF THE LETTER OF CREDIT FACILITY SANCTIONED TO THE WRIT PETITIONERS FROM 180 DAYS TO 270 DAYS : CALCUTTA HIGH COURT**

**OUR COMMENTS:** It was held that the argument that the 2018 Regulations brought about a change in policy regarding the usance period for credit does not hold water, since the said Regulations and the Master Direction on External Commercial Borrowings and Trade Credits dated July 1, 2015, updated up to October 6, 2015, relate to loans extended by overseas banks. The germane consideration in the present case is, rather, the Master Direction – Import of Goods and Services dated January 1, 2016 (updated lastly on April 1, 2019).

Trade Credit Policy – Revised Framework formulated by the RBI on March 13, 2019 does not alter the position as far as the usance period available to the petitioners was concerned.

As correctly argued by the respondents, a Court order cannot impose its own view to substitute the terms of the original contract between the parties and the petitioners cannot insist upon the discretion of the bank to extend the usance period of credit to be exercised in the petitioners' favour as a matter of right.

As correctly argued by the respondents, a Court order cannot impose its own view to substitute the terms of the original contract between the parties and the petitioners cannot insist upon the discretion of the bank to extend the usance period of credit to be exercised in the petitioners' favour as a matter of right.

The petitioners shall repay the loan amount pertaining to the credit facilities obtained from the State Bank of India (represented by the respondents) in respect of the loan-in-question within 30 days from date along with interest at the rate of 6 percent per annum from the date of expiry of the credit period of 180 days post-shipment till repayment. Failure to repay the said cumulative amount (principal with interest) within 30 days from date would entail imposition of interest at the rate of 18 percent per annum which the petitioners shall pay.

## CICULAR

**GUIDELINES ON IMPORT OF GOLD BY TARIFF RATE QUOTA (TRQ) HOLDERS UNDER THE INDIA-UAE CEPA AS NOTIFIED BY– THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)**

**OUR COMMENTS:** The Reserve Bank of India vide circular no. RBI/2023-24/118 dated 31.01.2024 circulated that Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular No.04 dated May 25, 2022, in terms of which AD Category-I banks have been permitted to remit advance payment on behalf of Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) for eleven days for import of gold through India International Bullion Exchange IFSC Ltd (IIBX).

2. Further, attention of AD Category-I banks is invited to Notification No.44/2023 dated November 20, 2023 issued by DGFT, in terms of which, valid Tariff Rate Quota (TRQ) holders under the India-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement (CEPA) as notified by the IFSCA have been permitted to import gold under specific ITC(HS) codes through IIBX against the Tariff Rate Quota (TRQ).

3. Accordingly, it has been decided that subject to the directions as mentioned in A.P. (DIR Series) Circular No.04 dated May 25, 2022, AD Category-I banks may allow valid TRQ holders under the India-UAE CEPA to remit advance payment for eleven days for import of gold through IIBX against the TRQ.

4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

5. The directions contained in this Circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

**[For further details please refer the circular]**

## CUSTOMS

### CIRCULAR

#### AUTHORIZATION OF BOOKING POST OFFICES AND THEIR CORRESPONDING FOREIGN POST OFFICES IN TERMS OF THE POSTAL EXPORT (ELECTRONIC DECLARATION AND PROCESSING) REGULATIONS, 2022

**OUR COMMENTS:** The Ministry of Finance, Department of Revenue vide circular no 01/2024-Customs dated 01.02.2024 circulated that Attention is drawn to the Postal Export (Electronic Declaration and Processing) Regulations, 2022 issued under Notification No. 104/2022-Customs (N.T.) dated 09.12.2022, the Guidelines for their implementation in Circular no. 25/2022-Customs dated 09.12.2022, and Circular No. 06/2023-Customs dated 01.03.2023, Circular 20/2023- Customs dated 07.08.2023 and Circular 27/2023-Customs dated 01.11.2023 vide which authorization of total 1001 booking post offices by Department of Post was communicated.

2. In terms of Regulation 6(1), the Department of Posts vide O.M. dated 23.01.2024 (copy enclosed) has authorized 14 more Booking Post Offices to accept consignments for export. The list of Booking Post Offices and the corresponding Foreign Post Offices is also enclosed.

3. The above is for your information, necessary action and implementation. Difficulty, if any, in implementation may kindly be brought to notice of the Board.

**[For further details please refer the circular]**

### PUBLIC NOTICE

#### WAIVER OF LATE FEE FOR DELAYED FILLING OF BILLS OF ENTRY DUE TO ERRATIC FUNCTIONING OF ICEGATE

**OUR COMMENTS:** The Ministry of Finance, Department of Revenue vide public notice no. 03/2024 dated 05.02.2024

notified that A representation has been received from Customs Brokers' Association dated on 05.02.2024 on above subject.

2. Considering the erratic functioning of ICEGATE , the trade has been facing difficulties in filing bills of entry. In view of the above, hereby it is decided to waive Late Fee for the Bills of Entry filed for the cargo arrived at Chennai Air Cargo / Airport from 03.02.2024 to 04.02.2024 in terms of Section 46(2) of the Customs Act, 1962 under Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

3. This Public Notice shall be considered as a Standing Order for the purpose of Officers and staff of the Department.

4. Difficulty faced, if any, may be brought to the notice of Additional Commissioner of Customs (Appraising Main), Chennai-VII for necessary action.

**[For further details please refer the public notice]**



# DGFT

## PUBLIC NOTICE

**CORRIGENDUM TO PUBLIC NOTICE NO. 28/2023 DATED 18.08.2023 REGARDING AMENDMENT IN APPENDIX 4B OF HANDBOOK OF PROCEDURES, 2023**

**OUR COMMENTS:** The Ministry of Commerce and Industry vide corrigendum to public notice no. 28/2023 dated 18.08.2023 notified In exercise of powers conferred under Paragraph 1.03 & 2.04 of the Foreign Trade Policy 2023, as amended from time to time, the Directorate General of Foreign Trade hereby partially modifies the headings of Table A and Table B of Public Notice No. 28/2023 dated 18.08.2023 as follows:

| Existing heading of Table A                                                                                                   | Revised heading of Table A                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT BOTH GOLD AND SILVER FOR FY 2023- 24 VALID UPTO MARCH 31, 2024 | A. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT BOTH GOLD AND SILVER FOR FY 2023- 24 WITH EFFECT FROM 01.04.2023 AND VALID UPTO 31.03.2024. |
| Existing heading of Table B                                                                                                   | Revised heading of Table B                                                                                                                                 |
| B. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT ONLY GOLD FOR FY 2023-24 VALID UPTO MARCH 31, 2024.            | B. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT ONLY GOLD FOR FY 2023-24 WITH EFFECT FROM 01.04.2023 AND VALID UPTO 31.03.2024.             |

### Effect of this Corrigendum:

The heading of Table A and Table B of Public Notice No. 28/2023 dated 18.08.2023 have been partially modified to make the list of banks effective from the 1st of April, 2023

**[For further details please refer the public notice]**

## POLICY CIRCULAR

**CLARIFICATION REGARDING IMPORT POLICY PROVISIONS FOR LAPTOPS, TABLETS, ALL-IN-ONE PERSONAL COMPUTERS AND ULTRA SMALL FORM FACTOR COMPUTERS, SERVERS UNDER HSN 8471**

**OUR COMMENTS:** The Ministry of Commerce and Industry vide policy circular no. 09/2023-24 dated 12.01.2024 circulated that Attention is drawn to DGFT Notification No. 23/2023 dated 03rd August 2023 read with Notification No. 26/2023 dated 4th August 2023 and Notification No. 38/2023 dated 19th October 2023 and in continuation to Policy circular no. 6/2023- 24 dated 19.10.2023, whereby Import of certain specified IT Hardware was 'Restricted'. In this regard, the following clarifications are provided:

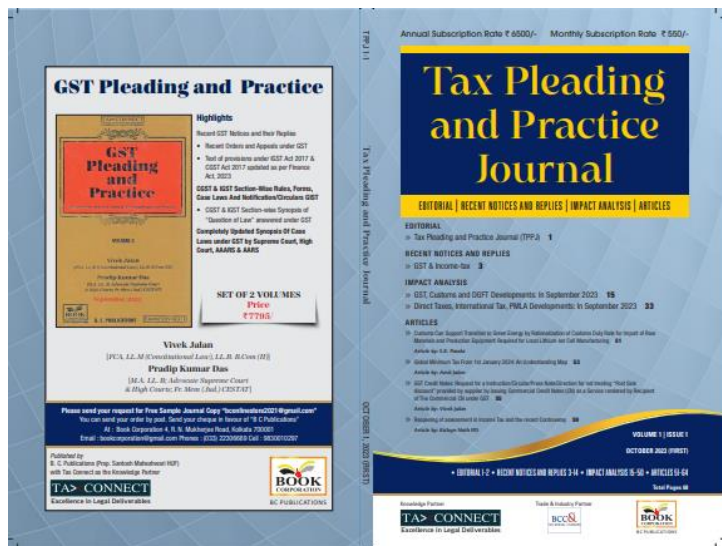
“Only the import of Laptops, Tablets, All-in-one Personal Computers, Ultra small form factor Computers and Servers falling under HSN 8471 is 'Restricted' and import should be allowed against a valid Import authorisation only for above five item categories. The given Import Restriction does not apply to any other goods such as Desktop Computers, etc. under tariff head 8471”.

This is issued with the approval of Competent Authority.

**[For further details please refer the policy circular]**

## :IN STANDS

### TAX PLEADING AND PRACTICE JOURNAL



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1. Recent Notices and replies on GST & Income Tax
2. Impact Analysis on GST, Customs and DGFT Developments: In September 2023
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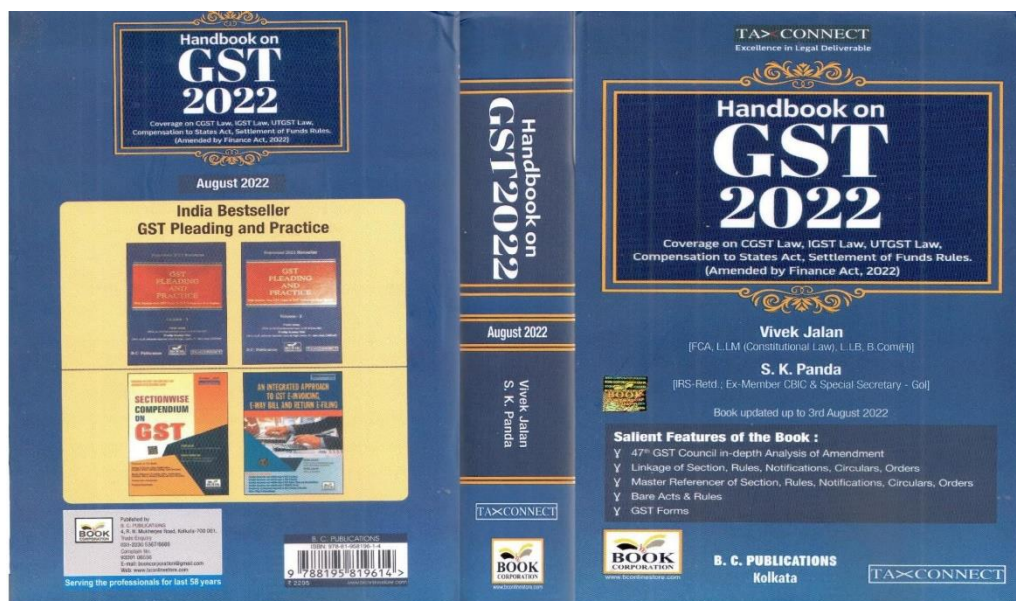
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5. GST Forms

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7. Discussion on Recent Instruction on GST-Summons, Arrest and Bail

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