

# INDIRECT TAX WEEKLY DIGEST

22 August 2023

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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### GST AMENDMENT BILLS PASSED BY THE PARLIAMENT RECEIVE PRESIDENT'S ASSENT.

Pursuant to the recommendations of the GST Council in its 50th and 51st meetings, recently, Parliament has passed two GST Amendment Bills inter alia clarifying the taxation of Online Gaming, Casinos and Horse Racing<sup>1</sup>.

The aforesaid bills received Presidential assent on 18 August 2023. Accordingly, the Central Goods and Services Tax (Amendment) Act, 2023 and Integrated Goods and Services Tax (Amendment) Act, 2023 have been enacted. The date on which respective provisions of these enactments would come into effect would be notified by the Government.

[Source - Central Goods and Services Tax (Amendment) Act, 2023 (Act No. 30 of 2023) and Integrated Goods and Services Tax (Amendment) Act, 2023 (Act No. 31 of 2023)]

### JUDICIAL UPDATES

#### MERE NON-UPLOADING OF THE COPY OF THE ORDER CANNOT SAVE TIME-BARRED APPEAL WHEN THE SAME IS SERVED MANUALLY.

##### Facts of the case

- Writ Petitions filed by M/s. Britannia Industries Ltd. (Taxpayer I):
  - Taxpayer I is inter alia engaged in manufacturing food products and also exports goods under the Letter of Undertaking (LUT).
  - Taxpayer, I filed an application under Section 54 of the Central Goods & Service Tax Act, 2017 (CGST Act) on 16 July 2019 seeking a refund of unutilised Input Tax Credit (ITC) in respect of zero-rated supplies made during the period starting from April to June 2019.

- The aforesaid refund application was rejected vide Order-in-Original dated 23 August 2019 (OIO I) which was manually served.
- Subsequently, Taxpayer I filed a fresh refund application in respect of the same period for the same supplies on 27 October 2020.
- The Tax Authorities issued a Show Cause Notice which was subsequently adjudicated vide Order-in-Original dated 3 December 2020 (OIO II). Vide OIO II, the Tax Authorities rejected the refund application on the ground that for the same supplies, an earlier refund application was rejected vide OIO I, against which, no appeal was filed. Hence, the said order had attained finality and the refund application was not maintainable.
- Against OIO II, Taxpayer I filed an appeal before First Appellate Authority on the ground that the Taxpayer was unable to file an appeal against OIO I because the order was not uploaded on the GST portal. However, the said appeal was rejected on the ground that there is no power to review an earlier order viz., OIO I.
- Aggrieved by the above, Taxpayer I filed two Writ Petitions impugning both OIO I and OIO II before the Hon'ble Gujarat High Court.
- Writ Petition filed by M/s. Sukhdham Upvan (Taxpayer II)
  - In respect of Taxpayer II, a partnership firm formed for a real estate project, the Tax Authorities had inter alia passed Order-in-Original dated 29 April 2021 (OIO III) under the GST law.
  - Although Taxpayer II had received OIO III via hand delivery, the same was not uploaded on the GST portal. Consequently, Taxpayer II was prevented from filing the

<sup>1</sup> Our summary of the Amendment Bills can be accessed [here](#).

appeals which can only be filed through electronic mode.

- Subsequently, the Bank of Taxpayer II informed that the Tax Authorities had directed the Bank to debit-freeze the bank account of Taxpayer II.
- Aggrieved by the above, Taxpayer II filed a Writ Petition before the Hon'ble High Court.

#### Contentions by the Taxpayer

##### ▪ Writ Petitions filed by Taxpayer I:

- OIO I ought to be uploaded on the GST portal as per Rules 26(1) and 26(3) of the Central Goods and Services Tax Rules, 2017 (CGST Rules). Additionally, there is no provision under the GST law indicating that an appeal can be filed electronically on the GST portal even if the order is not uploaded.
- Further, in Taxpayer I's case, the refund application was allowed by the Tax Authorities. Therefore, even if no appeal was filed, the said principle ought to have been accepted in respect of the orders for the subsequent period.
- Under Rule 108 of the CGST Rules, an appeal can only be filed electronically and by no other mode. Non-uploading of OIO I ought to be considered as non-communication of the order. As a result, the OIO II holding that OIO I has attained finality was bad in law.
- Reliance was also placed on the recommendation of the GST Council pursuant to the 50th meeting where a view was expressed to amend Rule 108 of the CGST Rules to enable the manual filing of an appeal. Accordingly, it can be construed that no appeal could have been filed by Taxpayer I, except through electronic mode.
- The judgement relied upon by the Tax Authorities (*Meritas Hotels Pvt. Ltd. Vs. State of Maharashtra and Ors. [TS-675-BC(BOM)-2021-GST]*) is per incuriam and hence, not a valid precedent.

##### ▪ Writ Petition filed by Taxpayer II:

- After filing the present Writ Petition, the Tax Authorities uploaded OIO III on the GST Portal on 23 May 2023. Accordingly, the Taxpayer would get a time of three months from the date of uploading OIO III to file an appeal.
- As per Section 107(7) of the CGST Act, the Suo motu stay would operate since Taxpayer II has already paid the 10% of the tax in dispute as per OIO III.

#### Contentions by the Tax Authorities

##### ▪ For Taxpayer I:

- An appeal can be filed even without the order being uploaded since the form only requires the Order-in-Original number, which could be obtained from the manual copy of the OIO I served to Taxpayer I.
- As a result, mere non-uploading of OIO I has no connection with filling an appeal in electronic mode. As a result, the Writ Petitions filed by the Taxpayer ought to be dismissed.

##### ▪ For Taxpayer 2:

- OIO III was served physically to one Mr Darpan Shah, Managing and Majority Partner of Taxpayer II. Accordingly, it can be construed that the orders were duly communicated to Taxpayer II and hence, Taxpayer II was not prevented from filing an appeal.
- Section 78 of the CGST Act stipulates that if no payments are made within three months of the date of the order, recovery can be initiated.
- The three-month limitation period began from the date of manual service to Mr Darpan Shah. Uploading orders on the GST portal is an alternative mode of service, and the requirement under Rule 142(5) cannot be construed to mean that no appeal can be filed unless the orders are uploaded. An appeal can be filed through electronic mode against an order manually received.
- In the present case, the time limit to file an appeal lapsed on 29 May 2022, and hence, notices were sent to the Bank to debit-freeze the bank accounts.
- In addition to the above, the following grounds were made by the Tax Authorities in respect of all 3 Writ Petitions:
  - In *Gujarat Petronet (supra)*, the assessee had not received the copy of the order (i.e., neither through electronic nor manual mode). Additionally, the Taxpayer was unable to file an appeal due to technical glitches on the portal. As a result, the said ruling cannot be squarely applicable to the facts of the present case.
  - The decision in *Meritas Hotels Pvt. Ltd (supra)* is applicable to the present case wherein the Court had rejected the submissions of the assessee that only communications made through the GST Portal are valid.

#### Observations and Ruling of the Hon'ble High Court

- Section 107 of the CGST Act indicates that any person aggrieved by the decision/ order may file an appeal before the Appellate Authority within three months from the date of communication of the order which may be extended by an additional period of three months.
- Section 169 of the CGST Act provides that a decision/ order shall be served by giving or tendering it directly or by a messenger including a courier to the addressee of the taxable person.
- The decisions in *Gujarat Petronet (supra)* and *Jose Joseph Vs. Assistant Commissioner of Central Tax and Central Excise and Ors. [WP (C) Nos. 8960, 8966, 8977 and 9052 of 2021]* cases inter alia held that the limitation period starts from the date of service of the manual copy or the uploaded copy of the order. The same cannot be read to mean that no appeal can be filed at all unless the order is uploaded. Instead, the purpose of the judgements is only to consider the question of limitation.
- Reliance was also placed on *Meritas Hotels Pvt. Ltd. (supra)* wherein it was held that -
  - Rule 108 prescribes that the appeal must be filed electronically but it nowhere prescribes that appeal must be filed after the impugned order is uploaded on the GST Portal.

- The date of communication of the order by email was the date of communication of the order for the purpose of limitation.
- The decision in *Gujarat Petronet (supra)* was distinguished since the same was rendered in a different situation.
- Since the assessee had only applied for a copy of the order after the recovery proceedings were initiated, the assessment order had become final and the assessee had lost his statutory right of appeal.

▪ **Conclusion:**

- **Writ Petition filed by Taxpayer II:**

- As regards Writ Petition filed by Taxpayer II, it is undisputed that the order was served manually to Mr Darpan Shah.
- Merely because the orders were subsequently uploaded on the GST portal will not render or save the appeals from having been time barred especially when the recovery proceedings have been initiated and orders to debit-freeze bank accounts have been made.
- The Partners of Taxpayer II are jointly and severally liable for the tax dues under Section 90 of the CGST Act.

- **Writ Petition filed by Taxpayer I:** In view of the above, the Writ Petition is dismissed.

*[M/s. Britannia Industries Ltd. Vs. Union of India, [TS-382-HC(GUJ)-2023-GST], dated 9 August 2023]*

**AMOUNTS DEPOSITED UNDER PROTEST ARE TO BE ADJUSTED AGAINST PRE-DEPOSIT WHILE FILING AN APPEAL**

**Facts of the case**

- M/s. Vinod Metal (Taxpayer) was prevented from filing an appeal before the Appellate Authority, under Section 107 of the CGST Act because the Taxpayer intended to adjust the amounts voluntarily deposited under protest under Section 73(5) of the CGST Act against the pre-deposit payable under Section 107(6) of the CGST Act.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Bombay High Court.

**Contentions by the Taxpayer**

- The Tax Authorities cannot contend that the amounts deposited under protest under Section 73(5) of the CGST Act are not available for meeting the pre-deposit requirements under Section 107(6) of the CGST Act. Accordingly, the Taxpayer cannot be required to make payment again to comply with the pre-deposit requirements.
- It would be unjust and arbitrary to reject the aforesaid adjustment and restrict the Taxpayer from availing the remedy of appeal by such rejecting adjustments of amounts paid under Section 73(5) for the purpose of pre-deposit requirements. Reliance was placed on *VVF (India) Ltd. Vs. the State of Maharashtra [(2021) SCC OnLine SC 1202]* wherein similar provisions of Section 26(6A) of the

Maharashtra Value Added Tax Act, 2002 (MVAT Act) were interpreted in the favour of the assessee.

- In cases where the Taxpayer seeks to adjust the amounts paid under Section 73(5) of the CGST Act for pre-deposit requirements, the GST portal would not open or would remain closed. However, the Taxpayer ought to be permitted to file an appeal on the GST portal which ought not to be closed or, in the alternative, manual filing of appeal must be permitted.
- The technicalities embedded in the GST Portal cannot defeat the statutory remedy of appeal and render the Taxpayer remediless.

**Contentions by the Tax Authorities**

- Sections 73(5) and Section 107(6) of the CGST Act are distinct and operate differently. Accordingly, an adjustment of the amount deposited under protest under Section 73(5) of the CGST Act towards pre-deposit requirements cannot be permitted.
- The legislature has provided an effective appeal remedy by stipulating the amounts payable as pre-deposit under Section 107(6) of the CGST Act, and hence, the Taxpayer cannot seek an adjustment of the amounts paid under Section 73(5) towards the pre-deposit requirements.
- Since the GST portal is applicable across the country, accepting the reliefs sought by the Taxpayer would disturb the prevalent process. As a result, the present Writ Petition cannot be entertained.

**Observations and Ruling by the Hon'ble High Court**

- It is well settled that any procedural rule or technical requirement cannot defeat the appellate remedy available under a substantive provision nor can such remedy be rendered illusory. The right of appeal, guaranteed by a statutory provision, must be effective and meaningful and cannot be neglected by the shackles of complex procedural formalities.
- An amount deposited under protest under Section 73(5) of the CGST Act is not an amount which is deposited pursuant to a demand or any assessment order and is certainly a voluntary deposit which is subject to the contentions of the Taxpayer. Further, such a deposit would be accounted for in the event of any liability to pay tax and would be integral to the assessment.
- The principles laid down in *VVF (India) Ltd. (supra)* are squarely applicable to the pre-deposit requirements under Section 107(6) of the CGST Act considering the pari materia provisions under the CGST Act and the MVAT Act.
- In view of the above, voluntary deposit made under protest under Section 73(5) of the CGST Act cannot be excluded for the purpose of complying with the pre-deposit requirements under Section 107(6) of the CGST Act.
- Accordingly, the Writ Petition is allowed with the following directions:
  - The Taxpayer is to file an appeal under Section 107 of the CGST Act within a prescribed time through electronic or manual mode;

- The Appellate Authority to register compliance with the pre-deposit requirements by considering the voluntary deposit made under protest under Section 73(5) of the CGST Act;
- The Appellate Authority to register the Taxpayer's appeal (filed as above) and decide the same without rejecting the same on the ground of limitation.

[M/s. Vinod Metal & Anr. Vs. State of Maharashtra & Ors., [2023-VIL-515-BOM], dated 18 July 2023]

## CENTRAL EXCISE

### LEGISLATIVE UPDATES

#### NOTIFICATION

#### CHANGE IN RATE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROLEUM CRUDE, AVIATION TURBINE FUEL AND HIGH-SPEED DIESEL OIL

Effective 15 August 2023, Notification no:18/2022 and 04/2022-Central Excise dated 19 July 2022 and 30 June 2022 respectively inter alia stipulating the applicable SAED rate on Petroleum crude, Aviation Turbine Fuel and High-Speed Diesel Oil respectively are amended as under:

Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
2709	Petroleum crude	INR 4,250 per tonne	INR 7,100 per tonne
2710	Aviation Turbine Fuel	Nil	INR 2 per litre
2710	High-Speed Diesel Oil	INR 1 per litre	INR 5.50 per litre

[Notification no:26&27/2023-Central Excise dated 14 August 2023]

## VALUE ADDED TAX (VAT) / SALES TAX

### LEGISLATIVE UPDATES

#### ODISHA - WRITE OFF OF ARREARS INCLUDING TAX, INTEREST AND PENALTY

- Pursuant to the proposal to write off old arrears of revenue (including tax, interest and penalty), the Odisha Government has granted approval to write off the arrears of revenue in cases where arrears of revenue is between INR 5,000 and INR 250,000, in each case till 31 March 2023.
- The benefit of the aforesaid scheme is available for arrears under the Odisha Sales Tax Act, 1947, the Odisha Additional Sales Tax Act, 1975, the Central Sales Tax Act, 1956, the Odisha Value Added Tax Act, 2004 (except for 6 specified goods namely, petrol, diesel, Aviation Turbine Fuel, natural gas, petroleum crude, and liquor for human consumption) and the Odisha Entertainment Tax Act.
- However, the aforesaid benefit is not available in respect of arrears of revenue under the Odisha Entry Tax Act, 1999 and the Odisha State Tax on Profession, Trade, Calling, and Employment Act, 2000.

[Resolution no:22732-FIN-CT1-TAX -0005-2015 dated 11 August 2023]

### JUDICIAL UPDATES

#### SUPREME COURT'S ORDER ON SUO MOTU EXTENSION IN THE LIMITATION PERIOD WOULD NOT APPLY TO ADJUDICATION/ ASSESSMENT PROCEEDINGS

##### Facts of the case

- M/s. Rungta Mines Ltd. (Taxpayer) inter alia engaged in the manufacture of Sponge Iron, M.S. Ingots and TMT Bars.
- The relevant facts concerning FY 2014-15 are summarised below:
  - The Taxpayer had filed a periodical VAT and statutory audit report for the FY 2014-15 wherein it was shown that the Taxpayer had incurred a loss on the manufacture and sale of M.S. Ingots.
  - Pursuant to the above, an assessment was carried out by the Tax Authorities wherein the aforesaid claim was accepted by the Tax Authorities.
  - Subsequently, the Tax Authorities received an audit objection from the Accountant General, Jharkhand stipulating that the loss incurred by the Taxpayer is leviable to VAT under Rule 25(4) of the Jharkhand Value Added Tax Rules, 2006 (JVAT Rules). Accordingly, the



Tax Authorities issued a Notice for initiating the re-assessment proceedings under Section 42(3) read with Section 40(1) of the Jharkhand Value Added Tax Act, 2005 (JVAT Act).

- In response, the Taxpayer filed its reply to the aforesaid notice inter alia raising a preliminary objection concerning the validity of the re-assessment proceedings, contending that the same is barred by limitation, and hence, void ab initio.
- Pursuant to the above, the Tax Authorities passed the re-assessment order confirming the allegations in the aforesaid notice.
- Similarly, the Taxpayer had received another notice for FY 2015-16 seeking imposition of VAT on the loss incurred on the sale of goods. The Taxpayer had filed a response to the aforesaid notice inter alia challenging its validity on the ground that the same is barred by limitation. However, the aforesaid notice was confirmed by the Tax Authorities.
- Aggrieved by the aforesaid orders for FY 2014-15 and 2015-16, the Taxpayer filed 2 Writ Petitions before the Hon'ble Jharkhand High Court.

#### Contentions by the Taxpayer

- **Maintainability of the Writ Petitions:**
  - The Taxpayer does not have an efficacious alternate remedy in light of the adverse findings of the Commercial Taxes Tribunal (CTT) (in respect of other assesses) holding that Section 42(3) of the JVAT Act does not prescribe any period of limitation.
  - Reliance was placed on the *State of Punjab and Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd. [2007 (11) SCC 363]*.
- **Applicability of limitation period under Section 42(3) of the JVAT Act:**
  - The constitutional embargo under Article 265 of the Constitution of India is both on levy and collection of tax without the authority of law. Hence, the collection of the tax must be in accordance with the law.
  - Section 42(3) must be read with Section 40 of the JVAT Act being the only enabling provision for initiation of re-assessment. Accordingly, the period of limitation (provided under Section 40(4) of the JVAT Act) i.e., 5 years from the end of the relevant financial year would apply to re-assessment proceedings initiated under Section 42(3) of the JVAT Act.
  - Applying the above, to the present case, the Impugned Orders for FY 2014-15 and 2015-16 are barred by limitation, being passed beyond the limitation period of 5 years.
  - The aforesaid view is further substantiated by the following:
    - Sections 42(1) and 42(2) of the JVAT Act contain non-obstante clauses, extending the limitation period for undertaking assessment / re-assessment. However, no non-obstante clause is provided under Section 42(3).

- If two distinct terminologies are used in the same Section, they intend to convey different meanings and hence, in the absence of a non-obstante clause under Section 42(3) of the JVAT Act, the limitation period for completing re-assessment proceedings would be governed by Section 40(4) of the JVAT Act.

- **Applicability of the Hon'ble Supreme Court order in *Suo Motu Writ Petition No.3 of 2020 (SC Order)* providing extension/ exclusion of the period of limitation from 15 March 2020 to 28 March 2023:**
  - The extension granted by the SC order is applicable only to judicial and quasi-judicial matters relating to petitions/ appeals/ other proceedings and would not apply to the original adjudication proceedings.
  - The aforesaid view is affirmed by the CBIC Circular no.:157/13/2021-GST dated 20 July 2021 (Circular) clarifying that the SC Order is inapplicable to original adjudication proceedings.
  - This view is further affirmed by the fact that the State Government had amended Sections 40(4), 42(1) and 42(2) of the JVAT Act for extending the limitation period for FY 2014-15 by an additional period of 6 months.
  - Reliance was also in *S. Kashi Vs. State through Inspector of Police Samaynallur Police Station, Madurai District [(2020) SCC OnLine SC 529]*.
- Reliance was placed on the State of Punjab & Ors. (supra) to contend that even if it is presumed that no period of limitation has been stipulated under Section 42(3) of the JVAT Act, the re-assessment ought to be carried out within a reasonable period which would be five years considering that the maximum limitation period under the JVAT Act is five years.

#### Contentions by the Tax Authorities

- **Maintainability of the Writ Petitions:**
  - The Taxpayer has an alternative remedy to prefer an appeal against the Impugned Orders before the Appellate Authority and hence, the Hon'ble Court cannot entertain the Writ Petition.
- **Applicability of limitation period under Section 42(3) of the JVAT Act:**
  - Section 42(3) of the JVAT Act is an independent provision enabling re-assessment proceedings. Further, the said provision uses the word 'shall' which mandates the Tax Authorities to proceed to re-assess pursuant to objection/ observation by the Comptroller and Auditor General of India (CAG).
  - Section 40(1) of the JVAT Act mandates the Tax Authorities to have 'reasons to believe' before initiating re-assessment proceedings. However, the said condition has been dispensed with by virtue of Section 42(3) of the JVAT Act in cases where the re-assessment proceedings are initiated pursuant to an objection/ observation by CAG.
  - Given that the Legislature has deliberately not prescribed any period of limitation and that

- a re- assessment can be initiated pursuant to the completion of assessment / re-assessment / scrutiny assessment, the limitation period prescribed under Section 40(4) of the JVAT Act would not apply to re-assessments under Section 42(3) of the JVAT Act.
- Reliance was placed on the *State of Jharkhand Vs. Shivam Coke [(2011) 8 SCC 656]* to contend that if a Statute does not provide for a period of limitation, provisions of the Limitation Act, 1963 cannot be read thereunto and proceedings thereunder should be conducted in a reasonable period depending on facts and circumstances of each case.
- **Applicability of the SC Order providing extension/ exclusion of the period of limitation from 15 March 2020 to 28 March 2023:**
- Even if it is presumed that Section 42(3) is to be read with Section 40(4) of the JVAT Act and re-assessment order must be passed within the limitation period of 5 years, then also, in the present case, the period of limitation got extended on account of various orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition no:3 of 2020 wherein the period from 15 March 2020 to 28 March 2022 would be excluded from the period of limitation and hence, the Impugned Orders would be deemed to be passed within the period of limitation.
- Observations and Ruling of the Hon'ble High Court**
- **Maintainability of the Writ Petitions:**
- It is well settled that the existence of an alternative remedy is not an absolute bar to the maintainability of a Writ Petition and the same may be entertained in certain circumstances namely, breach of the fundamental rights, violation of principles of natural justice; excess of jurisdiction or challenge to views of a statute / delegated legislation.
  - The Writ Petitions in the present case are maintainable on account of the following:
    - The Taxpayer has raised a jurisdictional issue of limitation;
    - It would be a futile exercise for the Taxpayer to avail the appellate remedy given that CTT has already taken a contrary view.
- **Applicability of limitation period under Section 42(3) of the JVAT Act:**
- Under Section 40(1) of the JVAT Act, the Tax Authorities can initiate re-assessment proceedings only after recording 'reasons to believe' of the circumstances enumerated therein. However, Section 40(1) read with Section 42 of the JVAT provides that Section 42 only stipulates additional grounds/ circumstances under which a re-assessment proceeding can be initiated without recording 'reasons to believe'.
  - Unlike Sections 42(1) and 42(2), Section 42(3) of the JVAT Act does not contain a non-obstante clause extending the limitation period for carrying out re-assessment proceedings.
  - CAG essentially performs administrative or executive functions and cannot be attributed to the power of judicial supervision over quasi-judicial authority.
  - It is well settled that a quasi-judicial authority cannot abdicate its jurisdiction on the dictate of an external authority and proceed to pass an order. The Tax Authorities' contention that Section 42(3) of the JVAT Act mandates the Assessing Authority to initiate re-assessment would amount to abdication of the jurisdiction of the Tax Authorities (being a quasi-judicial body) to external dictates which would be contrary to the ratio laid down in *Indian Eastern Newspaper Society, New Delhi Vs. CIT [(1979) 4 SCC 248]* and *M/s. Larsen & Toubro Ltd. Vs. State of Jharkhand & Ors. [(2017) 12 SCC 780]*.
  - Section 42(3) of the JVAT Act has merely dispensed with the requirement of recording 'reasons to believe'. However, since a non-obstante clause extending the limitation period is not incorporated in the aforesaid provision, the limitation period would be governed by Section 40(1) read with Section 40(4) of the JVAT Act.
  - If the Tax Authorities' contention that under Section 42(3) of the JVAT Act, a re-assessment can be carried out against a re-assessment order is accepted, there would be no finality of assessment and the assessee would be having a sword hanging over it in perpetuity which is against the scheme of the JVAT Act. Hence, the aforesaid contention is not tenable.
  - Relying upon the decision of the *State of Punjab & Ors. (supra)*, it was held that while incorporating the provision of Section 42(3) of the JVAT Act, the legislature, in its wisdom had not sought to extend the limitation period by inserting the non-obstante clause.
- **Applicability of the SC Order providing extension/ exclusion of the period of limitation from 15 March 2020 to 28 March 2023:**
- The Circular clarifies that the SC Order is only applicable to quasi-judicial and judicial matters relating to petitions/ appeals / other proceedings and would not apply to original adjudication proceedings. A similar view can be derived from the amendments made by the State Government under Sections 40(4), 42(1) and 42(2) of the JVAT Act seeking to extend the limitation period for FY 2014-15 by an additional period of 6 months.
  - Relying on *S. Kashi (supra)* it was observed that:
    - The SC Order was issued for the benefit of litigants who have to take the remedy in law as per applicable statute for a right, as the law of limitation bars the remedy but not the right.
    - Accordingly, the SC Order would not apply to original adjudication proceedings which is governed by applicable statutes, including its amendments.
  - In view of the above, the Writ Petitions are allowed, and the Impugned Orders are set aside.
- [M/s. Rungta Mines Ltd. Vs. State of Jharkhand & Ors., [2023-VIL-525-JHR], dated 9 August 2023]*

## FOREIGN TRADE POLICY (FTP)

### LEGISLATIVE UPDATES

#### TRADE NOTICE

##### EXTENSION OF DUE DATE FOR SUBMISSION OF APPLICATION FOR OBTAINING A LICENSE FOR THE EXPORT OF RICE

In compliance with the order dated 10 August 2023 passed by the Hon'ble Delhi High Court in *Asfive Agro Pvt. Ltd. & Ors. Vs. Union of India & Ors. [W.P.(C) 8625/2023 & CM APPL 32737/2023]*, Trade Notice no:16/2023 dated 20 July 2023 read with Trade Notice no:13/2023 dated 3 July 2023<sup>2</sup> and Trade Notice no:12/2023 dated 30 June 2023 read with Trade Notice no:08/2023 dated 20 June 2023<sup>3</sup>, which stipulates the procedure for allocation of quota for export of broken rice to Senegal, Gambia and Indonesia based on humanitarian and food security grounds is partially amended to extend the last date for submission of application for obtaining license for the aforesaid exports till the date of disposal of the aforementioned matter by the Hon'ble High Court.

[Trade Notice no:20/2023 dated 16 August 2023]

##### ON-BOARDING ON THE DGFT COMMON DIGITAL PLATFORM BY SPECIFIED AGENCIES/ CHAMBERS NOTIFIED UNDER APPENDIX-2E

- In relation to onboarding on the DGFT Common Digital Platform for mandatory electronic filing of Non-Preferential Certificate of Origin (CoO), the transition period for adoption of e-CoO was extended till 31 December 2023.
- The aforesaid transition period in respect of Agencies / Chambers notified under Appendix-2E are required to onboard on the electronic platform for CoO at the earliest, but not later than 31 August 2023, thereby providing sufficient time to such onboarded agencies for a smooth transition.
- It is also clarified that till the transition period (i.e., 31 December 2023 or 31 August 2023, as the case may be), CoO applications shall be allowed to be made in manual / paper mode.

[Trade Notice no:22/2023 dated 16 August 2023]

## NEWS FLASH

### “Corporate guarantees given to subsidiaries land many Indian holding companies in a GST pickle”

<https://economictimes.indiatimes.com/news/economy/policy/corporate-guarantees-given-to-subsidiaries-land-many-indian-holding-companies-in-a-gst-pickle/articleshow/102489967.cms?from=mdr>

[Source: Economic Times, 7 August 2023]

### “Income from ad revenue sharing by X liable to GST, if it exceeds the threshold: Experts”

<https://economictimes.indiatimes.com/wealth/tax/claiming-fake-deductions-rent-receipts-while-filing-your-itr-can-lead-to-heavy-penalties/articleshow/102559598.cms?from=mdr>

[Source: Economic Times, 13 August 2023]

### “Gaming apps converting earnings to crypto, Rs 700 crore moved out of India, reveals GST probe”

<https://economictimes.indiatimes.com/news/india/gaming-apps-coverting-earnings-to-crypto-rs-700-crore-moved-out-of-india-reveals-gst-probe/articleshow/102761710.cms?from=mdr>

[Source: Economic Times, 16 August 2023]

### “Himachal rains: Hoteliers seek 6-month deferment of GST, loan repayment as occupancy crashes to 5%”

<https://www.businesstoday.in/latest/story/himachal-rains-hoteliers-seek-6-month-deferment-of-gst-loan-repayment-as-occupancy-crashes-to-5-394380-2023-08-16>

[Source: Business Today, 16 August 2023]

### “GSTN looking for consultancy firm to prepare a roadmap for transitioning IT systems to GST 2.0”

<https://economictimes.indiatimes.com/news/economy/policy/gstn-looking-for-consultancy-firm-to-prepare-roadmap-for-transitioning-it-systems-to-gst-2-0/articleshow/102795384.cms?from=mdr>

[Source: Economic Times, 17 August 2023]

<sup>2</sup> Our summary of the Trade Notice can be accessed [here](#).

<sup>3</sup> Our summary of the Trade Notice can be accessed [here](#).

## ABOUT BDO GLOBAL

BDO is a leading professional services organisation and are global leaders of the mid-tier, with a presence in 160+ countries and over 111,300 people working out of more than 1,800 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

## ABOUT BDO IN INDIA

BDO in India offers Assurance, Tax, Advisory, Business Services & Outsourcing and Digital Services for both domestic and international clients across industries. The team at BDO in India consists of over 7,500 professionals led by more than 270 partners and directors operating out of 18 offices, across 12 key cities.

## CONTACT US

For any content related queries, you may please write to the service line experts at [taxadvisory@bdo.in](mailto:taxadvisory@bdo.in)

For any other queries or feedback, kindly write to us at [marketing@bdo.in](mailto:marketing@bdo.in)

## BDO IN INDIA OFFICES

### Ahmedabad

The First, Block C - 907  
Behind ITC Narmada, Keshavbaug  
Vastrapur, Ahmedabad 380015, INDIA

### Bengaluru - Office 1

Prestige Nebula, 3rd Floor,  
Infantry Road,  
Bengaluru 560095, INDIA

### Bengaluru - Office 2

SV Tower, No. 27, Floor 4  
80 Feet Road, 6th Block, Koramangala  
Bengaluru 560095, INDIA

### Chandigarh

Plot no. 55, Floor 5,  
Industrial & Business Park,  
Phase 1, Chandigarh 160002, INDIA

### Chennai

No. 443 & 445, Floor 5, Main Building  
Guna Complex, Mount Road, Teynampet  
Chennai 600018, INDIA

### Coimbatore

Pacom Square, Floor 3, 104/1, Sakthi  
Main Road, Bharathi Nagar, Ganapathy  
Coimbatore, Tamil Nadu - 641 006

### Delhi NCR - Office 1

The Palm Springs Plaza  
Office No. 1501-10, Sector-54,  
Golf Course Road, Gurugram 122001, INDIA

### Delhi NCR - Office 2

Windsor IT Park, Plot No: A-1  
Floor 2, Tower-B, Sector-125  
Noida 201301, INDIA

### Goa

701, Kamat Towers  
9, EDC Complex, Patta Plaza  
Panaji, Goa 403001, INDIA

### Hyderabad

1101/B, Manjeera Trinity Corporate  
JNTU-Hitech City Road, Kukatpally  
Hyderabad 500072, INDIA

### Kochi

XL/215 A, Krishna Kripa  
Layam Road, Ernakulam  
Kochi 682011, INDIA

### Kolkata

Floor 4, Duckback House  
41, Shakespeare Sarani  
Kolkata 700017, INDIA

### Mumbai - Office 1

The Ruby, Level 9, North West Wing  
Senapati Bapat Marg, Dadar (W)  
Mumbai 400028, INDIA

### Mumbai - Office 2

601, Floor 6, Raheja Titanium, Western  
Express Highway, Geetanjali, Railway  
Colony, Ram Nagar, Goregaon (E),  
Mumbai 400063, INDIA

### Mumbai - Office 3

Floor 20, 2001 & 2002 - A Wing, 2001 F  
Wing, Lotus Corporate Park, Western  
Express Highway, Ram Mandir Fatak Road,  
Goregaon (E) Mumbai 400 063, INDIA

### Mumbai - Office 4

The Ruby, Level 9, South East Wing  
Senapati Bapat Marg, Dadar (W)  
Mumbai 400028, INDIA

### Pune - Office 1

Floor 6, Building No. 1  
Cerebrum IT Park, Kalyani Nagar  
Pune 411014, INDIA

### Pune - Office 2

Floor 2 & 4, Mantri Sterling, Deep Bungalow,  
Chowk, Model Colony, Shivaji Nagar  
Pune 411016, INDIA

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