

# NewsBites

Sixty Fourth Edition

Greetings!

We are delighted to present our news bite for the month of July 2023. 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,  
S A N & CO.  
Chartered Accountants

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# Income Tax

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## CBDT notifies Form 3AF to be furnished by assessee claiming deduction u/s 35D:

Through Notification No. 54/2023-Income Tax Dt.1st August 2023, CBDT inserted New Rule 6ABBB which come into force with effect from the 1st day of April 2024. As per the new rule-Form of statement to be furnished regarding preliminary expenses incurred under section 35D:

1. The statement containing particulars of expenditure required to be furnished under proviso to clause (a) of sub-section (2) of section 35D by the assessee shall be in Form No. 3AF for each previous year.
2. This form must be submitted one month prior to the due date for filing the income tax return.
3. It should be furnished electronically either under digital signature or through an electronic verification code.

The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the procedures for furnishing Form No. 3AF and shall also be responsible for formulating and evolving appropriate security, archival and retrieval policies in relation to the form so furnished & also shall forward Form No. 3AF to the Assessing Officer.

The amendment also replaces Form No. 3AE in the Income-tax Rules, 1962, with new forms to be used for audit reports under section 35D(4)/35E (6) of the Income-tax Act, 1961. These changes are aimed at ensuring proper record-keeping and transparency in the deduction of preliminary expenses.

## Implementation of new rate of TCS for remittance under LRS:

During meetings with the RBI, Banks and Card networks, some financial institutions have desired more time to modify their current IT systems to address issues arising from the removal of the threshold for LRS payments other than for education and medical.

To address these issues, Ministry of Finance issued a press release which states:

1. Threshold of Rs. 7 lakh per financial year per individual shall be restored for TCS on all categories of LRS payments, through all modes of payment, regardless of the purpose. Thus, for first Rs 7 lakh remittance under LRS there shall be no TCS.
2. Beyond this Rs 7 lakh threshold, TCS shall be at the rate of –
  - a) 0.5% (if remittance for education is financed by loan taken from a financial institution)
  - b) 5% (in case of remittance for education/medical treatment)
  - c) 20% for others.

But for purchase of overseas tour program package, the TCS shall continue to apply at the rate of 5% for the first Rs 7 lakh per individual per annum; the 20% rate will only apply for expenditure above this limit.

The increase in TCS rates, which were to come into effect from 1st July 2023 shall now come into effect from 1st October 2023 with the above modification. Till 30th September 2023, earlier rates (prior to amendment by the Finance Act, 2023) shall continue to apply.



# Goods & Services Tax

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## Advisory: e-Invoice Exemption Declaration Functionality Now Available:

The e-Invoice Exemption Declaration functionality is now live on the e-Invoice portal. This functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the CGST (Central Goods and Services Tax) Rules.

### Salient features of this functionality are:

- The e-Invoice Exemption Declaration functionality is voluntary and can be accessed at the e-Invoice portal.
- This functionality is applicable to taxpayers who are exempted from e-Invoicing as per the provisions of the CGST Rules.
- It is important to note that any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer. The facility to report exemption declaration is purely for business facilitation purposes.

## Circular No. 201/13/2023-GST Dt 01-08-2023: Clarification regarding applicability of GST on services supplied by director of a company & supply of food or beverages in a cinema hall.

Government of India addresses important clarifications on the applicability of GST for certain services:

- Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6), dated 28.06.2017.
- Supply of food or beverages in a cinema hall is taxable as 'restaurant service' if the food or beverages are supplied by way of or as part of a service and supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

## Bombay High court Judgement: appeal can't be rejected without giving an opportunity to appellant to rectify procedural defects:

JEM Exporter  
Vs

Union of India,  
G.S. KULKARNI AND JITENDRA JAIN, JJ.  
WRIT PETITION (L) NO.25142 OF 2022  
AUGUST 2, 2023





# Goods & Services Tax

Image by Freepik

## FACTS:

The Petitioner is engaged in the business of exporting mobile handset & registered under the CGST Act, 2017 as a sole proprietor. On 10th April 2020 and 24th February 2020, the Petitioner made an application for refund of Input Tax Credit on export of goods and services for the period February 2020 and January 2020 claiming refund of Rs.1,01,72,874/- and Rs.16,51,370/- respectively.

Show cause notice was issued to the Petitioner and the IJM Exporters as it is alleged that IJM Exporters has availed ITC on goods purchased from non-existing entities and passed on said ITC to the Petitioner since IJM Exporters have sold the goods to the Petitioner, who has made a claim for refund of ITC on export of the goods purchased from the IJM Exporter. In the said show cause notice, the Petitioner was required to show cause why the GST registration should not be cancelled under section 29(2) of the CGST Act, 2017 and ITC amounting to Rs.1,01,72,874/- should not be demanded along with interest and penalty.

The Respondents supported the orders passed by the lower authority. The Respondents contended that the Petitioner has failed to comply with mandatory pre-deposit of 10% for entertaining the appeal under section 107(6) of the CGST Act, 2017. The Respondents further contended that the appeal memo was not signed by the proprietor of the Petitioner. and, therefore, the Appellate Authority was justified in rejecting the appeal on merits so,

On appeal, the Commissioner (Appeals) and the Tribunal, upheld the order of the Assessing Officer.

## Held:

The court analysed the procedural aspects of the case, highlighting the importance of adhering to the prescribed rules for filing an appeal. It emphasized that justice should not be denied solely based on procedural errors and suggested that rectification should be allowed, following the principle of natural justice. In the JEM Exporter vs. Union of India case, the Bombay High Court's ruling emphasized the need for proper adherence to GST procedural requirements before filing an appeal. The court set aside the previous Order in Appeal, directing the Commissioner (Appeal) to issue a defect memo and provide the petitioner an opportunity to rectify the procedural errors.



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# Companies Act, 2013

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## **Stringent additional twin-conditions for bail u/s 212(6) of CA 2013 would not apply where the accused has never been arrested even till the stage of cognisance, and appears against summons issued by the court:**

**HIGH COURT OF DELHI**  
**Suman Chadha**

**v.**

**Serious Fraud Investigation Office**

ANUP JAIRAM BHAMBHANI, J.

BAIL APPL NO. 1741 OF 2022

CRL.M.A. NO. 14727 OF 2022

JULY 19, 2023

- A reasonable interpretation of the twin-conditions leads to the conclusion that since the petitioner had not been arrested throughout the course of investigation; he had appeared before the learned Special Judge against summons - not arrest warrants - issued to him; and most importantly, when the investigating officer had not even sought police custody or judicial custody of the petitioner, the twin conditions would not apply. At that point in time, the twin-conditions stipulated in section 212(6) of the Companies Act did not automatically get actuated.
- What really transpired was that merely upon appearing before the learned Special Judge, as if by reflex action, the court remanded the petitioner to judicial custody; whereupon the petitioner filed a bail application; which also came to be dismissed there-and-then invoking section 212(6).
- When the petitioner appeared before the learned Special Judge in compliance of the summons issued to him, he was not under arrest. It must also be re-emphasised that on taking cognizance of the offence,

the learned Special Judge issued only summons for the petitioner to appear and did not deem it necessary to issue warrants for his arrest.

- Clearly therefore, learned Special Judge misdirected himself in applying section 212(6) of the Companies Act, on the flawed premise that that was the stage for grant of bail, whereas, it was the stage of considering whether there was any need to remand the petitioner to judicial custody at all.
- It was for the Investigating Officer to seek that the petitioner be remanded to judicial custody, for justifiable reasons based on material gathered during investigation, which he did not do.
- In the result, petitioner granted regular bail subject to conditions

## **Where NFRA imposes only monetary penalty, he can continue as auditor of cos. after filing appeal with deposit of 10% of the penalty:**

**NATIONAL FINANCIAL REPORTING AUTHORITY**  
**M H Dalal & Associates, Chartered Accountants,**  
**In re**

DR. AJAY BHUSHAN PRASAD PANDEY, CHAIRMAN  
DR. PRAVEEN KUMAR TIWARI AND SMITA JHINGRAN,  
MEMBER

ORDER NO. 021/2023

JUNE 28, 2023

In case where only monetary penalty is imposed on auditor by NFRA and penalty of debarment is not imposed the Auditor, after having deposited the monetary penalty or has filed an Appeal with 10% deposit, the auditor can continue discharging his functions as auditor subject to any decision taken by the company or body corporate.

# Companies Act, 2013

image: Freepik.com

In such a case, on receiving communication of NFRA's order, it is left to the discretion of body corporate whether to continue the auditor or to appoint a new auditor.

- When order passed under Section 132(4)(c) is challenged by filing an Appeal, it is for the Appellate Court to consider as to whether the implementation of the order impugned is to be stayed or not. It is, thus, clear that unless any interim order is obtained in an Appeal, filed challenging the order passed under Section 132(4)(c), the Auditor against whom order of debarment has been passed, ceases to function after expiry of thirty days from the order, unless order indicate otherwise.
- This consequence will not ensue where there is only order of monetary penalty and either monetary penalty has been deposited by the Auditor or Appeal has been filed with 10% deposit.
- In a case where punishment is only of monetary penalty, the information of said order has also to be sent to the company or body corporate where the Auditor is functioning as required by Rule 12, sub-rule (3) and it is for company or body corporate to chose its further action. The provisions of the statute read with Rule 12, do not indicate that in case of monetary penalty only, it is obligatory for the company or body corporate to appoint a new Auditor.

Meaning thereby that in case of monetary penalty the Auditor, after having deposited the monetary penalty or has filed an Appeal with 10% deposit can continue discharging its functions, subject to any decision taken by the company or body corporate.

## **NFRA fines & debars Audit firm for not reporting that auditee was a shell company used by promoters for diversion of funds:**

Expressing a Disclaimer of opinion on a particular aspect does not relieve the auditor of his responsibility to report other material misstatements that would have required a modification of audit opinion including the fact that the auditee was a shell company used by promoters for diversion of funds. The Standards on Auditing do not free an auditor from reporting all other misstatements once a disclaimer of opinion on a particular aspect is given:

### **HELD**

- Considering the proved professional misconduct and keeping in mind the nature of violations, principles of proportionality and deterrence against future professional misconduct, we, in exercise of powers under Section 132(4)(c) of the Companies Act, 2013, hereby order:

Imposition of a monetary penalty of Rs. One Crore upon M/s. Sundaresha & Associates. In addition, M/s. Sundaresha & Associates is debarred for a period of Two years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate. This debarment period will start after completion of two years debarment period imposed in case of Tanglin Development Limited for FY. 2018-19 vide NFRA order dated 26-4-2023.

Imposition of a monetary penalty of Rs. Five Lakhs upon CA C. Ramesh, in additions, CA C. Ramesh is debarred for a period of Five years from being appointed as an auditor or internal auditor or form undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

Imposition of monetary penalty of Rs. Five Lakhs upon CA Chaitanya G. Deshpande. In addition, CA Chaitanya G. Deshpande is debarred for a period of Five years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.



# Government Scheme Updates

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## Industry News:

### **Maharashtra Government announce the new IT and ITES Policy 2023 that aimed to attract an investment of ₹95,000 crore, 3.5 million jobs and export of ₹1 lakh crore.**

The policy also offers 50 to 100% subsidy in the stamp duty, waiving off electricity charges from 10 to 15 years, power supply on industrial rates among other benefits to the IT industry.

The state government declared its new policy for information technology (IT) and IT-enabled services offering several relaxations to the sector. As part of it, IT industries will be able to set up tech parks anywhere across the state. The policy also offers 50 to 100% subsidy in the stamp duty, waiving off electricity charges from 10 to 15 years, power supply on industrial rates among other sops and benefits to the new IT industry. The state cabinet cleared the new IT and ITES Policy that aimed to attract an investment of ₹95,000 crore, 3.5 million jobs and export of ₹1 lakh crore.

“In order to promote the development of special fields such as AVGC (Animation, Visual effects, Gaming and Comics) in which Maharashtra has strengths, The state govt would be giving a single window clearance for all IT projects and IT-enabled services.

Under the Ease of doing business, the state will launch Maharashtra Information Technology Interface that would give time-bound clearances for projects, registration of units and incentives.

Government decided to set aside ₹500 crore for setting up Maharashtra hub (M- Hub) to promote innovation by Micro, Small and Medium Enterprises (MSME), start-ups, and incubations centres, in emerging technologies.

To promote the growth of IT parks and IT-enabled services, the government has decided to allow the setting up of integrated IT townships, private IT parks and IT and ITES units across all zones, including residential zones, no development zones and green zones declared by the state.

Government has decided to grant the IT industry a ‘continuous industry status’ which means they will be allowed to work for 24 hours and 365 days a year, without any shutdown unless under some exigent circumstances, IT services will be granted essential services status and Data centres would come under the Essential Services Maintenance Act.

The state has also decided to provide more Floor Space Index (FSI) to IT companies than what was permitted in the previous policy in order to help them to set up more units in the state. Private IT parks would be allowed to set up ‘critical infrastructure’ on their own like setting up of power infrastructure and sewage lines.



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