

NewsBites

Fifty-Sixth Edition

Greetings!

We are delighted to present our news bite for the month of November 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.

Best Regards,
S A N & CO.
Chartered Accountants

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Income Tax

Third instalment of advance tax due on 15 December 2022:

The third instalment of advance tax for the financial year is due on 15 December; 75% of advance tax liability has to be paid by this date. Evaluate your advance tax liability and make sure you pay the advance tax instalment before the due date to avoid interest.

Interest under section 234B of the Act shall have to be paid if total advance tax paid is less than 90% of the assessed tax or if the entire advance tax has not been paid. Interest at the rate of 1% per month from the beginning of the assessment year till the payment.

Last date to file your ITR for FY 2021-22 is 31 December 2022:

It's important to note that the last date of filing belated ITR is 31 December 2022. The due date to file ITR for AY 2022-23 was 31st July 2022. But some people have missed it. Now they can file belated ITRs till 31 December 2022, by paying the penalty.

Income Tax department reduces time for taxmen to decide on refund adjustment:

To help avoid litigation, the income tax department has reduced the time needed for tax officers to decide on adjustments of refunds against outstanding tax dues to 21 days.

According to the Directorate of Income Tax (Systems) notice, the time limit of 30 days made available to the assessing officers has been reduced to 21 days.

If the assessee either does not agree or partially agrees for adjustment, the matter shall be referred by CPC immediately to the assessing officer, who shall, within 21 days from the date of such reference, shall provide feedback to CPC as to whether the adjustment should be made or not.

Time-barred appeal should be allowed if it involves a substantial question of law:

High Court of Calcutta
Principal Commissioner of Income-tax
v.
Soorajmul Nagarmull

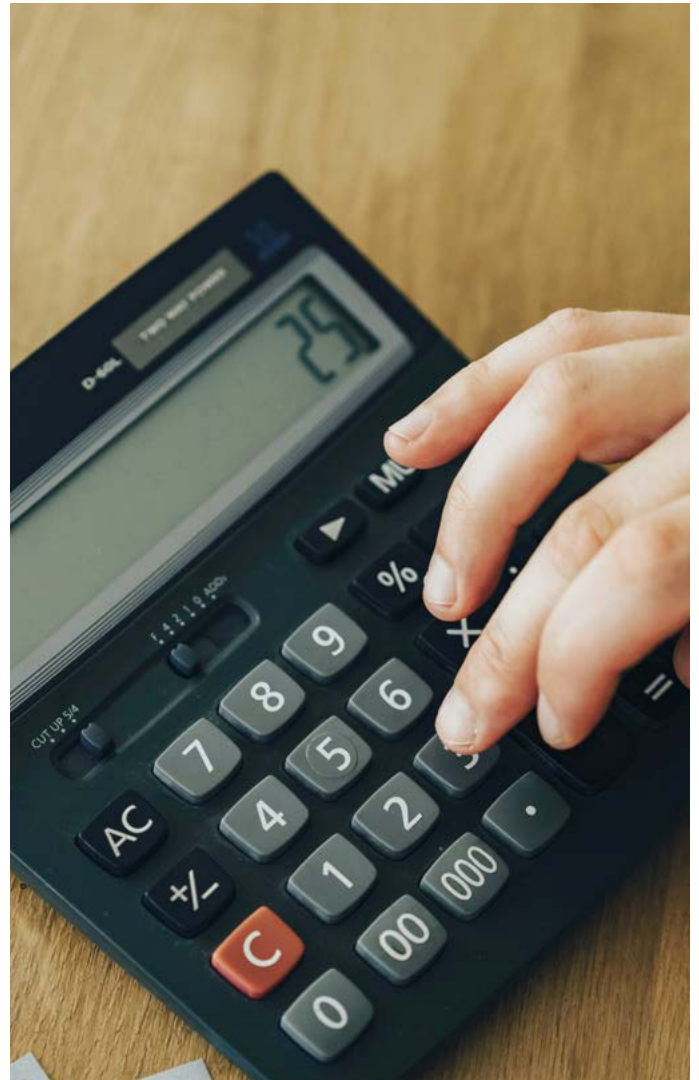
Facts of the case

There is a delay of 627 days in filing this appeal and the revenue has filed to condone the delay. The respondent assessee have filed their affidavit-in-opposition objecting to the prayer for condonation.



Held

Revenue's appeal should not be dismissed on the technical ground of time-bar even if 627 days delay in filing the appeal has not been satisfactorily explained by the Revenue as section 260A requires the High Court to consider whether any Substantial Question of Law (SQL) arises for consideration in appeal filed against ITAT's order. It may not be fair to reject the appeal on a technical ground especially when the statute stipulates that the requirement is to consider whether any substantial question of law arises for consideration in this appeal. Hence for such reasons, discretion is exercised and accordingly delay in filing the instant appeal by Revenue is condoned and GA No. 01 of 2020 is allowed.





Goods & Services Tax

GSTN as Financial Information Provider:

Reserve Bank of India has included Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework, i.e., Master Direction – Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016 dated September 02, 2016. With a view to facilitate cash flow-based lending to MSMEs, RBI has decided to include Goods and Services Tax Network (GSTN) as a Financial Information Provider (FIP) under the Account Aggregator (AA) framework. Department of Revenue shall be the regulator of GSTN for this specific purpose and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, shall be the Financial Information.

CBIC has issued instructions in relation to manner of processing and sanction of IGST refunds which have been withheld in terms of Rule 96 (4 and 5A) of CGST Rules, 2017:

Rule 96 of the CGST Rules, 2017 has been amended retrospectively w.e.f. 01.07.2017 to provide for withholding of IGST refund in cases where the verification of credentials of the exporter, identified based on data analytic including the availment of ITC by the exporter is considered essential before grant of refund.

Rule 96 (5A) has been inserted in rule 96 to provide for transmission of IGST refunds, withheld in terms of provisions of clause (c) of sub-rule (4) of rule 96 of the CGST Rules, as system generated refund in Form GST RFD-01 and to provide that the said system generated form shall be deemed to be the application for refund in such cases and such application for refund shall be deemed to have been filed on the date of such transmission on the portal.

Rule 96(5C) has also been inserted in rule 96 to provide that such system generated refund in FORM GST RFD-01 have to be dealt with in accordance with rule 89 i.e., in a manner similar to other GST RFD-01 refund claims. The officer will also follow the timelines for processing of the refund claim in terms of provisions of section 54(7) of the CGST Act. The procedure of review and post-audit will also be applicable to such refund claims. The SOPs dated 23.01.2020 and 20.05.2020 prescribing the procedure to be followed for verification of the risky exporters and their suppliers, are hereby superseded.

Filing of GST Audit for FY 2021-22 before 31st December 2022:

GST Audit for the FY 2021-22 is to be filled on or before 31st December 2022.

Taxpayers having annual turnover above 2 crores are required to file GSTR 9 annual return up to 31st December 2022.

Taxpayers having annual turnover above 5 crores are required to file GSTR 9C annual Audit form up to 31st December 2022.

Order passed without granting personal hearing to be set aside, matter remanded for re-adjudication:

**High Court of Calcutta
Raj Kumar Singh**

v.

**Assistant Commissioner of Goods and Services
Tax**



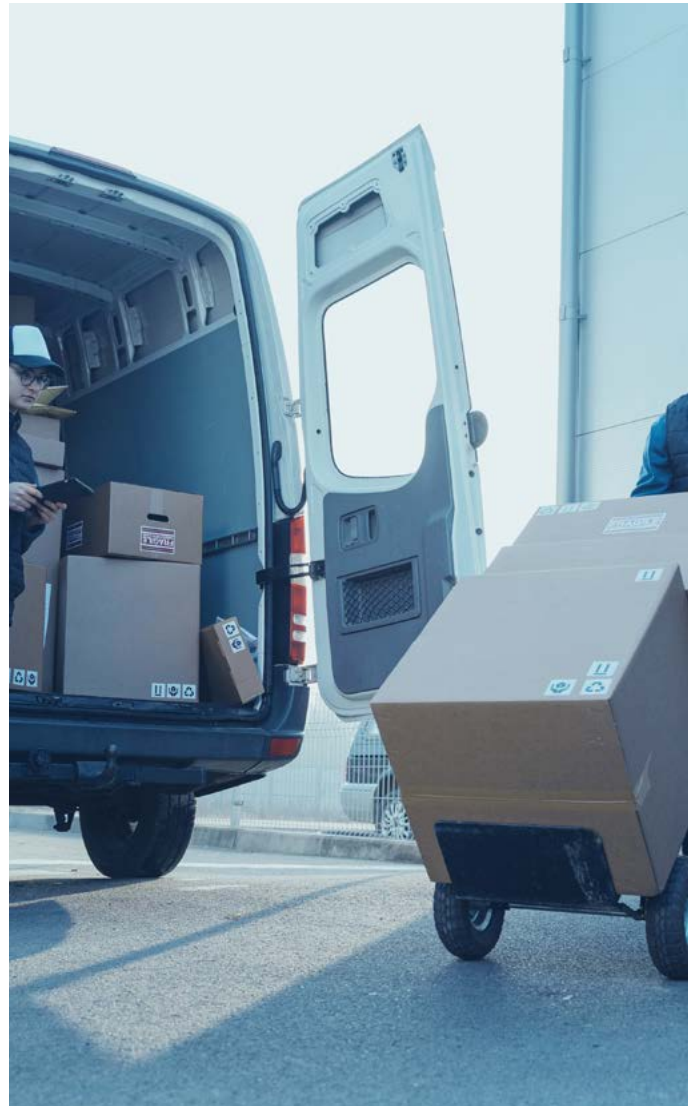
Facts of the case

In the aforesaid case, petitioners have challenged adjudication order passed by the Adjudicating Authority concerned, on the ground that the same has been passed in violation of principle of natural justice by not affording opportunity of personal hearing to the petitioners in spite of specific request from the petitioners in their reply to the show-cause-notice.

Adjudicating Authority concerned has recorded that the impugned order has been passed after considering the reply filed by the petitioners but nowhere it appears that the petitioners' request for personal hearing was either considered or rejected.

Held

Considering the facts and circumstances of the case the aforesaid impugned order is set aside and the matter is remanded back to the Adjudicating Officer concerned to pass a fresh order after giving an opportunity of hearing to the petitioners or their authorised representative.



Companies Act, 2013

CASE STUDY: Consequences of exercising borrowing power before filing the declaration of commencement of business

**M/s. Haridra Laxmi Property Managements
Private Limited
v/s
Registrar of Companies, Mumbai**

Facts of the Case

- The company Haridra Laxmi Property Managements Private Limited was incorporated on 13th January 2022.
- As per the provisions of the Companies Act 2013, any company, after incorporation shall not commence any business or exercise the borrowing powers unless the mandatory declaration pursuant to sub-section 2 of section 12 of the Companies Act 2013, is filed by the director within a period of 180 days from the date of incorporation to the Registrar of Companies.
- The company filed the required declaration to the Registrar of Companies on 14th February 2022.
- However, the company, much before filing the above declaration, has taken a loan from Godavari Urban Multistate Credit Co-operative Society Limited amounting to Rs 10 Crores as on 17th January 2022 by exercising the borrowing power.
- From the above facts, it is clear that the borrowing power was exercised by the company without filing the required declaration as per section 12(2) of the

Companies Act 2013 and the company filed the required declaration on 14th February 2022 – after a delay of 27 days which is a violation of section 10A of the Companies Act 2013. The same attracts the penal provisions under section 10A (2) of the Companies Act 2013.

Action taken by the company

Upon realizing that the company has committed the violation of section 10A of the Companies Act 2013, the company has filed an application for adjudication for penalty on this matter under section 454 of the Companies Act 2013, for the violation.

The company and its directors, in the application filed, have admitted the default committed by them and they have stated the default was caused inadvertently and unintentionally due to lack of knowledge and requested that the penalty may be imposed upon the Company and its directors as per the provisions of the Companies Act, 2013.

Order passed the Registrar of Companies

The following order was passed by the Registrar of Companies of Maharashtra, who was the Adjudicating officer in this case vide order no. ROC-(M) (RS) /ADJ-Order/374854/1455 to 1457/RD95 dated 13th August 2022 in the matter of Haridra Laxmi Property Managements Private Limited, for penalty under section 454 for violation of section 10A of the Companies Act 2013.

The Registrar of Companies after having considered the facts and circumstances of the case and after taking into



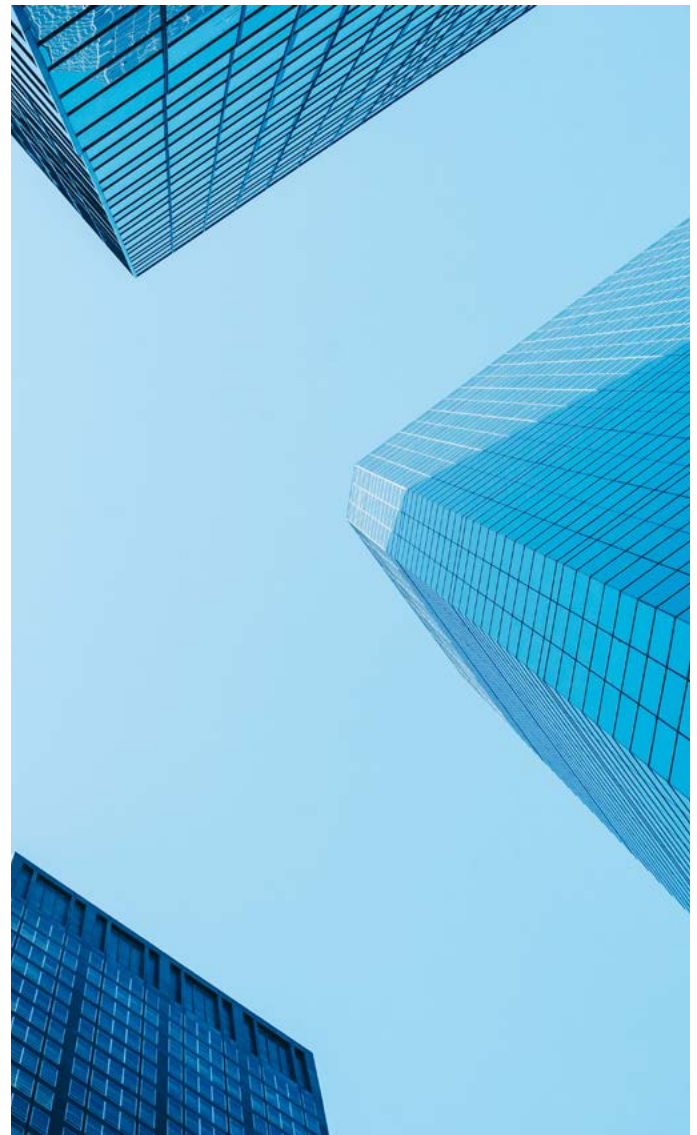
account the factors above, and also submissions made by the company and its directors imposed a penalty of Rs. 50,000/- (Rupees fifty thousand only) on the company and Rs. 27,000 each on two of the directors in default, for violation of provisions of section 10 (A) of the Companies Act, 2013 as per table given below.

No. of days default	Penalty imposed on company / Director(s)	First default Penalty in (Rs.)	Default continues penalty in (Rs.)	Total Penalty in (Rs)	Maximum Penalty in (Rs.)
27	Company	50,000	-	50,000	50,000
27	Director I	-	27*1000	27,000	27,000
27	Director II	-	27*1000	27,000	27,000
Total				1,04,000	

Conclusion

The Companies (Amendment) Act 2019 was passed with the aim to ensure more accountability and better enforcement in order to strengthen the norms of corporate governance and management of compliance in the corporate sector. By virtue of this section every company listed or unlisted, public or private having a share capital and incorporated post the commencement of the amended Act, not to commence its businesses or exercise its borrowing powers unless the directors of the company file a declaration within 180 days from the date of incorporation. It has to be filed in a prescribed form and requires every subscriber of the memorandum to pay the value of the shares as agreed for. Additionally, the registered office of the entity should be verified by filing all the necessary returns with the Registrar.

Failure to comply with section 10A not only attracts penalties upon the company and its directors and it may be an additional ground for the Registrar of Companies to strike off of the company's name.





Government Scheme

Industry News:

Investment of ₹20,000 crore in Raigad District.

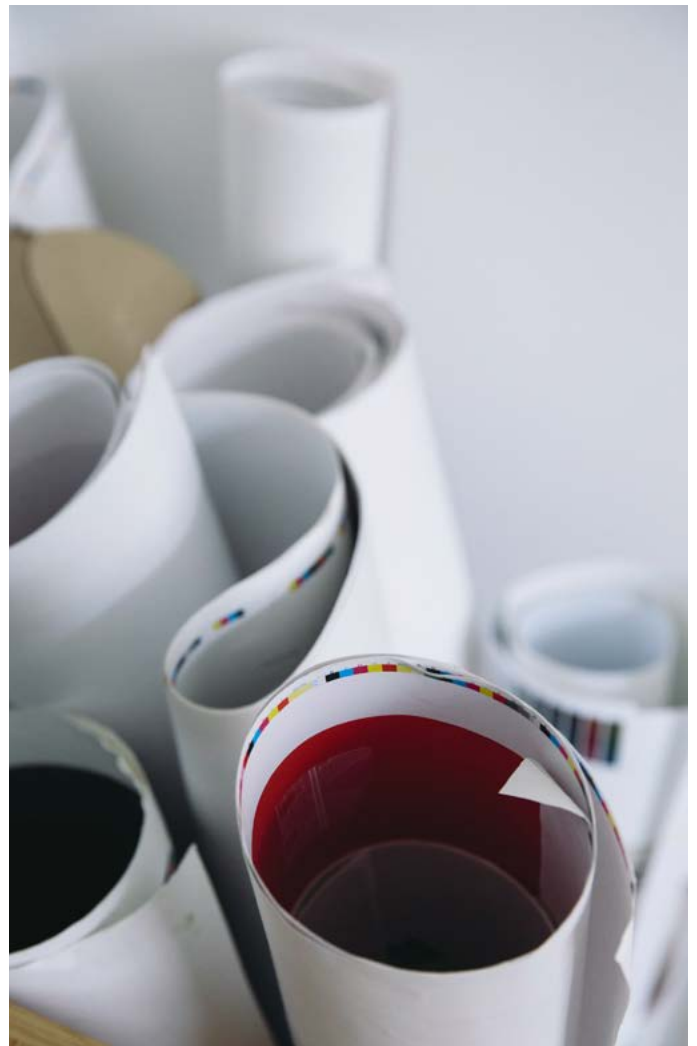
The Maharashtra government handed over 287-hectare land to the Indonesian firm Sinar Mas Pulp & Paper, to set up a ₹10,500 crore paper unit in the State. The company will invest a total of ₹20,000 crore in two phases in Raigad district's Dherand village.

Government of Maharashtra handed over the land allocation papers to Sinar Mas company on 29th November 2022 in Mumbai.

“After the first phase investment of ₹10,000 crore, the Indonesian company will invest another ₹10,000 crore in the second phase. The company will generate 7000 employment opportunities,” a press statement issued by the state government.

About 287 hectare land for phase one and 600 hectare land for phase two in Raigad district has been earmarked for the company's paper manufacturing plant.

The State government has given special status to the Sinar Mas project. “The flow of investment is rising in the State and in the next few days, we will be signing investment MoUs of about ₹40,000 crore” said state industry minister.



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