

THE BUZZ

FEBURARY 2023

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NEWSLETTER CONTRIBUTORS

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GOODS AND SERVICES TAX



GOODS
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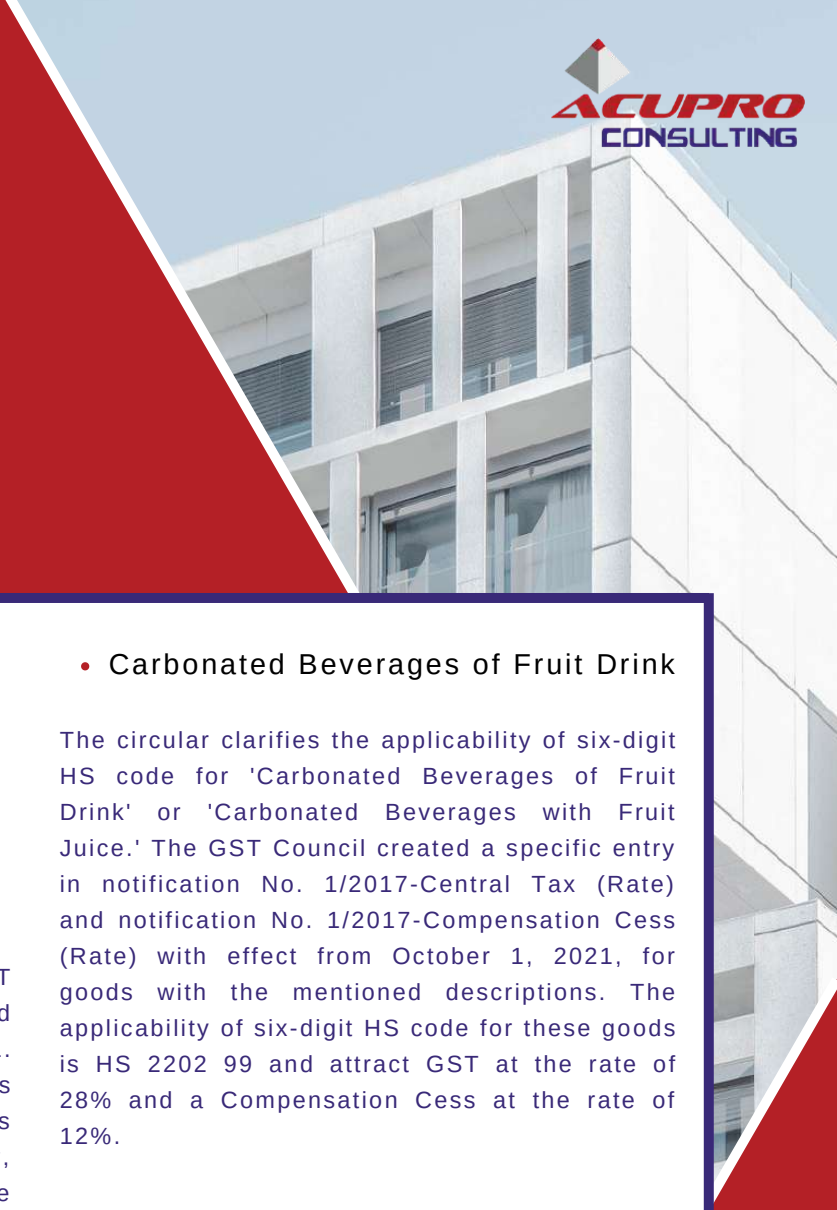

Clarifications regarding applicability of GST on certain services.

- Rab

The circular clarifies on the applicable GST rate for "Rab". Rab exists in semi-solid/liquid form, thus not covered under heading 1701. Also, the same is different from Molasses as per the order of Hon'ble Supreme Court, thus not covered under heading 1703. Accordingly, it is hereby clarified that Rab is classifiable under heading 1702 attracting GST rate of 18%.

- By-products of milling of Dal/Pulses

The GST Council received representations seeking clarification on the applicable GST rate for by-products of milling of Dal/Pulses such as Chilka, Khanda, and Churi/Chuni. The GST Council, in its 48th meeting, recommended full exemption on the supply of these goods, regardless of their end use, effective from January 1, 2023. This exemption is provided under S. No. 102C of schedule of notification No. 2/2017-Central Tax (Rate), dated 28.06.2017.

- Carbonated Beverages of Fruit Drink

The circular clarifies the applicability of six-digit HS code for 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice.' The GST Council created a specific entry in notification No. 1/2017-Central Tax (Rate) and notification No. 1/2017-Compensation Cess (Rate) with effect from October 1, 2021, for goods with the mentioned descriptions. The applicability of six-digit HS code for these goods is HS 2202 99 and attract GST at the rate of 28% and a Compensation Cess at the rate of 12%.

- Snack pellets manufactured through extrusion process

The council clarifies that snack pellets, such as 'fryums,' manufactured through the extrusion process, fall under the category of 'Extruded or expanded products, savory or salted,' and are subject to a GST rate of 18%. It is also hereby clarified that these products are classified under tariff item 1905 90 30.



- Sports Utility Vehicles (SUVs)

The clarification explains that a 22% compensation cess applies to motor vehicles falling under heading 8703, which are commonly referred to as SUVs, have an engine capacity exceeding 1500cc, a length exceeding 4000mm, and a ground clearance of 170mm or more. This clarification only applies to SUVs.

- Goods specified under notification No.3/2017 - Integrated Tax (Rate)

This circular clarifies the applicable IGST rate on goods specified in the list annexed to Notification No. 3/2017-Integrated Tax (Rate), dated 28th June 2017. The IGST rate has been increased from 5% to 12% on goods falling under any Chapter specified in the list annexed to the notification when imported for a specified purpose, subject to relevant conditions. However, some goods specified in the list are eligible for a lower schedule rate of 5% by virtue of their entry in Schedule I of Notification No. 1/2017-Integrated Tax (Rate). It is clarified that the importer can claim the benefit of the lower rate on such goods eligible for both rates.

(Circular No. 189/01/2023)

Clarifications regarding applicability of GST on certain services

- Services provided by Air Force Mess

The first issue concerns the applicability of GST on accommodation services provided by Air Force Mess, Army mess, Navy mess, Paramilitary and Police forces mess etc. to its personnel. The circular clarifies that such services are exempt from GST as these services are considered as services supplied by Central Government, State Government, Union Territory or local authority. Such services (barring a few specified services) are exempt as per notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017.

- Incentives paid by MeitY to acquiring banks

The second issue concerns the applicability of GST on incentives paid by the Ministry of Electronics and Information Technology (MeitY) to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions. The circular clarifies that such incentives are in the nature of a subsidy and does not form part of the taxable value of the transaction in view of the provisions of section 2(31) & section 15 of the CGST Act, 2017, thus not taxable under the provisions of the CGST Act, 2017.

(Circular No. 190/02/2023)

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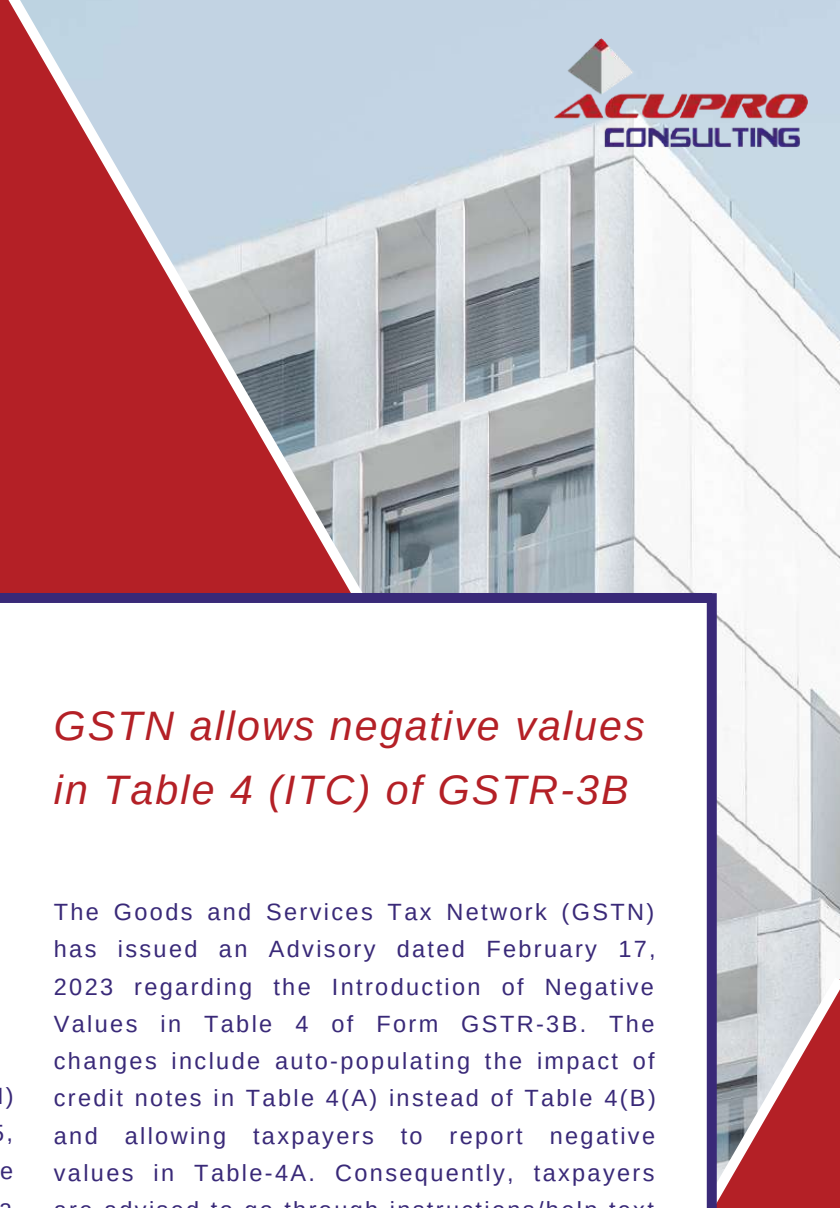
UPDATES



GSTN issued advisory on opting for payment of GST under the forward charge mechanism by a Goods Transport Agency.

The Goods and Services Tax Network (GSTN) has issued an Advisory dated February 25, 2023 on opting for payment of tax under the forward charge mechanism ("FCM") by a Goods Transport Agency (GTA). Annexure V is required to be submitted on the portal by the GTA every year before the commencement of the Financial Year, and the cut-off date for filing the Annexure V FORM is 15th March of the preceding financial year. Annexure V will be available till March 15, 2023.

GSTN allows negative values in Table 4 (ITC) of GSTR-3B

The Goods and Services Tax Network (GSTN) has issued an Advisory dated February 17, 2023 regarding the Introduction of Negative Values in Table 4 of Form GSTR-3B. The changes include auto-populating the impact of credit notes in Table 4(A) instead of Table 4(B) and allowing taxpayers to report negative values in Table-4A. Consequently, taxpayers are advised to go through instructions/help text carefully in GSTR-2B & System Generated GSTR-3B pdf before filing GSTR-3B.

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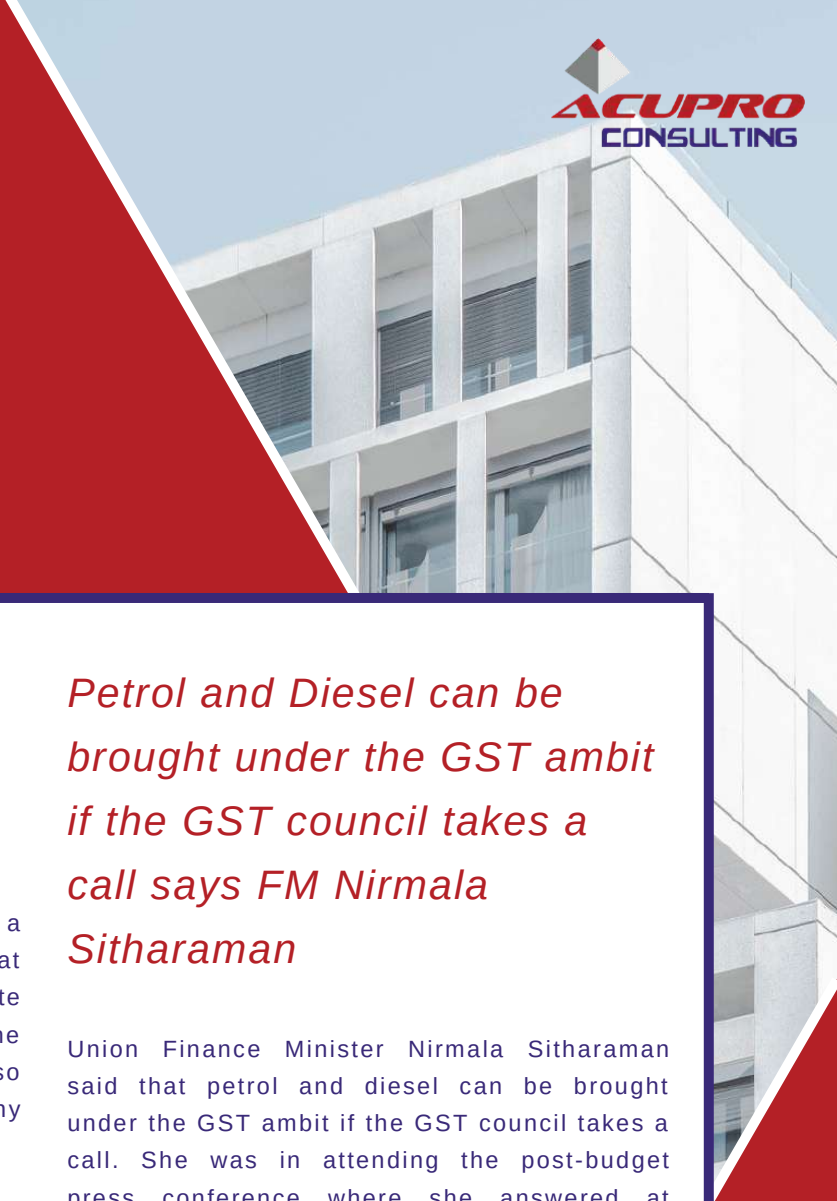

NEWS

GST Council will take a call on cement rate change: FM Sitharaman.

Finance Minister Nirmala Sitharaman on a post-Budget interaction with stakeholders at Bhubaneshwar, Odisha said that any rate change on cement will be decided by the Goods and Services Tax Council. The FM also added that the prices are not having any impact on the real estate inventory.

Micro, small and medium enterprises demand separate GST slab.

The Federation of Coimbatore Industrial Associations (FOCIA) has urged the Union government to introduce a separate GST slab for the products of micro, small and medium enterprises (MSME) as they could not compete with the big companies.

Petrol and Diesel can be brought under the GST ambit if the GST council takes a call says FM Nirmala Sitharaman

Union Finance Minister Nirmala Sitharaman said that petrol and diesel can be brought under the GST ambit if the GST council takes a call. She was in attending the post-budget press conference where she answered at length on questions related to petrol-diesel prices, inflation, rising repo rates, among other issues.

Govt. provided relief to Students from GST ahead of Entrance Exams.

On the suggestion of the GST Council, the National Testing Agency which conducts entrance exams for central and other universities, and engineering and medical colleges are exempted from the scope of the levy of GST.

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CASE LAWS



No cancellation of GST Registration when the reply to the SCN is not considered.

Facts:
M/s. Rakesh Enterprises ("the Petitioner") has filed a petition challenging the Impugned Order of cancellation of GST registration dated December 28, 2020 issued by the Revenue Department ("the Respondent"). The Impugned Order was passed in furtherance of proceedings commenced for the SCN dated December 15, 2020, which was issued due to non-filing of returns for more than six months. The Petitioner had responded to the Impugned SCN vide a reply dated December 24, 2020. However, the reply is not filed along with this petition, as copy of the same is not readily available.

Issues:
The Respondent contended that there is no evidence that the Petitioner had submitted a reply to the SCN and that the reference of the reply was generated due to a technical glitch. Being aggrieved, the Petitioner has filed a petition in High Court that whether the GST Registration can be cancelled without considering the reply to SCN.

Decisions:
The Hon'ble Delhi High Court has set aside the order passed by the Revenue Department for cancellation of GST Registration of the assessee on the ground that the order passed is not sustainable as the reply to the Show Cause Notice ("SCN") furnished by the assessee was not taken into consideration by the Revenue Department, directed the Revenue Department to restore the GST Registration of the assessee.

CGST and SGST Authorities cannot simultaneously prosecute the assessee on similar subject matter.

Facts:
Tvl Metal Trade Incorporation ("the Petitioner") has filed the petition challenging summons issued by the State Tax Authority ("the Respondent") under Section 70(1) of the TNGST Act, 2017 and by the Central Tax Authority under Section 70(1) of the CGST Act, 2017 on October 18, 2022 ("the Impugned Summons").

Issues:
The Petitioner challenged the impugned summons on the ground that both the Central Tax Authority and the Respondent do not have powers to initiate proceedings simultaneously under the CGST Act and the TNGST Act on the same subject matter as petitioner was already facing proceedings initiated by the Central Tax Authority. Further, the Petitioner contended that the Respondent is threatening him and calling it for personal hearing when it has already replied to the Summon.

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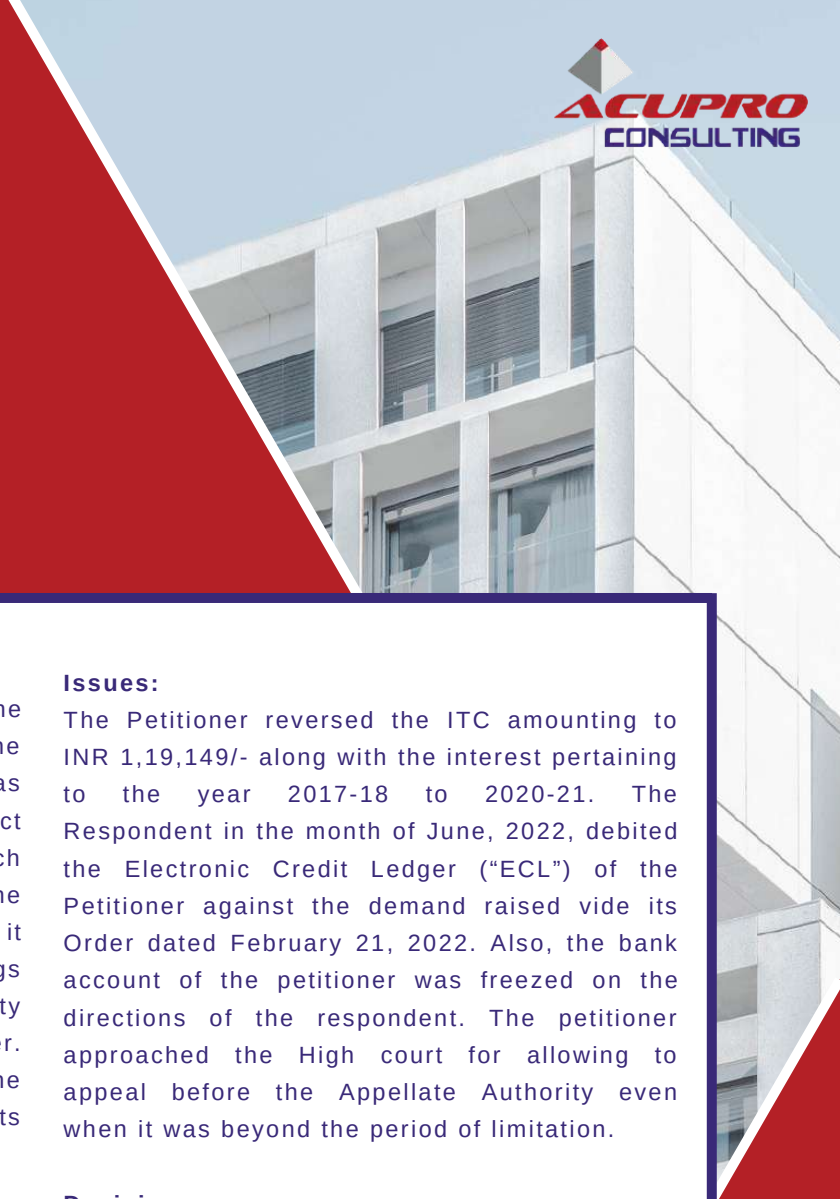
CASE LAWS



Decision:

The Hon'ble Madras High Court held that, the State Tax Authority cannot prosecute the assessee, when the Central Tax Authority has already initiated action on the same subject matter. Further held that, to substantiate such defence, the assessee must participate in the personal hearing/enquiry and only after that it can be ascertained whether the proceedings initiated by the Central and State Tax Authority are one and involving the same subject matter. Directed the assessee to appear before the Revenue Department and state all its objections.

Condoned the delay in period of limitation for filling the appeal by the assessee.

Facts:

M/s. Manjeet Cotton Pvt. Ltd. ("the Petitioner") is in the business of trading of cotton barns, cotton yarn etc. The Revenue department ("The Respondent") issued a Show Cause Notice (SCN) alleging that the petitioner had received certain nil rated or exempted supplies, but had not reversed the Input Tax Credit ("ITC") related to the said supply and raised a demand of INR 36,15,696/- with an interest of 24%p.a. The petitioner failed to submit a reply to the above SCN. Subsequently, search Proceedings under Section 67(2) of the CGST Act was carried out at the registered premise of the Petitioner on February 17, 2022

Issues:

The Petitioner reversed the ITC amounting to INR 1,19,149/- along with the interest pertaining to the year 2017-18 to 2020-21. The Respondent in the month of June, 2022, debited the Electronic Credit Ledger ("ECL") of the Petitioner against the demand raised vide its Order dated February 21, 2022. Also, the bank account of the petitioner was freezed on the directions of the respondent. The petitioner approached the High court for allowing to appeal before the Appellate Authority even when it was beyond the period of limitation.

Decision:

The Hon'ble Gujarat High Court observed that the petitioner did not submit a reply nor appeared before the respondent. Further observed that, the officer concerned cannot be held responsible as it had already granted the opportunity of hearing to the Petitioner. The Hon'ble Court held that, the assessee has the right to challenge the assessment order, by appealing to the Appellate Authority, and such right should be exercised to maintain the possibility of addressing a larger issue. Further directed that, there shall be no further coercive recovery and Petitioner shall be entitled to operate its bank account, till the matter is decided.

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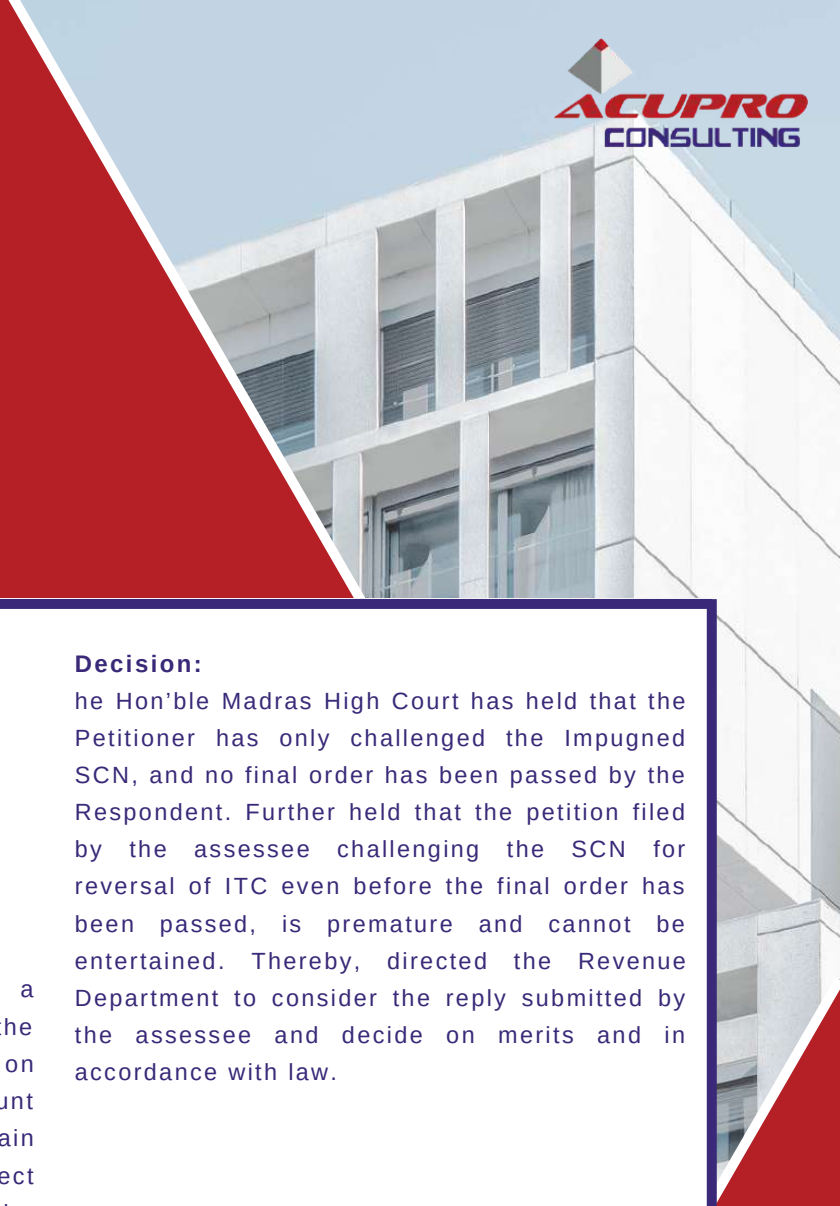
CASE LAWS



Writ petition filed before passing the final order is premature and not maintainable

Facts:

Geethanjali (the Petitioner") had received a SCN dated December 12, 2022 from the Revenue Department ("the Respondent") on account of mismatch in ITC and the amount liable to pay towards GST in respect of certain tax invoices. It is alleged that the ITC in respect of the invoices has been claimed by the Petitioner, but the supplier has not paid the tax amounts to the Respondent. The Petitioner furnished a detailed reply to the Impugned SCN on January 6, 2023 and it was acknowledged by the Respondent on the same date.

Issues:

The Petitioner has contended that despite having furnished the details of the supplier to the Respondent in respect of invoices, the Respondent has once again sent the impugned notice to the Petitioner. The Petitioner's reply to the Impugned SCN has not been considered by the Respondent, and only in case of collusion between the Petitioner and the supplier the Respondent can proceed against them. Being aggrieved the Petitioner has filed a petition in High Court.

Decision:

he Hon'ble Madras High Court has held that the Petitioner has only challenged the Impugned SCN, and no final order has been passed by the Respondent. Further held that the petition filed by the assessee challenging the SCN for reversal of ITC even before the final order has been passed, is premature and cannot be entertained. Thereby, directed the Revenue Department to consider the reply submitted by the assessee and decide on merits and in accordance with law.

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INCOME TAX

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NOTIFICATIONS

CBDT notifies new audit reports for Charitable or Religious Trusts, Education Institutions, Universities etc.

- In case of fund or institution or trust or university or other educational institution or hospital or other medical institution.

Rule 16CC has been substituted in the Income-tax Rules, 1962 wherein a form of audit report has been prescribed under tenth proviso to Section 10(23C)

As per the above rule, the audit report of the accounts of a fund or institution or trust or any university or other educational institution or any hospital or other medical institution is required to be furnished in-

1. Form 10B where such fund or institution or trust or university or other educational institution or hospital or other medical institution has-
   (a) the total income without giving effect to the provisions of the sub-clauses (iv), (v), (vi) and (via) of the said clause, exceeds rupees five crores during the previous year; or
   (b) received any foreign contribution during the previous year; or
   (c) applied any part of its income outside India during the previous year.
2. Form 10BB in any other cases.

- In case of trust or institution or charitable or religious trust.

Rule 17B has been substituted in the Income-tax Rules, 1962 wherein a form of audit report has been prescribed under Section 12(1)(b)(ii).

As per the above rule, the audit report of the accounts of a rust or institution or charitable or religious trust is required to be furnished in-

1. Form 10B where such trust or institution or charitable or religious trust has-
   (a) the total income without giving effect to the provisions of section 11 and 12 of the Act, exceeds rupees five crores during the previous year; or
   (b) received any foreign contribution during the previous year; or
   (c) applied any part of its income outside India during the previous year.
2. Form 10BB in any other cases.

(Source: Notification No. 7/2023 dated February 21, 2023)

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CBDT notifies "Insolvency and Bankruptcy Board of India" under Section 10(46)

CBDT notifies income tax exemption under Section 10(46) to 'Insolvency and Bankruptcy Board of India' subject to the following conditions that board-

1. shall not engage in any commercial activity
2. activities and the nature of the specified income shall remain unchanged throughout the financial years
3. shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961

(Source: Notification No. 9/2023 dated March 1, 2023)

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LITIGATIONS

ASG N. Venkataraman comes out swinging as Revenue assails MFN ruling in SC.

- Apex Court began hearing in challenge to Delhi HC ruling on MFN issue, with Additional Solicitor General N. Venkataraman opening Revenue's case with the words "Whatever Lordships lay down will affect all treaties and OECD members with whom India has entered into DTAA.
- Revenue poses a fundamental question as to whether a later entry of a country into OECD can give existing OECD countries the benefit of lower rate enjoyed by former?
- Revenue argued that entering into DTAA is different from implementing the DTAA and if one were to go by Delhi HC ratio, then the Executive Treaty will override statutory obligations.
- Revenue while reading Entry 14 with Article 253, argued that a treaty becomes law only when stamped by the Parliament or its delegate.
- Revenue stated that the consequences of the HC ratio is 'very impactful' as AOs will sit on treaty benefit decisions without any Parliamentary mandate
- Revenue on a conjoint reading of Section 4, 5, 90(1) and 90(2) of the Act submitted that benefits arising out of treaty are substantive, not procedural.

MFN sans specific notification 'stillborn' right; Can't encroach 'Executive's' diplomatic turf, argues ASG Venkataraman

- SC continued hearing Revenue's appeals in the MFN Clause dispute arising from Delhi HC rulings in Concentrix Services & Optum Global, Nestle and Steria involving India's DTAAs with Netherlands, Switzerland and France, respectively.
- Revenue emphasised on the significance of Notification, in incorporating treaties into the domestic law and buttresses that without a notification the beneficial provision of other DTAAs cannot be given effect to while acknowledging that notified Protocols are integral part of the DTAAs.
- He submitted that on such an issue "it is the first time when a writ of mandamus is being filed... what is in realm of executive supremacy, ought to be respected else it will cripple the executive diplomatic power"
- Revenue concluded their arguments and Senior Advocate Porus Kaka in his opening, appearing for Nestle SA, submitted that this is a case of an 'automatic self-executory provision' which requires no further notification as per the bargain struck between India and Switzerland.

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HC stays reassessment proceedings of Israeli Pharma Giant's US arm; Revenue alleges treaty shopping (eva Pharmaceuticals USA Inc.)

- Delhi HC granted stay on reassessment proceedings against Teva Pharmaceuticals USA Inc. (Assessee, subsidiary of Teva Pharmaceuticals Industries Ltd., Israel) for AY 2014-15;
- Assessee assigned its right to receive payment to Teva Pharmaceuticals Industries Ltd., Israel (Teva Israel), pursuant to which the latter received several 100 crores since AY 2012-13; the actual recipient and title holder of the income is the Assessee who, by unilateral assignment of its right, avoided tax liability in the US as well as India
- Revenue highlights that 'other income' is taxable in India under India-US DTAA but not under India-Israel DTAA, thus, alleges treaty shopping by the Assessee
- Before HC, Assessee submitted that DTAA is irrelevant in the present case as the payment is under an agreement executed outside India and involves manufacturing outside India, thus, no income accrues or arises in India under Section 9
- HC noted that the broad issue arising for Court's consideration is whether Assessee is liable to tax on payments made by Ranbaxy Laboratories Ltd. to Teva Israel
- Assessee also referred to the amended agreement signed by the Assessee in favour of Teva Israel and submits that the IPRs vest in Teva Israel whereas the Assessee is merely a facilitator and is neither entitled to payment, nor has it received any payment
- HC found the issue worth examining while noting that four other writ petitions on one issue or the other are pending before the Court;
- HC, thus, lists the matter for hearing with the other petitions on May 2, 2023 while granting stay on operation of reassessment notice.

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Sr. Adv. Porus Kaka expounds on 'automatic' nature of MFN Clause, customary international law

- Senior Advocate Porus Kaka made elaborate submissions on nature and characteristics of amendments made to the DTAAs via Protocols and argues that the constitutional requirement was duly complied with by notification of Protocol containing automatic self-operating MFN provision which does not require any further step to come into force
- Emphasised that the Gazette Notification notifying a protocol categorically states that treaty partners have completed the procedures required under their laws for bringing the Protocol into force
- He contended that automatic provision need not be further negotiated upon as the provisions requiring further negotiations are worded differently in the Protocol and sitting in judgment on automatic provision would only mark its end and he underscores that not allowing the operation of a duly notified automatic provision is nothing but a breach of treaty
- Referred to UN Law Commission Report as a part of customary international law and submits that as per the article in their Report, the MFN clause come into effect automatically.
- Justice Bhat remarked that if entering into OECD membership by a third country is not separately notified, how would AO get to know about it who is otherwise bound by the four corners of legislation, treaty, notifications and circulars
- Mr. Kaka submitted that this knowledge is available in the public domain;
- On the constitutional aspect, Mr. Kaka submitted, by relying on Sanofi ruling, Section 90(2) is a law made by Parliament referable to Article 253 read with Entries 13, 14 and 82 of List 1 of the Seventh Schedule, thus, Article 51(c) needs to applied to give it the necessary respect. Hearing to continue.

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Can India even notify OECD membership of third country under Sec.90(1), asks Justice Bhat.

- Mr. Kaka distinguished the judgments relied upon by the Revenue and relies on various judgments to argue that the Supreme Court has always reconciled the treaty law with the domestic law and in one of the case favour the foreign takeover regulation over Indian regulation
- He laid emphasis on Vienna Convention on Law of Treaties to emphasised on 'good faith' interpretation and explains various phraseology adopted by Switzerland in negotiating MFN Clause which has prevailed prior to and after entering into MFN Protocol with India
- He underscored Swiss treaties with Lithuania, Latvia and Kazakhstan to submit that MFN Clause Protocol in such treaties with respect to OECD membership of a third country is so worded that such membership is required to be seen on the date of signing the Protocol, which is not the case with India-Switzerland Protocol.
- Relied on South African and Dutch rulings in similar cases where the Courts gave plain meaning to the words of the treaty
- Sr. Adv. S. Ganesh brings out stark difference in Nestle's case and Steria's case in the context of respective DTAAs with Switzerland and France; Brings to the fore, numerous rulings where interpretation favouring the Assessees on narrow scope of FTS has been given by HCs, AAR and ITAT against which Revenue has not preferred any appeal, thus, argues finality in law
- He made a threefold submission: (i) MFN Clause applies automatically along with the notification of India-France DTAA, (ii) Revenue's argument on separate notification has been categorically rejected, and (iii) Protocols also has clauses which operate against the assessee and are contrary to Assessee's interests;
- Towards the end of hearing, Justice Bhat raised piquant question on the scope of what can be notified under Section 90(1);

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MFN case hangs by a thread as legal eagles exchange salvos.

- Supreme Court concluded hearing on the MFN Clause controversy and reserves judgment.
- Revenue produced India's diplomatic exchange with France to argue that narrower scope of FTS and applicability of make available clause was conspicuously absent from the correspondence that India had with France, thus, same cannot apply by invocation of MFN Clause read with India-UK DTAA
- Revenue further argued that the tenor of Protocols in India-Switzerland and India-Netherlands DTAA is same as that of India-France DTAA and shall be interpreted in the same way else it would lead to discriminatory treatment;
- S. Advocate Percy Pardiwalla submitted how MFN Clause triggers automatically and separate notifications for every aspect of MFN Clause are not required once DTAA and Protocols are notified
- Sr. Advocate P. Chidambaram made a seven point submission with emphasis on how heavily Indian companies have invested in the Netherlands and that India has benefitted from lower withholding tax on dividend paid by Dutch companies to Indian shareholders as it gives India more income to impose tax
- He urged the Court to look at the treaties in a dynamic way and stresses on the interpretation that benefits the world trade;
- Mr. Ganesh submitted that the right to benefit from more beneficial India-UK DTAA vested for French taxpayer when the such DTAA was notified and there is no other triggering event envisaged in the Protocol;
- Justice S. Ravindra Bhat returned the diplomatic correspondence after making an observation that Court can avoid the content of the letters exchanged between the countries and simply go by the language of the law
- He also apprised that treaties are the deals struck between the countries based on their economic strength and bargaining power and cannot be interpreted like statutes;
- Court granted two weeks time to both the sides for furnishing the written submissions.

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CIT(A) to re-hear Flipkart on Rs.1100 Cr. demand, orders Karnataka HC

- Karnataka HC allowed Flipkart India's (Assessee) writ petition with a direction to CIT(A) to furnish the remand report to the Assessee and consider Assessee's response;
- Assessee was aggrieved of demand exceeding Rs.1,100 Cr. from addition on account of capitalising discount as marketing intangibles and disallowing ESOP cross charges amounting to about Rs.4,500 Cr. and Rs.180 Cr., respectively for AYs 2016-17 and 2018-19;
- Assessee submitted that the appellate orders were passed in gross violation of principles of natural justice as the remand report forming the basis of CIT(A)'s findings were not provided to the Assessee for rebuttal and also submitted that CIT(A) did not adhere to the judicial discipline as the issues were covered either by Assessee's own case or by the judgments of jurisdictional HC
- Karnataka HC sets aside the order of CIT(A) and remands the matter for reconsideration in the light of the principles of natural justice.

Delhi HC saves OYO from recovery of Rs.1140 Cr. Angel Tax demand (OYO Homes & Hotels Pvt. Ltd.)

- Delhi HC granted stay on coercive action against OYO Homes & Hotels Pvt. Ltd. on high-pitched demand of Rs.1140 Cr. arising from Section 56(2)(viib) addition which pertains to the investment made by Petitioner's holding company Oravel Stays Ltd.
- HC disposes of the writ petition by directing CIT to decide the review application against denial of stay by the AO within 4 weeks and restricts tax recovery for 15 days beyond the said period of 4 weeks.

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AUDITING AND ASSURANCE

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UPDATES

Amendments to the buy-back regulation

The SEBI (Buy-back of Securities) Regulations, 2018 (Buy-back Regulations) govern the regulatory requirements relating to buy-back of securities.

On 7 February 2023, SEBI issued certain amendments to the Buy-back Regulation which are effective from 20 February 2023.

The key considerations from the amendment are as follows:

Conditions for buy-back

The provision stipulates the conditions and requirements for buy-back of shares and specified securities. The basis of computation of the limit of buy-back and the ratio of the debts to the paid-up capital and free reserves has been amended. The revised basis of computation prescribed in the circular is as follows:

1. The maximum number of equity shares that can be bought back in any financial year shall be 25 per cent or less of the aggregate of paid-up capital and free reserves of the **company based on the standalone or consolidated financial statements of the company, whichever is lower.**
2. The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy back would be less than or equal to 2:1 based on either of the following:
   - **Standalone or consolidated financial statements of the company, whichever sets out a lower amount**. However, if a higher ratio of the debt to capital and free reserves has been notified under the Companies Act, 2013, then such higher ratio shall prevail; or
   - **Standalone or consolidated financial statements of the company, whichever sets out a lower amount,** after excluding financial statements of all subsidiaries that are NBFCs and HFCs regulated by the Reserve Bank of India (RBI) or National Housing Bank, as the case may be. However, buy-back of securities would be permitted only if all such excluded subsidiaries have their ratio of aggregate of secured and unsecured debts to the paid-up capital and free reserves of not more than 6:1 on standalone basis.
   - The buy back is required to be authorized by a company's articles and a special resolution is also required to be passed. However, the regulation provides exemption to this rule in case the buy-back is 10 per cent or less of the total paid-up equity capital and free reserves, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, and a resolution to that effect has been passed by the board of directors.

Buy-back from open market

The following amendments have been made under the buy-back from open market mechanism:

- **Minimum amount to be utilized**: The limit for minimum amount to be utilized for buy-back has been increased from 50 per cent to 75 per cent of the amount earmarked for buy-back.
- **Buy-back from the open market through stock exchanges**: The amendment has revised the limit for buy-back and the time period for completion of buy-back as follows:

The 2013 Act (Section 2(76))	Buy-back till 31 March 2023	Buy-back till 31 March 2024	Buy-back till 31 March 2025
Maximum limit based on the standalone or consolidated financial statements, whichever sets out a lower amount, shall be less than	15 per cent of the paid up capital and free reserves	10 per cent of the paid up capital and free reserves	5 per cent of the paid up capital and free reserves
Time Period for Completion of buyback Offer	6 months	66 working days	22 working days

- **Buy-back through book building process:** The mechanism for buy-back under the book-building process has also been revised. The amendment lays down the revised provisions for disclosure requirements, timelines for public announcement, offer procedure, methodology for acceptance of bids etc. for buy-back under book building process.

Other amendments

The other key amendments stipulated are as follows:

- *The procedure for filing of draft offer letter with SEBI has been omitted. Accordingly, the company is required to directly file the letter of offer and the other documents with SEBI in an electronic mode as per the revised timelines as stated in the revised regulation.*
- *The provisions in the regulations pertaining to buy-back from odd lot holders have been omitted. Therefore, buy-back from odd lot holders is now not permitted*
- *As per the existing provision, a company is required to deposit a specified sum of the consideration payable in an escrow account. The amendment has revised the timeline for creation of escrow account and the modes of deposit.*

The amendments are applicable from March 9, 2023

(Source: SEBI Notification No. SEBI/LAD-NRO/GN/2023/120 dated 7 February 2023)

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Framework for social audit standards issued by ICAI

In July 2022, SEBI introduced the regulations pertaining to Social Stock Exchange (SSE). As per the regulation, a Social Enterprise (SE) either registered with or that has raised funds through an SSE is required to submit an annual impact report to the SSE which is to be audited by a social audit firm employing social auditor.

In January 2023, the Institute of Chartered Accountants of India (ICAI) had issued the Social Audit Standards (SAS) which are based on the 16 categories of social activities specified by SEBI. The SASs should be read in conjunction with the 'Preface to the Social Audit Standards' and 'Framework for the Social Audit Standards'.

In this regard, ICAI issued a framework for SAS on 4 February 2023. The framework is applicable to a social audit (i.e., social impact assessment of project/program of social enterprises) which is to be conducted by social auditors using the principles given in SASs. The framework may also be applied to any other engagement(s) conducted by a social auditor e.g. impact assessment required under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, or any other similar assignment. This framework is mandatory in nature and is applicable from February 4, 2023.

The objective of the framework is as follows:

- *To provide basic principles and elements in relation to social audit of projects/ programs/ project-based activities of a social enterprise registered/listed on the SSE and of any other organization.*
- *To provide related guidance on matters relating to preparation of social audit report in accordance with the social auditor's findings based on the procedures performed and evidence obtained.*

(Source: ICAI announcement dated 4 February 2023)

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COMPANIES ACT, 2013



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COMPANIES ACT, 2013

Extension of time for filing of 45 e-forms and PAS-3 on V3 portal.

Due to change in way of filing in Version-3, including a fresh process of registration of users on MCA-21 and the process of stabilization of 45 forms launched with the effect from 23.01.2023, and in continuation of General Circular 1/2023 dated 09.01.2023, MCA has allowed further additional time of 15 days for filing these forms, without additional fees, to the stakeholder.

Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, and whose due dates for filing fall between 20.01.2023 and 06.02.2023, can also be filed without payment of additional fees for a period of 15 days.

The official circular is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=CbgxW1sJmKtaGuYxShWEfA%253D%253D&type=open

Extension of time for filing of 45 e-forms, PAS-3 and SPICE+ PartA on V3 portal

Due to change in way of filing in Version-3, including a fresh process of registration of users on MCA-21 and the process of stabilization of 45 forms launched with the effect from 23.01.2023, and in continuation of General Circular 1/2023 dated 09.01.2023 and 3/2023 dated 07.02.2023, MCA has allowed further additional time till 31.03.2023 for filing these forms, without additional fees, to the stakeholder.

Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, and whose due dates for filing fall between 20.01.2023 and 28.02.2023, can also be filed without payment of additional fees till 31.03.2023.

Further, reservation period for the names which are reserved under sub-section (5) of section 4 of the CA 2013 is extended by a further period of 20 days. The resubmission period under rule 9 of Companies (Incorporation) Rules, 2014 falling between 23.01.2023 and 28.02.2023, is also extended by 15 day.

The official circular is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=2wjQ2Yt5XCZLAoGRr2jfOQ%253D%253D&type=open



APENDIX

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ACRONYMS

Used	Meaning
GST	Goods and Services Tax
CGST	Central Goods & Services
CBIC	Central Board of Indirect Taxes & Customs
GTA	Goods Transport Agency
IAS	International Accounting Standards
CBDT	Central Board of Direct Taxes
AY	Assessment Year
AAR	Authority of Advance Rulings
HC	High Court
SC	Supreme Court
PCIT	Principal Commissioner of Income Tax
CCIT	Chief Commissioner of Income Tax
FCRA	Foreign Contribution Regulations Act
CARO	Companies Auditor's Report Order
GOM	Group of Ministers
ITAT	Income Tax Appellate Tribunal
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act
CARO	Companies Auditor's Report Order
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies

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Thank You!

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