

# NewsBites

Forty-ninth Edition

Greetings!

We are delighted to present our news bite for the month of April 2022. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, company law, government incentives, FEMA and other regulatory laws.

We hope you find this useful. For any feedback you can reach to us at [info@sanca.in](mailto:info@sanca.in).

Best Regards,  
Chartered Accountants

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# Income Tax

## **CBDT made Return filing Mandatory where Turnover, TDS / TCS , or deposits in Saving Bank Account exceeds certain limit.**

CBDT has notified vide Notification No. 37/2022-Income Tax, additional conditions under section 139(1) of Income Tax Act 1961 for compulsory return filing which are as follows:

- (i) if his total sales, turnover or gross receipts, as the case may be, in the business exceeds sixty lakh rupees during the previous year; or
- (ii) if his total gross receipts in profession exceeds ten lakh rupees during the previous year; or
- (iii) if the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is twenty-five thousand rupees or more; or
- (iv) the deposit in one or more savings bank account of the person, in aggregate, is rupees fifty lakh or more during the previous year.

## **Central Government relaxes provisions of TCS under section 206C(1G) of the Income-tax Act, 1961 for non-resident individuals visiting India.**

Section 206C (1G) of the Income-tax Act, 1961 ("the Act") provides for collection of tax by a seller of an overseas tour program package from a buyer, being a person purchasing such package, at the rate of 5% of the amount of the package.

Representations were received from domestic tour operators who were facing difficulties in collection of tax from non-resident individuals visiting India who were booking overseas tour package from such domestic tour operators. Since such persons may not have a PAN, tax is required to be collected at higher rates. Further, such non-residents may find it difficult to furnish their ITR and claim refunds.

In order to remove such difficulties, the Central Government, in exercise of powers conferred under section 206C(1G) of the Act, has specified that the provisions of the said section shall not apply to a buyer being an individual who is not a resident in India in terms of clause (1) and clause (1A) of section 6 of the Act and who is visiting India. Hence, a domestic tour operator is not required to collect tax on sale of overseas tour package to non-resident individuals visiting India.

## **CBDT notifies Form ITR-U for filing of updated return:**

The Finance Act, 2022 has introduced a new concept of updated return, wherein it allows up to 24 months to file the return of income.

The Central Board of Direct Taxes (CBDT) has notified a new Rule 12AC and a new Form ITR-U, which shall be required to be filed along with the respective ITR, to furnish an updated return.

The following are the key excerpts from the newly notified Rule and Form:



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## 1. Manner of furnishing an updated return

An updated return of income is to be furnished electronically under a digital signature or through an electronic verification code for a certain class of person. Further, no separate ITR forms have been notified for filing of an updated return.

A taxpayer is required to furnish an updated return in those ITR forms which were notified for the respective Assessment Year for which an updated return is to be furnished. Such an ITR form is to be filed along with the newly notified ITR-U

## 2. Part A General Information (ITR-U)

This part of ITR-U seeks general information from taxpayers related to the filing of an updated return. It includes the following:

- a) Are you eligible to file an updated return? i.e., a person is not falling in such circumstances wherein an updated return can't be filed.
- b) Selecting the ITR form for filing an updated return
- c) Reasons for updating income. This includes reasons such as returns previously not filed, income not reported correctly, wrong heads of income chosen, etc.
- d) Are you filing an updated return within 12 months from the end of relevant AY or between 12 to 24 months from the end of relevant AY?
- e) Are you filing an updated return to reduce carried forward loss or unabsorbed dep. or tax credit?

## 3. Part B – Computation of updated income and tax payable (ITR-U)

This part of ITR-U includes heads of income under which additional income is reported. The taxpayer is required to mention only additional income. Total income as reported in Part B TI of the ITR form shall also be reported here to compute the additional tax payable by the assessee on the updated return (section 140B).

Adjustments such as previously paid tax, refund issued to the taxpayer, and fee for default in the furnishing of return of income under section 234F shall be considered while calculating such additional tax.

## 4. Tax Payments (ITR-U)

This part of ITR-U includes details of tax payment by the assessee on the updated return under section 140B and details of payments of advance tax, self-assessment tax, regular assessment tax, and credit for which has not been claimed in the earlier return.

# Goods & Services Tax

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## Arranging transport facility for employees by Software Development company is not a supply of service: AAR

### Facts of the case:

Applicant is engaged in providing software development and support services. As a measure of welfare, security and safety, applicant is providing transport facility to its employees for which it is availing renting of motor vehicles service, Cab services from their vendors.

Applicant initially pays entire amount to vendors and subsequently recovers partial amount from respective employees who avail of said facility and bears balance of cost itself

### Held:

In terms of section 7 of CGST Act 2017, for a transaction to qualify as supply, it should essentially be made in course or furtherance of business - Provision of transport facility to employees is not at all connected to functioning of applicant's business - Arranging transport facility by applicant for its employees is definitely not an activity which is incidental or ancillary to activity of software development, nor can it be called an activity done in course or furtherance of development of software as it is not integrally connected to business in such a way that without this business will not function.

Arranging transport facility for employees is not a supply of service.

GST would not be applicable on partial recovery amount

## High Court held that initiation of adjudication proceeding without issuance of Show cause notice is unenforceable.

Following is summary of case

### HIGH COURT OF JHARKHAND Godavari Commodities Ltd. v. State of Jharkhand

### Facts of the case:

Godavari Commodities Ltd. (the Petitioner) is aggrieved by letter of intimation for payment of interest on delayed payment of GST issued by superintendent of CGST (the Respondent). The Petitioner was asked to make payment in Government account and submit payment details within 3 days of receipt of letter .

Admittedly, pursuant to issuance of this demand the bank account of Petitioner was frozen and upon payment of tax, the account was defrozeed

### Held:

Issue has already been settled in a precedent decision of the same Court. Summary of SCN was issued without specifying date of hearing and thereafter, an adjudication order was passed fastening liability of tax, interest and penalty.



No opportunity of personal hearing was granted - No explanation could be furnished by department as to why different dates are mentioned in summary of order and adjudication order entire adjudication proceedings have been carried out in stark disregard to the mandatory provisions and in violation of the principles of natural justice.

Adjudication order is non est in eye of law, as the same has been passed without issuance of proper SCN - Commissioner of State Tax Department is directed to issue appropriate guidelines/circular/notification elaborating procedure to be adopted by State Tax authorities regarding manner of issuance of SCN, adjudication and recovery proceedings - Summary of SCN, adjudication order and summary of orders issued quashed and set aside - Writ applications allowed.

## **Intimation of tax recovery cannot be given in Form DRC-01 it should be in DRC-01A; HC quashed intimation**

Following is summary of case -

**HIGH COURT OF GUJARAT**  
**Agrometal Vendibles (P.) Ltd.**

**v.**

**State of Gujarat**

### **Facts of the case:**

Department issued intimation of tax liability in Form GST DRC-01 alleging that inadmissible input tax credit has been availed and that the same may be paid along with interest and penalty, otherwise recovery action shall be initiated.

Intimation of tax liability is to be issued under Form GST DRC-01A and not Form GST DRC-01 pertaining to show cause notice.

### **Held:**

Notice is termed as intimation but the same is issued in Form GST DRC-01 which is in the form of a show cause notice - Proper Officer could not have said that failure on part of notice may entail consequences of recovery of amount with interest and penalty - Intimation of tax has to be strictly in Form GST DRC-01A and not Form GST DRC-01 - Dealer not to be threatened with recovery action in the notice of intimation - In intimation, dealers are to be informed that if they fail to make payment, show cause notice will be issued as a next step but in the present case, Proper Officer informed that in case of failure to pay, recovery action shall be initiated - Impugned intimation is quashed and set aside.

# Companies Act, 2013

## **MCA notifies rules to further amend the Companies (Incorporation) Rules, 2014:**

- These rules may be called as the Companies (Incorporation) Rules, 2022.
- They shall come into force from the date of their publication in the Official Gazette.
- MCA vide its notification dated 08/04/2022 made following amendments:
  - ◇ Company incorporated as Nidhi, the declaration from the Central Government under Section 406 of the Act shall be obtained by the Nidhi Company before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation of the company.
  - ◇ Further E-form INC-20A is also substituted accordingly.
  - ◇ Also, E-form INC-32 (Spice+) Part B has been substituted. In declaration portion of Part B, following has been added:

“I further declare that the company shall not commence the business as Nidhi, unless all the required approvals including the declaration to be issued under Section 406 of the Act have been obtained from the Central Government.”

## **Provisions of IBC are intended to bring the corporate debtor to its feet and are not of money recovery proceedings: Supreme Court**

Invent Asset Securitisation and Reconstruction (P.) Ltd. v. Girnar Fibres Ltd. - [2022] 137 taxmann.com 462 (SC)

In the instant case, an application was moved before the Hon'ble Supreme Court against the order of the Hon'ble National Company Law Appellate Tribunal, Delhi Bench. An application was filed by the appellant under section 7 of the Insolvency and Bankruptcy Code, 2016 against the corporate debtor.

The corporate debtor defaulted on 28-02-2002. The applicant filed an application before the Hon'ble National Company Law Tribunal (NCLT). The NCLT held that right to sue accrued when the default occurred way back on 28-2-2002, and that the material on record does not evidence any acknowledgment of liability in terms of Section 18 of the Limitation Act, 1963. Therefore, the debt has become time-barred now. No insolvency proceedings can be initiated against the corporate debtor.

The applicant filed an appeal before the Hon'ble National Company Law Appellate Tribunal against the order of the NCLT. NCLAT took the same view as that of the NCLT.



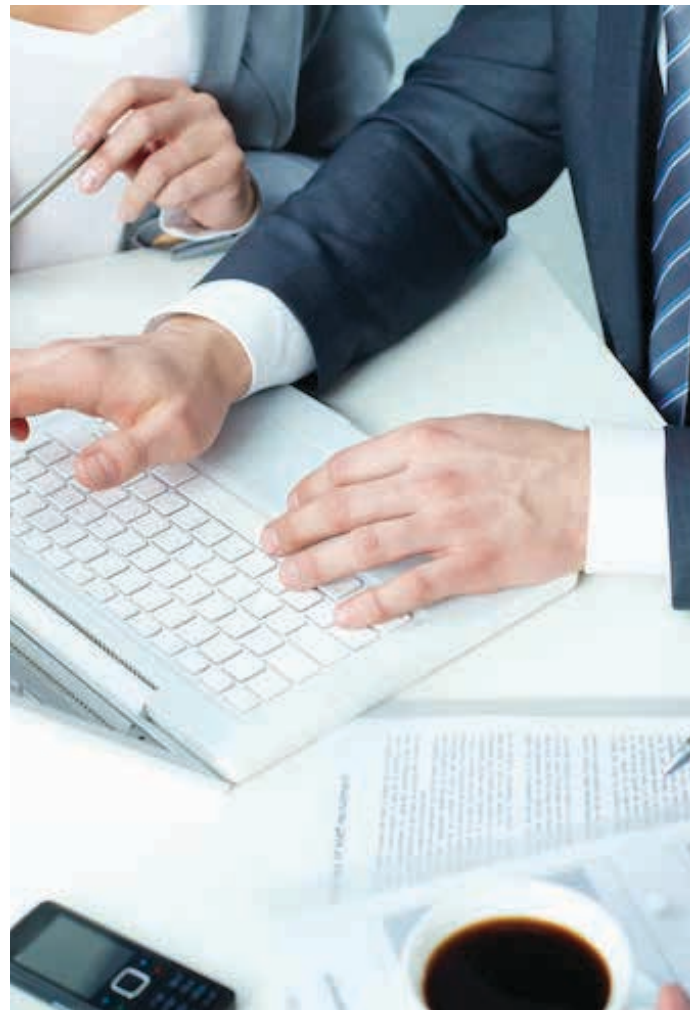


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On further appeal, the Supreme Court dismissed the plea and held that both NCLT & NCLAT have rightly taken the view that the application as moved by the present appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') was barred by limitation.

Although the counsel for the appellant has attempted to refer to the documents towards restructuring of the loan and the alleged revival letter etc. Court is satisfied that the said documents cannot ensure to the benefit of the appellant so far as the application under Section 7 of the Code is concerned.

The provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor.



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# Government Scheme Updates

Industry News:

## **Subsidy for Mega Projects / Ultra Mega Projects:**

The Subsidy available for manufacturing units & food processing units for Mega Projects / Ultra Mega Projects under package scheme of incentive – 2019 are as follows:

### **Coverage under the PSI -2019**

- Manufacturing Enterprises
- IT Manufacturing Units registered with DIC/MIDC/STPI
- Bio-Technology Manufacturing Units
- Mechanized Food / Agro Processing Industries

### **Quantum of Incentives for Mega Projects / Ultra Mega Projects**

- The template for quantum of incentives for Mega Projects and Ultra Mega Projects shall be decided by the High Power Committee under the chairmanship of the Chief Secretary, Government of Maharashtra.
- Ultra-Mega/ Mega projects based on employment criteria shall be required to maintain the qualifying direct employment on rolls of the company throughout the year. If the employment criteria is not maintained for any period of the year, then Industrial Promotion Subsidy shall not be admissible for such year(s).

- Mega and Ultra-mega Projects will have to provide employment to local persons as stipulated by the State Government. Failing to do so may result into reduction of offered incentives.
- Minimum Direct Employment should be created within a period of two years from the date of commercial production.



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