

THE BUZZ

MAY 2023

ACUPRO CONSULTING

NEWSLETTER CONTRIBUTORS

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GOODS AND SERVICES TAX



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NOTIFICATION

E-invoicing limit to be reduced from 10 crore to 5 crore with effect from 1st August, 2023

CBIC has issued Notification No. 10/2023–Central Tax dated May 10, 2023, amending Notification No. 13/2020 – Central Tax dated March 21, 2020, to reduce the E-invoicing aggregate turnover limit from 10 crores to 5 crores, which will be effective from August 01, 2023.

(Notification No. 10/2023)

Extension granted for Goods Transport Agencies to exercise Forward Charge tax payment option for FY 2023-24 till May 31, 2023.

The CBIC has issued Notification No. 05/2023-Central Tax (Rate) on May 09, 2023, extending the time limit for Goods Transport Agencies (GTAs) to opt for Forward Charge tax payment for the Financial Year 2023-24 till May 31, 2023. Previously, the option was required to be exercised before March 15, 2023

(Notification No. 05/2023)

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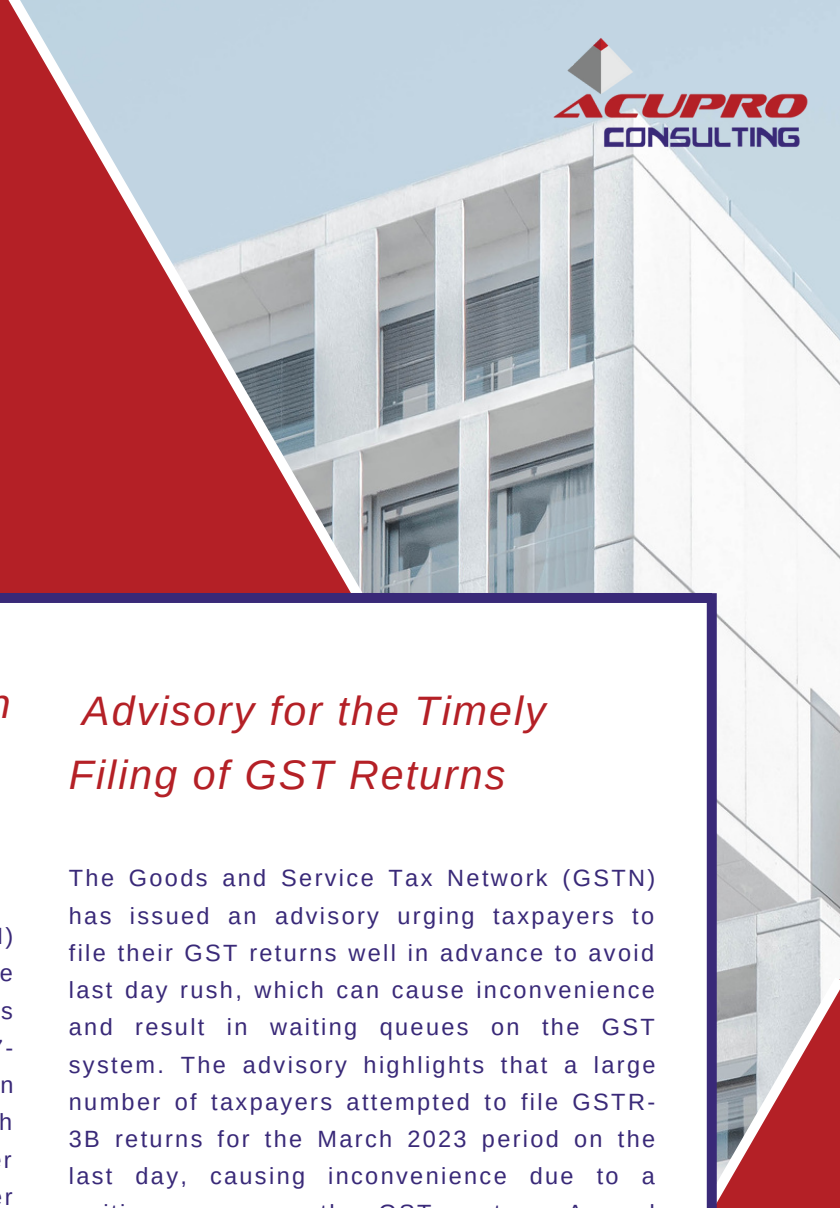
UPDATES



Deferment of Implementation of Time Limit on Reporting Old e-Invoices

The Goods and Service Tax Network (GSTN) has issued an advisory to inform the taxpayers that the competent authority has decided to postpone the enforcement of the 7-day time limit for reporting old e-invoices on the e-invoice IRP portals for taxpayers with an aggregate turnover equal to or greater than 100 crores by three months. Further GSTN will notify the next implementation date in due course.

Advisory for the Timely Filing of GST Returns

The Goods and Service Tax Network (GSTN) has issued an advisory urging taxpayers to file their GST returns well in advance to avoid last day rush, which can cause inconvenience and result in waiting queues on the GST system. The advisory highlights that a large number of taxpayers attempted to file GSTR-3B returns for the March 2023 period on the last day, causing inconvenience due to a waiting queue on the GST system. Around 45% of returns filed on the last day were either NIL returns or those where no tax was paid in cash. Taxpayers are advised to inculcate a month-wise return filing discipline and avoid reporting past invoices in one go. The advisory also recommends using SMS filing options to file NIL returns, which is quicker and more convenient.

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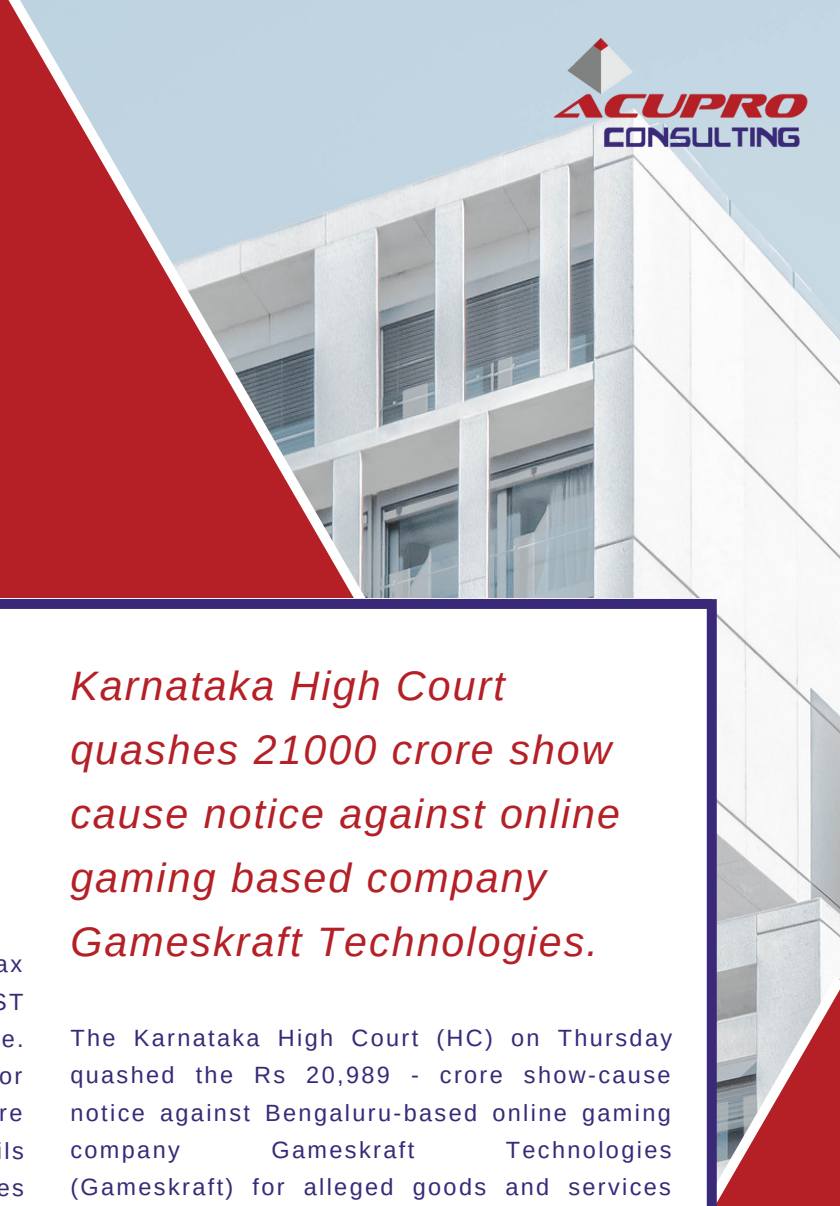

NEWS

10,000 fake GST registrations detected in the first week of the Special All-India drive.

Central and state goods and services tax officials have detected about 10,000 fake GST registrations in the first week of a joint drive. The officials are conducting door-to-door physical verification of addresses before initiating any action, people aware of details said. The campaign against fraudulent invoices and registration began May 15 and will run until July 15.

Extended due date for filing GSTR-1, GSTR-3B, GSTR-7 for taxpayers whose principal place of business is in the State of Manipur.

The CBIC has extended the time limit for furnishing Form GSTR-1, GSTR-3B and GSTR-7 for the month of April-2023. The extension is applicable for registered persons having principal place of business in the state of Manipur.

Karnataka High Court quashes 21000 crore show cause notice against online gaming based company Gameskraft Technologies.

The Karnataka High Court (HC) on Thursday quashed the Rs 20,989 - crore show-cause notice against Bengaluru-based online gaming company Gameskraft Technologies (Gameskraft) for alleged goods and services tax (GST) evasion. This was the biggest such claim in the history of indirect taxation.

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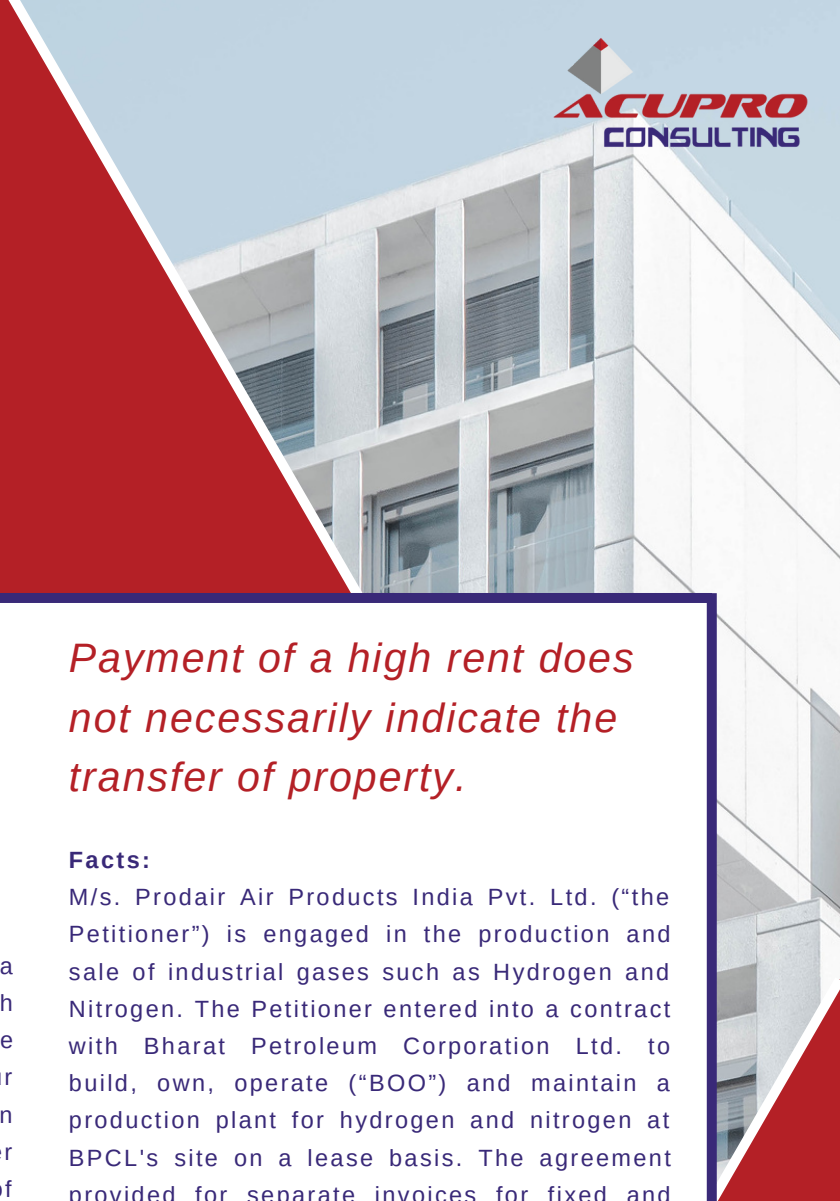

CASE LAWS

During revocation process of cancelled GST registration, Input Tax Credit can be claimed.

Facts:
M/s R.K. Jewelers (“the Petitioner”) filed a petition before the Hon’ble Rajasthan High Court challenging the order passed by the Appellate Authority, Commercial Tax, Jodhpur (“the Respondent”) dated February 02, 2022, in which the GST registration of the Petitioner was cancelled on the ground of non-filing of GST return. The Petitioner also filed an appeal against the Impugned Order, which was rejected by the Appellate Authority.

Issue:
Whether Input Tax Credit (ITC) can be claimed by the Petitioner during the revocation of a cancelled GST registration?

Decisions:
The Hon’ble Rajasthan High Court held that the cancellation of GST registration due to non-filing of GST returns can be revoked under a notification issued on March 31, 2023. The Petitioner may apply for restoration of their registration subject to fulfilling certain conditions. The Court instructed the Petitioner to file an application for restoration of their registration before the competent authority. The Court further held that the Petitioner is entitled to claim ITC for the period from the cancellation of registration till the registration is restored.

Payment of a high rent does not necessarily indicate the transfer of property.

Facts:
M/s. Prodair Air Products India Pvt. Ltd. (“the Petitioner”) is engaged in the production and sale of industrial gases such as Hydrogen and Nitrogen. The Petitioner entered into a contract with Bharat Petroleum Corporation Ltd. to build, own, operate (“BOO”) and maintain a production plant for hydrogen and nitrogen at BPCL's site on a lease basis. The agreement provided for separate invoices for fixed and variable charges, and included a clause granting BPCL the option to take over the production plant if the agreement was not renewed after 15 years. However, during the term of the agreement, the production plant remained the property of the Petitioner. The Revenue Department imposed a penalty on the Petitioner under the Karnataka Value Added Tax Act, alleging that the agreement involved transfer of property in the gas manufacturing plant and not just a supply of gases.

Issue:
Aggrieved by the penalty the Petitioner filed a writ petition before the Kerala High Court, which was dismissed. The Petitioner has now filed a writ appeal against the dismissed writ petition. The issue is whether the fixed consideration under a BOO contract would be constituted as deferred payment for transfer of property.

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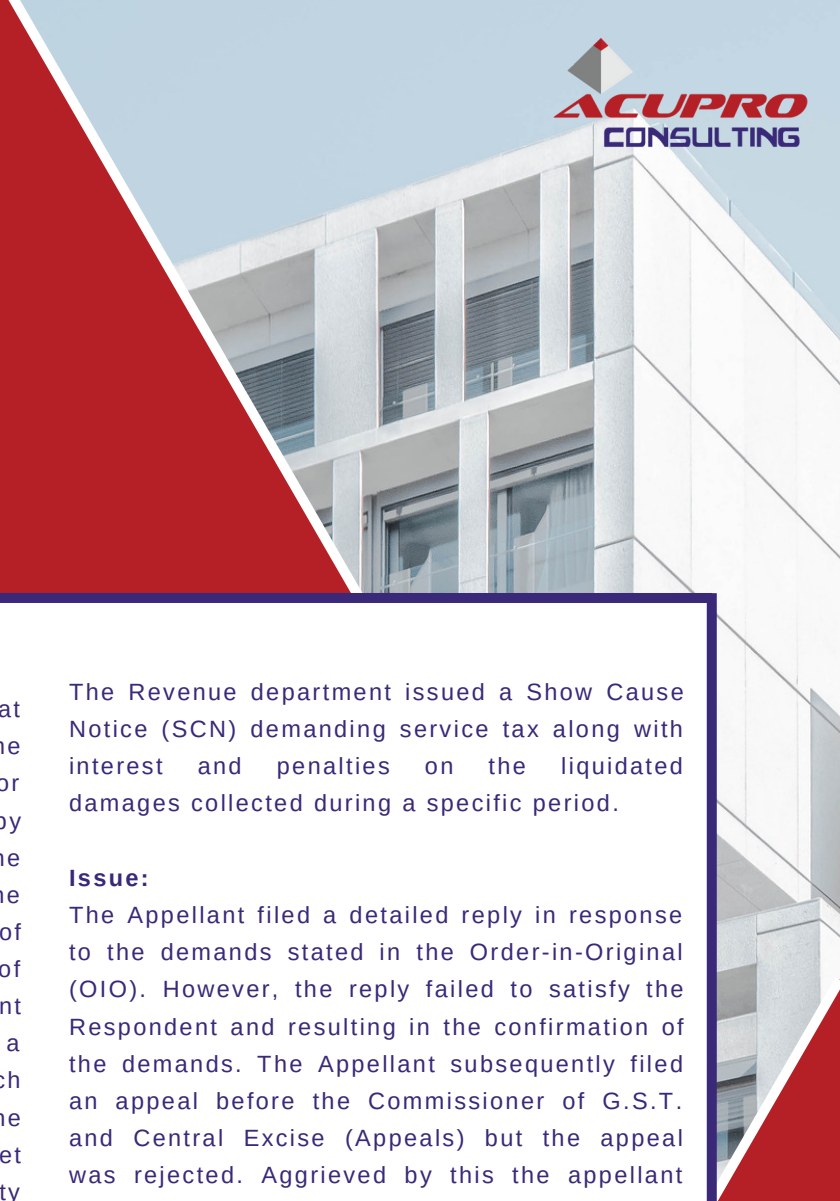
CASE LAWS



Decision:
The Hon'ble Kerala High Court held that ownership of the gas plant remained with the Petitioner for the duration of the contract or until BPCL exercised its option to take over by paying the fair value. The fact that the Petitioner was recovering a portion of the investment in the plant as a fixed component of the gas price did not amount to transfer of property. The court found that the Respondent had erred in treating this fixed payment as a taxable event under the KVAT Act, which requires transfer of property. Consequently, the court allowed the Petitioner's appeal and set aside the impugned judgment and penalty orders.

No Service Tax liability applicable to liquidated damages.

Fact:
M/s. Bharat Heavy Electricals Ltd. (the Appellant), a manufacturer of heavy engineering equipment and provider of power plant/projects erection services, had agreements with vendors that included a clause for payment of liquidated damages in case of delays in supply and service. An enquiry by the Directorate General of Goods and Services Tax Intelligence (DGGI) revealed that the Appellant was charging liquidated damages but not paying service tax on them.

The Revenue department issued a Show Cause Notice (SCN) demanding service tax along with interest and penalties on the liquidated damages collected during a specific period.

Issue:
The Appellant filed a detailed reply in response to the demands stated in the Order-in-Original (OIO). However, the reply failed to satisfy the Respondent and resulting in the confirmation of the demands. The Appellant subsequently filed an appeal before the Commissioner of G.S.T. and Central Excise (Appeals) but the appeal was rejected. Aggrieved by this the appellant filed an appeal before the CESTAT that whether the Appellant would be held responsible for paying Service Tax on the liquidated damages collected from vendors.

Decision:
The Hon'ble Chennai CESTAT held that recovery of liquidated damages from defaulting party cannot be said to be towards any service, since the purpose of imposing damages is to ensure that the defaulting act is not undertaken or repeated.

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INCOME TAX

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NOTIFICATIONS

CBDT directs 100% e-filing before ITAT/HC by May 31, pursuant to SC Order

The Supreme Court of India has directed that the Union state of India shall ensure that the entire filing of Revenue appeals before the High Courts and Tribunal is carried out in the e-filing mode.

It has been directed to ensure 100% filing of revenue appeals/petition before the High Courts and ITAT in e-filing mode by May 31,2023 for the financial year 2023-24.

(Source: Circular No. 380/01/2023 dated May 05, 2023)

Mahila Samman Savings Certificate outside Sec.194A TDS ambit.

- Central government notifies the Scheme "Mahila Samman Savings Certificate" has been framed for exclusion from TDS as per Section 194A(3)(i)(c) and shall come into force from the date of its publications in the Official Gazette
- The said provision excludes interest income upto Rs.40,000 from the purview of TDS arising from the instruments.

(Source: Notification 27/2023 dated May 16, 2023)

CBDT notifies FSSAI for Sec.10(46) exemption

Specified income includes-

1. grants-in-aid received from the Ministry of Health and Family Welfare;
2. statutory fees such as licence fee, registration fee, analysis or testing of food samples fee fixed through regulations made under the Food Safety Act, 2006 (No.34 of 2006) and approved by the Government of India;
3. penalty as per the provisions of the Food Safety Act, 2006 (No.34 of 2006); and
4. income earned on (a) to (c) above

The above exemption 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; and
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.

The above notification shall be deemed to have been applied for the FY 2020-2021 (from Jun 1, 2020 to Mar 31, 2021) to FY 2024-2025.

(***Source: Notification 26/2023 dated May 10, 2023)***

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NOTIFICATIONS

CBDT notifies Pune Metropolitan Region Development Authority for Sec.10(46) exemption

Specified income includes-

- grants received from the State Government, the Union Government or any other authority or agency.
- income such as fees, user charges or fines received in the capacity of Local Town Planning Authority.
- income such as land lease – rental received from monetization of Government Lands;
- stamp duty grant;
- other miscellaneous income such as penalty charges, sale of tender forms, RTI fees, registration
- interest earned on (a) to (e) above.

The above exemption 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;and
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.

The above notification shall be deemed apply from FY 2017-2018 to 2021-2022.

(Source: Notification 25/2023 dated May 10, 2023)

CBDT extends Sec.10(23C), 12A & 80G registration deadline to Sep 30

- The due date for furnishing the application by the charitable or religious trusts and institutions for re-registration/approval has been extended from Nov 25, 2022 to September 30, 2023.

- The due date for furnishing application for regular registration/approval by provisionally registered/approved trusts or institutions has also been extended from September 30, 2022 to September 30, 2023 for registration under section 10(23C) and 12AB of the Income Tax Act , 1961.

(Source: Circular 06/2023 dated May 24, 2023)

CBDT notifies Rs.25 Lac for leave encashment exemption under Sec.10(10AA)

- CBDT notifies Rs.25 Lac as exemption limit under Section 10(10AA) with regard to leave encashment received by non-government employees on retirement;

- The notification comes into effect from Apr 01, 2023.

(Source: Notification 31/2023 dated May 24, 2023)

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LITIGATIONS

Search Judgment Fallout: SC to hear Revenue's MA on Sec. 148 proceedings – Abhisar Buildwell

- Revenue mentioned the Miscellaneous Application (MA) before SC in AbhisarBuildwell case w.r.t. initiation of Sec.148 proceedings in the cases where Sec.153A/153C proceedings do not survive;
- As ASG N. Venkataraman submitted before the Bench that MA is meant for proper implementation of the judgment, Justice M.R. Shah stated that the bench (comprising Justice M.R. Shah and Justice Sudhanshu Dhulia) had contemplated the issue and that they should have provided for Sec.148 proceedings in the judgment itself;
- Senior Advocate Arvind Datar appeared for the Assessees, submitted that the MA virtually attempted to revive all the notices that did not survive due to the judgment; Justice Shah then indicated that all the defences under the reassessment regime would be available to the Assessees barring the limitation period and that the bench will hear the Assessee's submission in detail before deciding the MA; Bench to hear the MA on May 2, 2023.

SC stays Rajasthan HC order in post Ashish Agarwal reassessment controversy – Geeta Agarwal.

- SC issues notice on Revenue's SLP and granted stay on Rajasthan HC order involving reassessment proceedings for AY 2016-17 with alleged income escapement of less than Rs.50 Lacs;
- SC tags this matter with SLP against Allahabad HC judgment where the stay was granted by SC on Apr 13, 2023

Search Judgment Fallout - SC reserves order in Revenue's MA for Sec.148 proceedings

- SC concluded hearing and reserves order in Revenue's Miscellaneous Application (MA) filed pursuant to AbhisarBuildwell judgment;
- The MA was filed to seek clarity on initiation of reassessment proceedings under the prevailing provisions of Section 147 to 151 in the cases where proceedings under Sections 153A/153C did not survive due to AbhisarBuildwell judgment

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SC: Revenue's MA for clarification in Abhisar judgment akin to 'Review', requires detailed hearing

- SC declined to entertain Revenue's Miscellaneous Application (MA) seeking clarification for initiating Sec.148 proceedings in Abhisar Buildwell judgment; Observed that relief sought in the MA required detailed consideration, thus, it was in the nature of review petition;
- Therefore, relegates Revenue to file appropriate review petition which is to be decided on its own merits and be heard in the open court;
- SC abstained from entering into the merits of Revenue's MA

SC rules on scope of Sec.69A vis-a-vis 'bitumen' with concurring judgments

- SC, by two separate yet concurring judgments, allows Assessee's appeal against Patna High Court judgment over addition of bitumen under Section 69A;
- Justice K.M. Joseph observed that Section 69A would apply on 'bitumen' when held in large quantity so as to be a valuable article whereby a great deal of money could be arrived at;
- Held the Section 69A "as such" would not apply on bitumen and restores CIT(A)'s order deleting the addition of Rs.1.04 Cr for AY 1996-97;
- Justice Hrishikesh Roy, in a concurring judgment, quoted British singer Roger Whittaker, "gold would not be precious If we all had gold to spare" and observed that the legislature was concerned only with precious and aspirational articles like bullion and jewellery while introducing Section 69A as they were repositories of hidden earning but not bitumen which would not attract a second glance on any road surface of our country.

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SC stays Gujarat HC judgment holding AYs 2013-14 & 2014-15 reassessment proceedings as time-barred – Keenara Industries Private Limited

- SC issues notice on Revenue's Special Leave Petition against Gujarat HC ruling in Keenara Industries where reassessment proceedings for AYs 2013-14 and 2014-15 were held as time-barred;
- SC granted stay on the HC judgment;
- HC had remarked "CBDT Instruction No.1/2022 cannot override the provisions of law or the SC ruling.";
- HC had also rejected Revenue's reliance on CBDT Notification No.20/2021 and 38/2021 (extending the time limit for reassessment/assessment to Jun 30, 2021) by observing that the CBDT Notifications were applicable to unamended provisions of reassessment regime and once the provisions were repealed w.e.f. Apr 1, 2021, the notifications could have no applicability

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COMPANIES ACT, 2013



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COMPANIES ACT, 2013



Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

The Ministry of Corporate Affairs (MCA) has, vide its notification dated 15thMay, 2023 ("Notification"), amended the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023.

The amendments specifically modify sub-rules (5) and (6) of rule 25 in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The new sub-rules introduce provisions regarding objections, suggestions, and confirmation orders related to schemes of merger or amalgamation under section 233 of the Companies Act, 2013.

The official Notification of MCA will be effective from 15th June, 2023 and is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=ab6Q0qvTuxNB7D4Ij6zO7Q%253D%253D&type=open

Companies (Removal of Names of Companies from the Register of Companies)Second Amendment Rules, 2023

The Ministry of Corporate Affairs (MCA) has, vide its notification dated 10thMay, 2023 ("Notification"), amended the Companies (Removal of Names of Companies form the register of Companies) Second Amendment Rules, 2023.
Pursuant to the amendment the following new provisos shall be inserted, namely:-

1. The company cannot file an application unless it has filed overdue financial statements and overdue annual returns up to the end of the financial year in which the company ceased to carry out its business operations.
2. Where the Registrar's action has already been initiated against the Company, it can only file the application for removal of names, after filing pending financial statements and annual returns.
3. A Company will not be allowed to file an application for removal of names, once the Registrar has issued notice for publication.

The official Notification of MCA will be effective from 10th May, 2023 and is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=ab6Q0qvTuxNB7D4Ij6zO7Q%253D%253D&type=open

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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
SEBI	Securities and Exchange Board of India
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies

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WHY ACUPRO?

FEATURES

Leading professional firm serving for 10+ years

Solution Oriented Team with vast experience

3 Dynamic partners

Team of Big 4 Alumnus

Team of 100+ Professionals

Served 500+ MNCs

Subject Matter Experts

Right Blend Of Professionals

Industry wise Expertise

SERVICES

Direct Taxation

Indirect Taxation

Transaction Advisory

International Taxation

Assurance, Accounting & GAAP Advisory

Regulatory & Secretarial Consulting

Risk Advisory & Financial Transformation

Thank You!

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