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[Daily Newsletter related to Profession]
No 520 | Tuesday 14 September 2021

Most Authentic Newsletter of India

Direct & Indirect Taxes | ICAI & ICSI Updates | Corporate laws |
Insolvency | SEBI | RBI | Economy & Finance

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Indirect Taxes

Legal Updates- Advance Ruling Authorities / Tribunals / High Courts / Supreme Court

Sr.No.	Key to find the document	Authority who passed the order	Details of decision
1	UOI v. VKC Footsteps CA NOS.4802, 4804 TO 4811 OF 2021 & Others dated 13.09.2021. Download order here.	Supreme Court	Rule 89(5) which denies refund of unutilised ITC of input services is not ultra vires; SC set aside decision of Gujarat HC Explanation (a) to substituted rule 89(5) which denies refund of 'unutilised input tax' paid on 'input services' as part of 'input tax credit' accumulated on account of inverted duty structure is in conformity with section 54(3) Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is therefore no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. Explanation (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3) [VKC Footsteps India (P.) Ltd. v. Union of India [2020] 118 taxmann.com 81 (Gujarat) disapprove. • Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [2020] 119 taxmann.com 324 / 43 GSTL 433 (Madras) affirmed.]

Sr.No.	Key to find the document	Authority who passed the order	Details of decision
2	BMG Informatics Pvt Ltd. v. Union of India WP(C)/3878 OF 2021 SEPTEMBER 2, 2021	Guwahati HC	Refund under inverted duty structure allowed even if input & output supplies are same. Refund claim of assessee was rejected on ground that, as input and output supplies made by assessee were of same material and goods, therefore, although rate of tax on input supply may be higher than rate of tax in output supply, but by referring to provisions of paragraph 3.2 of Clarificatory Circular No.135/05/2020-GST it was held assessee was not entitled to refund, however, it was found that there was a conflict between provisions of paragraph 3.2 of Circular No.135/05/2020-GST with provisions of section 54(3)(ii) and whenever there is a conflict between provisions of a statutory Act and that of a notification or circular issued by an administrative authority, provisions of statutory Act would prevail over such conflicting provisions of a notification or a circular of an administrative authority. Thus, in view of clear unambiguous provisions of section 54(3)(ii) providing that a refund of unutilized ITC would be available in event, rate of tax on input supplies is higher than rate of tax on output supplies, it is viewed that provisions of paragraph 3.2 of Circular No.135/05/2020-GST dated 31-3-2020 providing that even though different tax rate may be attracted at different point of time, but refund of accumulated unutilized tax credit will not be available under section 54(3)(ii) in cases where input and output supplies are same, would have to be ignored. • Consequently, rejection of claim for refund by assessee in order dated 22-5-2020 of Assistant Commissioner by referring to provisions of paragraph 3.2 of Circular No.135/05/2020-GST dated 31-3-2020 would not be sustainable in law.



Direct Taxes

- **Notifications / Circulars / Press releases / FAQs / Portal Updates / Write-ups by Board “CBDT” and Government.**

❖ **Income Tax Department release an update related to income tax refunds.**

CBDT issues refunds of over Rs. 70,120 crores to more than 26.09 lakh taxpayers between 1st April 2021 to 6th September 2021. Income tax refunds of Rs. 16,753 crores have been issued in 24,70,612 cases & corporate tax refunds of Rs. 53,367 crores have been issued in 1,38,801 cases.

- **Legal Updates- Advance Ruling Authorities / Tribunals / High Courts / Supreme Court**

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1	Thirveni Earthmovers Pvt. Ltd. v. Assistant Commissioner of Income-tax W.A.NOS.1911, 1922 AND 1987 OF 2021 AND OTHS SEPTEMBER 1, 2021	Madras HC	Reassessment valid if TDS appearing in Form 26AS was deliberately not claimed to concealed facts during assessment. Where there was a huge mismatch in receipts appearing in Form 26AS vis-a-vis receipts credited in P&L account as assessee never disclosed and claimed TDS from certain parties during assessment proceedings, though he had opportunity to do so and therefore, deliberately concealed particulars during assessment proceedings, reopening of assessment was justified. It could not be said that reopening was based on change of opinion but facts which emanated after rectification application had been filed by assessee. Thus, it was incorrect on part of assessee to state that reopening of original assessment was on assumptions and presumption.



Corporate Laws

❖ **Madras High Court sets aside disqualification of director for lack of notice to director before disqualification.**

Where no notice was given to petitioner before disqualifying him as Director of company, impugned order passed by MCA disqualifying petitioner as Director of company under section 164(2)(a) was to be set aside.

[2021] 130 taxmann.com 27 (Madras)

Subramaniam Krishnaraj v. Registrar of Companies

W.P.NO. 7046 OF 2021, W.M.P.NOS.7568 & 7569 OF 2021, MARCH 18, 2021

❖ **NFRA draws conclusion on comments received on consultation paper on enhanced engagement with stakeholders.**

NFRA has identified engagement with various categories of stakeholders as central in its strategy to deliver on its public interest mandate. Accordingly, NFRA had asked its Technical Advisory Committee (TAC) to examine the issues involved and recommend steps to be taken. The TAC submitted its report at the end of March 2021. NFRA examined the TAC's Report and its recommendations and put out a Consultation Paper in June 2021 seeking public views/suggestions on the proposed steps NFRA was planned to take in this regard. The last date for submission of comments was 30 July 2021. NFRA has received 17 comment letters from Stakeholders, which includes important Industry Bodies, Large Accounting Firms and Research/Academia among others. Overall, stakeholders have expressed support for NFRA's proposals to proactively promote stakeholder engagement. NFRA has analysed all the public comments and has arrived at its conclusions on the way forward in respect of the issues posed in the Consultation Paper.

NFRA's conclusions along with the comments received are posted on its website at [this link](#).

[Read this MCA Release also.](#)



Insolvency & Bankruptcy

- **Notifications / Circulars / Press releases/ Write-ups by IBBI and Government.**
- ❖ **Appointment committee of cabinet approved appointment of certain juridical and technical members of NLCT.**
[Here is MOPP release.](#)

- **Legal Updates- NCLTs / NCL-ATs / Supreme Court**

Sr.No.	Key to find the document	Authority who passed the order	Details of decision
1	Tudor India (P.) Ltd. v. Servotech Power Systems Ltd. (IB)-219/ND/2021 JULY 2, 2021	NCL-AT	No illegality in choosing Form 3 for sending demand notice if unpaid invoices w.r.t. transaction annexed therewith.
2	Anil Agarwal v. PNB I.A NO. 09 OF 2021 C.P. (IB) NO. 23/GB/2019 MAY 5, 2021	NCLT Guwahati	Where NCLAT discharged corporate debtor from ongoing CIRP, IRP of corporate debtor was to be relieved from his duties.



Reserve Bank of India

- ❖ **Reserve Bank of India released the data on Overseas Direct Investment, both under Automatic Route and the Approval Route, for the month of August 2021.**
[Read here for more.](#)