



Brahmayya Bulletin

August 2017

Editorial

“The achievement we celebrate today is but a step, an opening of opportunity to the greater triumphs and achievements that await us” - These words of Jawaharlal Nehru still hold good. Our Honorable Prime Minister is on the same path, trying to make an impact on world forum with introduction of various reforms such as “Make in India”, a realistic move towards ease of doing business.

One more month has lapsed after the roll out of Goods and Services Tax Act, and August has proved to be very crucial and an important month for every tax payer as well as professionals. Practically, this month was the first month for everyone to file GST Returns for supplies as well as purchases after the roll out of GST. Though, teething difficulties are being faced, Government has looked into the matter and has extended the due dates for compliances of Goods and Services Tax.

Securities and Exchange Board of India has also started initiatives against certain Shell Companies and Dormant Companies. Securities and Exchange Board of India has already given the list of 331 suspected companies to NSE and BSE to act upon and these companies may face compulsory delisting.

Many regulatory changes have been implemented and September is also going to be a busy month for all the professionals with tax audits, half yearly limited reviews and GST compliances.

This calls for professionals to gear up with the technology advancements and regulatory updates.

Readers are requested to check the “Our News” Section of our Website for more detailed updates on several rules and regulations.

Happy reading!

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Ministry of Corporate Affairs (MCA)

Notification No. GSR .1061(E) - Dated 23rd August 2017

Central Government has issued National Company Law Appellate Tribunal Amendment Rules, 2017, amending the National Company Law Appellate Tribunal Rules, 2016. Rule 63 has been substituted by following:

- Any party to the proceeding or appeal can either appear in person before the Appellate Tribunal or authorise one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioners or any other person.
- Central Government, Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an advocate to represent in the proceedings before the Appellate Tribunal.
- Officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the official Liquidator shall not be the officer below the rank of Junior Time Scale or Company Prosecutor.

Notification No. S.O. 2751(E) - Dated 24th August 2017

MCA, vide this notification appoints 24th August 2017 as the date on which the provisions of sub section (8), (9) and (10) of section 212 of Companies Act, 2013 shall come into force. These sections of Companies Act, 2013 primarily pertain to arrest powers endowed upon the Director, Additional Director or Assistant Director of SFIO and procedures related thereto.

Notification No. GSR 1061(E) - Dated 24th August 2017

Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 has been notified, which state that:

- In Case of Companies other than a Government Company or foreign Company, where Director, Additional Director or Assistant Director of SFIO has reason to believe on the basis of material in his possession, that any person has been guilty of offence punishable under Section 212 of Companies Act, then he may arrest such person. However, written approval of SFIO Director is required where the arrest is being made by Additional or Assistant Director.
- In Case of Government Company or Foreign Company, such arrest shall be made with prior written approval of Central Government along with intimation to the Managing Director or Person-In-Charge of the affairs of the Government Company.
- Where the Managing Director or Person-in-Charge of Government Company is to be arrested then prior intimation to the Secretary of the Administrative Ministry concerned to be given.
- The Director, Additional Director or Assistant Director shall sign the arrest order together with personal search memo and serve and obtain acknowledgment.
- The Director, Additional Director or Assistant Director shall forward copy of order to the office of Director, SFIO.
- An arrest register shall be maintained at the office of Director, SFIO or any other nominated Director.
- Upon receipt of documents, entry shall be made immediately in the arrest register.
- The office of Director shall preserve the arrest order and other materials for a period of 5 years

The Provisions of Code of Criminal Procedure, 1973 relating to arrest shall also apply mutatis mutandis to every arrest made under the Act.

Competition Act, 2002

Notification No. SO 2828(E) - Dated 30th August 2017

This notification exempts the applicability of Section 5 "Combination" and Section 6 "Regulation of Combination of Competition Act 2002" on reconstitution, transfer of the whole or any part and amalgamation of nationalised bank under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 for a period of ten years from the date of publication of this notification.

Insolvency & Bankruptcy Code, 2016

Notification No IBBI/2017-18/GN/REG013 – Dated 16th August 2017

IBBI has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017, consequent to which, Regulation 9A has been inserted and Form F has been specified for submission of claims by creditors other than Financial Creditors and Operational Creditors of the Corporate Debtor under Corporate Insolvency Resolution Process.

Paragraph in Form A has also been substituted whereby Financial Creditor shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.

Central Board of Direct Taxes (CBDT)

Notification No.79/2017 - Dated 8th Aug 2017

Central Government has notified the bonds issued by Indian Railway Finance Corporation Limited having redemption period after 3 years, as "Long Term Specified Assets" under Section 54EC. The said notification is effective from 8th Aug 2017 and in respect of bonds issued after effective date of notification.

Notification No. 80/2017 - Dated 18th Aug 2017

Central Government has issued Income Tax (22nd Amendment), Rules 2017, wherein Form 29B "Report Under section 115JB (Minimum Alternate Tax)" has been substituted with revised Form 29B and report under Section 115JC for (Alternate Minimum Tax) also to be furnished in the same form.

Central Board of Excise and Customs (CBEC) – Customs

Circular No. 33.2017 - Dated 1st August 2017

This Circular pertains to levy of IGST on High Sea Sales of imported goods. An issue was presented to Board whether high sea sales which are similar to inter-state sales will be subjected to IGST twice, firstly u/s 3(7) of Customs Tariff Act, 1975 at time of clearance and secondly u/s 5 of IGST Act, 2017.

GST council has deliberated on this aspect and decided that IGST on high sea sale shall only be levied and collected at time of importation, i.e. when import declarations are filed before custom authorities for clearance for first time. This is in line with Section 3(12) of Customs Tariff Act, 1975. The importer (last buyer in the chain) would be required to furnish the entire chain of documents.

Circular No. 35.2017 - Dated 16th August 2017

CBEC vide this Circular issues Guidelines for adjudicating authorities in order to ensure uniformity and to streamline the divergent procedures being followed for grant of provisional release of imported goods which are seized u/s 110 of the Customs Act, 1962.

According to Section 110A, any goods, documents or things seized u/s 110, pending order of adjudicating authority, be released to the owner of seized goods on taking a bond from him in proper format with such security and conditions as the authority may require.

In this, reference has been given to Hon'ble Delhi High Court order in "Mala Petrochemical & Polymers v/s The Commissioner of Customs (Import) ICD, Tughlakabad, New Delhi" and Hon'ble Madras High Court order in "Malabar Diamond Gallery v/s ADG, DRI, Chennai" wherein Courts have laid down that power u/s 110A of Customs Act involves exercise of discretion by adjudicating authority and there cannot be a blanket rule for same.

Further, the Guidelines require furnishing of Undertaking that the importer shall pay the duty/fine/penalty as adjudged by the authority subject to appellate provisions of the Act and where security is furnished by way of Bank Guarantee, the same should contain a clause binding the issuing bank to keep it live till final adjudication of the case and in case of non renewal, the guaranteed amount be credited to the Government account by bank.

Instruction No. 12/2017 - Dated 31st August 2017

Board has issued clarification on difficulties related to recent amendments in Customs Act, 1962.

With effect from 1st April 2017, as a result of changes brought in by Finance Act 2017, Government mandated charges for late filing of bill of entry. After the amendment, importers were required to present bill of entry before end of next day after the aircraft or vessel or vehicle carrying the goods has arrived at the customs station at which they are to be cleared for home consumption or warehousing.

Charges for next 3 days was fixed at INR 5000 per day and charges beyond 3 days was fixed at INR 10,000 per day. However, the Additional or Joint Commissioner can waive the charges if there are valid grounds for delay.

Board received representation that the above provisions are facing implementation issues due to instability of ICEGATE.

Board has requested Jurisdictional Chief Commissioners to identify cases where reasons for late filing of Bill of Entry are not attributable to the importers and issue standing orders so that proper officers can exercise powers in interest of ease of doing business.

Notification No. 72/2017 - Dated 16th August, 2017

Central Government vide this notification exempts goods of the description specified in point A,

- from the payment of so much of the customs duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in Point C &
- from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the limitations and conditions specified in point B given below.

A. Description of goods

Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975.

B. Limitations and conditions

- the goods taken on lease by the importer for use after import;
- the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;
- the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of clause 5 of Schedule II of the Central Goods and Services Act, 2017;
- the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;
- where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;
- the importer executes a bond, with a bank guarantee, undertaking
 - a. to pay integrated tax leviable under sub-section (1) of section 5 of the Integrated Goods and Services Act, 2017 on supply of service covered by items 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017;
 - b. to re-export the said goods within three months of the date of import or within the aforesaid extended period;

- c. to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;
- d. to pay the balance of customs duty, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period; and
- e. to pay on demand an amount equal to the integrated tax along with applicable interest payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.

C. Extent of exemption

The extension has been provided in the case of:

- a. goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of 5%
- b. goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of 15%
- c. goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of 25%
- d. goods which are re-exported after nine months, but within twelve months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of 30%
- e. goods which are re-exported after twelve months, but within fifteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of 35%

- f. goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent., of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable.

It is to be noted that the goods imported under this concession shall not be eligible for drawback under subsection (2) of section 74 of the Customs Act, 1962.

Securities and Exchange Board of India (SEBI)

Press Release PR No. 51/2017 - Dated 3rd August 2017

With technology driven revolution in the financial markets, regulators are faced with the challenges as well as opportunities to evolve their functioning more effectively through adoption of new technology solutions. A committee under the Chairmanship of Shri T.V. Mohandas Pai, Chairman, Manipal Global Education has been constituted by SEBI. The Committee would examine, deliberate and advise SEBI on an ongoing basis on the following:

- a. Recent and medium-term trends (within next 5 years) in FinTech developments in securities market worldwide
- b. Opportunities and challenges from new FinTech solutions and its impact on Indian Securities Market.
- c. FinTech solutions for further widening and deepening of Indian securities market.
- d. Approach and framework for regulatory sandbox in Indian market conditions to facilitate adoption of FinTech and promote financial innovations

- e. Preparing Indian securities market and regulatory framework to adopt to new FinTech solutions while promoting market integrity, market development, consumer protection and managing change, business models and market disruptions
- f. Assessing technological solutions for regulatory functions of SEBI viz. information management and data mining, risk management including cyber security, intermediary supervision, consumer protection, etc. through application of new technological solutions like application of distributed ledger technology, big data, data analytics, artificial intelligence, machine Learning etc.
- g. Technology capacity building by Indian securities market in general and SEBI in particular.

Circular No. CIR/CFD/CMD/93/2017 - Dated 4th August 2017

This Circular is issued under Regulation 101 of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015, mandating disclosure by listed entities w.r.t. defaults of payments of interest or repayment of principal amount of loans taken from banks/financial institutions/debt securities etc. This circular will come into force with effect from 1st October 2017.

For further clarity, kindly refer "Our News" section of website.

SEBI/LAD-NRO/GN/ 2017-18/016 & SEBI/LAD-NRO/GN/ 2017-18/015 - Dated 14th August 2017

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017 and SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017. Thereby, SEBI exempts "Open offer" obligations for acquisitions pursuant to resolution plans approved under Bankruptcy Code. In a major relief to banks and other lenders holding stressed assets, market regulator SEBI

relaxed norms for a stake purchased in distressed listed companies by lenders, exempting them from making open offers for shareholders. The relaxation will be subject to certain conditions, including shareholders' approval of the stake acquisition by way of special resolution. SEBI eased the norms for restructuring in stressed companies that are listed on exchanges as well as resolution plans approved under the Insolvency and Bankruptcy Code. The move could lead to a turnaround of listed companies in distress which will benefit their shareholders and lenders. Currently, relaxations from preferential issue requirements and open offer obligations are available for lenders undertaking restructuring of distressed listed companies under the Strategic Debt Restructuring (SDR) scheme. Relaxations will be subject to a lock-in of their shareholding for a minimum period of 3 years.

Department of Industrial Policy & Promotion (DIPP)

DIPP has issued Consolidated FDI Policy Circular of 2017 which is effective from 28th August 2017. For more details, kindly refer to "Our News" section of website.

The Institute of Company Secretaries of India (ICSI)

F. No ICSI/6/2017

The Secretarial Standards have been revised by the ICSI and approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has been obtained for the revised SS-I and SS-2.

The revised version of SS-I and SS-2 as approved by the MCA, shall be applicable to all the companies (except the exempted class of companies like IFSC) w.e.f. 1st October, 2017 and will supersede the text of earlier SS-I and SS-2.

ICSI has also come out with FAQs on Revised Secretarial Standards which clarifies that it is applicable in respect of Meetings of Board & its Committees and General Meetings for which Notices are issued on or after 1st October 2017.

The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017

Kindly refer to "Our News" section for more details.

Ministry of Law and Justice – 25th August 2017

The Government has notified the Banking Regulation (Amendment) Act, 2017 which shall be deemed to come into force from 4th day of May, 2017 and the Banking Regulation (Amendment) Ordinance, 2017 is hereby repealed. According to the Amendments, the Government now can authorise the RBI to issue directions to banks to initiate insolvency resolution process to recover bad loans. Earlier this month, Parliament had approved the Act, which replaced an ordinance in this regard. The government in May had promulgated an ordinance authorising the Reserve Bank of India (RBI) to issue directions to banks to initiate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. Under the Banking Regulation (Amendment) Act, 2017, the RBI can issue directions to banks for resolution of stressed assets. The RBI can specify authorities or committees to advise banks on resolution of stressed assets. The members on the committees will be appointed or approved by the RBI. Further, "default" has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

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