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The Chamber of Tax Consultants

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THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XII | No. 7 | April 2024



Student Committee

1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2024 held on 16th and 30th March 2024 in association with ILS Law College, Pune (Valedictory function)



Dignitaries on the dias — (L-R) Dr. Deepa Paturkar (Principal In-charge, ILS Law College), Adv. Niyati Mankad (Chairperson, Student Committee CTC), Hon'ble Dr. Justice Neela Kedar Gokhale, Bombay High Court, Hon'ble Shri. Justice Prithviraj Chavan, Bombay High Court, Shri. Devendra Nagvenkar, Additional Director General, DGGI Pune & CA Haresh Kenia (President, CTC)



CA Haresh Kenia, President gave the opening remarks



Dr. Deepa Paturkar, Principal In-charge, welcomed everyone



Adv Niyati Mankad, as the Chairperson, elucidated the objectives and significance of the event.



Ms. Smita Sabne, Governing Council Member- ILS Law College presenting memento to Shri. Devendra Nagvenkar, ADG, DGGI, Pune



Shri. Devendra Nagvenkar, Chief Guest sharing his views



Dr. Deepa Paturkar presenting memento to Hon'ble Dr. Justice Neela Kedar Gokhale



Hon'ble Dr. Justice Neela Kedar Gokhale shares valuable insights with the audience and students

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THE CHAMBER OF TAX CONSULTANTS
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787/2209 0423/2200 2455
E-Mail: office@ctconline.org • Website : http://www.ctconline.org.

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Editorial

Dear Readers,

Reserve Bank of India (RBI) celebrated its 90th foundation day on 1st April 2024, indeed a momentous occasion for the Indian banking system ! While central banks in developed countries can be traced as far back as the 17th century, among developing countries, the Reserve Bank of India, established on April 1, 1935,under the Reserve Bank of India Act,1934 is one of the oldest such institutions.

Since its inception in 1935, the RBI has been at the forefront of India's financial landscape. As an institution entrusted with monetary stability, financial regulation, and economic development, the RBI has played a pivotal role in shaping the country's economic path. Over the years, the RBI has been a cornerstone of India's economic growth, shaping monetary policy, regulating the financial system, and fostering economic stability.

The central bank has facilitated numerous significant moments in India's economic history. From nationalisation to economic liberalisation and from agricultural transformation to inflation targeting, the RBI has played a pivotal role in shaping India's economic path.

As RBI marches towards its centenary, let me narrate the significant milestones in its journey of 90 years:

— RBI was nationalised in 1949 which strengthened its autonomy and allowed it to act independently in formulating monetary policy and regulating the banking sector.

— The Mahalanobis Plan, formulated by renowned economist Prasanta Chandra Mahalanobis, highlighted rapid industrialisation as a means to achieve economic growth. The RBI played a crucial role in implementing this plan in 1955 by providing monetary support and regulatory framework conducive to industrial development. This period laid the foundation for India's industrialisation drive and set the stage for the country's economic transformation.

— In the 1960s and 1970s, India witnessed the Green Revolution, a significant agricultural transformation aimed at increasing food production. The RBI played a pivotal role in supporting this initiative by providing credit facilities to farmers, promoting agricultural mechanisation, and implementing policies to enhance rural credit accessibility. The Green Revolution not only boosted agricultural productivity but also contributed to rural development and poverty alleviation.

— In 1991 historic economic liberalisation measures were introduced which opened up Indian economy for the Indian entrepreneurs as well as for the global players. The RBI played a crucial role in implementing these reforms These reforms transformed India's economic landscape, paving the way for higher economic growth, increased foreign investment, and integration into the global economy.

— In 2016, the RBI formally adopted an inflation targeting framework, aiming to maintain price stability while supporting economic growth. Under this framework, the RBI set a target for inflation and adjusted monetary policy instruments to achieve it. The banking regulator has set an inflation target of 4 per cent, with a tolerance band of +/- 2 per cent. The adoption of inflation targeting enhanced the credibility of RBI's monetary policy, anchored inflation expectations, and contributed to macroeconomic stability.

— Demonetisation, announced in November 2016, aimed to curb black money, counterfeit currency, and corruption. The RBI played a central role in implementing this move by withdrawing high-denomination currency notes from circulation and introducing new currency notes. While the move faced criticism and challenges, it underscored the RBI's role in implementing bold policy measures to address economic issues.

— The outbreak of the Covid-19 pandemic posed unprecedented challenges to the Indian economy. The RBI responded swiftly by implementing various monetary and regulatory measures to support liquidity, ease financial stress, and mitigate the impact of the pandemic on businesses and households. These measures included interest rate cuts, liquidity infusion, loan moratoriums, and regulatory relaxations.

— In recent years, the RBI has embraced technological advancements, modernizing payment and settlement systems, promoting digital transactions, and fostering innovation in financial technology.

RBI with its prudent policies (including monitory policies), measures to control inflation and strong monitoring of banks and financial sector, has reached a point where the Indian banking system is being seen as a strong and sustainable banking system of the world.

6th April marks the completion of 94 years of the historic Dandi March or salt satyagraha by the Father of the Nation, Mahatma Gandhi. On 6th April 1930, Gandhiji picked up a fistful of salt, symbolically defying the draconian Salt Law of 1882 which prohibited Indians from making salt from sea water and imposed heavy taxes on salt. Dandi March is significant because it was the first time when Gandhiji openly challenged the British empire. The movement drew global attention to our freedom movement though the act of defiantly picking up a pinch of salt looked simple.

The current issue of the Journal is on “Overview Of State Fiscal Incentives’, a very important subject for professionals as well as stakeholders. Compliments to the Journal Committee for designing this issue on which not much material is available. Special mention must be made of Mr. Arpit Jain, member of the Journal Committee, for designing the sub topics of the issue Sincere gratitude to all the authors for sparing their valuable time and sharing their knowledge.

Wishing you and your family a Happy Gudi Padwa and Eid Mubarak !

VIPUL K. CHOKSI
Editor



From the President

Dear Members

The Chamber of Tax Consultants and ILS Law College, Pune, proudly hosted the first-ever National Chamber of Tax Consultants Indirect Tax Moot Court Competition in 2024, marking a pioneering achievement in legal education focused on GST. This groundbreaking event, culminating in success on March 30, 2024, at the ILS Law College Auditorium, was distinguished by the participation of Hon'ble Justices Prithviraj Chavan and Neela Kedar Gokhale from the Bombay High Court, whose insights profoundly enriched the experience for all attendees. The presence of Chief Guest, the Additional Director General - DGGI Pune Shri Devendra Nagvenkar added depth to the discourse, highlighting the real-world enforcement of GST laws. The event not only set a benchmark for legal moot competitions but also emphasized the collaborative strength of The Chamber of Tax Consultants and ILS Law College in fostering a practical legal education environment. Special appreciation goes to the student chairperson and the dedicated teams from both the Chamber and ILS Law College, whose collective vision and hard work brought this unprecedented event to life. This successful initiation sets a new precedent for legal competitions, highlighting our commitment to excellence and innovation in legal education. We look forward to continuing this legacy, inspired by the brilliance and dedication demonstrated at the 1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2024.

The Central Board of Direct Taxes (CBDT) recently issued a circular that maintains the monetary thresholds for the Income-tax Department's appeal filings with the ITAT, High Courts, and Supreme Court, while significantly expanding the list of exceptions. This expansion covers a broad spectrum of scenarios, including penny stocks, TDS/TCS disputes, and the interpretation of tax treaties, aiming to protect revenue and ensure compliance. However, this broadening raises concerns about potential complexities and the risk of ensnaring genuine taxpayers in litigation over 'insignificant' amounts. The concern is not just the financial burden on taxpayers but also the broader impact on investor sentiment and international business relations, particularly in light of disputes that may arise from interpretations of international tax treaties. The approach, while intended to curb tax evasion, may inadvertently signal a shift towards a more litigious tax environment. This

could have implications for cross-border trade and investment, underscoring the need for a careful evaluation of these changes by professionals and stakeholders within our community.

Sustainability becomes a key part of business, our job as tax professionals is changing. We're now at the forefront of helping businesses combine their financial goals with environmental, social, and governance (ESG) standards. This includes making sure companies meet ESG requirements, use tax benefits for eco-friendly investments, and understand the tax side of sustainable business moves. Our work goes beyond usual auditing to include ESG risk checks and making sure ESG efforts show correctly in financial reports. With new government tax incentives for green projects, there's a big chance for us to guide our clients and support the environment at the same time. I understand that, there are hurdles like varying ESG standards and complex data needs, but these are also chances for us to lead and innovate. Staying updated on ESG knowledge and working with ESG experts will keep us ahead in this important area.

Women now make up 48% of new Chartered Accountants, a huge leap from just 8% in 2000. This incredible progress shows India's commitment to gender equality, especially in finance and accountancy. Women aren't just joining in larger numbers; they're excelling, often topping the CA exams result exhibit in 2020 and 2021. The Institute of Chartered Accountants of India (ICAI) supports this growth by updating its courses to be more inclusive, aligning with the National Education Policy 2020. ICAI President Ranjeet Kumar Agarwal sees this as a big win for diversity in finance, matching the Modi government's push for gender parity and inclusive growth. As this trend continues, it's clear that embracing diversity not only enriches our professional community but also strengthens our financial sector. Let's keep supporting everyone who wants to pursue this career, making our financial world diverse and dynamic.

The low number of young people, especially 18 and 19-year-olds, signing up to vote is worrying. It shows they feel disconnected from politics, which is bad for democracy. Democracy works best when everyone takes part, and missing young voices means we're missing out on representing everyone's views. To fix this, we need to make voting easier for young people who move around a lot and teach them about politics in a way that connects with their lives. Political groups should also make a real effort to listen to what young people want and include their views in discussions. Getting young people interested and involved in voting is key to keeping our democracy strong and inclusive.

The Pension Fund Regulatory and Development Authority (PFRDA)'s recent data reveals a slowdown in the growth of its subscriber base to 16.3% last financial year, with a total exceeding 7.3 crore across government, private sector, and Atal Pension Yojana. The introduction of a new tax regime, offering lower rates without investment exemptions, is seen as a key factor impacting the National Pension System (NPS), especially within the private sector which now represents a 7.5% share. The corporate scheme growth

moderated to 16.1%, marking the slowest pace since the economic impact of Covid-19 in 2020-21, while the all-citizens model experienced a deceleration to 20.3% growth in FY24. This moderation is attributed to the new tax regime's lack of exemption for employee contributions, contrasting with preserved benefits for employer contributions to NPS, and the prevailing default choice of PF and Employees' Pension Scheme. The situation is compounded by a lack of awareness among new employees about their pension options. Despite these challenges, NPS assets under management witnessed over 30% growth, reaching 11.7 lakh crore by March-end 2024, with government employees comprising the majority share. This scenario underscores the need for enhanced awareness and potential policy adjustments to foster a more robust pension system landscape.

The Central Board of Direct Taxes (CBDT) has reported a notable increase in net direct tax collections by 19.88%, reaching over ₹ 18.90 lakh crore as of March 17, 2024. This includes Corporation Tax and Personal Income Tax along with Securities Transaction Tax, indicating a strong economic performance and tax administration efficiency. With refunds totalling ₹ 3.37 lakh crore, the commitment to prompt and fair tax processing is evident. The gross collections before refunds stood at ₹ 22.27 lakh crore, marking an 18.74% growth year-on-year. Finance Minister Nirmala Sitharaman's upward revision of the projection to ₹ 19.45 lakh crore for FY24 reflects a positive outlook on fiscal health, emphasizing the critical role of tax compliance and advisory services.

In the last month, The Chamber of Tax Consultants has spearheaded a series of enriching programs across diverse domains of professional interest. Notably, CA Naysar Parekh's webinar on NFRA orders/QRB reports unveiled intricate details of regulatory frameworks and best audit practices. The realm of Direct Taxes saw Mr. Chirag Wadhwa enlightening us on key decisions, while a seminar on 15th March, co-hosted with IMC & BCAS, delved into the restructuring of family-owned businesses with luminaries like CA Amrish Shah, CA Anup Shah, and others offering their profound insights. In International Taxation, CA Maneet Singh Sabharwal and CA Pankaj Bhuta alongside CA Naisar Shah provided deep dives into US Taxation and FEMA compounding, respectively, equipping members with essential knowledge for navigating global compliance challenges. Furthermore, our collaboration with the Tax Bar Association, Amravati, and Vidarbha Tax Practitioners' Association for a Direct Taxes seminar reinforced our commitment to enhancing professional acumen across the community. Student engagement was particularly vibrant, with the "Webinar Series on CA Student Orientation Course" covering a wide spectrum of topics from tax filings to GST compliance, illustrating our commitment to the professional growth of our future members. Lastly, the Study Circle & Study Group's sessions, including "Recent Judgements under Income Tax Act" and "New Reassessment Regime & Latest Updates," ensured our members stayed abreast of critical legal advancements, highlighting our unwavering dedication to fostering a knowledgeable and informed professional community.

Join us for an insightful panel discussion, "Navigating FEMA's Practical Challenges," organized by the International Taxation Committee of The Chamber of Tax Consultants (CTC). This event is set for April month, focusing on the real-world challenges professionals encounter under FEMA. Our respected panellists, CA Paresh P. Shah, CA Naresh Ajwani, and Mr. Suhas Bendre from HSBC, will share their expertise, moderated by CA Vijay Gupta. Don't miss this opportunity to deepen your understanding of FEMA's impact on professional practice. Mark your calendars for a Virtual Half-Day Seminar on "Stay & Recovery Proceedings Representation before First Appellate Authorities," scheduled in April. This seminar will delve into critical aspects of legal representation on "Representation before First Appellate Authorities" by CA Ketan Vajani, followed by a discussion on "Stay & Recovery Proceedings" by Adv. Rahul Hakani. Take this opportunity to enhance your understanding and skills in these vital areas of practice. For more details, refer to our latest newsletter.

Get ready for an immersive experience at our 17th Residential Conference on International Taxation from June 20-23 at The Leela, Gandhinagar. This gathering is not just a conference; it's an opportunity to forge networks, brotherhood, and friendships over four days, live in the world of international taxation. We're bringing together top experts like Mr. P. V. Srinivasan and CA H. Padamchand Khincha to dissect emerging trends and technologies impacting global tax practices. Set against the backdrop of Gandhinagar's luxurious Leela Hotel, our venue combines the best of Indian hospitality with the chance to participate in a meeting of minds. This event is your portal to professional growth, offering unparalleled access to knowledge and networking in a setting of leisure and luxury. So, circle the dates and prepare to join your peers in shaping the future of our profession.

In our current edition, we take a panoramic view of state incentives “OVERVIEW OF STATE FISCAL INCENTIVES“, a subject that holds vast potential for our professional practice and academic understanding. The Chamber's Journal serves as a beacon, guiding us through the intricate landscape of state-level policies and incentives that are pivotal in sculpting the business terrain of our diverse country. We present an overarching view that captures the essence of diverse state policies shaping business dynamics. Our heartfelt thanks go to the Journal Committee and our contributors for their insights, providing us with a nuanced understanding of these incentives. As you peruse the articles, consider their relevance in guiding strategic decisions and advising clients adeptly.

With best wishes,

HARESH KENIA
President

Gujarat Government — State-level Incentives




CA Dhaval Trivedi CA Shradha Khemka

Overview

Gujarat is emerging as one of India's most industrially advanced states, boasting a diverse array of industries including automobiles, textiles, chemicals, semi-conductors, electronics, agro-processing, and more. The state has implemented a comprehensive range of sector-specific policies, each tailored for a predefined operational period. These policies offer incentives, both fiscal as well as non-fiscal support, that may vary based on factors such as size of the enterprise and the geographical locations in which business operations have been set up to promote the backward districts in Gujarat. The incentives may be in the form of capital investment reimbursements, subsidized interest rates on term loans, SGST cost reimbursements, stamp duty exemptions on land purchases, R&D-related incentives, and more. Moreover, the Gujarat government allows the investors to benefit from incentives provided by both the central and state governments simultaneously. While the government has rolled out incentive policies for nearly all the major industries in the State, we have highlighted some of the most common industrial policies in the state.

Gujarat is the fourth largest economy in the nation with a strategic location on the western border of the country and showcasing an extensive coastline of 1600 kms. Gujarat is the industrial powerhouse of the nation, playing an important role and an excellent example of entrepreneurship. It has a strong business ecosystem and supportive government policies that attract significant investments across sectors. In FY 22-23, the Gross Domestic Product estimated at Rs. 22.61 lakh crores exhibited a 15.5% YoY growth while contributing 8.6% of the nation's GDP. The state attracted significant foreign direct investment, ranking fourth among states, with an 83% increase in FY 22-23.

The government is continuously working to stimulate industrial growth, manufacturing, exports, job creation and ease of doing business in Gujarat. The policies are regularly updated to offer incentives based on the size of the enterprise and contributions to sectoral infrastructure development, promoting investment and business development. Considering multiple incentive policies implemented by the Gujarat Government, enterprises are allowed to claim incentives only under one State Government scheme at any given point in time. However, enterprises can continue to claim additional benefits under Central Government Schemes, if any.

SS-VII-1

Some of the key policies impacting a majority of the industries in the State are discussed in the below paragraphs.

Overview of Major Incentive Policies

1. Aatmanirbhar Gujarat Schemes 2022

Aligned with the Aatmanirbhar Bharat vision, Gujarat's initiatives aim to support key industries, promote green manufacturing and foster innovation through the Aatmanirbhar Gujarat Scheme. This scheme extends benefits across a range of industries including MSMEs, large and mega industries. While the main incentives are offered in the form of SGST reimbursement and interest subsidy, there are other fiscal and non-fiscal incentives also available for industries at large. It is anticipated that this scheme will transform Gujarat's manufacturing landscape, attracting an investment of approximately INR 12.5 lakh crores, and creating job opportunities for over 15 lakh people.

The operative period of the Scheme is from October 5, 2022 till October 4, 2027

The incentives under this Scheme are categorized for three different industries being MSMEs, Large and Mega Sectors. Further, in order to promote some of the identified Thrust Sectors and undeveloped districts ('talukas'), the Scheme facilitates additional incentives to industries promoting these sectors/areas in the State.

(i) Scheme for Assistance to Micro, Small or Medium enterprises ('MSMEs')

Eligibility Condition - a MSME means an enterprise which has Fixed Capital Investment ('FCI') made in Plant and Machinery as per following:

- Micro: Less than or equal to INR 1 crore
- Small: More than INR 1 crore and less than or equal to INR 10 crore
- Medium: More than INR 10 crore and less than or equal to INR 50 crore

Assistance of Capital Investment Subsidy to Micro enterprises:

Under the scheme for MSMEs, Micro enterprises are eligible for subsidy towards their capital investment as under:

Category of Taluka	*Quantum of Incentives*
Category-1	25% of term loan upto INR 35 Lakhs
Category-2	20% of term loan upto INR 30 Lakhs
Category-3	10% of term loan upto INR 10 Lakhs

A new or existing manufacturing enterprise expanding or diversifying and commencing production during the operative period qualifies for such incentives. It is to be noted that if the enterprise receives capital investment subsidy from both the Central and State Governments, the combined subsidy cannot exceed the total loan amount disbursed by banks or financial institutions.

Interest Subsidy to Micro, Small and Medium Enterprises in the manufacturing sector:

The government of Gujarat provides for a subsidized rate of interest on term loans obtained by MSMEs for doing business in Gujarat as under:

Category of taluka	**Quantum of incentive**
Category 1	Interest subsidy @7% on Term Loan upto INR 35 lakhs per annum for a period of 7 years

Category of taluka	Quantum of incentive
Category 2	Interest subsidy @6% on Term Loan upto INR 30 lakhs per annum for a period of 6 years
Category 3	Interest subsidy @5% on Term Loan upto INR 25 lakhs per annum for a period of 5 years

— 1% additional interest subsidy to differently-abled entrepreneurs, women entrepreneurs, registered startups in the manufacturing sector and young entrepreneurs under the age of 35 years

— The enterprise is required to bear a minimum of 2% of interest on the Term Loan.

— Any service enterprise shall be eligible only if it is registered under the relevant MSME act, provides permanent employment to at least 10 persons and has a GST registration.

Net SGST reimbursement to Micro, Small and Medium Enterprise (MSMEs)

MSMEs shall be eligible for reimbursement of net SGST based on the taluka category of the project subject to the following ceilings:

Category of taluka	*Quantum of incentive*
Category 1	100% of net SGST for 10 years upto 7.5% of eligible Fixed Capital Investment p.a.
Category 2	90% of net SGST for 10 years upto 6.5% of eligible Fixed Capital Investment p.a.
Category 3	80% of net SGST for 10 years upto 5% of eligible Fixed Capital Investment p.a.

Accordingly, enterprises falling under Category 1 are allowed to claim subsidies up to 75% of the Fixed capital investments of the enterprise over the tenure of 10 years which is a remarkable benefit being provided to enterprises to promote business in Gujarat. The period of 10 years shall be from the date of commencement of commercial production.

(ii) Scheme for Assistance to Large Industries and Thrust Sector

Eligibility Conditions - Manufacturing enterprises with Fixed Capital Investment in Plant and Machinery above INR 50 crores are eligible under this Scheme. The Scheme shall provide benefits to new manufacturing companies as well as existing companies undertaking expansion/diversification. Further, for promoting Thrust sectors in Gujarat, additional incentives are being provided to enterprises engaged in such sectors. The Thrust sector has been defined to include the following sectors:

List of Thrust Manufacturing Sectors:

Sr. No.	***Sector***	***Sub-sectors***
1.	Green Energy Ecosystem	Green Hydrogen/Green Ammonia, Electrolyser, Renewable Energy Equipment, Battery Storage and Fuel Cells
2.	Mobility	Aviation related manufacturing, Electric Vehicles, Auto or Auto Components, Space related manufacturing
3.	Capital Equipment	Electrical machinery and/or equipment, Industrial Machinery and/or equipment, Telecom related machinery and/or equipment
4.	Metals and Minerals	Metals, Mineral Processing, Ceramics
5.	Textile and Apparel	Technical Textiles, Textile, Apparel and Garment
6.	Sustainability	Municipal solid/liquid waste recycling equipment manufacturing
7.	Agro Processing	Agro and Food Processing
8.	Gems and Jewellery	Gems and Jewellery including Lab Grown Diamonds
9.	Healthcare	Pharmaceuticals and/or APIs, Medical devices
10.	Chemicals (applicable only for Mega Industries)	Chemicals

Assistance of Interest Subsidy

Interest subsidy will be given as per the following rates:

Category of taluka	***General Sector***	***Thrust Sector***
Category 1	Interest subsidy @7% on Term Loan for 10 years upto 1% of eFCI p.a.	Interest subsidy @7% on Term Loan for 10 years upto 1.2% of eFCI p.a.
Category 2	Interest subsidy @7% on Term Loan for 8 years upto 1% of eFCI p.a.	Interest subsidy @7% on Term Loan for 10 years upto 1% of eFCI p.a.
Category 3	Interest subsidy @7% on Term Loan for 6 years upto 1% of eFCI p.a.	Interest subsidy @7% on Term Loan for 8 years upto 1% of eFCI p.a.
*eFCI stands for eligible Fixed Capital Investment		

Accordingly, it can be observed from the above table that enterprises can eventually obtain term loans for setting up business units in Gujarat at a substantially discounted interest rate, wherein the enterprises are required to bear a minimum of 2% interest only.

Net SGST reimbursement

The eligible large industrial undertaking will be eligible for reimbursement of net SGST based on the taluka category of the project subject to the following ceilings:

Category of taluka	***General***	***Thrust***
Category 1	100% of net SGST for 10 years upto 7.5% of eFCI p.a.	100% of net SGST for 10 years upto 8% of eFCI p.a.
Category 2	90% of net SGST for 10 years upto 6.5% of eFCI p.a.	90% of net SGST for 10 years upto 7% of eFCI p.a.
Category 3	80% of net SGST for 10 years upto 5% of eFCI p.a.	80% of net SGST for 10 years upto 5.5% of eFCI p.a.
*eFCI stands for eligible Fixed Capital Investment		

Even the Large manufacturing undertakings are allowed to claim up to 80% of its fixed capital investment over the years which act as a considerable relief for the enterprises.

(iii) Scheme for Assistance to Mega Sector

Eligibility Sector - The Mega Industrial Unit must fulfil the following criteria:

— It must be a manufacturing unit, and

— Investment in Plant & machinery of at least **INR 2,500 crore**, and

— Provides **direct employment to atleast 2,500 persons**, and

— **Must belong to one of the Thrust Sectors** (as defined above)

Similar to the Scheme for Large Industries, higher incentives are offered to enterprises engaged in the thrust sector wherein the sectors as defined under Large Industries remain the same in addition to the Chemical sector. The incentives provided under this Scheme are as under:

Assistance of Interest Subsidy

— Interest subsidy is eligible at @7% on a Term Loan subject to a maximum of 1.2% of eligible FCI p.a. for 10 years.

— Similar to interest subsidies offered to MSMEs and Large Industries, Mega industries are also required to bear at least 2% interest on term loans.

Net SGST reimbursement

The eligible projects are eligible for reimbursement of net SGST at 100% of net SGST subject to a maximum of 0.9% of eligible Fixed Capital Investment p.a. for 20 years which in totality almost amounts to 18% of the total eligible Fixed capital investments.

Reimbursement of SGST on capital goods

Eligible Units are eligible for 100% reimbursement of Input SGST paid on capital goods to the extent that input tax credit is admissible under the Gujarat GST Act 2017. Reimbursements are to be provided in twenty equal annual instalments.

Reimbursement of Stamp Duty and registration fees

As a major relief to the enterprises, the government provides for 100% reimbursement of stamp duty and registration charges paid to the Government of Gujarat for the purchase and/or lease of land meant for the eligible project.

Reimbursement of Employer's PF Contribution to MSME, Large & Mega Industries

In addition to the above incentives, all the above eligible industries may also claim reimbursement for the employer's contribution to the Employees' Provident Fund (EPF) for new employees over 10 years from the Date of Commercial Production (DoCP). The reimbursement will be 100% of the employer's EPF contribution, with a maximum incentive of 12% of the employee's basic salary plus applicable dearness allowances, capped at INR 1800 per month.

2. IT/ITeS Policy

Promoting the Center's vision of Digital India, Gujarat is committed to fostering the rapid growth of the IT/ITeS sector and to place Gujarat among the top five performing states of India in the IT Sector. Gujarat houses the renowned Tech-city, widely recognized as the GIFT city that focuses on attracting global technology and finance enterprises and related services, consolidating them all under one roof. The new IT policy, effective 07th February 2022, incentivizes the sector through reimbursement of Capex-Opex expenses, employment boost and subsidized loans benefitting over 5000 small and large enterprises. The Operating Period of the policy is from 07th February 2022 to 31st March 2027

The IT/ITeS sector shall be focusing on incentivizing enterprises engaged in the development, production and services related to IT products, IT Software, IT services & ITeS. Thus, the policy aims to incentivize a wide spectrum of businesses, spanning from high-end products/services such as software development and Artificial Intelligence to supporting services such as call centres, BPOs, KPOs, Finance and accounting outsourcing, among others.

The policy provides for a wide array of incentives such as capex & opex reimbursements, interest subsidies, reimbursement of employee-related social security costs, R&D support, etc. The enterprises eligible under this scheme are either new units having a minimum of 10 employees on their payroll or an expansion unit having a minimum of 15 employees on their payroll.

Types of incentives

Capex-Opex Model of Incentives

The fiscal incentives in this policy aim to boost the IT/ITeS ecosystem by categorizing support into CAPEX and OPEX avenues. The scheme aims to incentivize the Gross Fixed Capital Investment ('GFCI') incurred by an undertaking which includes expenditures incurred on the construction of the building, computers, software, networking-related hardware and other related fixed assets excluding the cost of land and expenditure on purchase of the building required to produce products/services.

The unique incentive structure simplifies the claiming process and is tailored to suit various project and investment categories. The Government is providing substantial relief to the companies in the IT/ITeS sector by enabling them to claim up to 25% of their capital investment and an additional 15% of their annual expenses, the details of which are as under:

Category	*Capex Support*	*Opex Support*
Category 1- GFCI less than INR 250 Cr.	One-time CAPEX support, up to 25% of eligible expenditure, as defined, upto INR 50 Cr.	Up to 15% of annual eligible expenditure, as defined, upto INR 20 Cr. per year for 5 years
Category 2 (Mega Projects)* – GFI more than INR 250 Cr. Or generating 2000 or more direct IT employment on its payroll	One-time CAPEX support, up to 25% of eligible expenditure upto INR 200 Cr.	Up to 15% of annual eligible expenditure, upto INR 40 Cr. per year for 5 years
*Early mover advantage to first three IT/ITeS projects by relaxing minimum investment criteria		

Employment Generation Incentives

Eligible IT/ITeS units can claim one-time support for each new and unique job created, amounting to 50% of CTC - up to INR 50,000 for male and INR 60,000 for female employees.

Interest Assistance

Eligible IT/ITeS units can avail up to 7% interest subsidy on term loans, with a maximum annual cap of INR 1 Cr. on loans obtained from RBI-approved financial institutions. This incentive can be claimed annually for up to 5 years from the start of actual interest repayment.

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Eligible IT/ITeS units can claim reimbursement on the employer's EPF contributions for employees over 5 years upto 100% for female employees and 75% for male employees capped at 12% of the basic salary, including DA and retaining allowance.

For eligible expansion units, assistance is available for incremental employee counts beyond the previous year's average, continuing for 5 years from the start of the expansion.

Electricity Duty Incentive

Eligible IT/ITeS units can claim a full reimbursement of electricity duty paid to the Government of Gujarat for 5 years from the date of commencing commercial operations or obtaining in-principle approval, whichever occurs later.

Incentives for the development of IT City/ Township

The Government aims for a dedicated state-of-the-art IT township or IT city with modern amenities. Developers or consortia engaged in developing such infrastructure shall receive incentives in the form of one-time CAPEX support of up to 25% of eligible CAPEX expenditure, capped at INR 100 Cr. This reimbursement covers expenses for creating IT office space (co-working space, IT/ITeS park) in the IT city/township.

Facilitating Cloud Ecosystem

For improving the cloud infrastructure in the State, Government facilitates the setting up of Cable Landing Stations and Data Centers by providing fiscal support as under

	CAPEX Support	***OPEX Support***
Cable Landing Stations	One-time CAPEX support up to 25%, limited to INR 20 Cr. in relation to expenses in the nature of civil works for the construction of the building along with network hardware	Power tariff subsidy of INR 1/ unit for a period of 5 years.
Data Centers	Eligible Data Centers can claim one-time CAPEX support of up to 25%, limited to INR 150 Cr.	

Support for Research and Development

Eligible R&D institutes can receive one-time CAPEX support, covering 60% of equipment costs for setting up R&D centres or laboratories, with a maximum limit of INR 5 Cr. Such R&D institutes must be recognized by CSIR/DSIR for research in the relevant field.

3. Gujarat Semi-Conductor Policy 2022-27

Semiconductors and displays are pivotal in propelling the digital revolution under Industry 4.0, encompassing a wide array of applications ranging from smartphones to defence. The Indian semiconductor market, valued at USD 15 billion in 2020, is projected to reach USD 63 billion by 2026.

Gujarat is a leading industrialized State in India, with a robust infrastructure, extensive connectivity, 48 ports, 17 airports (including 2 international), and specialized industrial zones like the Dholera Special Investment Region (DSIR). Gujarat is the first State in the country to issue a sector-focused Semiconductor Policy which aims to make Gujarat a major contributor to the Global Value Chain of the semiconductor and display manufacturing sector. This could be one of the significant factors driving the establishment of the country's first fabrication plant as facilitated by a joint venture between Tata Electronics and Taiwan-based PSMC in Gujarat's Dholera. Yet another global semiconductor giant – the Micron Group, has initiated the construction of a semiconductor plant in Gujarat, supported by subsidies from Gujarat Government and the Central Government. The presence of such global giants in Gujarat shall attract other players in the industry creating Gujarat as a semi-conductor hub in the coming future.

The eligible projects under the scheme shall be in relation to the setting up of Semiconductor Fabs, Display Fabs, Compound Semiconductors/Silicon Photonics/Sensors Fab and Semiconductor Assembly, Testing, Marking and Packaging (ATM P)/OSAT facilities in Gujarat State.

The Operative period of the policy shall be five years from July 27, 2022, ending July 26, 2027. The major incentives offered under this Scheme by the Gujarat Government is as under:

Capital Assistance

Projects approved by the India Semiconductor Mission (ISM) under the Ministry of Electronics and Information Technology (MeitY) shall be eligible for additional capital assistance (i.e. over and above assistance received from the Central Government) from the Government of Gujarat, constituting 40% of the capex aid provided by the Government of India. This assistance pertains to eligible capital expenditure, calculated from the agreement date between the applicant and the Government of Gujarat, with the total period

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determined by the Government of India. Initially, the Government shall support one Semiconductor Fabrication and one Display Fabrication project, additional projects will be considered based on detailed appraisals and recommendations from the High-Powered Committee (HPC).

Subsidy on Land Procurement

The Gujarat Government shall provide a 75% subsidy on the first 200 acres of land for FAB projects in the Dholera Special Investment Region (DSIR). Additional land, whether for FAB projects, upstream/downstream ecosystems, or ISM-approved ventures, shall be eligible for a 50% subsidy. The subsidy applies solely to land necessary for core project activities, allotted by DSIRDA or the Government.

Similar to other incentive schemes, the eligible projects under this Scheme shall also be entitled to one-time reimbursement of 100% of Stamp Duty and Registration Fees paid for lease, sale or transfer of land for the purpose of the project.

Incentive on Water Availability

Eligible projects will receive potable water at INR 12 per cubic meter for the first 5 years, with a 10% annual tariff increase for the next 5 years. If a Semiconductor or Display Fabrication project builds a desalination plant in the initial 5 years, the Government will offer a 50% capital subsidy on the project cost (excluding land), capped at INR 8 crores per MLD of capacity.

Incentives on Power Tariff and Electricity Duty.

Eligible projects will receive a power tariff subsidy of INR 2 per unit for a 10-year period from the Date of Commercial Production. Projects with significant Foreign Direct Investment or those relocating from abroad may receive an enhanced tariff subsidy for a limited period.

4. Gujarat Electronics Policy (2022-28)

The global electronics industry, valued at USD 2.9 trillion in 2020, is one of the world's largest and fastest-growing sectors. Gujarat is committed to propelling the electronics sector through its Electronics Policy (2022-28), focusing on attracting investments, generating employment, and embracing technology. The key objectives include achieving a USD 30 billion electronics value chain, providing employment for 1 million people by 2028, supporting manufacturing, fostering collaboration for skilled manpower, and encouraging industry-led R&D and innovation across sub-sectors.

The eligible units under this scheme shall be a new unit or an existing unit going for expansion/diversification to produce eligible goods as under:

- Electronics products such as telecom systems/mobiles/IT systems and hardware/consumer electronics/ medical electronics/avionics/industrial electronics/defence and strategic electronics/automotive electronics/ information and broadcasting equipment
- Manufacturing of intermediates such as PCBs/semiconductors/chip components/ ICs/components/parts, etc.
- Electronics manufacturing services
- Any other electronics verticals/products covered by the National Policy on Electronics or any other policies, as issued by the Government of India

The policy shall be operative from 28 October 2022 to 31 March 2028 and the major incentives under the Scheme are as under:

Capital Assistance

The eligible units will receive the following capital assistance, disbursed in equal annual instalments over a 5-year period starting from the date of commercial operations or production with respect to eligible CAPEX which shall include expenditure incurred on plant, machinery, equipment, associated utilities and expenditure incurred on construction of the plant (excluding the cost of purchase of land & building):

Scale of Investment	***Incentive***
Eligible CAPEX less than or equal to INR 1,000 Cr.	Support of up to 20% of the eligible CAPEX upto INR 200 Cr.
Eligible CAPEX more than INR 1,000 Cr.	• Support of up to 20% of the eligible CAPEX upto INR 200 cr. for the eligible CAPEX incurred up to INR 1,000 Cr. • Capital support of up to 15% of the incremental eligible CAPEX above INR 1,000 Cr.

Stamp Duty and Registration Fees

Eligible units can avail of one-time reimbursement of 100% of Stamp Duty and Registration Fee paid to the government for the lease, sale, or transfer of land.

Interest Assistance

Eligible units can avail of interest assistance on term loans, capped at 7% or the actual interest paid, whichever is lower, limited to INR 10 croresannually for a period of up to 5 years from the commencement of actual interest repayment within the Policy's operational period, however, minimum 2% interest to be borne by such units. The assistance applies to term loans from an Indian branch of an RBI-approved financial institution (excluding NBFCs).

Logistics Subsidy

The Government will assist eligible units in lowering their operational costs by providing support for the transportation of goods, raw materials, and machinery essential for core manufacturing activities:

Category	***Incentive***
Support for Logistics (imports)	Support of up to 25% of the freight charges, upto INR 5 Cr. per year for 5 years
One-time support for relocating their manufacturing operations from outside India to Gujarat	Reimbursement of 50% of the cost incurred on import of manufacturing equipment up to INR 5 Cr.

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Incentives on Power Tariff & Electricity Duty

Eligible units qualify for a power tariff subsidy of INR 1 per unit for a 5 year period. For existing units undergoing expansion or diversification, the power tariff subsidy and electricity duty reimbursement applies only to the additional power consumed due to such expansions.

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Eligible units can claim reimbursement on the employer's EPF statutory contribution for employees working in Gujarat offices for 5 years. For female employees, 100% reimbursement is provided, while for male employees, it is 75%. The incentive amount per employee is capped at 12% of the basic salary, including DA and retaining allowance.

5. Other Non- Fiscal Incentives

In addition to the fiscal incentives provided by the Gujarat Government under the above Schemes, the Government is committed to creating an investor-friendly business ecosystem aligned with Ease of Doing Business principles. Accordingly, the Government undertakes the below measures to support enterprises as eligible for incentives under any of the above-discussed incentive schemes:

- Enhancing ease of doing business by facilitating self-certification for compliances under local statutory laws such as the Factories Act, 1948, Maternity Benefit Act, 1961, Payment of Wages Act, 1948, etc.
- Providing a single window clearance for all statutory clearances required at State level.
- The Government will facilitate access to hazardous waste disposal facilities for semiconductor or display fabrication projects to ensure proper treatment and recycling.
- The scheme also focuses on providing uninterrupted power and water supply.
- The Government will assist companies in acquiring suitable land and streamline procurement processes, addressing issues like Right of Way and Change of Land Use permissions.

Conclusion

With such significant incentives and benefits, Gujarat emerges as a prime destination for investments across various industrial sectors, as enumerated above. The establishment of GIFT City - the nation's first financial and technological hub alongside the annual Vibrant Gujarat Summit is further boosting investments in Gujarat with strong support from the State Government incentive policies. Gujarat has been ranked as the 'Best Performer' in the year 2022 by the DPIIT with over 12,000 start-ups and MSME sectors claiming the benefits of different incentive schemes implemented by Gujarat.

■●■

"The greatest religion is to be true to your own nature. Have faith in yourselves."

— *Swami Vivekananda*

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Maharashtra Government - State Level Incentives





Ketan Tadsare
Advocate

Mr. Amit Dadapure

Overview

Having been at the forefront of industrial development, the State of Maharashtra is poised to leverage its potential and it is only appropriate that the State Government functions as an enabler in the process. The State has since long introduced various policies to achieve this, and in this article, we seek to touch upon few of the significant and continuing policies. Amongst all these, the 'Package Scheme of Incentives' has to be the most significant and widespread policy initiative which provides plethora of incentives in the form of interest subsidy, power tariff subsidy, stamp duty exemption, electricity duty exemption and many more in addition to the refund of SGST!

The State Government has also identified focus sectors and has introduced 'Integrated and Sustainable Textile Policy' that potentially bolster employment generation, exports etc, and contributes to India's Gross Production. Catching the winds of dynamic change in EV sector, the 'Maharashtra Electric Vehicle Policy' comprehensively penetrates faster adoption of EV eco-system. It incentivizes not only the OEM but also the charging infrastructure and end consumers.

Additionally, the State has also introduced 'Information Technology and Information Technology Enabled Services Policy' to incentivize 'New' and 'Expansion' units as well as 'Maharashtra State Export Promotion Policy' which focuses on building comprehensive infrastructure for export-oriented units.

With its contribution of 20% to National Industrial Output, Maharashtra has been second leading State in India in terms of industrial growth. The State domiciles country's financial capital 'Mumbai' and education hub 'Pune', acting as a catalyst in this growth in a wide range of industries including Finance, Information Technology, Manufacturing, Automative, Pharmaceuticals and Textiles. It facilitates several SEZ's that offer incentive and facilities to attract domestic and foreign investment.

Maharashtra's industrial growth is driven by various factors including its strategic location, infrastructure, skilled labor and conducive business environment. To further leverage its advantage, the Government of Maharashtra offers various schemes like the Package Scheme of Incentives, Integrated Textile Policy, Electric Vehicle Policy, Maharashtra State

Promotion Policy, and IT&ITES Policy, focusing on employment generation, cost reduction, and overall economic growth.

Package Scheme of Incentives - 2019

The Package Scheme of Incentives or 'PSI' as it is popularly known is one of the flagship initiatives by the Maharashtra Government since 1964. The scheme has been amended from time to time and the incumbent scheme was introduced in 2019 and shall remain operative until March 2024 or until introduction of a new PSI. It is administered by Directorate of Industries and features financial incentives such as, capital subsidies, interest subsidies, reimbursement of expenses in case of infrastructure development, land acquisition and technology upgradation.

The extent of benefits is provided based on area classification. Such area classification is based on level of industrial development and comprises categories such as A, B, C, D, D+ and No Industry Districts, Naxalism Affected Area, Aspirational Districts.

The Scheme provides its benefit to a wide range of eligible units as follows:

- Industries Listed in the First Schedule of the Industries (Development and Regulation) Act, 1951.
- Manufacturing Enterprises as defined in the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006
- Information Technology Manufacturing Units registered with Directorate of Industries, Maharashtra Industrial Development Corporation (MIDC), Software Technology Parks of India (***'STPI'***) in the State and Development Commissioner, Santa Cruz Electronic Export Processing Zone (***'SEEPZ'***).
- Bio-technology Manufacturing Units as specified by the Government from time to time.
- Mechanized, Food/Agro Processing Industries in (i) Dairy, Fruit and Vegetable Processing (ii) Grain Processing (iii) Fish/Meat/Poultry Processing (iv) Consumer foods including Packed foods (v) Non-alcoholic beverages from fruits and vegetables.

These eligible units, based on quantum of investment and employment generation, are further divided into three categories i.e. MSME, Large Scale Industries (LSI)/Special LSI, Mega/Ultra Mega Projects. Availability of key benefits to these categories are expounded below. These are available to new as well as expansion units:

MSME

- Industrial Promotion Subsidy - The Unit would be eligible for incentive of 100% SGST payable on the first sale of eligible products, billed and delivered within Maharashtra;
- Interest Subsidy - Interest subsidy for the interest paid to Banks and Public Financial Institutions on term loans taken for acquiring new Fixed Assets. The subsidy excludes unsecured loans, private loans, loans from NBFCs, etc. The subsidy is calculated at the effective interest rate, deducting any subsidies received from State or Central Government schemes and penal/ compound interest of 5% per annum;
- Exemption from Electricity Duty- New manufacturing units in Group C, D and D+ areas enjoy a 15-year exemption from Electricity Duty, while specified manufacturing units in Group A and B areas are exempt for 7 years;

- Power tariff subsidy- The subsidy for specified areas of the State amounts to Re 1 per unit, and for other areas, it is Re 0.50 per unit, valid for 3 years from the start of commercial production, based on energy consumed and paid;

Large Scale Industries/Special LSI

- Industrial Promotion Subsidy -50 % of Gross SGST payable by the unit and Special LSI units shall be offered subsidy of 40% of Net SGST payable by the unit on the first sale of eligible products, billed and delivered within Maharashtra;

- Exemption from Electricity Duty- New units in Group C, D, and D+ areas are exempt from Electricity Duty for up to 15 years. In Group A and B areas, only eligible 100% Export Oriented Units (EOUs), Information Technology Manufacturing Units and Bio-Technology Manufacturing units will also be exempted from payment of Electricity Duty for a period of 7 Years.

Mega/Ultra Mega Projects

- The incentives and eligibility period for Mega and Ultra Mega Projects in Maharashtra will be determined case by case by a High-Power Committee chaired by the Chief Secretary of the Government of Maharashtra.

The bouquet of benefits offered by this scheme comes with its own set of compliance requirements including and most prominently, the documentation in support of Fixed Capital investment, Annual Turnover, Annual Computation of Incentive, etc. These compliance requirements are often seen to have overwhelmed many applicants in the past, and capability to adhere to these, create make or break situation.

The Scheme as it existed during introduction of GST regime lead to multiple disputes. The changeover caused curtailment of incentives in terms of tenure as well as quantity of benefit. Such curtailment was challenged before writ jurisdiction of Hon'ble High Court, which inter-alia held that the doctrine of promissory estoppel applies to this scheme, and it would forbid the Government from taking any decision of not completely implementing the incentive scheme or reducing the incentive as it is detrimental to the petitioner.

Integrated and Sustainable Textile Policy 2023-2028

Maharashtra is an integral contributor in India's incredible ascend to significance as a textile powerhouse. It is the second-biggest employment sector in Maharashtra, only behind agriculture! Presently, 10.2% of all jobs in the textile and apparel industry of the country are held by the State of Maharashtra, which also accounts for 10.4% of the nation's total output in this area. Furthermore, the State generates 272 million kg of yarn, or 12% of India's total gross production. No doubt the textile industry is vital to the State's economy.

In order to capture new and emerging opportunities the State has introduced Integrated and Sustainable Textile Policy-2023-28 which aligns with the Government of India's 5F goal, which stands for Farm to Fiber to Factory to Fashion to Foreign. The goal of the policy is to integrate the entire textile value chain and establish favourable conditions for the industry's subsectors to grow steadily.

The maiden version of this policy aims at increasing the processing capacity of cotton from 30% to 80%, promote state of the art infrastructure and technological upgradation, to bolster investment of INR 25,000/- Crores and employment generation up to 5 Lakhs, all in the next 5 years. A summary of incentives is tabulated below for a quick view.

<table>
<tr><th>Sub Sector</th><th>Type</th><th>Type of Incentive</th><th>Range</th></tr>
<tr><td rowspan="4">Ginning and Pressing Sector, Private Power looms, Processing Sector</td><td>MSME</td><td>Capital Subsidy</td><td>• The incentive rate ranges from 30% to 45% based on the zone's fixed capital investment</td></tr>
<tr><td>Large Enterprise</td><td>Capital Subsidy</td><td>• 25% to 40% on fixed capital investment depending on zone</td></tr>
<tr><td>Mega Enterprises</td><td>Capital Subsidy</td><td>• The capital subsidy is percentage to the expenditure with maximum limit.
<table><tr><th>Zone</th><th>Incentive</th></tr><tr><td>Zone I</td><td>55% with a maximum up to INR 250 crore, whichever is less</td></tr><tr><td>Zone II</td><td>50% with a maximum up to INR 225 crore, whichever is less;</td></tr><tr><td>Zone III</td><td>45% with a maximum up to INR 200 crore, whichever is less;</td></tr><tr><td>Zone IV</td><td>40% with a maximum up to INR 175 crore, whichever is less.</td></tr></table></td></tr>
<tr><td>Ultra Mega Enterprise</td><td>Capital Subsidy</td><td>• The incentives and eligibility period for Mega and Ultra Mega Projects in Maharashtra will be determined case by case by a High-Power Committee chaired by the Chief Secretary of the Government of Maharashtra.</td></tr>
<tr><td>All sectors</td><td>Maha Technology Upgradation Fund Scheme</td><td>Capital Subsidy</td><td>• The capital subsidy is percentage to the expenditure with maximum limit.
<table><tr><th>Zone</th><th>Incentive</th></tr><tr><td>Zone I</td><td>40% of the basic cost of eligible machinery or INR 25 crore, whichever is less</td></tr><tr><td>Zone II</td><td>35% of the basic cost of eligible machinery or INR 20 crore, whichever is less;</td></tr><tr><td>Zone III</td><td>30% of the basic cost of eligible machinery or INR 15 crore, whichever is less</td></tr><tr><td>Zone IV</td><td>25% of the basic cost of eligible machinery or INR 10 crore, whichever is less</td></tr></table></td></tr>
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Sub Sector	*Type*	*Type of Incentive*	*Range*
All sectors	Green Technologies	Capital Subsidy	• 50% capital subsidy or a maximum of INR 5 crore (whichever is lower) will be provided for establishing Effluent Treatment Plants (ETPs) in all zones of the State;
All sectors	All	Electricity Subsidy Rate	• Electricity subsidy rates are subject to type of textile industry such as powerloom, knitting, soot girni etc. This subsidy rate ranges between INR 2 to INR 3.77 per unit.

The Policy broadly charts four territorial Zones based on development and availability of inputs for this sector. Zone-I comprises Vidarbha, Zone-II Marathwada, Zone-III North Maharashtra and Zone-IV West Maharashtra and Kokan. In addition to the above benefits, the policy provides for setting up of 6 technical textile parks across these 4 Zones through private investment. These technical textile parks attract additional incentive of the capital subsidy as well as support for Effluent Treatment Plans, Zero Liquid Discharge, installation of Solar Plant, common facility centres and Research and Development promotion.

The entire scheme being in its nascent stage, prospective applicants should be vigilant about developments in the scheme itself. Further, regular interaction with Regional Authorities implementing this scheme is also recommended.

This sector being employment sensitive, sector issues concerning labour rights, employment practices are likely to bespilled over. It would also be noteworthy to monitor the international trade landscape of competing textile industries that may raise concerns about this schemes fitment under Trade agreements and possible allegations of unfair trade practices.

Maharashtra Electric Vehicle Policy - 2021

The Government of Maharashtra introduced its Electric Vehicle ('EV') Policy in 2021 to create an eco-system conducive to widespread adoption of electric vehicles in the State. The policy initiative seeks to promote manufacturing, adoption and usage of electric vehicles across various segments. As such, Maharashtra is amongst the first States in the country to implement an EV policy. This Policy however is exclusively meant for Battery Electric Vehicles ('BEVs') sold and registered in the State of Maharashtra. As such mild hybrid, strong hybrid and plug-in hybrid electric vehicles are not covered under this policy.

The Key policy objectives are to achieve contribution of BEVs to 10% of new vehicle registrations by 2025, electrification of 25% of public transport, fleet operators, fleet aggregators and last mile delivery vehicles by 2025, to transition 15% of State's transport bus fleet to electric, lead the country's BEVs production by promoting innovation and skilled development of State's EV eco-system.

The incentives under this policy are categorised as (i) Demand side incentive (ii) Charging infrastructure incentive and (iii) supply side incentive.

The demand side incentive subsidizes vehicle cost as well as incentivizes scrappage of ICE vehicles. It also provides incentives on extended Batter Warranty and Buy Back Agreements. In addition, purchaser of electric vehicles is entitled for exemption from Motor Vehicle Tax and Registration fees. An individual buyer can claim these benefits only once for the respective category, while fleet aggregators/operators can avail the benefit on the entire fleet. Notably, these benefits are available over, and above benefits of FAME II (Faster Adoption and Manufacturing of Electric Vehicles) as provided by the Central Government. The responsibility to pass on these incentives to end consumer lies with Vehicle Manufacturer.

The charging infrastructure incentive are provided to public and semi-public charging stations as a percentage (50% to 60%) of cost of charging station. These incentives are however available only after commencement of the operation of the station. The policy has provided detailed guidelines for Urban Local Bodies to promote EV eco-system by providing property tax rebates and mandate to have at least 20% of the total parking space as EV ready.

On the supply side incentives, the Policy allows all the benefits under D+ category of Mega Projects/other categories to the industry irrespective of its manufacturing location. The Government also endeavours to offer incentives that significantly enhance/ compliment the incentives offered by Central Government under The Production Linked Incentive Scheme.

In addition to the above, the policy mandates all new Government, Semi-Government, Urban Local Bodies, Government Funded Organisations Vehicles to be electric vehicles. The Policy directs the Finance Departments to make necessary amendments in Government Vehicle procurement process.

New Information Technology and Information Technology Enabled Services Policy of Maharashtra State - 2023

Maharashtra has been a pioneering State in introducing Information Technology Policy in 1998. The benefits and effectiveness of this policy initiative is evident from the phenomenal growth in terms of export of services, employment generation and all the ancillary benefits in last 3 decades. The policy as introduced in 1998 was amended from time to time and the present policy viz. Information Technology and Information Technology Enabled Services Policy of Maharashtra State was introduced in 2023. While 2015 Policy was transformative, making Maharashtra a top technology investment hub in Asia, the 2023 Policy continues this trajectory, showing the State's dedication to adapting to global IT trends and demands.

The incumbent Policy will remain in operation for 5 years or until new policy is announced. Notably, the 2023 policy has expanded its scope to include co-working spaces, high-tech training centres and it has also introduced a detailed list of permissible activities within IT Parks, such as audio/video product design, R&D laboratories and projection planning and management.

The key highlight of this policy is exemption from Stamp Duty. The policy provides 50% to 100% exemption to new and expansion units on execution of range of instruments such as Hypothecation, pawn, pledge, deposit of title deeds, conveyance, charge on mortgage property, lease, mortgage deed and security bond on mortgage deed etc. this benefit is however, not available to those units that are already in operation and merely shifting from one location to another and those units which had already availed the exemption benefit earlier.

In addition to the above, IT and ITes units are entitle to receive cost reimbursement of

up to 25% of retrofitting cost or INR 10 lakhs, to conduct retrofitting study and implement the energy efficiency equipment. Further, exemption from payment of Electricity Duty from the date of commencement of production/ activity for a period of 10-15 Years depending on Zone-I and Zone -II for new or existing units. The Units are also provided with benefit in Property Tax which shall be levied at par with the residential rates.

Maharashtra State Export Promotion Policy - 2023

Exports in general have direct nexus with economic growth as well as creation of employment. As such export- oriented industries are known to have created direct as well as indirect employment opportunities. To capitalise on available resources and capabilities to further augment exports, the Government of Maharashtra introduced Maharashtra State Export Promotion Policy 2023.

This ambitious policy will remain operational till 2027-2028 and would facilitate investment of INR 25000/- Crores, that would more than double the exports of the State from 72 billion USD to 150 billion USD. It further aims to develop 30 export oriented industrial parks in next 5 years and achieve 22% of total stake participation in country's 1 trillion USD export target by 2030.

The policy offers support by way of Grant-in-Aid for creating and developing export eco-system. The components eligible for grant comprise of internal roads, power, water, effluent treatment plan, packaging, green initiatives, connected infrastructure like transport, container handling facility etc. The policy devises its incentives based on two programmes viz. Export Oriented Specific Projects ('EOSP') and Export Oriented Industrial Parks ('EOIP').

EOSP's are eligible for Grant in Aid of about 40% to 60% of contribution on approved project cost depending on the zone. As such the policy refers to zones as specified under the PSI and caps the benefit up to INR 50 Crores. The benefit is also limited to maximum of 5 projects in one zone and a total of 15 projects during the policy period of five years.

On the other hand, EOIP aims to bolster common infrastructure and logistics facilities, technology and communication infrastructure, transportation infrastructure, industrial building and ware-houses, port and terminal facility, trade support services, business support centres and simplified regulations. Financial assistance under EOIP continues to be in the form of Grant in Aid of 40% to 60% of contribution on approved project cost depending on the zone. While the number of projects eligible for this benefit are also limited to maximum of 5 projects in one Zone and a total of 15 projects during the policy period, the Grant in Aid is capped at INR 100 Crores.

In addition to above, insurance cover, interest subsidy, export promotion subsidy is also offered to MSME engaged in exports. Further, in order to promote import substitution, the Central Government has already offered incentives such as electricity tariff waiver, employment provident fund subsidy and special capital subsidy. The benefits of this policy to MSME's shall be available over and above aforesaid benefits offered by Central Government.

It is expected that the policy will benefit a total of 5000 MSME's and Large Industrial Units, generate about 40,000 employment and help to enhance State's exports from 7% to 14%.

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A Novice's Guide to Incentive Schemes of the Karnataka





Gopal Machiraju
Advocate

Bhusan Porwal
Advocate

Aastha Sahay
Advocate

Overview

Karnataka has established itself as a leading state for economic growth and development of the country. Over the years, through the Government of Karnataka's various initiatives, the state has seen constant progress. These initiatives seek to address the various issues that prevent the growth of the economy and subsequently resolve the same. It is now a hub of constant innovation and is constantly evolving to keep up with the ever-changing environment.

It has spearheaded the digital transformation of the country, by being a leading destination for various industries such as the information technology sector and is often referred to as the 'Silicon Valley of India'. The state has also served as the primary breeding ground for budding entrepreneurs, and through its policy framework, has now developed an ecosystem that encourages constant innovation and entrepreneurship.

The Government of Karnataka has issued various policies from time to time to promote further development and towards continued holistic economic development of the state. In this article, we have discussed some of the important incentive schemes/policies being issued by the Government of Karnataka for some major sectors which are inevitable for the growth of the state.

Karnataka Special Incentives Scheme for ESDM Sector (2020-2025)

Keeping in mind the opportunities presented by India's existing ecosystem, the Central Government had introduced the National Policy on Electronics, 2019 (**"NPE"**). Under the NPE, several schemes were launched specifically for the benefit of the Electronics Systems Design and Manufacturing (**"ESDM"**) sector. The NPE also provided for various states to offer incentives which could go beyond those proposed by the Central Government. Bengaluru has been able to establish a breeding ground for leading ESDM companies due to its infrastructure and the presence of several ESDM sector companies among other several benefits. Thus, the state of Karnataka has proposed certain special incentives for the ESDM sector in order to facilitate and attract investments.

While there have been several land and labour reforms and various non-fiscal initiatives to encourage investments, the Special Incentives Scheme for ESDM Sector 2020-2025 (**"ESDM Scheme"**) is introduced to provide fiscal

interventions, which are necessary for the growth of the sector. The ESDM Scheme is Valid for a period of 5 years, from the date of announcement of the scheme i.e. September 7, 2020, and it is applicable for new investments or investments in the expansion of existing units. The ESDM Scheme provides for a 25% capital investment subsidy on land and a 20% capital investment subsidy on plant and machinery. Reimbursement of 100% of stamp duty and registration charges, land conversion fee and power tariff at ₹ 1 per unit for 5 years is also provided for in the ESDM Scheme. A 100% exemption from electricity duty is another incentive. Production Linked Incentive (**"PLI"**), based on annual turnover, can also be provided to new investments and expansions.

The products and activities eligible for the ESDM Scheme are the manufacturing and/or design of electronics products, semiconductor manufacturing and design, electronic manufacturing services, products/activities covered by the Karnataka ESDM Policy 2017-22. Additionally, the ESDM Scheme also covers the products and activities covered by the NPE and scheme for the Promotion of manufacturing of Electronics Components and Semiconductors (**SPECS**) and PLI, alongside Solar Cells Manufacturing and LED-Fab, intermediaries and manufacturing and assembly of LED products.

The ESDM Scheme can be availed in addition to any incentive and subsidy available under any policies of the Central Government. However, industries who avail the incentives under the ESDM Scheme cannot avail the benefits under any of the other policies of the Government of Karnataka.

Author's Comments

The 25% Capital Investment Subsidy on land is only eligible to those industries being set up in areas outside of Bengaluru. While this promotes industrial development in Tier-2 and Tier-3 cities and attracts investments towards the same, stabilizing and incentivizing the ESDM sector in Bengaluru, which continues to be the primary choice for industry and developers. The purpose of such a subsidy is to bring down the cost of establishing or expanding ESDM units. Since the cost of land is higher in the capital, it is logical to provide a subsidy for units in the capital. The exclusion of the capital may be twofold (i) the need for de-congestion of industry in the capital; and (ii) to de-centralise the industry and simultaneously ensure growth of other cities. However, such factors must be balanced such that the industry in the capital is not prejudiced. While competition is healthy, the lower cost of land and the additional discount in the cost by way of the subsidy may result in higher price disparity threatening the industry in the capital. It may be prudent to allow the subsidy for expansion of existing industries in the capital ensuring a level playing field. Suitable representations may be made to the Government in this regard.

Karnataka Industrial Policy 2020-2025

The Karnataka Industrial Policy 2020-2025 (**"Industrial Policy"**) was introduced by the Government of Karnataka with the objective of attracting investments worth ₹ 5 Lakh Crore and to generate employment for 20 Lakh people. The aim is to maintain an industrial growth rate of 10% and to establish an ecosystem suitable for the adoption of innovative and new technology. The focus sectors identified under the Industrial Policy are Automobiles and Auto Components, Pharmaceutical and Medical Devices, Engineering and Machine Tools, Knowledge Based Industries, Cement and Steel, Sugar, Logistics, Renewable Energy, Aerospace and Defence, Electric Vehicles, Healthcare and

Wellness, Higher Education and BioFuels. This policy is valid for a period of 5 years from August 13, 2020, or till a new policy is announced.

The Industrial Policy provides for several fiscal and non-fiscal incentives for export promotion, promotion of Micro, Small and Medium Enterprises (MSME) and Large, Mega, Ultra and Super-Mega Enterprises. It also identifies various thrust areas such as Industry 4.0, research and development, intellectual property rights, technology adoption and innovation, cluster development initiatives and responsible industrialization with a focus on sustainability and seeks to promote them as well through the various benefits provided for in the Industrial Policy.

Ease of Doing Business

For ease of doing business enhancement, and to attract future investments for the development of the various industries in the state, the Government of Karnataka has constituted the single window clearance mechanism at the district level and state level for approving all investment proposals and to act as a single touch point for obtaining the requisite approvals.

Export Promotion

The State Government seeks to promote exports to achieve economic growth and create more jobs for the workforce. It does so by creating export infrastructure and logistics and also through participating in international trade fairs, hosting the annual export awards, etc. and establishment of a Strategic Implementation Unit to act as an advisory body for export promotion.

Fiscal Incentives

Fiscal initiatives and concessions under the Industrial Policy differ as per sector, and the details are provided in Section 9 of the Industrial Policy.

Fiscal Support to MSMEs

For MSMEs, the general financial incentives are as follows:

- Investment Promotion Subsidy
- Exemption from Stamp Duty
- Concessional Registration Charges
- Reimbursement of Land Conversion Fee
- Exemption from Tax on Electricity Tariff
- Power Subsidy for Micro and Small Enterprises
- Special support to SC/ST entrepreneurs

More financial support is available for technology adoption and innovation for MSMEs and sustainability and responsible industrialization by MSMEs.

Fiscal Support to Large, Mega, Ultra-Mega and Super Mega Enterprises

Where Large, Mega, Ultra-Mega and Super Mega Enterprises are concerned, the monetary incentives being provided to them are:

- Exemption from Stamp Duty
- Concessional Registration Charges
- Reimbursement of Land Conversion Fee
- Subsidy for setting up Effluent Treatment Plant
- Investment Subsidy for Anchor Industries

Investment promotion subsidy based on turnover is also provided to Large, Mega, Ultra-Mega and Super Mega Enterprises.

Non-Fiscal Incentives

There are a plethora of non-fiscal incentives and initiatives for the various industries in the state of Karnataka.

Support to MSMEs

Apart from the fiscal incentives that have been proposed, the Industrial Policy extends non-monetary support to MSMEs as well. A few of the measures proposed are as follows:

- Establishment of SARTHAK- Centre of Excellence for MSMEs
- Infrastructure support in terms of earmarking land for MSMEs
- Enhanced credit for MSMEs
- Vendor Development and Facilitation
- Marketing Support in Public Procurement
- Skill Development and Entrepreneurship Development
- MSME Manufacturing Excellence Awards
- Equity Funding

Promotion of Large, Mega, Ultra-Mega and Super Mega Enterprises

Some of the efforts that are being taken by the Government of Karnataka for the promotion of Large, Mega, Ultra-Mega and Super Mega Enterprises are:

- Annual Action Plans for Investment Generation
- Support to existing state PSUs through one-time capital infusion
- Infrastructure Support
- Organization of an Investors Meet
- Establishment of International Investment Facilitation Desk to attract foreign investment

Incentives and concessions under this policy shall primarily be available only for manufacturing enterprises and specified categories of service enterprises mentioned in Annexure 3 of the Policy. Incentives and concessions shall be available to all new and additional investments made during the policy period for the establishment of new enterprises and expansion/diversification/modernization.

Author's Comments

The Karnataka Industrial Policy is significant as it provides various fiscal as well as non-fiscal initiatives for promoting industrial development in the State from the MSME level to Super Mega industries. However, given the scale and number of industries that are covered, the incentives are ad-hoc in nature and are not tailor-made for each kind of industry at each level, having regard to the specific needs of each kind of industry at each level. Guidelines in respect of each industry ought to have been issued further bifurcated into the various scales, to meet the specific needs of each of them, under the overall budget of the Industrial Policy for optimal application.

The Karnataka IT Policy 2020-2025

The Karnataka Information Technology Policy 2020-2025 (**"IT Policy"**) was introduced by the Government of Karnataka to tap into and explore the various opportunities and benefits the state provides for the growth of the Information Technology (**"IT"**) sector. Valid for a period of 5 years from the date of notification i.e. September 7, 2020, or till a new policy is announced, the IT Policy seeks to achieve its vision through focusing on innovation and continued development

of cities falling under the Beyond Bengaluru zone.

The incentives offered under the IT Policy can be categorized into the following 5 categories:

1. Infrastructure Development
2. Market Development
3. Ecosystem Management
4. Talent Development
5. Ease of doing business enhancement

For determining the eligibility of benefits under the IT Policy, the Information Technology/Information Technology enabled Services entities (**"IT/ITeS"**) are categorized into (i) entities with investment upto ₹ 250 crores and (ii) entities with investment above ₹ 250 crores.

The IT Policy lays down the various businesses that are eligible for benefits under the same such as IT involving development, software, computer systems etc. and all the legal entities operating in the IT and ITeS industry. Additionally, the entity must have their registered office in Karnataka or should be registered as per the Karnataka Shops and Commercial Establishments Act, 1961. At least 50% of the total qualified workforce of the entity, which does not include contract employees, should be employed in Karnataka. Additionally, the entity must be registered with Karnataka Innovation and Technology Society ("KITS"), Department of Electronics as an IT/ITeS entity.

- **Infrastructure development**

  Incentives/benefits available for both categories of entities

  IT Hubs/clusters: Where IT Hubs/ clusters are concerned, both categories of entities are eligible for financial support of upto 20% of fixed investment for infrastructure, excluding the cost of land, capped at ₹ 3 crore, whichever is lower. This is subject to occupancy rate and employment generations, and recommendations from State Level Committees for all the IT hubs/clusters outside Zone 3.

  Co-working spaces: Co-working spaces are eligible for financial support of upto 33% of fixed investment for infrastructure, excluding the cost of land, subject to a ceiling of ₹ 2 crores whichever is lower, subject to occupancy rate and employment generations, and recommendations from State Level Committees for all the co-working spaces outside Zone 3.

  Stamp Duty Exemption: Stamp duty exemption of 75% is available in Mysuru, Hubballi, Dharwad and Mangaluru, and 100% for all Zones except Zone 3.

  Power Tariff Concession: Industrial power tariff will be applicable to IT/ITeS entities instead of commercial tariff.

  Incentives/benefits available IT/ITeS entities with investments up to ₹ 250 crore

  Lease/rental reimbursement*:* Re-imbursement at ₹ 10 per sq. ft is available to IT/ITeS entities set up outside Zone 3 subject to a ceiling of ₹ 3 lakhs, for a period of 1 year. This is applicable once during the period of the IT Policy. Additionally, reimbursement is also available at the rate of ₹ 1000 per seat, for IT/IeS entities outside Zone 3, capped at ₹ 6 lakhs for a period of 1 year, applicable once during the policy period.

Incentives/benefits available IT/ITeS entities with investment above ₹ 250 crore

For Mega Projects, tailor-made packages of incentives on a case-to-case basis will be available.

- **Market Development**

Incentives/benefits available for all categories of entities

Reimbursement of Provident Fund/ Employee State Insurance: This is available to IT/ITeS entities outside Zone 3 at the rate of ₹ 2000 per employee per month for 2 years for all new employment, subject to certain conditions.

Incentives/benefits available IT/ITeS entities with investments up to ₹ 250 crore

Marketing Cost Reimbursement: 30% of the actual cost incurred by IT/ITeS entities set up outside Zone 3, up to ₹ 5 lakhs subject to certain conditions and specifications.

Quality Certification Reimbursement: For IT/ITeS entities which have been set up outside Zone 3, 50% reimbursement of cost of quality certification, subject to a maximum limit of ₹ 6 lakhs, is available.

Patents Cost Reimbursement: Patent awarded IT/ITeS entities are eligible for patents cost reimbursement.

Additionally, the State Government will facilitate and enable the development of a thriving market for IT/ITeS entities by easing norms for public procurement, hosting IT and emerging technology events, specifically beyond Bengaluru.

- **Ecosystem Management**

For further development of the existing ecosystem in the state, the Government of Karnataka seeks to incentivize IT/ ITeS entities by recognizing their efforts through awards and other recognitions.

Furthermore, all domestic (not applicable to Indian subsidiaries of foreign entities) IT/ITeS entities spearheading R&D projects, in the category of emerging and 5G technologies are eligible for reimbursement of 33% of the total project R&D cost or upto ₹ 1 crore, whichever is lower.

- **Talent Management**

The State Government, through this IT Policy provides for mentorship opportunities and building up the workforce through its various programs, schemes and initiatives such the Yuva Yuga Program, National Apprenticeship Training Scheme, etc.

- **Ease of doing business enhancement**

The Government of Karnataka has authorised the Karnataka Udyog Mitra, Department of Commerce and Industries, to act as a single window agency, for providing regulatory approvals to the IT/ITeS proposals. The IT/ITeS entities are also permitted to file self-certifications under the various labour law legislations. These measures are among several being taken by the State Government to enhance the ease of doing business in the state.

Author's Comments

Having been introduced at the onset of the COVID-19 pandemic, the IT Policy sought out to face the challenges presented by the global pandemic and as such, bring about a change

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in perspective. However, the IT Policy doesn't address the issues that have arisen due to the pandemic and how it would be curtailed. For example, the pandemic lead to a massive reduction in the workforce, and there was a huge shift to online/remote working. Thus, the incentives ought to have had regard to remote working instead of being solely focused on fixed infrastructure, which was underutilized during the period.

Karnataka Startup Policy 2022-2027

Karnataka, often referred to as the 'Silicon Valley of India', over the years, has established itself as most leading investment destination for entrepreneurs. The first state in India to introduce a policy specifically targeting startups in the year 2015, it has subsequently introduced various policies and programs in order to further the growth of startups in the state.

The Karnataka Startup Policy 2022-2027 (**"Startup Policy"**) has been introduced by the Government of Karnataka to encourage social entrepreneurship/assistive technology innovation and strengthen the infrastructure set up. This policy targets various areas such as funding, mentorship, facilitating ease of doing business, fostering partnerships etc., which are conducive to the growth of startups.

To avail the policy incentives and concessions under the Startup Policy, the entity should meet the definition of Startup as defined by the Government of Karnataka which is in line with the definition of GoI notification (G.S.R. notification 127 (E) dated 19.02.2019) and it must be registered with Karnataka Startup Cell under Karnataka Innovation & Technology Society.

The Startup should be incorporated as a private limited company or registered as a partnership firm or LLP and the turnover of the entity for any of the financial years since incorporation/registration has not exceeded ₹ 100 Crores and it shall be considered as a startup up to 10 years from the date of its incorporation. The Startup should be working towards innovation/improvement of existing products, services and processes and should have the potential to generate employment/ create wealth.

The Startup Policy envisages fueling the growth of the startup ecosystem in the State through the following pillars:

- **Pillar 1: Creating and Strengthening New Age Innovation Network ("NAIN")**
  The Startup Policy aims to build new centres and encouraging the growth of existing NAIN centres. Financial support is provided to NAIN 2.0 (Centres established under the Startup Policy) centres upto ₹ 5 lakhs per student project, the same is capped to 10 projects in a year, for 3 years. For strengthening of existing NAIN centres, existing NAIN centres are provided financial support of upto 25% of total cost, capped at ₹ 45 lakhs, for a period of 3 years. The Government aspires to arrange for the linking of NAIN Centres and external incubators/accelerators and provide funding support of ₹ 10 lakhs to the external incubators/accelerators per year per NAIN Centre.

- **Pillar 2: Fostering strong partnerships between Academia and Industry**
  Under the Startup Policy, the Government seeks to establish Technology Business Incubators ("TBI") outside Bengaluru with support of upto ₹ 10 crores per TBI for over a period of 5 years. Existing TBIs are also provided with funding support, on a case-to-case basis.

- **Pillar 3: Funding for Startups**

  Funding assistance is provided to startups through various schemes. Under the Idea2Poc Grant-In-Aid Scheme-Elevate, certain startups are recognised, and those requiring early-stage seed funding support are bestowed with a one-time Grant-in Aid of upto ₹ 50 lakhs. Under this Scheme, 10% of the fund is allocated for startups in areas related to Deep Tech, Assistive Technology and Sustainable Development Goals including Circular Economy, Renewable Energy/ Sustainability/Climate Change, thus further incentivising them. Additionally, a Venture Capital Fund of ₹ 100 crores is set up to provide financial assistance to startups in the fields of artificial intelligence, machine learning, electric vehicles, MedTech, robotics, drones, and other such disruptive technologies across all sectors.

  The Government also seeks to connect startups with investors of various categories, such as angel investors/ high net worth individuals, venture capitalists/government departments through outreach activities.

- **Pillar 4- Supporting Mentorship and Creation of Incubation and Acceleration Infrastructure**

  The State Government proposed a one-time capital grant of maximum 50% or 50 lakhs, whichever is less for fixed-cost investment (excluding land and building) for setting up incubators in technology clusters beyond Bengaluru.

- **Pillar 5- Building Inclusive & Equitable Startup Ecosystem**

  The Startup Policy aims to promote diversity, equality and inclusion. It seeks to promote women's entrepreneurship by setting aside 25% of the ₹ 100 Crore Venture Capital Fund for women startups. 20% of the seats at government-supported incubators are reserved for women startups. Additionally, a direct loan of upto ₹ 10 lakhs can be availed through Karnataka State Women Development Corporation.

- **Pillar 6- Fostering Social and Rural Entrepreneurship**

  In order to encourage startups from Tier-II and Tier-III cities beyond Bengaluru, assistance will be provided to accelerate the growth of grassroots and rural startups. Additionally, there also exists a provision for internship support for social entrepreneurs. The Startup Policy incentivises them by providing with a subsidy upto ₹ 1 Lakh as internship fees per startup for hiring interns from beyond Bengaluru subject to certain requirements. This can be availed once during the duration of the Startup Policy.

- **Pillar 7- Channelizing Innovation for Societal Impact**

  The Startup Policy seeks to explore business models and new technologies to focus on issues pertaining to Sustainable Development Goals and Environmental, Social and Governance framework. For this purpose, several challenges in collaboration with other departments are introduced and monetary rewards are presented to the startups who are able to complete them.

- **Pillar 8- Enablement and Facilitation**

  The Startup Policy seeks to improve the ease of doing business in the state

through various enablers such as Startup Cell, etc. For instance, the Karnataka Startup Cell facilitates self-certification by startups under various labour law legislations. The policy also provides preferential market access for startups in public procurement.

- **Pillar 9- Providing State support in the form of incentives & concessions**

  Various incentives and concessions can be availed by the startups during the policy period as follows:

  - Reimbursement of 100% State GST for beyond Bengaluru startups, set up in Government of Karnataka supported incubators and having maximum annual turnovers of ₹ 1 crore, within first 3 years of incubation.
  - Marketing Cost Reimbursement of 30% of the actual costs including travel incurred in international marketing through trade show participation. This incentive is subject to a cap of ₹ 5 lakhs per year per startup.
  - Patents Filing Cost Reimbursement for startups incubated in State Government supported incubators subject to a limit of ₹ 2 Lakhs per Indian patent awarded. For awarded foreign patents on a single subject matter, upto ₹ 10 Lakh would be reimbursed.
  - 50% reimbursement of Quality Certification Cost with a ceiling of ₹ 6 lakhs (maximum 3 certifications) for startups outside Bengaluru Urban district.

Author's Comments

The Startup Policy has covered startups at every stage of the business cycle, right from the funding at their inception, incubation support, focus on coworking spaces, internship support, support for women startups, mentoring, fostering rural and social entrepreneurship.

The most notable feature of this Policy is the creation of a fund for startups. Initiatives like these and the ones proposed in the Startup Policy further highlight Karnataka's mission to maintain its position as the most preferred destination for startups in India. Additionally, focus has been provided to both existing startups and emerging ones. The benefits under this Policy are spread across the State and not restricted to just the Bengaluru rural and urban district.

The Karnataka Renewable Energy Policy 2022-2027

The Karnataka Renewable Energy Policy 2022-2027 (**"RE Policy"**) was notified by the Government of Karnataka in order to establish the position of the State as a preferred destination for investments in the renewable energy sector and create an ecosystem for sustainable and green energy development in the state. The RE Policy is valid for a period of 5 years from its date of issuance i.e. April 16, 2022, or till a new policy is announced.

The RE Policy is applicable to all solar, wind, solar-wind hybrid, energy storage, mini and small- hydro, biomass, co-generation, waste to energy projects, and all new initiatives and projects which are set-up during the policy period are eligible for the benefits provided for.

The RE Policy identifies eleven focus markets and it will be applicable to projects and

programs relating to these focus markets as follows-

- Green Energy Corridor
- Renewable Energy Parks
- Solar Energy Projects
- Wind Energy Projects
- Solar-Wind Hybrid Energy Projects
- Energy Storage Projects for Renewable Energy
- Biomass Projects
- Co-generation projects
- Waste to Energy Projects
- Mini and Small-Hydro Projects
- New Initiatives/Pilot Projects/Research & Development

There are various incentives that shall be provided to all the focus markets. A few of them have been highlighted below:

1. ***Energy Sale***- The developers of the renewable energy products can sell their energy to procurers, intermediaries, and consumers both within and outside Karnataka to promote intra-state and inter-state transmission projects.
2. ***Land***- It is the responsibility of the developer of the RE project to acquire/lease the land required. All the renewable energy projects are treated as the manufacturing industry and can avail the incentives and concessions provided for in the State Industrial Policy, as applicable to the manufacturing industry, except for investment promotion subsidies.
3. ***Connectivity***- The RE Policy assists the developers by providing them with an opportunity to connect the project with the State Transmission Utility and the Central Transmission, depending upon the category of the project.
4. ***Clearances***- The Karnataka Renewable Energy Development Limited ("KREDL") will facilitate the project developers in obtaining requisite clearances required for the projects, by providing letters of recommendation to the necessary authorities, as may be requested by the project developers.
5. ***Energy Storage***- A project can be developed with or without an energy storage system, in accordance with guidelines issued by the Government of India and/or the Government of Karnataka.

Additionally, there are several incentives being provided by the RE Policy, which are specific to the focus markets, in accordance with guidelines or prevailing schemes of the Central and State Governments. RE Policy also provides for the criteria for utilisation of land for the project, timelines, fees and charges.

Author's Comments

While the policy is well-rounded and covers every sector for renewable energy projects, it overlooks a major challenge which is being faced by renewable energy project developers across the country, i.e., disposal and recycling. The RE Policy ought to have been comprehensive to also promote and incentivise the environmentally friendly recycling and disposal, as the overall intent is to provide for clean energy. The purpose is not fully served if clean energy is produced at the cost of other waste accumulation and pollution.

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Andhra Pradesh and Telangana: Incentives being offered to Fuel Industrial Growth



CA Vipul Mittal

Overview

The State Governments compete amongst themselves to attract more and more investment from domestic and foreign investors. In the process, they provide fiscal as well as non-fiscal incentives to investors. Andhra Pradesh and Telangana share same roots as well as geographical boundaries. While Andhra Pradesh promises to provide more incentives to Small and Medium Enterprises and industries in specified sectors, Telangana offers host of incentives for all sections.

The incentives range from capital subsidy, interest cost reimbursement, tax incentives, subsidised power tariffs, stamp duty waivers and other land cost related subsidies. Both the states offer tailor-made incentives to industries under "Mega" category but the investment threshold of INR 200 crore prescribed in Telangana is significantly lower than the INR 1000 crore threshold prescribed in Andhra Pradesh.

This article delves into the Industrial Policies rolled out by both the states, incentives offered under such policies, focus sectors and also some of the sector specific policies rolled out to attract investment in specific sectors.

India is the fastest growing large economy in the world. The Union Government is making efforts to boost manufacturing activity in India through their ambitious *"Make in India"* program.

The State Governments are not far behind in doing their bit to attract domestic as well as foreign investors to their respective states.

The State Governments offer varied fiscal incentives to businesses in order to:

(i) boost industrial development in the State;

(ii) develop backward regions, create jobs for masses;

(iii) enhance State's competitiveness; and

(iv) promote specific or sunrise sectors.

Two of such states, originating from the same roots, are Andhra Pradesh and Telangana. They are dolling out host of fiscal and non-fiscal incentives to attract investment in their respective states. Let's look at the incentives being offered by these two states.

Andhra Pradesh

Andhra Pradesh is India's 5th largest state in terms of area and has 2nd longest coastline after Gujarat. The Government of Andhra Pradesh has recently rolled out new industrial policy to attract investment in the state.

❖ AP Industrial Development Policy 2023-27

In March 2023, the State Government rolled out a new industrial policy named *AP Industrial Development Policy 2023-27* to replace the earlier AP Industrial Development Policy 2020-23.

Operative Period

The policy shall be in force for a period of four years, starting from 1st April 2023 to 31st March 2027.

Incentives offered

The scheme offers incentives to various sections of the industry which has been bifurcated is of (i) Investment in plant & machinery and (ii) Turnover or Employment. The following table summarises the conditions for various industry groups:

(Amount in INR Crore)

Industry	*Investment in Plant & Machinery*	*Turnover*	*Employ-ment*
Micro	< 1	< 5	-
Small	< 10	< 50	-
Medium	< 50	< 250	-
Large	50 – 1000	-	-
Mega	1000 – 3000	-	> 1000
Ultra-Mega	> 3000	-	> 3000

With an objective to have an all-round development, the scheme categorises the districts into three baskets, depending on the present level of industrialisation.

Category	*Status of Industrial Development*
I	Less Industrialised
II	Moderately Industrialised
III	Highly Industrialised

More incentives are offered in less industrialised areas to promote investment in these regions. Government Order can be referred for exact identification of district.

Now let's look at the incentives being promised by the State Government to each of the industry groups.

Incentive for Micro and Small Enterprises (MSEs)

The scheme promises following incentives to attract investment and support MSE sector:

- ***Reduced Land Acquisition Costs***: The scheme offers a 25% reimbursement on land conversion charges, subject to a maximum limit of INR 10 lacs.
- ***Stamp Duty Concessions***: The State Government has waived off 100% stamp duty for this category of entrepreneurs.
- ***Investment Subsidies:*** The scheme provides a 15% investment subsidy on fixed capital investment, subject to a maximum cap of INR 20 Lakhs. Further, the upper cap is enhanced to INR 30 Lakhs in case of women entrepreneurs.

  Same amount of incentive is granted for approved industries in service sector.

- ***Tax Advantages:*** The scheme offers reimbursement of 100% net State Goods and Services Tax (SGST) for a period of five years from the commencement of commercial production, subject to a maximum cap of 100% of Fixed Capital Investment (excluding land). This is granted when the industry is paying SGST liability in cash on its sale within the state.
- ***Power Cost Assistance:*** In order to compensate with increased power cost, the scheme provides a fixed power cost reimbursement @ Re. 1.00 per unit for a period of five years from the date of commencement of commercial production.
- ***Technology upgradation & acquisition:*** Incentive amounting to 50% of the cost or INR 25 Lakhs, whichever is lower, is granted to support technology upgradation & acquisition. This helps the industries to meet the challenges of evolving technological landscape.
- ***IP Acquisition cost:*** The scheme also provides support of 75% of the cost of IP acquisition, with an upper cap of INR 10 lacs.
- ***Interest subsidy***: A subsidy to the tune of 3% of interest rate, limited to INR 25 lacs, is granted to general category for a period of five years. The upper cap is increased to INR 30 lacs for BCs/ Minorities.

Incentive for Medium Industries

The scheme also offers a few incentives to medium industries also.

- ***Investment subsidy or Tax Advantages:*** The scheme provides a choice for the entrepreneurs to select between fixed investment subsidy of 15% of FCI limit upto 2.5 crore which will be paid in 5 equal annual instalments or 50% net SGST reimbursement for 5 years.

  The entrepreneurs can select the most beneficial option, depending on their investment and supply chain, by doing a comparative analysis.
- ***Technology upgradation & acquisition:*** On similar lines of MSEs, an incentive of 50% is granted for technology upgradation & acquisition with an upper cap of INR 25 Lakhs.
- ***IP Acquisition cost***: The scheme also provides support of 75% of the cost of IP acquisition with an upper cap of INR 10 lacs.

Incentive for Large Industries

Incentive in the form of net SGST reimbursement is granted to the large industries depending on the location of project. The projects under less developed districts are granted more incentive to boost development. The table below list down the amount of incentive provided to each of the categories.

Category	*Incentive*
I	100% of Net SGST for 5 years, upto 100% of FCI
II	100% of Net SGST for 5 years, upto 75% of FCI
III	100% of Net SGST for 5 years, upto 50% of FCI

The cost of land acquisition has to be excluded while calculating FCI under all the categories.

Incentive for Mega and Ultra Mega Industries

Considering the size of investment and employment potential, the State promises to offers tailor-made incentive package for this segment. The industry can approach the State Government to customise the incentives according to their need and business operations.

Industries in this category may expect following incentives:

1. Capital subsidy;
2. Interest subsidy;
3. Power cost reduction;
4. Net SGST reimbursement;
5. Allotment of non-agricultural land;

These incentives are operationalised by issuance of a separate Government Order and project specific guidelines.

Ineligible industry/activity

The list for ineligible industries is provided in the operational guidelines of the scheme notified vide GOMs No 68, Industries and Commerce (P&I) Department dated 24 July 2023. The list provides for 38 type of industries where incentive not eligible. Some of the key industries under the ineligible categories are:

- Khandasari Sugar and Sugar Mills and Jaggery making.
- Distilleries, Rectified Spirit (Alcohol) from Molasses, Breweries, Beer and other Alcoholic Drinks, except Winery and Bio-Ethanol meant for blending with petrol
- All animal rearing/farming like poultry, piggery etc.
- Alcohol based Industries except Pharmaceuticals, APIs, Intermediates, Drug and other products having utility for medical purposes
- Varnishes and Thinners, Painting works and spray-painting units
- Cotton ginning except Modern ginning as per the norms of Technology Mission on Cotton, Ministry of Textiles, Government of India
- Tobacco barons/tobacco re-drying/ processing, Beedi, Cigarette manufacturing and other Tobacco based products. Units for cutting raw tobacco and sprinkling jaggery for chewing purposes and Gutkha manufacturing units
- Mining and quarrying
- Ferro Alloys Manufacturing

In addition to the listed industry, the State Government may make addition to the list from time to time.

❖ **Focus Sectors**

The State Government has special focus on certain sectors to fuel industrial growth in the region. Let's look at some of the sectors which are in focus:

Aerospace and Defence: In order to attract investment in the sector, the State promises to provide tailor-made incentive for investment exceeding INR 500 crore or creating employment for over 2000 people.

The State also offers infrastructural subsidy, waiver of SGST for all inputs used for aircraft MRO activities in Andhra Pradesh. Incentives are also provided for Research & Development, Patent and Quality Certifications, Skill Development etc.

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Automobile & Auto Components: Automobile sector has been one of the focus areas for almost all states, considering the large investment it brings in the region. Andhra Pradesh Government also provide host of incentives to the units in the sector to attract investment.

Incentives in the form of Capital Subsidy, Patent Cost, Gross SGST reimbursement, water supply etc. This sector also gets tailor-made incentive benefits.

Electronics: Visakhapatnam is being developed as major electronic hub. East Godavari district is also hosting an Electronics Hardware Park. The State also houses some of the major smartphone manufacturers.

The State is offering reimbursement of stamp duty, transfer duty and electricity duty. Power subsidies, capital subsidy, interest subsidy and tax rebates are also on offer.

Textile & Apparels: Andhra Pradesh is 2nd largest cotton and raw silk producer. It is developing integrated supply chain city (Brandix India Apparel City) in Vizag. The Government also provides land to textile parks as per the policy.

The fiscal incentives are offered in the form of interest subsidy, tax concessions, power tariff reduction, stamp duty waiver, capital subsidy etc.

❖ **Procedural aspects**

The Incentive Schemes are managed by the Department of Industries under the Government of Andhra Pradesh. The application is filed online on "Industrial Incentive Portal". The Industrial Incentives portal provides for a hassle-free and seamless incentive application and tracking process. After filing the application, detailed scrutiny is done by the department before granting the approval.

Telangana

The Telangana State was established in June 2014 and is now consistently ranked in top 3 for "Ease of doing business" in India. Telangana is a major IT and pharmaceutical manufacturing hub.

❖ **T-IDEA Incentive Scheme 2014**

Telangana rolled out the T-IDEA (Telangana State Industrial Development and Entrepreneur Advancement) Incentive Scheme, 2014 to propel industrial activity within the state. This initiative aimed to create a lucrative environment for investors and budding entrepreneurs.

Operative Period

The scheme was originally notified from 1 January 2015 to 31 March 2019. However, the operative period of the scheme was extended in March 2019 till further orders.

Incentives offered

The scheme offers incentives to various sections of the industry which has been bifurcated as per the following investment criterion:

(Amount in INR Crore)

Industry	***Investment in Plant & Machinery***
Micro	< 1
Small	1 – 10
Medium	10 – 50
Large	50 – 200
Mega	200 >

The incentives are extended for investment in the entire state, except a few specified areas. Let's delve into the incentives offered under T-IDEA scheme:

Incentive for Micro and Small Enterprises (MSEs)

T-IDEA Scheme entices investors under this segment with a multitude of benefits, including:

- ***Reduced Land Acquisition Costs:*** The scheme offers a 25% rebate on land cost in industrial estates and parks, with a maximum limit of INR 10 Lakhs. Additionally, entrepreneurs receive 25% rebate on land conversion charges for industrial use.
- ***Stamp Duty and Transfer Duty Relief:*** SMEs benefit from 100% reimbursement of stamp duty and transfer duty paid by them on land purchase. Similarly, for lease cases, 100% reimbursement of stamp duty is granted for lease of land/shed/buildings, mortgages, and hypothecations.
- ***Subsidies for Setting Up Shop:*** T-IDEA provides a 15% investment subsidy on fixed capital investment, subject to a maximum cap of INR 20 Lakhs. This financial aid eases the burden of establishing a new venture.
- ***Tax Advantages:*** The scheme offers reimbursement of 100% net VAT/ CST or State Goods and Services Tax (SGST) for a period of five years from the commencement of commercial production. This significantly reduces the tax burden on new businesses in case they are selling locally.
- ***Power Cost Assistance:*** To address operational expenses, T-IDEA provides a fixed power cost reimbursement @ Re. 1.00 per unit for a period of five years from the date of commencement of commercial production.
- ***Support for First-Generation Entrepreneurs:*** Recognizing the challenges faced by new entrepreneurs, the scheme offers seed capital assistance, @ 10% of Machinery Cost, to first-generation entrepreneurs setting up micro enterprises.
- ***Interest Subsidy:*** Micro and small enterprises can avail interest subsidies on term loans taken for fixed capital investment.

Incentive for Medium & Large Industries

The scheme offers similar incentives to this segment also with a few modifications.

- ***Reduced Land Acquisition Costs:*** The scheme offers same amount of rebate i.e. 25% on land cost in industrial estates and parks, with a maximum limit of INR 10 Lakhs. However, 25% rebate on land conversion charges for industrial use is available only to medium enterprises and not available for Large enterprises.
- ***Stamp Duty and Transfer Duty Relief***: The scheme offers 100% reimbursement of stamp duty for land purchase as well as lease cases.
- ***Tax Advantages:*** The scheme offers reimbursement of 75% net VAT/ CST or State Goods and Services Tax (SGST) for a period of seven years from the commencement of commercial

production for medium scale industries. The reimbursement amount is reduced to 50% in case of large industries. This can be claimed upto 100% of the fixed capital investment made in the project.

- ***Power Cost Assistance:*** Fixed power cost reimbursement is kept at the same level i.e. Re. 1.00 per unit for a period of five years from the date of commencement of commercial production.

Incentive for Mega Industries

The industries having investment of more than INR 200 Crore or creating employment of more than 1,000 persons are categorised as Mega Industries.

The State offers tailor-made incentive package for these industries. The industry can approach the State Government to customise the incentives according to their need and business operations.

Industries in this category may expect following incentives:

6. Capital subsidy;
7. Interest subsidy;
8. Power cost reduction;
9. Net SGST reimbursement;
10. Allotment of non-agricultural land;
11. Any other incentive extended under the T-IDEA Scheme for other categories

These incentives are operationalised by issuance of a separate Government Order and project specific guidelines.

Ineligible industry/activity

The State Government has issued a list of ineligible industry/activity vide G.O.Ms.No.62, Industries & Commerce (IP&INF) Dept. dated 08.09.2015. Some of the key industries are:

- Rectified Spirit (Alcohol) from out of Molasses, except Grain based ENA
- Alcohol based Industries except Pharmaceuticals and Drug Industries
- Mining and Quarrying
- Tobacco barns/tobacco re-drying/ processing, Beedi/Cigarette manufacturing and other tobacco based products
- Calcium carbide and Silicon carbide manufacturing
- Ferro Alloys Manufacturing
- Hotels and Motels
- Composite Units setup for manufacture of an eligible items along with ineligible items except when the proportion of in-eligible items in the total production is less than 10% in value of the total turnover

❖ **Focus Sectors**

Fiscal incentives as laid down under the T-IDEA scheme are available to all sectors, except the ones which are under the ineligible list.

The State offers a unique "Meet or Beat Policy" in which the State Government promises to offer opportunities that will either match or supersede any package offered anywhere in the world for industry.

In addition to this, the State Government has laid down special emphasis on certain sectors which they intend to promote in the State. The subsequent section looks at some of the sector specific policies rolled out by the state.

Aerospace and Defence: The State has special focus on this sector and houses multiple industries in the sector. They provide single window clearance under TSiPASS scheme, tailor made incentive for projects having investment more than INR 200 Crore or employment of more than 1000 and upskilling.

SpaceTech: The state intends to become a global technology hub for SpaceTech. The Emerging Technology Wing under the Information Technology, Electronics & Communications (ITE&C) Department of Government of Telangana has laid a policy called "SpaceTech Framework" in April 2022.

The policy offers to extend the benefits available under T-IDEA scheme along with host of other non-fiscal incentives like faster clearances, investment support for Startups, Co-working spaces, advisory support etc.

Electric Vehicle and Batteries: Telangana Electric Vehicle and Energy Storage Policy 2020-2030 (EV Policy) inter alia aims to make the State an attractive investment destination, promote R&D in the sectors. The policy extends to manufacturers, EV customers and charging infra providers.

The scheme provides incentives in the form of capital subsidies, SGST reimbursement, power tariff subsidy, waiver from Road Tax & Registration Charges etc.

Information Technology & Electronics CT: Telangana 2nd ICT Policy 2021-26 lays down the policy roadmap to attract investment in Information Technology, Electronics and Communication (ITE&C). The policy aims to further strengthen product development, engineering, R&D, IT services etc.

Under the policy, the State Government will provide incentive in the form of Allotment of Government Land, Power, reimbursement of specified costs, R&D grants, capital subsidy, stamp duty & transfer fee waivers etc.

The policy also lays special emphasis on Electronics sector focusing on specific sub-sectors such as Consumer Electronics, Mobile Manufacturing, Solar PV Cell & Module, IT Hardware, Telecom Equipment, Semiconductor Fabrication/ Manufacturing. Medical Devices, Automotive and Defence.

❖ **Procedural aspects**

The Department of Industries & Commerce manages the Incentive Scheme in Telangana. The State has launched various portals viz Invest Telangana, TS-ipass to provide information on various incentive scheme and also provide online interface for application filing and tracking.

■●■

"Dare to be free, dare to go as far as your thought leads, and dare to carry that out in your life."

— *Swami Vivekananda*

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Tamil Nadu Government's Sectoral Policies and Strategic Initiatives



CA Rahul Jain

Overview

Tamil Nadu, renowned as the powerhouse of the Indian economy, stands tall as the second-largest state economy, enticing investors with its formidable industrial infrastructure and highly skilled workforce. Spearheaded by stalwart agencies such as TIIC, TIDCO, SIPCOT, ELCOT, and Guidance Tamil Nadu, the state orchestrates a symphony of growth through visionary initiatives and progressive policies.

Tamil Nadu's Industrial Policy of 2021 is a bold stride towards turbocharging manufacturing, drawing investments, and igniting employment opportunities across pivotal sectors like automobiles, electronics, textiles, and software. With a staggering investment target of USD 135 billion and a mission to employ 20 lakh individuals by 2025, this policy sets its sights on a soaring 15% annual growth rate in the manufacturing domain.

Similarly, the Electric Vehicles Policy and Electronics Hardware Manufacturing Policy further underscore Tamil Nadu's commitment to fostering innovation and attracting investments in emerging sectors.

These new policies offer a range of incentives, including a 100% reimbursement of Gross SGST and capital subsidies ranging from 15% to 30%, to incentivize investment in electric vehicles, data centers, and electronics hardware manufacturing.

At the same time, challenges such as disputes over incentive fulfillment, highlight the importance of transparent policy implementation to maintain investor confidence.

Overall, Tamil Nadu's strategic policies and proactive approach towards industrial development are expected to propel the State towards sustainable economic growth and achieve its ambitious goal of becoming a $1 trillion economy by 2030.

1. Tamil Nadu, the second-largest State economy in India[1], accounts for 8.8 percent of the nation's GDP. The State's substantial number of factories and skilled workforce underscores its pivotal role in the national industrial landscape. Its attractiveness as an investment hub has garnered significant interest

1. RBI - Handbook of Statistics on Indian States 2022-23

from both domestic and international investors, evident in resounding success of events such as the Global Investors Meet 2024.

2. In facilitating investments and promoting industrial growth, the Government has institutionalized several agencies.

3. The Tamil Nadu Industrial Investment Corporation Ltd (TIIC), established in 1949, functions as the primary State-level development financial institution, extending financial assistance to medium and large industries.

4. The Tamil Nadu Industrial Development Corporation Limited (TIDCO), established in 1965, plays a crucial role in fostering industrial growth through joint ventures and developmental projects, including various industrial corridor initiatives.

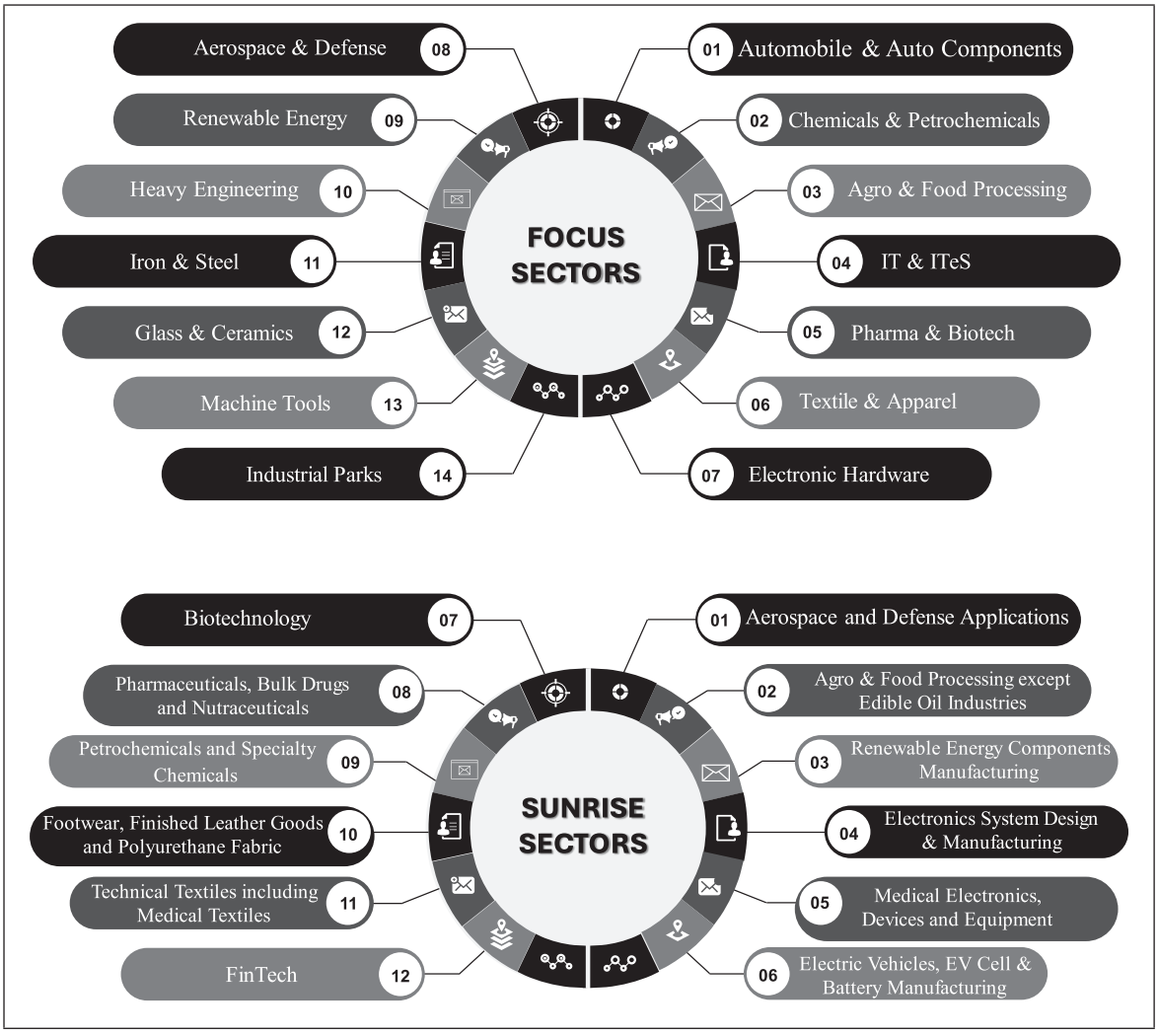
5. The State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT), formed in 1971, plays a pivotal role in developing industrial complexes, parks, and special economic zones (SEZs), thereby enhancing industrial infrastructure Statewide.

6. Furthermore, the Electronics Corporation of Tamil Nadu Limited (ELCOT), established in 1977, significantly contributes to promoting technological advancement and digital services in the State. Acting as the nodal agency for Information and Communication Technology (ICT) projects for the Government of Tamil Nadu, ELCOT plays a crucial role in positioning Tamil Nadu as the leading IT destination in India.

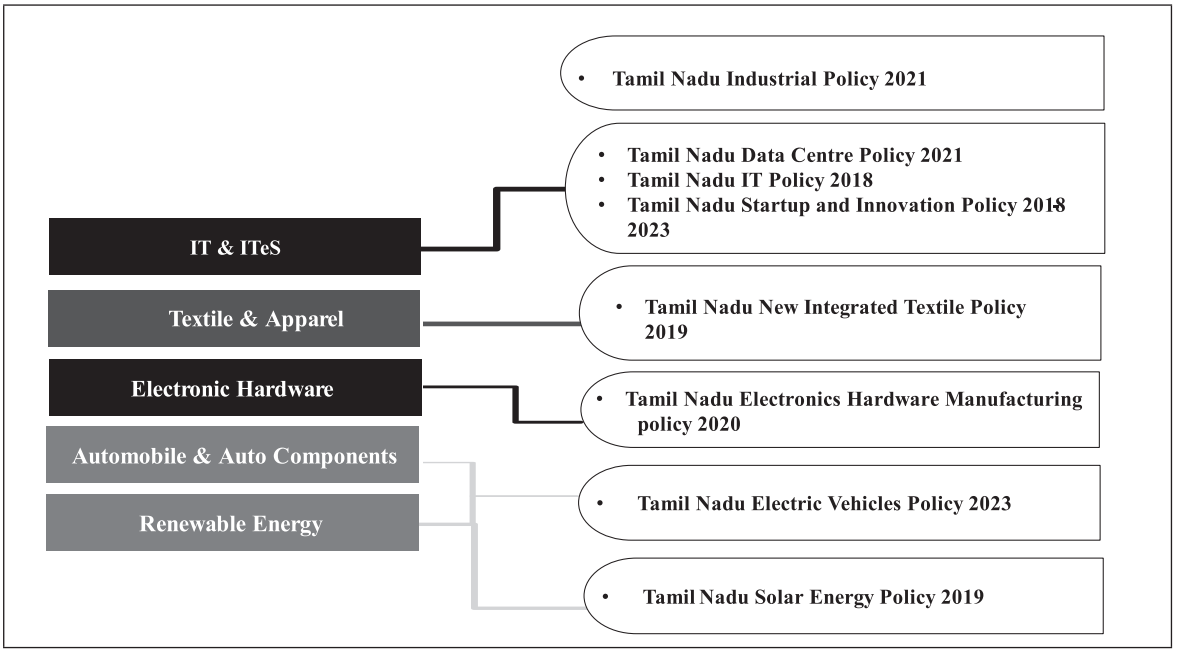
7. Additionally, Guidance Tamil Nadu, established in 1992[2], serves as the primary agency for investment promotion and single-window facilitation, offering comprehensive support to investors throughout the investment lifecycle.

8. These agencies collaboratively work towards bolstering Tamil Nadu's standing as a preferred investment destination, thereby advancing economic growth and prosperity in the region. The Tamil Nadu Government has also identified various sunrise and focus sectors[3] for ushering the next stages of growth. These sectors are depicted in the representation below.

2. Established as Tamil Nadu Industrial Guidance and Export Promotion Bureau
3. Classification per Guidance, Tamil Nadu



9. Industries such as automobiles, textiles, engineering, electronics, and software stand as robust pillars of economic resilience, spearheading employment generation and encouraging innovation. The proactive policies formulated for these sectors have fortified growth and elevated competitiveness in the State's fiscal position. New visionary policies like the Electric Vehicles Policy and the Electronics Hardware Manufacturing Policy epitomize the State's affirmative approach towards advancing innovation and enticing fresh investments. These strategic policies would nurture local manufacturing capabilities and cultivate an environment conducive to sustainable economic advancement. This article delves into the State's key sectors, as illustrated in the accompanying diagram, and the latest policies propelling their expansion.



1) Tamil Nadu Industrial Policy 2021

Tamil Nadu's Industrial Policy 2021 aims to enhance the State's manufacturing sector through infrastructure development, skill enhancement, ease of doing business, and incentives. Valid for a four-year period from 1st January 2021 to 31st March 2025, the policy intends to achieve an annual growth rate of 15% in the manufacturing sector, attract substantial investments (of USD 135 billion), create employment opportunities for 20 lakh people by 2025, and increase the sector's contribution of manufacturing to 30% of the State's Gross State Value Added (GSVA) by 2030.

Focus of the Policy

The policy identifies key sectors for emphasis, including automobiles, chemicals, electronics, textiles, financial services, and software. Additionally, it targets sunrise sectors such as aerospace, agro-processing, renewable energy, biotechnology, and electric vehicles. By targeting these sectors, the policy aims to capitalize on existing strengths and explore emerging opportunities.

Infrastructure development forms a cornerstone of the policy, with a focus on enhancing SEZs, land banks, industry-specific parks, and transportation and logistics networks to support industrial growth and facilitate ease of doing business.

Innovation and ecosystem development are prioritized through initiatives such as establishing Industrial Innovation Centers, providing grants under the Industrial Ecosystem Fund, and supporting Micro, Small, and Medium Enterprises (MSMEs) to promote a conducive environment for innovation and entrepreneurship.

The policy emphasizes skill development through the Apex Skill Development Centers, inclusive employment practices, and flexible employment conditions. By empowering local communities and marginalized groups, the policy seeks to ensure inclusive and sustainable growth.

Initiatives like the Single Window Facility, dedicated investor facilitation desks, and streamlined planning norms aim to enhance the ease of doing business in Tamil Nadu. These measures simplify regulatory processes, reduce bureaucratic hurdles, and facilitate timely approvals for industrial projects.

Incentives and Support Mechanisms

Under the Tamil Nadu Industrial Policy 2021, various incentives are provided to support investment and industrial development in the State, with specific provisions based on project size, classification, and district categorization.

The districts of the State are categorized based on their development status and industrial potential as follows:

"A" Category Districts (4 districts) – Fully industrially developed areas such as Chengalpattu, Chennai, Kancheepuram and Tiruvallur.

"B" Category Districts (12 districts) – Moderately industrially developed areas such as Coimbatore, Erode, Salem, Tiruchirappalli, Tiruppur, etc.

"C" Category Districts (22 districts) – Industrially developing areas such as Cuddalore, Dharmapuri, Dindigul, Kanniyakumari, Madurai, Mayiladuthurai, Thoothukudi, Tirunelveli, etc.

Further the Projects are categorized based on their size and employment generation capacity:

- ***Sub-Large Projects***: Investment ranging from ₹ 50 crore to ₹ 300 crore.
- ***Large Projects***: Investment ranging from ₹ 300 crore to ₹ 500 crore.
- ***Mega Projects:*** Investment ranging from ₹ 500 crore to ₹ 5,000 crore.
- ***Ultra-Mega Projects:*** Investment exceeding ₹ 5,000 crore.

The incentives provided for large projects and above are as follows:

- Investment Promotion Subsidies: Subsidies in the form of State Goods and Services Tax ("SGST") Reimbursement for Final Products, Fixed Capital Subsidy, Flexible Capital Subsidy, and Turnover-based Subsidy. For example, the Fixed Capital Subsidy ranges from 10% to 25% of Eligible Fixed Assets (EFA) depending on the project category and district classification.
- Training Subsidies: Offers subsidies for training programs to enhance workforce skills and productivity - ₹ 4,000 per worker per month for 6 months, or ₹ 6,000 per worker per month for specified categories, such as women, transgender employees, persons with disabilities, and Scheduled Caste (SC)/ Scheduled Tribes (ST) communities.
- Offers refunds on SGST paid on capital goods purchases.
- New or expanding manufacturing projects are eligible for a 5-year exemption on electricity tax for power

purchased from Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) or generated and consumed from captive sources.

- Land is allotted at concessional rates, with a 10% discount in "A" and "B" districts and a 50% discount in "C" districts for projects.
- Provides concessions on stamp duty for industrial land leases or purchases across districts. Projects located in industrial parks promoted by SIPCOT in "A" and "B" category districts are eligible for a 50% concession on stamp duty payable for the lease or purchase of land, shed, or buildings meant for industrial use.
- In "C" category districts, industrial projects can avail a 100% concession on stamp duty for similar transactions in parks promoted by SIPCOT, SIPCOT JV, or SIDCO.
- Ultra-Mega Projects receive a 5% interest subvention on actual term loans, up to ₹ 4 crore per annum for 6 years, reducing financing costs and enhancing project viability.
- Provides incentives to promote environmentally sustainable practices in industries. Industrial projects implementing green initiatives for recycling waste and water, and promoting sustainable energy usage, are eligible for a 25% subsidy on the cost of setting up environmental protection infrastructure.
- Provides incentives for obtaining quality certifications to enhance product quality and competitiveness.
- Reimbursement of 50% of the expenditure incurred by the Project subject to a maximum of ₹ 30 lakh for the period of investment for a patent, copyright, trademarks, Geographical Indicators registration.
- Incentivizes logistics infrastructure development through stamp duty concessions on industrial land leases or purchases.
- Introduces special incentive packages for emerging sectors, such as Industry 4.0 and advanced technology industries.
- Implements streamlined processes and digitized interactions to enhance ease of doing business and attract foreign direct investment.
- Includes provisions for the development of industrial parks to support manufacturing activities.

SIPCOT plays a pivotal role as the implementing agency for disbursing incentives and facilitating the policy's effective execution.

Further, inter-departmental committees ensure coordination and oversight, while a transparent application and sanction process enhance accountability and efficiency.

2) Tamil Nadu Electric Vehicles Policy, 2023

The Tamil Nadu Electric Vehicles Policy, valid for a period of 5 years (or till a new policy is announced), aims at transforming the State into a leading hub for electric vehicle (EV) manufacturing in South-East Asia. With a targeted investment of ₹ 50,000 Crores and the creation of 1.50 lakhs jobs

within the State, the primary goals are as follows:

- Develop robust infrastructure and an industrial ecosystem to attract EV manufacturing units.
- Encourage the establishment of indigenous EV manufacturing value chains by attracting EV Original Equipment Manufacturers (OEMs) and component manufacturers to set up units in the State.
- Provide initial incentives to incentivize early adopters of electric vehicles.
- Facilitate the development of charging infrastructure with favorable power tariffs through both public and private initiatives.
- Promote research and development as well as innovations in automotive technology and shared mobility.
- Identify and promote key cities such as Chennai, Coimbatore, Tiruchirappalli, Madurai, Salem, and Tirunelveli as pilot cities for implementing e-mobility solutions.
- Support the electrification of commercial and public transport fleets to further drive the adoption of EVs across different sectors.

These objectives underscore the government's commitment to nurture a sustainable and thriving electric vehicle ecosystem in Tamil Nadu, encompassing manufacturing, adoption, innovation, and infrastructure development.

EV Policy Key Incentives

- Grants 100% reimbursement of Gross SGST to manufacturers on the sale of EV for a period of 15 years from the date of commercial production.
- Offers a subsidy of up to 2% of the project's annual turnover.
- Grants a subsidy of 15% of investment in EFA.
- Provides a significant upfront financial incentive for investment in EV infrastructure.
- Facilitates capital expenditure and reduces financial barriers for new projects.
- Offers a generous capital subsidy of 20% for EV battery and Advanced Chemistry Cells manufacturing projects.
- Provides 100% exemption on electricity tax for 5 years.
- Grants 100% exemption on stamp duty for land acquisition from government agencies.
- Provides reimbursement of EPF contributions for new employees.
- Covers 50% of the total cost for obtaining quality certifications.
- Provides reimbursement for expenses related to patents, copyrights, and trademarks.
- Offers a 5% rebate on interest rates for term loans.

- Reduces the cost of borrowing and improves the financial feasibility of EV projects.
- Stimulates investment by making financing more affordable and attractive.

Who are eligible for incentives under the Policy?

The following categories of persons/entities in Tamil Nadu are eligible for specific incentives under the scheme:

- Suppliers/ Manufacturers in the EV Sector – Projects with a minimum investment in EFA exceeding ₹ 50 crore and creating a minimum of 50 direct jobs.
- Companies transitioning/diversifying into EV manufacturing
- Startups in the EV sector
- Research institutions engaged in EV-related research
- EV charging stations

3) Tamil Nadu Data Centre Policy, 2021

Recognizing the significance of the role of data centers in facilitating information storage and processing, the comprehensive Data Centre Policy was introduced in 2021, under the administration of ELCOT.

This policy aims to promote Tamil Nadu as a preferred destination for data center investments. It also aims to safeguard data, provide a conducive business environment, promote sustainability, and encourage research and development.

Scope and Objectives

The policy is tailored to cover firms engaged in the development and operation of various types of data centers[4]. The objectives of the policy include:

1. Providing essential infrastructure support in terms of power, land, and connectivity.
2. Offering fiscal and non-fiscal incentives to attract investments in the data center sector.
3. Supporting research, development, and innovation in data technologies.
4. Promoting the usage of renewable energy and green technologies.
5. Encouraging collaboration between industries and academic institutions for skill development and innovation.

Incentives

1. Power-related incentives, such as 100% subsidy on Electricity Tax for five years, concessional open access

4. These shall broadly include the following:
   - Greenfield Data Centre unit or Data Centre parks
   - Brownfield expansions of existing Data Centre units shall be eligible for concessions/relaxations subject to certain restrictions
   - Edge Data Centres

charges, provision of dual power and augmentation of power supply by 50%.

2. Stamp duty concessions with up to 100% exemption in certain districts and land cost subsidies, offering a 50% subsidy on land cost in particular districts to facilitate the acquisition of land for data center development.

3. Support for the Micro, Small, and Medium Enterprises (MSME) sector including reimbursement of 10% of remuneration paid to local MSMEs.

4. Training incentives of up to ₹ 10,000 per person trained per month, capped at ₹ 1 crore per data centre unit.

5. Structured packages of assistance for projects exceeding ₹ 2000 crore investment, on a case-to-case basis, and additional support for large-scale investments.

3) Tamil Nadu New Integrated Textile Policy 2019

Tamil Nadu's textile sector, a cornerstone of its economic fabric, commands a significant share of the nation's textile output. Representing 19% of the country's textile production, this sector stands as the keystone of the State's economy, second only to agriculture. Recognizing the evolving dynamics of the global textile landscape, Tamil Nadu unveiled its New Integrated Textile Policy in 2019. This policy aims to enhance the State's position as a textile powerhouse while addressing emerging challenges and seizing new opportunities.

Incentives offered under the Tamil Nadu New Integrated Textile Policy 2019 are tailored to support and promote various sectors within the textile industry, including the spinning, handloom, and power loom sectors. A concise summary of the incentives offered for key sectors is presented below:

1. Spinning Sector

- A 2% interest subsidy for investments in upgrading and modernizing existing spinning mills with machinery that has been in use for at least 15 years.

2. Handloom Sector

- Creation of continuous employment to handloom weavers in co-operative field through facilitation of production of Sarees, Dhoties, and uniforms under Cost-Free Distribution of Sarees and Dhoties Scheme and free supply of uniforms to school children.
- Scheme for free supply of electricity to handloom weavers households @ 200 units bi-monthly to weavers' households.
- Savings and security scheme, family pension scheme, and old age pension scheme for handloom weavers.
- Handloom Support Programme for innovation and product diversification, with an allocation of ₹ 40 crore.
- Various insurance schemes including Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY), Pradhan Mantri Suraksha Bima Yojana (PMSBY), and Mahatma Gandhi Bunkar Bima Yojana (MGBBY).
- Credit assistance under the Weaver MUDRA Scheme.

- Infrastructure development through Cluster Development Programmes.
- Promotion of traditional handloom products through schemes like Hank Yarn Obligation and Hank Yarn Price Subsidy.

3. Power Loom Sector

- Scheme for Free Supply of Electricity to Power loom Weavers households @ 750 units bi-monthly for about 1.06 lakh Power loom units.
- Production incentives similar to those offered to the handloom sector.
- 10% additional Capital subsidies for investments in brand new shuttle-less looms and preparatory machines under ATUFS (Amended Technology Upgradation Fund Scheme).
- Financial assistance for infrastructure development through schemes like Modified Comprehensive Power loom Cluster Development Scheme (MCPCDS) and Scheme for Integrated Textile Parks (SITP).
- Implementation of PowerTex India scheme for overall development of the power loom sector.

4) Electronics Hardware Manufacturing Policy of Tamil Nadu, 2020

The Electronics Hardware Manufacturing Policy of Tamil Nadu, 2020, aims at transforming the State into a hub of innovation and global competitiveness in the Electronics System Design and Manufacturing (ESDM) sector. It intends to provide infrastructure, attract global players, nurture home-grown startups, promote innovation-led enterprises, and develop semiconductor fabrication (FAB) industry within Tamil Nadu.

The objectives of the policy are as follows:

- Increase Tamil Nadu's electronics industry output to USD 100 billion by 2025.
- Contribute 25% of India's total electronic exports to the world by 2025.
- Undertake skill training for over 1,00,000 people by 2024 to meet the human resource requirement.
- Enhance value addition across focus sectors such as Mobile Handsets, LED Products, Fabless Chip Design, PCBs, Solar Photovoltaic Cells, Medical Electronics, and Automotive Electronics.
- Conduct focused research and development programs to aid in innovation.
- Support ESDM startups, particularly those involved in designing, developing, and manufacturing technologically advanced solutions.
- Attract at least two major FAB investments to Tamil Nadu within the next three years.

Who are eligible for incentives under the policy?

- MSMEs operating in the electronic hardware manufacturing sector.
- Electronics Manufacturing Clusters (EMCs - Designated areas or zones specifically developed to promote and

facilitate electronics manufacturing activities).

- Companies involved in the development of ESDM parks.
- Developers of industrial housing projects near existing and new ESDM hubs.

Administration of Incentives

Investments made from January 1, 2020, are eligible for incentives under this policy. The administration of incentives is categorized based on the size of the investment:

- ***MSME Sector:*** Sanctioned by the Commissioner of Industries and Commerce.
- ***Large and Mega Industries:*** Sanctioned by the Industries department with structured packages recommended by the Inter Departmental Committee (IDC) and disbursed by SIPCOT.

Financial Incentives for Large and Mega Categories

The policy offers various financial incentives to encourage investment in ESDM units:

- Capital Subsidy ranging from 15% to 30% of investment in EFA based on the category and location.
- Subsidy on Land Lease Cost of up to 50% of the cost of land, subject to certain conditions.
- 50% to 100% stamp duty exemption depending on the district and type of land.
- Training Subsidy of ₹ 4,000 per employee per month for up to 6 months.
- Maximum 5% interest subvention on term loans.
- 100% Electricity Tax exemption for 5 years from the date of commercial production.
- Environment Protection Infrastructure Subsidy for setting up dedicated effluent treatment plants and hazardous waste treatment facilities.
- ***Financial Incentives for EMCs***: Additional incentives are extended to EMCs as per the Modified Electronics Manufacturing Clusters (EMC 2.0) scheme issued by the Government of India.
- ***Financial Incentives for Private ESDM Park Developers***: Developers of Private ESDM parks are eligible for reimbursement of various subsidies subject to occupancy conditions.

Overall, the policy aims to create a conducive environment for investment, innovation, and growth in the ESDM sector, positioning Tamil Nadu as a global leader in electronics hardware manufacturing.

Conclusion

Tamil Nadu has thus presented a successful model of combining massive social welfare policies with robust growth parameters. Tamil Nadu's vigorous manufacturing ecosystem, skilled workforce, and strategic location have propelled it to become one of the most preferred investment destinations in Asia. Pivotal to the State's economic success

are the proactive policies and initiatives implemented by the government. The robust policy making framework of the State underscores its commitment to encouraging a favorable business environment and enhancing market efficiency. These policies, such as the Electric Vehicles Policy and the Electronics Hardware Manufacturing Policy, have played a pivotal role in promoting innovation, attracting investments, and creating an enabling environment for sustainable economic progress.

Despite the State's ambitious industrial policies and incentives, there is scope for disputes arising due between the government and potential beneficiaries, in light of implementation and transparency. It is relevant to highlight the dispute between Nissan and the Tamil Nadu government, which arose from allegations that certain incentives promised under a 2008 agreement for setting up a car manufacturing plant were not fulfilled. This dispute escalated into an international arbitration in 2016, with Nissan seeking substantial sums in unpaid dues and damages. The protracted legal battle cast a shadow over the State's industrial landscape, raising concerns about investor confidence and policy implementation. Notably, the Multinational company's industrial dispute was resolved through arbitration under the Industrial Disputes Act 1947.

The Nissan dispute underscores the importance of transparent and consistent implementation of industrial policies. While Tamil Nadu's policies including Industrial Policy 2021 offers a plethora of incentives to attract investments and enhance industrial growth, the failure to honor commitments can have far-reaching consequences.

By addressing disputes such as the one with Nissan Motor in a transparent and timely manner, the State can reinforce its commitment to furthering a conducive business environment and cement its position as a beacon of industrial growth in the country.

Looking ahead, Tamil Nadu's economic trajectory remains promising, with ongoing infrastructure projects like the Industrial Corridors poised to further enhance its economic landscape. As the State continues to prioritize strategic policy interventions and infrastructure development, it is well-positioned to maintain its leadership position in India's industrial sphere and achieve greater heights of economic prosperity. In this backdrop, it is hoped that the State's articulated an ambitious goal of achieving a $1 Trillion economy by 2030 becomes a reality.

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"Feel nothing, know nothing, do nothing, have nothing, give up all to God, and say utterly, 'Thy will be done.' We only dream this bondage. Wake up and let it go."

— *Swami Vivekananda*

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Unlocking Novel Opportunities - Uttar Pradesh's State Industrial Incentive Policies





CA Kulraj Ashpnani CA Neha Jain CA Kiran Tehlani

Overview

The Industrial Policies provide a framework of rules and regulations for public as well as private sectors. This encompasses range of tools such as subsidies, tax incentives, infrastructure development, protective regulations, Research and Development support and various other fiscal benefits.

Uttar Pradesh occupies a significant place in the Indian economy, and it contributes to around 9% to the nation's GDP. To foster growth and promote ease of doing business, the Government of Uttar Pradesh has instituted an array of policies (for promoting investment, manufacturing and employment in various sectors) which aim at galvanizing investment inflows and stimulate business sustenance. It stands in complete alignment with the Union Government's vision of promoting Make in India and AtmaNirbhar Bharat revolutions.

In this article, the Authors attempt to provide a glimpse of various Industrial Policies introduced by the Government of Uttar Pradesh and their significance in changing landscape of industrial development in the State. It will be important for industries / investors to examine their eligibility under each Policy and seek optimum fiscal and non-fiscal incentives.

"Every industrial revolution brings along a learning revolution - By Alexander De Croo"

Since the introduction of New Industrial Policy 1991, the Government of India has consistently aimed at fostering growth, encouraging foreign investment, localisation, brining worldwide competitiveness, enhancing technical and technological development, increasing employment, promoting capital investments to name a few. Since, then the Indian industry has undergone sea change in terms of parameters and structure governing the industries.

In this context, the Industrial Policies provide a framework of rules and regulations for sectors and activities for both - public as well as private sector. This encompasses range of tools such as subsidies, tax incentives, infrastructure development, protective regulations, Research and Development support and various other fiscal benefits.

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Uttar Pradesh, one of the largest states in India, stands as a testament to the confluence of ancient history, abundant resources, and vibrant cultural heritage. Uttar Pradesh occupies a significant place in the Indian economy. It contributes to around 9% to the nation's GDP and offers one of the largest consumer markets. Solidifying its commitment to progress and promote ease of doing Business, the Government of Uttar Pradesh has instituted an array of policies aimed at galvanizing investment inflows and fortifying business sustenance. It stands today to encourage a strong industrial ecosystem, balanced policies and legal and regulatory framework and foster the Union Government's vision of Make in India and AtmaNirbhar Bharat.

With Industrial Policy gaining nationwide popularity, especially in Uttar Pradesh, this article attempts to provide a glimpse of various Industrial Policies introduced by the Government of Uttar Pradesh and how they are significantly changing the landscape of industrial development in the state.

Insights into the pivotal State Industrial Policies are as under:

1) Uttar Pradesh Industrial Investment and Employment Promotion Policy 2022

Uttar Pradesh has established itself as one of the leading places to invest in the country amongst not only large investors but also MSMEs. In the years ahead, the State is determined to make itself stronger and more outward-looking than ever.

As per Industry Minister, Mr. Nand Gopal 'Nandi' the Uttar Pradesh Industrial Investment and Employment Promotion Policy, 2022 aims at creating a progressive, innovative, and competitive industrial ecosystem generating employment in the state while mobilising investments from across the world.

The policy focuses on sectors like Agro & Food Processing, Handloom & Textiles, Tourism, MSME, Electronics Manufacturing, Data Centre, Defence & Aerospace, Warehousing & logistics, Dairy and Poultry, IT/ITeS, Start-up, Electric Vehicle, Film, Renewable Energy (Solar), Pharmaceuticals, Civil Aviation, Biofuel, Semiconductor, Animation, Visual effects, Gaming and Comics (AVGC), Private sector hospital, Private universities/colleges including medical & paramedical colleges, Mega multisector focused skill parks/hubs.

The said policy, effective for 5 years, offers following key incentives:

— Facilitating land acquisition and aggregation for private industrial parks

— Preferential land allotment on fast-track basis for category of investors

— To promote export-oriented units through a dedicated policy providing various support like marketing assistances, subsidy on export cargo etc.

— Capital subsidy under the head of fixed capital investment. Such subsidy is graded by regions of the state, i.e., highest in Bundelkhand and Poorvanchal followed by Madhyanchal & Paschimanchal (except Gautam Buddh Nagar & Ghaziabad districts) and Gautam Buddh Nagar and Ghaziabad districts,

— Reimbursement of 100% of the net SGST amount deposited in State's account

— Other fiscal incentives such as stamp duty exemption, capital subsidy,

employment booster, exports booster, top up on incentives received under Production Linked Incentives (PLI) Scheme of Government of India.

Importantly, the policy has innovative option-based incentive models and land facilitation mechanisms, whereby, the investors will be provided 3 mutually exclusive options between Capital Subsidy, Net SGST reimbursement and PLI top-up.

2) Uttar Pradesh Textile and Garmenting Policy 2022

Recognizing the significance of textile industry in India's economy and with a vision to make Uttar Pradesh a global textile manufacturing hub, the Government implemented this policy with following key objectives:

— Attracting investment of INR 10,000 crores

— Development of 5 Textile and Apparel Parks through private sector

— Generating employment opportunities for 500,000 people

— Increasing production of silk yarn, modernizing power looms with solar energy, and

— Increasing earnings of Handloom and Power loom weavers by 50%

This policy has been introduced in addition to existing Government schemes and will be effective for 5 years. Both existing and new units are eligible for the benefits of this policy. The policy offers following key incentives:

— Subsidy on land cost

— Incentives on defined infrastructure and for employment generation

— Interest subsidies on loans taken for plant & machineries and capital subsidy on Investment in plant & machineries

— Stamp duty exemption on purchase of land from Government

— Incentives for electricity, financial assistance for marketing, benefits in form of reimbursement of freight costs for export units for a specific period

— Financial assistance and exemptions for private textile parks, subsidies and assistance for the silk industry,

— Measures to facilitate ease of doing business etc.

Incentives under this policy are capped at 100% of fixed capital investment, with variations for specific districts and with an annual ceiling of INR 500 crores on total subsidies.

3) IT and ITeS Policy of Uttar Pradesh 2022

Globally, the IT and ITeS market is poised for robust expansion. In India it has emerged as the foremost contributor to total exports and is serving as a pivotal engine for economic advancement. Revenue for the industry surged to $227 billion in FY 2022, showcasing an impressive 15.5% year-on-year growth trajectory. With the current advent of cutting-edge technologies, the industry is forecasted to breach the $350 billion revenue milestone by FY 2026.

Uttar Pradesh, renowned as the IT nucleus of North India, hosting some of the nation's premier institutes such as IIT Kanpur, IIT(BHU) Varanasi, MNNIT Allahabad, and IIIT Allahabad, boasts the sixth position in software exports nationwide, with its IT and

ITeS sector furnishing direct employment to over 0.12 million individuals. The industry has transcended from novelty to necessity in navigating the dynamic business environment. Acknowledging this ascendancy, the Uttar Pradesh Government prioritized cultivating an environment conducive to IT and ITeS industry proliferation through efficacious policy enactment.

With a validity of 5 years, the policy endeavours to incubate a robust ecosystem for innovation and technology and proposes establishment of IT Cities, IT Parks, and Centres of Excellence in domains like AI, Blockchain, Big Data and Cloud Computing.

The policy offers following key fiscal incentives:

— 10% subsidy on fixed capital investment

— 10% reimbursements on operating expenses

— Conditional rebate on purchase of land

— Interest subsidy on term loans

— 100% stamp duty exemption for land/ office space/buildings for IT/ITeS use

— Reimbursement of patent filing costs, recruitment assistance etc.

The Policy also offers non-fiscal incentives such as exemptions from certain regulations, permission for 24x7 operations, recognition as 'essential services' etc.

4) Uttar Pradesh Electronics Manufacturing Policy 2020

The Government aims to establish Uttar Pradesh as the preferred location for the electronics industry by providing globally competitive infrastructure. It aims to cultivate the Electronics Manufacturing Industry as a key driver of growth, leveraging skilled manpower, innovation and new technologies for long term sustainability contributing to the state and nation's economy.

The policy has been formulated with a mission to develop infrastructure that meets global standards to attract electronics manufacturers which includes industrial parks, Special Economic Zones (SEZs) and technology parks equipped with state-of-the-art facilities.

Effective for a period of 5 years, the said policy financial incentives in the form of capital subsidy, interest subsidy, stamp duty exemption, patent cost reimbursement, electricity duty exemption, skill development and other assistance etc. Such incentives are eligible upon commencement of commercial production.

A nodal agency, policy implementation unit and empowered committee to be formed to oversee the implementation of the policy.

5) Uttar Pradesh Investment Promotion Policy 2023

To attract global investments, the Government of Uttar Pradesh through this policy aims to incentivise Foreign Direct Investment (FDI), Fortune Global 500 & Fortune India 500 companies fulfilling several eligibility criteria.

The key highlights of this policy are as follows:

— The policy will be effective for 10 years

— Requires capital investment of minimum INR 100 crores from FDI and from Fortune Global 500 & Fortune India 500 companies

— Outlines negative list, i.e., ineligible industries, such as Tobacco, Alcohol,

Cement, Iron & Steel, Beverages, Logistics etc.

— Fiscal incentives include refunds of State Goods and Services Tax (SGST) on capital goods or, 100% Net SGST reimbursement subject to maximum limit of eligible capital investment (excluding land cost)

— Capital subsidy for setting Effluent Treatment Plant (ETP) as a green industry incentive

— In addition to land subsidy, capital subsidy, R&D support incentives, skill development subsidy, exemption from stamp duty & registration fees and exemption of electricity duty

— Incentive for development of workers housing/dormitory and reimbursement of transportation cost for shifting existing plants to Uttar Pradesh in the form of logistics subsidy.

6) Uttar Pradesh Semiconductor Policy 2024

Realizing the requirement of paradigm shift in semiconductor industry, the Government recently sanctioned Semiconductor Policy 2024 with a myriad of benefits, surpassing those offered by the Central Government's Modified Programme for Semiconductors and Display Fab Ecosystem.

The policy harmonizes with the State's ambition of becoming a One Trillion-dollar (USD) economy, thus aligning with the Hon'ble Prime Minister's overarching goal of propelling India into a 5 Trillion-dollar (USD) economy.

The key highlights of this policy are as follows:

— The policy will be effective for 5 years

— 5% per annum interest subsidy on loans from scheduled banks or financial institutions, with a generous repayment period of up to seven years

— Incentive extends to investments ranging from small units up to ₹ 200 crores, with even smaller units investing up to ₹ 7 crores

— Complete waiver of stamp duty and registration fees on land transactions

— Exemption from electricity duty and provision of double power grid networks for semiconductor fabrication units for a period of 10 years

— 50% discount on wheeling charges or transmission charges for interstate electricity purchases, spanning an impressive 25-year duration from the project's operational date

— 50% capital subsidy and 75% subsidy on land purchases, covering up to 200 acres at prevailing sector rates

— Dedicated funding of up to INR 3 crores over five years for skill development and training initiatives

— Provisions for patent registration reimbursement.

Concluding remarks

While State Incentive/Industrial Policies have been instrumental in attracting investment and spurring economic growth, a myriad of challenges loom on the horizon. These includes but are not limited to infrastructure deficits, regulatory complexities, intricacies associated with land acquisition and labour dynamics etc. Addressing these challenges will be crucial in sustaining the momentum of

economic development and ensuring inclusive growth across the state.

In summation, Uttar Pradesh's policies serve as a cornerstone for fostering a conducive business environment and nurturing sustainable economic development. In a recent article the Chief Minister of Uttar Pradesh, Mr. Yogi Adityanath, mentioned that the state received investment proposals of INR 40 Lakh crores in the last year from investors across the globe and implementation work towards large proportion of such projects is underway. He emphasised that Uttar Pradesh is on the path to transform from a labour centric state to an economic powerhouse.

As enterprises traverse the contours of investment vistas, leveraging these policies can provide them with a competitive edge and pave the way for mutual prosperity and growth. It will be important for industries/ investors to examine their eligibility under each Policy and seek available fiscal and non-fiscal incentives.

Being the federal governing structure, India is geared up for significant general elections in 2024. World will be watching it as the largest democratic festival. Focussing and implementing the policies to their maximum potential and contributing to overall economic development, will be something to watch out for over the next few years.

Disclaimer: The thoughts in this article have been expressed briefly. Investors should analyse the policies holistically before determining their eligibility and available quantum of benefits.

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"Learn Everything that is Good from Others, but bring it in, and in your own way absorb it; do not become others."

— Swami Vivekananda

"Prayer is not asking. It is a longing of the soul. It is daily admission of one's weakness. It is better in prayer to have a heart without words than words without a heart."

— Mahatma Gandhi

"Don't take rest after your first victory because if you fail in second, more lips are waiting to say that your first victory was just luck."

— A.P.J. Abdul Kalam

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Production Linked Incentives — Hits and Misses



CA Gautam Pai

Overview

The article provides an extensive overview of the Production-Linked Incentive (PLI) scheme introduced by the Government of India outlining the Scheme's objectives, structure, implementation process, and outcomes across different sectors. Introduced in November 2020, the PLI scheme was allocated an initial budget of INR 1.97 Lakh crores. Its primary goals include enhancing India's manufacturing capabilities, promoting investment, increasing domestic production, and boosting global competitiveness.

The basic structure of the PLI scheme is described in the article, covering eligibility criteria, incentive claim processes, and the entities involved in its implementation. Additionally, insights are provided into various ongoing PLI schemes across sectors such as pharmaceuticals, medical devices, food processing, automobiles, drones, and textiles, including their progress and budget allocations.

The article also discusses the benefits of the PLI scheme, including attracting investments, stimulating domestic manufacturing, creating employment opportunities, and enhancing export competitiveness. It also highlights challenges in the implementation process and initiatives taken by the government to address them.

Conclusively, the PLI scheme is recognized as a transformative initiative driving inclusive growth, innovation, and resilience in India's manufacturing sector. Despite challenges, the PLI scheme has attracted significant investments, stimulated domestic production, and created job opportunities. India aims to leverage the scheme to emerge as a global manufacturing powerhouse and foster growth in various sectors.

1. Introduction of PLI scheme

a. When was the idea introduced, requirement/objective of the scheme.

In the global economic landscape during the pre-covid times, where competition was fierce and market dynamics were constantly evolving, India found itself at a crucial juncture for shaping its future dominance globally. India faced several challenges, including high imports, sluggish growth rates, and the impact of the COVID-19 pandemic. To navigate these challenges and emerge as a resilient and competitive force in the global market, India had to leverage its strengths and address its weaknesses.

The prime necessity was to reduce its import dependency and unleash export potentials in the country in a non-discriminatory manner. This was possible when domestic industries are given more and due importance.

Keeping in view India's vision of becoming Aatmanirbhar, Government of India announced the Production-Linked Incentive schemes ('PLI scheme' or 'the Scheme') for various sectors and products in November, 2020 with an outlay of Rs. 1.97 lakh crore (over US$26 billion) to enhance India's manufacturing capabilities.

The primary objective of the PLI schemes is to provide companies with financial incentives on incremental sales of goods (domestically manufactured) and to attract investment in sectors of core competency and cutting-edge technology; ensure efficiency and bring economies of size and scale in the manufacturing sector and make Indian companies and manufacturers globally competitive. PLI schemes along with other investment promotion schemes offered by the Central Government have the potential of significantly boosting production, employment & economic growth over the coming years.

The PLI scheme not only encourages domestic manufacturing but also aims to attract foreign companies to invest in India. It also promotes technology transfer and innovation as companies strive to enhance their manufacturing capabilities. Additionally, the Scheme contributes to increasing exports, thereby improving India's trade balance along with generating additional demand for local suppliers by incentivising localisation of various manufacturing stages.

India is primarily a labour-intensive country owing to the population including the skilled workforce. The Indian Government could focus on capital influx for growth but the capital-intensive growth can generate returns only after a long time. So instead, the Indian Government is shifting its focus to boost short term result driven industries, that can potentially balance the trade in and out of the country and ensure economic viability of capital infusion in the manufacturing sector.

To ensure transparency and fairness, the PLI scheme incorporates a competitive bidding process. As a part of the process, the eligible companies submit their proposals and/or application, which are evaluated based on various criteria such as production capacity, technology, and financial viability. This ensures that the manufacturing incentives are allocated to deserving and capable companies.

b. Basic structure of a PLI scheme, Like the requirements incentives and ways to claim the incentives, entities involved, Budget allocation.

PLI Scheme Eligibility Criteria

To be eligible to benefit from the PLI scheme, companies must meet certain eligibility criteria, which may vary depending on the sector and specific guidelines issued by the relevant Ministry of the Central Government.

However, some common eligibility criteria for companies to benefit from the PLI scheme are as follows:

1. **Registration**: Applicant must be registered as a legal entity in India under the Companies Act, 2013 or any other relevant legislation.
2. **Eligible products**: Manufacturing of the eligible products is incentivised.
3. **Sector-specific criteria**: Applicant must operate in sectors identified by the Indian Government for the PLI scheme.
4. **Investment**: Applicant must commit to making a specific minimum investment in their manufacturing facilities as per the guidelines of the scheme. The

investment requirement may vary across sectors and is usually linked to the expected production output.

5. **Production targets**: Applicant must commit to achieving specific production targets within a predetermined time frame. These targets are set by the government to encourage companies to increase production and contribute to the growth of the Indian economy, thereby meeting the objective of the respective Schemes.

6. **Additional conditions**: Applicant must demonstrate incremental production capacity or turnover over the base year as specified by the government. This means that the Scheme is designed to reward companies that increase their manufacturing capabilities and contribute to the growth of the sector.

7. **Compliance with quality standards**: Applicant must comply with relevant quality standards laid down by the government or industry-specific regulatory bodies. Meeting these standards ensures that the manufactured products meet the required quality benchmarks.

8. **Employment generation**: Applicant may be required to generate a certain level of direct and indirect employment based on the size and nature of their operations. This criterion aims to promote job creation and economic growth. It is important to note that these are general eligibility criteria, and the specific requirements for each sector may vary. Companies interested in benefiting from the PLI scheme should refer to the sector-specific guidelines issued by the government for accurate and updated information.

PLI Scheme Selection Criteria

The PLI schemes specify various criteria based on which the applications are evaluated, and the eligible beneficiaries are selected, some of these criteria are as follows:

1. Committed investment under the PLI scheme
2. Committed annual production capacity
3. Total sales and export sales of the applicant
4. Level of localisation and efficiency of the products to be manufactured
5. Net worth of the applicant and the group companies, etc.

Incentive claim process

Under the PLI scheme, applicants must submit their applications online, ensuring compliance with the eligibility criteria outlined in the relevant scheme guidelines. Following a thorough verification of the submitted application documents, the PMA acknowledges receipt and forwards the application to the relevant Ministry of the Central Government. Upon confirmation by the relevant Ministry, approved applicants receive an approval letter. Subsequently, approved applicants are required to fulfill scheme requirements and conditions mentioned in the letter, such as providing a specified amount of bank guarantee, achieving committed investment, minimum sales criteria, employment generation and others as stated in the PLI Scheme.

Furthermore, in accordance with the relevant scheme guidelines, applicants can claim the incentive by submitting the relevant documents as per the disbursement claim checklist on annual or half-yearly basis as the case maybe. Post verification of the claim, the PMA and the Ministry will proceed to disburse the incentive.

Key authorities

For the successful implementation of the Scheme, various authorities play designated roles within the structure of the PLI scheme. The relevant Ministries act as decisive authorities for their respective sectors and industries, focusing on approving the Scheme for specific sectors and allocating the financial outlay.

To assist the ministries in the effective execution of the scheme, an Empowered Group of Secretaries (EGoS) oversees its implementation, addresses arising issues, and conducts periodic reviews to ensure expenditure remains within the prescribed outlay.

Furthermore, for the examination and processing of applications, the Project Management Agency (PMA) ensures compliance and examines documents in accordance with the scheme guidelines.

Also, the Technical Committee (TC) assists the Ministry in verifying the eligibility of products and the product mix on time-to-time basis during the implementation of the respective schemes.

List of schemes

As mentioned above, PLI schemes have been introduced for over 14 sectors for promoting new investments in manufacturing and incremental sales, the brief details of the ongoing schemes have been mentioned below:

Ongoing PLI schemes

1. PLI Scheme for Promotion of Domestic Manufacturing of critical Key Starting Materials (KSMs)/ Drug Intermediates and Active Pharmaceutical Ingredients (APIs) in the Country (Bulk Drug)

a) Activity incentivized- The sales of 41 selected critical KSMs, Drug Intermediates and APIs manufactured in India are incentivized.

b) Concerned Ministry – Department Of Pharmaceuticals (DoP), Ministry of Chemicals and Fertilizers

c) Tenure - FY 2020-21 to FY 2029-30

d) Budgeted outlay – INR 6940 Crore

e) PMA involved – IFCI Limited

f) Approvals and Incentives – 48 approvals were granted under the Scheme. For FY 21-22, an incentive amount of INR 4.34 crore was released to the applicants, based on achieving the eligibility criteria.

g) Progress of the Scheme - Investments worth INR 3,630 crore have been made and 2,848 new jobs were generated till January 2024 under the Scheme.

2. PLI scheme for Promoting Domestic Manufacturing of Medical Devices

a) Activity incentivized – To stimulate domestic manufacturing and attract substantial investments in the Medical Devices Sector, sales of medical devices covered under the target segment are incentivized.

b) Concerned Ministry – Department Of Pharmaceuticals (DoP), Ministry of Chemicals and Fertilizers

c) Tenure - FY 2020-21 to FY 2027-28

d) Budgeted outlay – INR 3,420 crore

e) PMA involved – IFCI Limited

f) Approvals and incentives – 26 approvals were granted under the Scheme. For FY 21-22, an incentive amount of INR.12.80 crore was released to the applicants, based on achieving the eligibility criteria.

g) Progress of the Scheme – Investments worth INR 899 crore have been made, and 4,815 new jobs were added as of January 2024 under the Scheme.

3. PLI scheme for Food Processing Industry

a) Activity incentivized – The incremental sales of eligible food products are incentivized, subject to fulfilment of the minimum committed investment condition.

b) Concerned Ministry - Ministry of Food Processing Industries (MoFPI)

c) Tenure - FY 2021-22 to FY 2026-27

d) Budgeted outlay – INR 10900 crore

e) PMA involved – IFCI Limited

f) Approvals and Incentives - 149 approvals were granted under the Scheme. For FY 21-22, MoFPI has disbursed an INR 584.30 crore incentive to the applicants.

g) Progress of the Scheme – Investments of INR 7,126 crore and cumulative sales of INR 49,825 crore have been made up to September 2023.

4. PLI scheme for Pharmaceuticals

a) Activity incentivized – The sales over the base year of various selected pharmaceutical products i.e. approved products under various categories are incentivised.

b) Concerned Ministry - DOP, Ministry of Chemicals and Fertilizers

c) Tenure - FY 2020-21 to FY 2027-28

d) Budgeted outlay – INR 15000 crore

e) PMA involved - SIDBI

f) Approvals and Incentives - 55 approvals were granted under the Scheme. During FY 22-23, an incentive amount of INR.915 crore was released to the applicants, based on achieving the eligibility criteria for Quarterly/Half-yearly/Annual incentive claims.

g) Progress of the Scheme – Investments worth INR 26,787 crore have been made and 56,897 new jobs were generated till January 2024 under the Scheme.

5. PLI scheme for White Goods

a) Activity incentivized -Financial incentives over the incremental sales of the components of Air Conditioners and LED Lights manufactured domestically are introduced in order to attract large investments in the White Goods manufacturing value chain.

b) Concerned Ministry - Department for Promotion of Industry and Internal Trade (DPIIT), Ministry Of Commerce And Industry.

c) Tenure - FY 2021-22 to FY 2028-29

d) Budgeted outlay – INR 6,238 crore

e) PMA involved – IFCI Limited

f) Approvals and Incentives - 64 approvals were granted under the Scheme.

g) Progress of the Scheme – An additional 41,739 direct jobs have been created and a total actual production of Rs. 7,957 Crore has been achieved under the Scheme.

6. PLI scheme for Automobile and Auto Components

a) Activity incentivized - Incentives are applicable under the scheme on Determined Sales of Advanced

Automotive Technology (AAT) products (vehicles and components) manufactured domestically.

b) Concerned Ministry – Ministry of Heavy Industries

c) Tenure - FY 2023-24 to FY 2027-28

d) Budgeted outlay – INR 25,938 crore

e) PMA involved – IFCI Limited

f) Approvals and Incentives - 95 approvals were granted under the Scheme.

g) Progress of the Scheme – Few of the approved applicants like Tata motors, Mahindra and OLA has received the AAT certification under the PLI scheme.

7. PLI scheme for Advanced Chemistry Cell (ACC) Battery Storage

a) Activity incentivized - To enhance India's manufacturing capabilities of Advanced Chemistry Cell (ACC) by setting up of Giga scale ACC and battery manufacturing facilities in India with emphasis on maximum domestic value addition.

b) Concerned Ministry - Ministry of Heavy Industries

c) Tenure - FY 2022-23 to FY 2028-29

d) Budgeted outlay – INR 18,100 crore

e) PMA involved – IFCI Limited

f) Approvals and Incentives - 4 approvals were granted under the Scheme.

8. PLI scheme for Drone and Drone components

a) Activity incentivized – Incentive is provided to manufacturers of drones and drone components based on their value addition in India.

b) Concerned Ministry – Ministry of Civil Aviation

c) Tenure - FY 2021-22 to FY 2023-24

d) Budgeted outlay – INR 120 Crore

e) PMA involved – IFCI Limited

f) Approval and Incentives – 23 approvals were granted under the Scheme. During FY 22-23, an incentive amount of INR 30 crore was released to the applicants. Further, the claim for disbursement of incentive for FY 22-23 are under processing.

g) Progress of the Scheme - The scheme is currently at its last phase. The authorities may consider extending the scheme/introducing second phase of the scheme, based on industry feedback.

9. PLI scheme for Textiles for MMF Apparel, MMF Fabrics and technical textile

a) Activity incentivized – An applicant is eligible to avail the incentive upon achieving the threshold investment and threshold/incremental sales of MMF apparel & fabrics and technical textiles products.

b) Concerned Ministry – Ministry of Textiles

c) Tenure - FY 2022-23 to FY 2028-29

d) Budgeted outlay – INR 10,683 crore

e) PMA involved – IFCI Limited

f) Approvals – 64 approvals were granted under the Scheme.

g) Progress of the Scheme – Investment made till September 2023 amounts to INR 2,119 Crore.

10. PLI scheme for Millet based products

a) Activity incentivized – The packaged and branded RTC/RTE food products with more than 15% of millets by weight/volume in product composition, are eligible for claiming the incentives under the Scheme.

b) Concerned Ministry – Ministry of Food Processing Industries

c) Tenure - FY 2022-23 to FY 2026-27

d) Budgeted outlay – INR 800 crore

e) PMA involved – IFCI Limited

f) Approvals – 30 approvals were granted under the Scheme.

g) Progress of the Scheme – Procurement of millets has increased to 3,703 MT in FY 22-23 from 668 MT in FY 20-21.

11. PLI scheme for Green Hydrogen and Electrolysers (SIGHT)

a) Activity incentivized- Incentives are provided to producers of Green Hydrogen and manufacturers of electrolyzers.

b) Concerned Ministry – Ministry of New and Renewable Energy

c) Tenure - FY 2025-26 to FY 2029-30

d) Budgeted outlay – INR 17,490 Crore

e) PMA involved – SECI Limited

f) Approvals –8 successful bidders for making electrolysers and 10 successful bidders of getting incentive on production of hydrogen.

g) Progress of the Scheme - The selected applicants are commissioning the manufacturing units, incentives are yet to be disbursed.

12. PLI scheme for IT hardware 2.0

a) Activity incentivized – Incentive granted on the net incremental sales (over base year) of Laptops, Tablets, All-in-One PCs, Servers and USFF devices manufactured in India.

b) Concerned Ministry – Ministry of Electronics and Information Technology (MeITY)

c) Tenure - FY 2023-24 to FY 2030-31

d) Budgeted outlay – INR 16,939 crore

e) PMA involved – IFCI Limited

f) Approvals – 27 approvals were granted under the Scheme.

13. PLI scheme for Specialty Steel

a) Activity incentivized – Eligible company can avail the incentive on the incremental production of manufactured steel grades.

b) Concerned Ministry – Ministry of Steel

c) Tenure - FY 2023-24 to FY 2029-30

d) Budgeted outlay – INR 6,322 crore

e) PMA involved – MECON Limited

f) Approvals – 67 approvals were granted under the Scheme.

14. PLI scheme for High-Efficiency Solar PV Modules

a) Activity incentivized – Incentive granted on manufacturing of high efficiency solar PV modules meeting the specified performance threshold.

b) Concerned Ministry – Ministry of New and Renewable Energy

c) Tenure – Till FY 2029-30

d) Budgeted outlay – INR 24,000 crore

e) PMA involved –IREDA Limited

f) Approvals – 14 approvals were granted under the Scheme.

15. PLI scheme for Telecom and networking products

a) Activity incentivized – Incentive granted on the sales of Telecom and networking products manufactured in India and covered under the target segment.

b) Concerned Ministry – Department of Telecommunications. (DoT)

c) Tenure - FY 2021-22 to FY 2025-26

d) Budgeted outlay – INR 12,195 crore

e) PMA involved –SIDBI

f) Approvals – 42 approvals were granted under the Scheme.

g) Progress of the Scheme – From 1st April 2021 till 31st October 2022 cumulative investment of Rs. 952 crores, sales of Rs. 16,313 crores and employment of 11,847 numbers has been generated.

16. PLI scheme for Large Scale Electronics Manufacturing

a) Activity incentivized – Incentive granted on the net incremental sales (over base year) of mobile phones and specified electronic components manufactured in India and covered under the target segment.

b) Concerned Ministry – Ministry of Electronics and Information Technology (MeITY)

c) Tenure - FY 2020-21 to FY 2025-26

d) Budgeted outlay – INR 40,951 crore

e) PMA involved –IFCI Limited

f) Approvals – 32 approvals were granted under the Scheme.

g) Progress of the Scheme : Investment of around INR 7400 crores and employment of around 72,000 has been generated under the PLI scheme.

Upcoming PLI scheme

List of schemes -

1. PLI for Toys
2. PLI for leather and footwear
3. PLI for chemicals (speciality and petrochemicals)
4. PLI for shipping containers
5. PLI for Pharma – Vaccine Raw material/ APC/KPI
6. PLI for textile 2.0
7. PLI Scheme Millets based products 2.0
8. PLI Scheme for Batteries

The PLI scheme has yielded several tangible benefits and outcomes:

Attracting investments: PLI schemes has successfully attracted significant investments, both domestic and foreign, in key manufacturing sectors. These investments have infused capital, technology, and expertise into the Indian manufacturing ecosystem, fostering innovation and modernization.

Stimulating domestic manufacturing: Through financial incentives and performance-linked rewards, the PLI schemes has spurred domestic manufacturing activities. This has led to the expansion of production capacities, increased localization of supply chains, and enhanced competitiveness of Indian manufacturers.

Creating employment opportunities: One of the pivotal objectives of the PLI schemes was the generation of employment opportunities across various skill levels. The expansion of manufacturing activities has created jobs in

manufacturing facilities, ancillary industries, and associated service sectors, contributing to inclusive growth and socio-economic development.

Enhancing export competitiveness: By incentivizing companies to manufacture for the global markets, the PLI schemes aims to boost India's export competitiveness. PLI schemes focuses on sectors with high export potential, enabling Indian manufacturers to tap into international markets and increase their share in global trade.

Building resilience and sustainability: By fostering indigenous production, reducing import dependency, and promoting technological advancements, the scheme strengthens the sector's capacity to withstand external shocks and adapt to evolving market dynamics, thereby enhancing resilience and sustainability of India's manufacturing sector.

Challenges in implementing PLI Scheme

Here are some challenges to implementing the PLI Scheme.

- The request for additional information during the implementation of the PLI schemes comes with a challenging and stringent timelines, which needs to be adhered to
- At many instances, bulky information and repetitive data request from different point of contact for the respective PLI schemes results delay in process and additional time
- Collaboration with various external stakeholders such as statutory auditor, chartered engineer, valuer, banker and internal stakeholders such as finance team, upper management leads to a difficult challenge while meeting the stringent deadlines
- Maintenance of books of accounts for extracting various information required for adhering to the compliances, especially for the historical information
- Restriction on inclusion/modifications with respect to products & locations leads to hurdles/obstacles for the applicant in achieving the threshold criteria under the scheme.
- The introduction of stringent Standard Operating Procedure (SOP) impedes the smooth implementation of the Scheme
- Most businesses either do not meet the eligibility requirements for the PLI scheme or believe that the return on investment is less than the declared incentive.

Initiatives taken by various Ministry with respect to respective PLI schemes

1. PLI Pharmaceuticals

The selection criteria for Group C – MSME applicants was setup as Gross Manufacturing Revenue in the FY20 (Base year), which was then changed to Committed investment, given the representations and continuous follow-ups of the same. Further, the investment and the minimum CAGR to be attained was not considered for the group in the scheme and were becoming a hurdle to reap the maximum benefits out of the scheme. Representations were made before the DOP and the mentioned criteria were then framed to be considered on a consolidated basis.

2. PLI Auto /Auto Components

- Due to the delayed release of SOP for certifying the Domestic Value addition via AAT certification, many of the PLI applicants were facing a standstill position regarding the AAT certification for the first year, leading to the initial year being irrelevant to the company.

Responding to this concern, the Ministry of Heavy Industries amended the scheme guidelines, shifting the incentive year from FY23 to FY24 and subsequent years for five consecutive FYs.

- Further, amendments if an approved company fails to meet the threshold for an increase in Determined Sales Value compared to the first year, it will not receive incentives for that year. However, eligibility can be retained if the company achieves a 10% year-on-year growth over the first year's threshold for four consecutive years from the scheme's applicability (starting FY24) This provision ensures fairness for all approved companies and protects those who choose to front-load their investments.
- This amendment provides a fair opportunity for applicants to meet Scheme requirements and avail incentives under the Scheme.

3. PLI Drones

- According to the guidelines issued on November 29, 2022, the incentive was based on Eligible Value Addition (EVA), calculated by deducting total purchases from sales for the target segment made during the year. However, applicants with surplus raw materials faced difficulty meeting the EVA because raw material stock wasn't considered.
- To address this issue, the Ministry of Civil Aviation amended the scheme guidelines on January 3, 2024. Under the revised guidelines, applicants need to consider the cost of raw material (net of GST) used in producing drones and drone components as eligible purchases, instead of total purchases made during the FY, thus accounting for the impact of the stock of raw materials.
- Therefore, this amendment allows applicants with surplus raw materials to meet the EVA requirement and qualify for the scheme's incentive.

4. PLI Food

- Under the amended scheme guidelines, the companies can avail benefits under category 1 and category 3 both.
- Applicants were allowed to shift branding and marketing expenditure into committed investment. A company can shift Branding & Marketing expenditure, in part or in full, towards committed investment under PLI Scheme for Food.
- Refrigerators weren't allowed to form as a part of the minimum investment according to the scheme guidelines, which then was made eligible through the various representations made by dairy products and ice cream manufacturers.

5. PLI IT Hardware 2.0

- The scheme guidelines for PLI IT Hardware 2.0 announced improved incentive payouts, a longer tenure, and more flexible domestic sourcing norms. The incentive rate has been raised to 5%, with additional incentives available for companies manufacturing specific components locally.
- With optional incentives, the total incentive could reach 8-9%. Applicants now have the flexibility to choose the implementation period, and certain relaxations have been made in investment threshold conditions.
- Furthermore, a new category of applicant, Hybrid, has been introduced, further diversifying participation options within the scheme. These updates aim to stimulate domestic manufacturing and

bolster the IT hardware sector's growth and competitiveness.

Conclusion

As India charts its course towards economic recovery and resilience in the aftermath of the COVID-19 pandemic, the PLI scheme stands as a beacon of hope and progress, driving inclusive growth, fostering innovation, and positioning India as a formidable force in the global manufacturing landscape. However, to realize its full potential, continuous policy support, effective implementation, and stakeholder collaboration are paramount. Through concerted efforts from policymakers, industry stakeholders, and the workforce, India can harness the full potential of the PLI scheme to chart a course towards prosperity and resilience in the 21st century economy.

In summary, the PLI schemes introduced by the Indian Government has emerged as a pivotal driver in bolstering the nation's manufacturing prowess and catalyzing economic growth. Since its inception, the PLI scheme has garnered remarkable success, attracting significant investments, stimulating domestic production, and enhancing India's global competitiveness across a spectrum of industries.

The influx of investment due to introduction of the Scheme has not only led to increased domestic production but also contributed to the reduction of import dependency, thus narrowing the trade deficit and fortifying India's economic resilience.

By providing financial incentives, the government aims to make India an attractive destination for investors and enable the country to become a global manufacturing hub.

Also, the testimonials from industry leaders, underscore the transformative impact of the PLI scheme on businesses, emphasizing its role in reducing import dependence, boosting domestic manufacturing, and creating employment opportunities within the sector. Their insights highlight the imperative for stringent quality standards and alignment with service-linked incentives to ensure the scheme's sustained success and mitigate potential risks.

In essence, the PLI schemes represents a strategic intervention to reinvigorate India's manufacturing landscape, foster innovation-driven growth, and propel the nation towards becoming a globally competitive manufacturing powerhouse. Through its multifaceted approach, the scheme is poised to catalyze transformative changes, drive economic prosperity, and reinforce India's position on the global manufacturing map.

The PLI scheme's strategic focus on key sectors such as electronics, pharmaceuticals, automobiles, textiles, and renewable energy has yielded tangible outcomes, with major global players making substantial investments and bolstering their manufacturing operations in India.

Moreover, the PLI scheme's potential extensions to sectors like textiles, healthcare, agriculture, and services underscore its versatility and adaptability to address diverse economic challenges and unlock new avenues for growth. By incentivizing investments and fostering innovation in these sectors, the government can further propel India's journey towards becoming a global manufacturing hub and enhance its self-reliance across critical industries.

The PLI scheme, while aiming to bolster manufacturing in India, faces challenges that need to be carefully addressed for its effective implementation. However, addressing these challenges is a gradual process that requires careful consideration and implementation.

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SS-VII-65

Free Trade Agreements – Overview





Meetika Baghel
Advocate

CA Neha Sethi

Overview

As India positions itself as a burgeoning economic power, it intends to strategically employ Free Trade Agreements ('FTAs') to bolster its global relationships, while capitalizing on its national strengths. India's array of FTAs encompasses a variety of bilateral and multilateral agreements, with the latest being the India-EFTA Trade and Economic Partnership Agreement. Rules of Origin are key features of each of the FTAs entered by India as these rules govern the application and monitoring of the beneficial tariff measures for the trades by the member nations. While India ranks among the top users of FTAs, it faces challenges in fully realizing the benefits of these agreements. High Tariffs and trade restrictions, compounded by unilateral interventions, hinder FTA effectiveness.

The Authors in this article have provided a brief introduction to the FTAs, their benefits, and the broad coverage and framework of these agreements. It is discussed how the amendments to the Customs Act and the introduction of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 have increased the complexity for importers, leading to a greater compliance burden and giving rise to disputes leading to litigation. It is believed that to maximize the benefits of the FTA, India must focus on building domestic manufacturing capabilities, ensuring compliance with international standards, and safeguarding domestic industries while negotiating the FTA benefits. Strategic alignment with international standards along with proactive measures to address the issues revolving around verification of the origin criteria could go a long way in cementing India's FTA success and sustainable economic growth.

"Whether drawing strength from its heritage and culture or approaching challenges with the optimism of democracy and technology, this is certainly a New India — an India that is more Bharat."[1]

Introduction

India has been proclaimed to become the world's next big economic power and India strategically has sought to achieve this by leveraging on its global relationships and by building its national strengths. One popular

1. Why Bharat Matters – Author S. Jaishankar

tool deployed by India and countries across the globe to wade through the choppy seas of international trade, to bring some semblance of stability, is the Regional Trade Agreements ('RTAs'). RTAs ensure free movement of goods across borders by reducing trade barriers. India ranks 10th in the list of the biggest users of RTAs, where the forerunners are the European Union nations and the United Kingdom[2].

RTAs are bilateral (i.e., between two countries) or plurilateral/multi-lateral (i.e., between more than two countries) reciprocal trade agreements between countries belonging to various regions. RTAs strive to bridge the gap between developed and developing countries by enabling developing countries to lower trade costs, boost trade, and accelerate their economic growth. RTAs thus, by nature bestow preferential treatment to the signatory partners and hence, can be said to be against the principle of non-discrimination, enshrined in the standards developed by the World Trade Organization ('WTO'), however, the legitimacy of these instruments of trade have been validated by the WTO, provided that they comply with the set of rules, prescribed by the WTO in this regard[3] that provide that such favourable treatment can be accorded provided they do not raise barriers/restrictions for trade of any other contracting parties.

RTAs extend mutual benefits to member countries, which can either be tariff or non-tariff or can simply target the improvement of the investment environment in the member countries. Largely, RTAs can either provide preferential tariff treatment to products per the Generalized System of preference or reduce or eliminate tariffs in a free trade area or bloc. A Free Trade Agreement ('FTA') is a comprehensive pact where the countries decide to eliminate tariffs and import quotas on almost all goods allowing for the free movement of goods in the free trade area and in a few advance agreements which may convert into a Comprehensive Economic Partnership Agreement ('CEPA') or Comprehensive Economic Cooperation Agreement ('CECA') also allow for free movement of capital and greater degree of economic integration for expanding trade and investment. A Preferential Trade Agreement ('PTA') on the other hand, is an economic pact between participating countries to help improve the quantity of trade by gradually reducing tariffs on certain [identified] products between participating countries.

General Framework of FTA

India has signed various bilateral and multilateral FTAs affording concessional tariffs or exemptions to member nations and is undergoing negotiations with various other nations on more such arrangements. The Ministry of Commerce and Industry through a PIB posted on 06 April 2022 declared that India currently has 13 operational or effective FTAs, which include three agreements, namely the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA) and India-

2. https://www.wto.org/english/tratop_e/region_e/rtafactfig_e.pdf
3. Article XXIV of the General Agreement on Tariffs and Trade 1994, Enabling Clause and Article V of the General Agreement on Trade in Services [https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm]

Australia Economic Cooperation and Trade Agreement (IndAus ECTA) and six PTAs and is engaged in formal negotiations for more than 18 such agreements[4]. Since then, India on 10 March 2024[5], has also signed the India-EFTA Trade and Economic Partnership Agreement with Switzerland, Iceland, Norway and Liechtenstein. With this, the FTA count, that India has entered into, has gone up to fourteen [14].

All FTAs, broadly follow the same framework. It starts with a preamble that offers insight into the background to the agreement followed by the definition clause that defines all the relevant terms as used in the agreement. The FTAs then define the scope and coverage of agreements *interalia* to elaborate as to whether they cover goods or services or both and other non-tariff measures. Then comes the process of creating the tariff/non-tariff measures to be extended to the member nations as one of the central objectives of FTA is to reduce or eliminate tariffs on goods traded between the parties. This is achieved through a process of economic analysis, stakeholder consultations, identifying the key negotiation objectives, and by considering each party's sensitive industries and economic priorities. Then again, rules of origin determine the criteria for determining the nationality/origination of a product and whether it qualifies for preferential treatment under FTA. Rules are also established to prevent third-party countries from circumventing tariff reductions by re-exporting goods through member countries. Given the above, FTAs can be broadly said to include the following sections/clauses:

1. ***National treatment:*** Once the foreign goods, services, or investors have entered the domestic market of any country, this rule requires that the country to treat such goods, services, or investors at par with domestic goods, services, or investors. It promotes fairness and non-discrimination in trade relations.

2. ***Trade liberalisation:*** FTAs identify the goods and services and make provisions for a reduction in tariff, define the regulatory compliances, and outline market access commitments.

3. ***Dispute settlement:*** FTAs also provide for the dispute resolution mechanism to resolve the disputes between the member countries, if any. Such mechanisms could be consultation, mediation, arbitration, or adjudication by impartial tribunals.

4. ***Rules of Origin [RoO]:*** To ensure that goods genuinely produced within the FTA area receive preferential treatment, the FTA includes rules determining the eligibility of goods for preferential treatment and defines the minimum regional value content to be achieved by the goods for becoming entitled to the benefits accorded by the FTAs. The Rules of Origin would typically outline the below:

    - The Rules of Origin identify the goods that can be said to be wholly originating from a member country

4. pib.gov.in/PressReleaseIframePage.aspx?PRID=1814151
5. Press release by Ministry of Commerce and Industry on India-EFTA Trade and Economic Partnership Agreement – Posted on 10 March 2024

and therefore, would be eligible for the benefits agreed upon by the member nations.

- The Rules of Origin also prescribe the formula or rule to determine the goods that pursuant to substantial transformation [e.g., change in tariff heading] would qualify as originating from a member nation by passing the process-based method, change in tariff heading or value-added or regional value content test etc. The Rules of Origin also prescribe whether indirect materials, accessories, and parts packing material would be considered for determining the origin criteria.
- Identify the processes or goods that would not qualify as originating from the member nation as they have simply undergone minimal operations or popularly known as insufficient processes and operations – for e.g., simple processes of assembly/disassembly, affixing marks/re-packaging, simple mixing of products, etc., do not qualify to confer the origination tag on a product.
- The manner of issuance and presentation of the certificate of origin [CoO].
- The procedure to be followed for verifying and challenging the CoO issued by the Issuing Authority of the exporting member nation.

5. ***Safeguard measures/Security exceptions:*** Safeguard measures implemented with respect to particular goods that may be necessitated by circumstances that result in causing serious injury to the domestic industry of the import member country. Measures concerning payments and transfers, safeguarding the balance of payments are implemented under safeguard measures. General exceptions and security exceptions may be maintained to secure the any information the disclosure of which is contrary to security interests or to prevent actions of member nation that is necessary for the protection of security interests.

6. ***Customs Procedure:*** The agreement also provides for each member nation to have a simplified and transparent customs procedure to ensure speedy clearance of goods and enhance predictability in processes. The clauses call for all member nations to have a harmonized customs procedure and align these procedures and rules to international standards such as those made by the World Customs Organization. This would include harmonizing the classification of imported/exported goods to the WCO HSN. Similarly, following the transaction value system as the basis of valuation of goods is covered under custom procedures.

In line with the above, the salient features of the various FTAs entered into by India with various member nations can be summarized as under:

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
1.	**India-Sri Lanka FTA [ISFTA]**	Notification No. 26/2000 – Customs dated 01 March 2000 Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000 - Notification No. 19/2000 – Customs (N.T), dated 01 March 2000	• ISFTA only covers trade in goods. Rule of Origin divides products into two parts i.e. Goods wholly obtained or produced and goods not wholly obtained or produced. • Goods wholly obtained or produced comprise raw or other products extracted, produced, or manufactured in the participating country. • Alternatively, where goods are not wholly obtained or produced then the domestic value addition [DVA] in the exporting country should not be less than 35% of freight on board [FOB] value of the finished product. • Where the raw materials for the product are imported from the other contracting state and are not less than 10% of the FOB value of the product then a minimum of 25% DVA is allowed. However, the goods must undergo a four-digit tariff head change [CTH], the final product should be manufactured in the exporting country and products should be directly consigned without passing the territory of the third country. • The CoO certifies that all RoO criteria have been met and it can be obtained from the Export Promotion Council in India and from the Department of Commerce in Sri Lanka.
2.	**Agreement on South Asian FTA [SAFTA]**	Notification No. 68/2012 – Customs dated 31 December 2012	• SAFTA is an agreement between India, Pakistan, Sri Lanka, Nepal, Bhutan, Bangladesh, Afghanistan and Maldives].

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
		Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA) – Notification No. 75/2006 – Customs (N.T) dated 30 June 2006	• As per the RoO, there should be a change in four digit tariff head and achieve a DVA of 40% [i.e., the ratio of raw material or products [non-originating] in manufacturing of originating products should not exceed 60%.]. However, the rules also provide for a product specific DVA contained in Annex-A, with a general DVA of 30% for the goods originating from the exporting country.
3.	**India-Bhutan Agreement on Trade, Commerce and Transit**	No specific rules of origin	• Establishes a free trade regime between the two countries • The agreement provides for duty free transit of Bhutanese exports to third countries.
4.	**India-Thailand FTA**	Notification No. 85/2004 – Customs dated 31 August 2004 Rules of Origin, Notification No. 101/2004-Customs (N.T.), dated 31 August 2004	The notified[6] products are duty free if the importer proves that the goods in respect of which the exemption is claimed are either wholly originating from Thailand or satisfy the below criteria for non-originating goods: (i) Goods listed in Annexure A to satisfy the RVC specified against the said products (ii) Goods not mentioned in Annexure A to satisfy an RVC of 40% and change in four digit tariff heading
5.	**India-Singapore Comprehensive Economic Cooperation Agreement [CECA]**	Notification No. 74/2005 – Customs and 75/2005 – Customs both dated 27 July 2005 and 10/2008 – Customs dated 15 January 2008	• Singapore has agreed to bind all their tariff lines at zero customs duty for India under CECA. • India has offered tariff concessions on electricals, electronics, instrumentations, pharmaceuticals and plastics. India's offer is categorised into

6. Notification No.101/2004-Customs dated 31.08.2004 [as amended from time to time]

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
		Customs Tariff Determination of Origin of Goods under the Comprehensive Economic Cooperation Agreement between the Republic of India and Republic of Singapore (hereinafter referred to as "the Agreement") Rules, 2005 Notification No. 59/2005 – Customs (N.T) dated 20 July 2005	four lists namely Early Harvest, Phased Elimination, Phased Reduction, and the Negative List. • Products are duty free or enjoy concessional duty rates if the importer proves that the goods in respect of which the exemption is claimed are either wholly originating from Singapore countries or satisfy the criteria of 40% AIFTA content or the product specific rules contained in Annex B for non-originating goods:
6.	**India-ASEAN [Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India]**	Notification No. 46/2011 – Customs dated 01 June 2011 Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, Notification No. 189/2009-Customs (N.T.) dated 31 December 2009	• The ASEAN-India Trade in Goods Agreement was signed and entered into force on 1 January 2010 by Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. • Under the Agreement, ASEAN Member States and India have agreed to open their respective markets by progressively reducing and eliminating duties on 76.4% coverage of goods. • Products are duty free or enjoy concessional duty rates if the importer proves that the goods in respect of which the exemption is claimed are either wholly originating from ASEAN countries or satisfy the criteria of 35% AIFTA content for non-originating goods.

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
7.	**India-South Korea Comprehensive Economic Partnership Agreement [CEPA]**	Notification No. 151/2009 – Customs and Notification No. 152/2009 both dated 31 December 2009 Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009, Notification No. 187/2009-Customs (N.T.), dated 31 December 2009	• Major items of export to Korea are mineral fuels/oil distillates, cereals, iron, and steel. On the other hand, Korea's main export items are automobile parts, telecommunication equipment, hot rolled iron products, petroleum refined products, base lubricating oils, mechanical appliances, electrical machinery and parts, and iron and steel products. • An initiative 'Korea Plus' was launched to promote and facilitate Korean Investments in India. • Products are duty free or enjoy concessional duty rates if the importer proves that the goods in respect of which the exemption is claimed are either wholly originating from South Korea or satisfy the criteria of 35% AIFTA content for non-originating goods and a change in six digit level tariff heading.
8.	**India-Japan CEPA**	Notification No. 69/2011 – Customs dated 29 July 2011 Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 Notification No. 55/2011 – Customs (N.T) dated 01 July 2011	• Most of India's exports are covered by the general rule of change in tariff heading and an RVC of 35% and the other is covered under the wholly obtained products category. • Very few products are there in the product specific rules contained in Annexure-1 of the rules,

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
9.	**India-Malaysia CECA**	Notification No. 53/2011 – Customs dated 01 July 2011 Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia] Rules, 2011 Notification No. 43/2011-Customs (N.T.) dated 1 July, 2011	• Trade in goods involves tariff eliminations in a phased manner on products listed in Normal Track 1 and 2, and tariff will be reduced to 5% on high sensitive list products. • Products are duty free or enjoy concessional duty rates if the importer proves that the goods in respect of which the exemption is claimed are either wholly originating from ASEAN countries or satisfy the criteria of 35% AIFTA content for non-originating goods and a change in six digit level tariff heading. • In the area of services, India has committed to allow Malaysian foreign equity shareholding ranging from 49 to 100% including professional services, healthcare, telecommunications, retail and environmental services. • Malaysia has committed to allow Indian foreign equity shareholding in 91 services sub-sectors.
10.	**India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement [CECPA]**	Notification No. 25/2021 – Customs dated 31 March 2021 Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 Notification No. 81/2020 -Customs (N.T) dated 21 August 2020	• Mauritius benefits from preferential market access into India for its products including frozen fish, speciality sugar, biscuits, fresh juices, mineral water, beer, alcoholic drinks, soaps, bags, medical and surgical equipment, and apparel. • Indian service providers have access to around 115 sub-sectors such as professional services, computer related services, research and development, telecommunication, construction, distribution, education, environmental, financial, tourism and travel related, recreational, yoga, audio-visual services, and transport services.

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
11.	**India-UAE CEPA**	Notification No. 22/2022 – Customs dated 30 April 2022 Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 Notification No. 39/2022 – Customs (N.T) dated 30 April 2022	• Key benefits of the agreement include lower tariffs for trade in goods i.e. preferential tariff rates namely tariff elimination immediate, tariff elimination phased and tariff reduction. Rules of origin prescribe for wholly originating criteria or criteria of 40% RVC along with change tariff heading for non-originating goods. Precious metals and jewellery enjoy a lower RVC percentage. • CEPA is intended to enhance the mutual provision of service between the economies with a focus on financial services, telecommunication services, construction and related services, educational and health services etc.
12.	**India-Nepal Treaty of Trade**	Notification No. 104/2010 – Customs dated 01 October 2010	• India is to give on a non-reciprocal basis, duty-free access to Nepalese industrial goods without any quantity restriction. • Concession is subject to four digit change in tariff head and value addition of 30% at ex-factory price in Nepal.
13.	**India-Australia Economic Cooperation and Trade Agreement [ECTA]**	Notification No. 64/2022 – Customs dated 29 December 2022 Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022. Notification No. 112/2022 – Customs (N.T) dated 22 December 2022	• The ECTA requires each party to progressively eliminate or reduce its customs duties on originating goods. • The Rules of origin prescribe for wholly originating good criteria. • For goods not originating and are not covered under Annexure-B of Rules, the materials should have undergone at least a change in tariff sub-heading level and the qualifying value content (QVC) of the good should not be less than 35% of the FOB value as per build-up formula or 45% of the FOB value calculated as per build-down formula.

Sr. No.	*FTA*	*Relevant Customs Notifications*	*Main Features*
			• The phase out mechanism will be spread over the period of 10 years. • Australia has offered MFN duty rates covering key areas of interest of India such as information technology [IT], IT enabled services, business services, health, education, audiovisual etc. • India has officered market access to Australia with MFN duty rates in business services, communication services, and construction and related engineering services.
14.	**India-EFTA Trade and Economic Partnership Agreement with Switzerland, Iceland, Norway and Liechtenstein**	Notification yet to be issued	• India recently signed a trade agreement with the European bloc on 10 March 2024 that includes a commitment of $100 billion in investment and creating 1 million jobs in India over the span of 15 years. • This is the first agreement where there is a commitment of minimum investment in India. • EFTA seeks to boost domestic manufacturing in India in sectors such as Infrastructure and connectivity, machinery, pharmaceuticals, chemicals, food processing, transport and logistics, banking, insurance, and financial services. • This agreement will stimulate the export of services in sectors of India's strength such as IT services, business services, cultural, sporting, and recreational services. • India is offering 82.7% of its tariff lines and duties on a substantial number of goods imported from EFTA countries will be phased out by India.

As per A GTRI Report – India FTA Outlook 2024, India is in the advanced stages of negotiating FTAs with the United Kingdom, Oman, the United States, the European Union, and many other smaller nations. The Report predicts that by the end of 2024, India may have completed or nearing completion of an FTA with all major economies except China.

Key challenges in obtaining the benefits

India is known to be a country with the highest tariffs and most restrictive trade practices in the world, more so in recent years largely to support its "Made in India" policy. The Executive office of the President of the United States of America in its 2019 National Trade Estimate Report on Foreign Trade Barriers[7] notes that though the USA has sought bilateral and multilateral opportunities to increase access to the Indian market, exporters from the USA continue to face significant trade and non-trade barriers that have been impeding exports from the USA. As mentioned earlier FTAs are a channel to introduce stability and bypass a more protectionist national policy. However, the past few years have seen India backtracking on the FTA commitment through various unilateral interventions at the domestic level. It is a strong belief that the FTAs have not conferred any real benefits to the country and in fact, the trade deficit with the member nations of the FTAs has increased. The NITI Aayog in its Note on Free Trade Agreements and their Costs, has remarked that India's exports to partners and non-partner nations have increased year on year and any growth in the Indian exports to such partner nations is owing to diversification and not owing to FTAs.

India in the Budget of 2020 introduced provisions under the Customs Act, 1972, which have now placed the onus on Indian importers to prove that goods imported under the FTA adhere to the prescribed origin criteria. The Customs authorities now have greater powers that permit them to temporarily suspend the preferential treatment pending verification, or even disallow the claim under special circumstances without further verification. Claims can also be rejected for importers of identical goods, where at the time of previous verification, such goods imported by other Indian importers from the same producer and exporter have been found to be non-compliant with the prescribed conditions.

In pursuance to these provisions, the government has notified the Customs (Administration of Rules of Origin under Trade Agreement) Rules, 2020, which stipulate the detailed procedure to be followed for substantiating the benefits under the FTAs and the powers of verification of the authorities. The Rules require an importer to be in possession of details on the production process, originating criteria, the origin of inputs (used for manufacturing/ producing imported goods), the method used for determining the origination criteria, for example, de minimis, accumulation/ cumulation, value content, change in tariff classification rule, process rule, etc. The importer is supposed to exercise reasonable due diligence in the verification of data. The onus of accuracy and truthfulness of the information is on the importer. The rules lack guidance on the exact nature of the documents/proof that needs to be obtained to convince authorities on the genuineness of the claim by the Indian importer, which results in the Customs authorities in taking an arbitrary stand in most cases. Where the origination declaration is not accepted by the authorities, the importers are compelled to

7. https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf

clear goods provisionally and provide security equivalent to 100% of the duty benefit sought to be availed by the importers.

The importers struggle to obtain the necessary information from the suppliers, who hold back the information on the premise of confidentiality. Though the rules ultimately prescribe for a verification process to be undertaken by a central nodal authority, the time involved in this process is indefinite which leads to a cost built up for the importer, which may ultimately surpass any benefit that the importer may have factored at the time of import under an FTA. Also, how does an importer assess whether the information provided by the supplier is accurate and sufficient to satisfy the origin criteria. "Reasonable due diligence" to be exercised by the importer has no defined scope and thus, leads to an asymmetric approach, which leads to a never ending assessment/reassessment by the Customs authorities. Importers in this process have also been required to submit additional documents at a later date, as the powers of the Customs authorities to check the validity of such imports extend to five years. This unsystematic modus operandi is deterring various importers from availing the benefits under the FTA, as the element of extreme uncertainty makes undertaking these transactions completely unviable both for the importer as well as the exporter. Commercial arrangements are also seeing a sea change, as the importers are now demanding surety on the genuineness of the CoO and the information provided by the suppliers to substantiate the origin criteria. Though this approach would serve the larger industry players, the smaller importers do not have the level playing field to demand similar assurances.

The CoO issued by the member country is generally accepted as a reasonable assurance that the goods are of the origin of the exporting country. Furthermore, the FTAs already prescribe a retroactive check mechanism, whereby the importing country government can reach out to the exporting country's government and seek information. However, the Indian Government instead of choosing the diplomatic route is choosing to penalize the domestic importers for the widespread scepticism on the effectiveness of the FTAs.

Conclusion

The recent trends indicate India is now looking at the Western countries like the EU, UK, etc., for FTAs as opposed to its look east approach, to gain more market access for its competitive sectors. India should focus on building manufacturing capacities that comply with international standards and regulations to augment its abilities to better negotiate for all future FTAs. Additionally, India should while negotiating for the new FTAs appositely safeguard the domestic industries to avoid any future disputes in this regard. The unrelenting stance of the customs authorities to question imports under the FTAs has led to an atmosphere of apprehension amongst the trading community. The Government should strive to bring more clarity and certainty to the availability of the benefits agreed to be extended to the FTAs. The new mechanism prescribed under the amended provisions of the Customs Act and the CAROTAR 2020, is not in line with the general rule of retroactive check and hence is susceptible to dispute and litigation. India should fall back on the diplomatic route and dispute resolution mechanism prescribed under the agreements to resolve any misgiving that India may have on the origin criteria of the goods being imported, instead of burdening the importers with this task.

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Key Legal Interpretation issues in State Incentive Scheme



CA Gyanendra Tripathi

Overview

The State Governments in India have implemented industrial policies from time to time for encouraging investments in new/ expansion units within the State by providing concessions/ exemptions/ subsidy to the units being set-up.

There have been several occasions when the schemes have been amended resulting in curtailment of benefits available and have led to the Courts examining such issues with respect to 'Promissory Estoppel'; interest eligibility and Prospective v/s retrospective applicability of amendments. Similarly, there have been disputes on the classification of incentives being capital or revenue in nature for income tax purposes.

The following article analyses the above issues basis some of the recent judicial precedents.

With a view to increase/ channelize investment and fostering of growth in industrialisation and consequentially the economy, the Central and State Governments in India, have, from time to time implemented policies to help industries setup/ expand their units within the specified areas. To this effect, most of the State Governments have announced various incentive schemes for setting up and/ or expansion of industries within the state. Growth in employment opportunities for the local population has been an additional expected outcome of these policies.

The policies provide for both fiscal and non-fiscal incentives. Whilst different States have different policies, a majority of the policies focus towards reimbursing or granting refund of a portion of the amounts invested, by way of exemptions in Stamp Duties, Electricity Duties, capital subsidy, etc. along with refund of the State taxes paid on sales within the State.

To encourage the new industries being setup to choose locations, which are lesser developed regions within the state, many State Policies have adopted the method of classifying various areas of the state as developed, underdeveloped, least developed, etc. The quantum of incentives are aligned to provide maximum benefit to industries setting up in the least developed areas.

While the objective is to provide a smooth and hassle free experience to the entrepreneurs setting up industries, the implementation of these Policies has often been accompanied by disputes between Industry and officials, over interpretation of various facets of the Policy. Disputes have also arisen when a State Government has, after passage of some time,

introduced amendments to the Policies or have revoked the policies and implemented fresh policies.

Promissory Estoppel not applied

The primary contention is whether any Government authority, having entered into an agreement to provide specified incentives, can go back on its promise. The issue has been the subject of wide debate and litigation.

The Hon'ble Supreme Court has recently, in its ruling pronounced in December 2022, examined the legal position on 'promissory estoppel' in detail in the case of ***Hero Motocorp Ltd vs. UOI and Ors.***[1] wherein appeals against the orders of the High Court were taken up jointly for two Appellants viz. M/s Hero Motocorp Ltd (High Court Delhi) and M/s Sun Pharma Laboratories Ltd. (High Court Sikkim).

The Apex Court was dealing with an issue pertaining to area based incentives offered by the Central Government and The Hon'ble Supreme Court has held that "For considering the rival submissions, it would also be necessary to refer to various earlier authoritative pronouncements of this Court on the issue". Thereafter the Apex Court has discussed and distinguished earlier rulings on the issue of 'promissory estoppel' including rulings pertaining to State incentives.

The factual scenario leading to the filing of the appeals was that the Government of India had issued O.M. of 2003 which provided that, for the States of Uttaranchal and Himachal Pradesh, new industrial units and existing industrial units on their substantial expansion would be entitled to exemption of 100% outright excise duty for 10 years from the date of commencement of commercial production. Various other incentives were also provided in the said O.M. of 2003.

Both the appellants had established a new industrial unit and commenced commercial production, availing the exemption benefits. Subsequently, by the Constitution (One Hundred and First Amendment) Act, 2016, Goods and Service Tax came to be introduced pan India replacing the earlier Central Excise Act 1944. Notification No. 21/2017-CE dated 18th July 2017 was issued by the Union of India by which the exemption notifications through which tax exemptions were granted as an incentive against the investment were rescinded. Appellants filed writs in their respective High Courts, which were dismissed.

Referring to the Constitution Bench judgement in the case of ***Ramnath Pillai vs. State of Kerala***[2], the Supreme Court observed that "It can thus clearly be seen that the Constitution Bench has approved the statement in American Jurisprudence that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception to the application of the said doctrine to the State would, however, arise where it is necessary to prevent fraud or manifest injustice".

The Hon'ble Supreme Court noted that "this Court has also consistently held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory estoppel could not be invoked. It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification." It further observed that "this Court, in a catena of

1. 2022 (10) TMI 677 - SUPREME COURT, Dt.17 Dec 2022
2. (1973) 2 SCC 650

judgments, including two Constitution Bench judgments, a four-Judge Bench judgment and various judgments of learned three judges, have consistently held that promissory estoppel would not apply against the exercise of legislative powers of the State."

Having observed as above, the Supreme Court mentioned that "Though we have held that the appellants' claim based on promissory estoppel is without substance, we find that this is not a case wherein it can be said that the appellants' claim is wholly without any substance". "Relying on the said policy (O.M. of 2003), the appellants have established their units. Though the appellants may not have a claim in law, we find that they do have a legitimate expectation that their claim deserves due consideration".

While dismissing the appeals, the Supreme Court noted that the GST Council is a constitutional body. It has powers to make recommendations on wide-ranging issues concerning GST, including grant of exemptions from the GST and permitted the appellants to make representations to the respective State Governments as well as to the GST Council. The Supreme Court also requested the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed in its ruling, in an expeditious manner.

The significant observation from the above ruling is that the Supreme Court held that the claim based on promissory estoppel is without substance and dismissed the appeals, even though it felt that the Appellants had got an unjust treatment in the circumstances.

Promissory Estoppel applied

Notwithstanding the above ruling of the Apex court, a different view was taken in a recent ruling pronounced in March 2024 by the Calcutta High Court in the case of ***M/s Adani Wilmar Ltd vs. State of W. Bengal***[3].

The Appellant's obtained registration under the West Bengal State Incentives scheme and disbursement of benefits commenced. Even after the advent of GST taxation regime, amounts were disbursed, as incentive, in the month of September 2017. Thereafter the State authorities refused to disburse the rest of the amount of the scheme on the plea that in the altered GST regime, the scheme cannot be continued and contended that the GST Act subsumed all the pre-existing indirect tax statutes, including those relating to West Bengal Value Added Tax.

The High Court held that "a substantial portion of the amount due under the scheme was paid to the petitioner on September 1, 2017, thereby further bolstering the entitlement of the petitioners' claim under the Scheme. Even after the promulgation of the GST regime such disbursal was made.

The petitioners, in fact, have continued commercial production under the specific promise made by the State of giving the incentive/subsidy under the scheme-in question. Hence, the doctrine of promissory estoppel is squarely applicable in the present case.

The argument that promissory estoppel does not apply to schemes in the nature of concession has spent its force, since much water has flown after the scheme was floated."

The above ruling reopens the doors for seeking Court intervention by an industry, which had obtained registration under a State Government Incentive scheme and has subsequently been denied the benefits due to any changes/ subsequent withdrawal of the scheme.

3. 2024-VIL-227-CAL dated 7 March 2024

Notifications to have prospective effect

In pursuance of the Himachal Pradesh Industrial Policy 2004, the State Excise and Taxation Department issued statutory notifications, granting exemption from payment of General Sales Taxes/Central Sales Taxes for goods manufactured by new industrial units and or existing industrial units as on 07.01.2003, located in Tax Free Industrial Zone for a period of ten years from the date of commencement of commercial production or from the date of exemption notification, whichever was later. Accordingly, many Companies set-up or expanded industrial units in such 'Tax Free Zones'.

In March 2013, the authorities issued notification, whereby certain areas/Panchayats were de-notified as backward areas/ Panchayats. Consequently, notices were issued to the Companies located in these areas, that on account of withdrawal of the status of backward Panchayats where they had established their industrial units, they were liable to deposit VAT and CST with effect from 01.04.2013.

The Companies filed Writ petitions wherein the doctrine of promissory estoppel was invoked by them, to argue that investments have been made based upon State's promise of tax incentives for a period of ten years in lieu of setting up industrial units in backward areas of the State called as Tax Free Zone.

The authorities urged that it is the prerogative of the Government to declare a Panchayat as backward area and de-notify the same if it does not fulfil the criteria laid down for being declared as backward area. Therefore, tax concessions earlier granted to the petitioners in lieu of them' setting up industrial units in the said Panchayats could be taken away after the de-notification of the areas. The Panchayats where the petitioners had set up their industrial units pursuant to the Industrial Policy, 2004 were backward areas at the time of setting up of industrial units. The petitioners-units were accordingly allowed exemptions from payment of VAT/CST. Later, on finding that these Panchayats no more satisfied the criteria laid down by the State to continue to enjoy backward area status, they were de-notified as such.

The Hon'ble High court in its ruling[4] observed that "The self-serving Rule framed by the State debarring the petitioners from enforcing the tax concession in a Court of law, cannot be held against the petitioners".

The High Court has discussed and distinguished earlier rulings on the issue of promissory estoppel. It has also observed that "While holding that there can be no promissory estoppel against the exercise of legislative power, ***(2023)1 SCC 386, Hero Motocorp Ltd. vs. Union of India*** also elaborates that this principle cannot be invoked for preventing the government from discharging its functions under law."

"The growth of industrial sector can be said to be one significant factor in the development of an area. The petitioners who set up their industrial units in the then backward areas under the promise of tax exemption extended to them by the State for specific period cannot be penalized for the subsequent development of the area, by withdrawing tax exemptions from them during the promised period on the ground that with passage of time, the erstwhile backward areas had developed and were no more part of the tax free zone. Doctrine of promissory estoppel is applicable in the facts of the cases and can certainly be successfully invoked by the petitioners in such circumstances to compel the State to adhere to its side of bargain".

4. TS-636-HC-2023(HP)-VAT-Jaiprakash Associates Ltd dated 4 December 2023

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The High Court held that "the notifications withdrawing area status from the concerned Panchayats will have only prospective effect i.e. will be applicable to industries being set up/ expanded after the date of withdrawal notifications. These cannot be applied retrospectively to the petitioner units which had already come into production before the time the backward area status was withdrawn from such Panchayats. These Panchayats shall have to be construed as backward areas/ tax free zone for the purpose of grant of tax incentives to the petitioners for specific period as per the promise extended by the State."

Capital Receipt vs. Revenue Receipt

There have been debates on the nature of subsidy being received primarily from income tax and accounting perspective. While each incentive scheme and its modalities have to be reviewed, the High Court of Delhi has in a recent judgement pronounced on 23 January 2024, in the case of ***INDO Rama Textiles Ltd vs. CIT***[5], observed that " What has uniformly emerged upon perusal of the case law cited by both sides is that the courts have applied the "purpose test" for concluding one way or the other as to whether the subsidy received should be treated one on capital or revenue account.".

The Delhi High Court observed that what the court requires to examine while applying the purpose test to the incentive/ subsidy received by an assessee are the following aspects:

(i) First, does it assist in setting up an industry, as opposed to carrying out trade or business operations?

(ii) Second, is the incentive/subsidy given to operate the industrial unit profitably and not for setting it up?

(iii) Third, while employing the purpose test, the court is not concerned with the source, the timing or the mode and manner in which the subsidy is measured and paid. In other words, the quantification of the subsidy/incentive (whether it is linked to turnover or the cost of a capital asset) would not be a determinative factor in concluding the nature of the receipt. The purpose and the object with which the benefit/ incentive/subsidy is extended would determine its character in the hands of the recipient, i.e., the assessee.

Thereafter, the High Court has distinguished on facts the decisions rendered in Commissioner of Income Tax v/s Rassi Cements Ltd by the Andhra Pradesh High Court, Wardex Pharmaceuticals (P.) Ltd v/s ACIT by the Madras High Court and lastly, a judgement of the same court (HC Delhi) in Commissioner of Income Tax v/s Steel Authority of India Ltd., as in these rulings, the receipts were ruled to be 'revenue' in nature.

Having distinguished the above rulings, the High Court observed that in the instant appeal, the Assessee had registered under the scheme titled "Dispersal of Industries Package of Incentives, 1993". Thereafter, it examined the nature of the scheme and observed that the central theme, object and purpose of the 1993 Scheme was to industrialise underdeveloped and developing areas which fell outside the Bombay [now Mumbai]-Thane-Pune belt by incentivising the setting up of new and expanded units.

It further held that Investment in capital assets such as land, buildings, plant and machinery was only a measure adopted for calculating the sales tax subsidy/incentive [which in this

5. ITA 392/2014 & connected appeals dated 23 January 2024

case was availed by the respondent/assessee by retaining the sales tax it had levied on its goods]. It accordingly ruled that the sales tax subsidy/incentive received by the respondent/ assessee under the 1993 Scheme was a capital receipt.

Availability of Funds for incentive disbursal

An issue of lack of funds available with the Central GST authorities by way of budgetary support for disbursal of incentives was the subject of a ruling[6] by the High Court of Jammu and Kashmir. Being a ruling which could be relied on by State authorities for withholding disbursal, the same is discussed here.

The Central Government came up with Budgetary Support Scheme for eligible units vide Notification dated 05.10.2017 issued by the Department of Industrial Policy and Promotion ['DIPP'] in the Ministry of Commerce and Industry, Government of India.

M/s VJ Jindal Cocoa Pvt Ltd, being an eligible unit, filed its claim under the Scheme. The competent Authority sanctioned the claim and forwarded the same for disbursement as and when the funds were received from DIPP. However, due to non-availability of funds, the claim amounts were not disbursed.

Feeling aggrieved by the inaction of the authorities, the Company filed a petition in the High Court, seeking, inter alia, a direction to the Central GST authorities to disburse the amount of Budgetary Support already sanctioned in its favour along with interest in a time bound manner.

During pendency of the petition, the entire amount payable under the Scheme was disbursed to the Company. The High Court, in its ruling dated 6 May 2023, found that the claim was sanctioned within time, but not disbursed due to lack of funds. It held that "it is difficult for us to say that the amount payable to the petitioner under the Scheme was illegally, arbitrarily or without any reason withheld by the respondents. We, therefore, do not find the petitioner entitle to interest on the amount disabused to it."

Conclusion

The primary concern of a Company setting up an industrial unit in any particular location of the State, proposing to benefit from incentives available for such setup/ expansion, is the timely availability and continuity of such benefits being extended, during the course of the promised tenure.

Government implementing such incentive schemes, have time and again, sought to amend or restrict the benefits, for variety of reasons. Further, there exist many judicial precents, including from the Apex Court that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. However, even after adopting such position, the Courts have often offered respite where it was felt that it is necessary to interfere to prevent fraud or manifest injustice.

Also, on the issue of capital v/s revenue nature of subsidy, a close look at the policy and its modalities is required to determine the exact categorization of the benefits for accounting and income tax purposes.

6. 2023-TIOL-643-High Court-Jammu & Kashmir High Court dated 6 May 2023

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SS-VII-84

DIRECT TAXES
Supreme Court



Keshav B. Bhujle
Advocate

1 ***Principal CIT vs. Shantilal Khushaldas and Brothers Pvt. Ltd.; [2023] 461 ITR 361 (SC): Dated 12/09/2023***

Business expenditure — Appeal to High Court — Substantial question of law — Commission paid to foreign agents on export of goods — Tribunal deleting additions observing transactions between foreign agents and importers abroad not assessable in India — No substantial question of law — Supreme Court dismissed SLP: Ss. 9(1)(i) and 260A of ITA 1961: A. Y. 2012-13

The Commissioner (Appeals) held that the non-resident foreign commission agents had provided services to the assessee outside India and no part of their income was assessable in India as the agents had no operations in India and, therefore, the provisions of section 9(1)(i) of the Income-tax Act, 1961, could not be invoked. Accordingly, the Commissioner (Appeals) deleted the addition of income made on account of the disallowance of the commission paid to the non-resident foreign agents. The Tribunal upheld the order of the Commissioner (Appeals).

The High Court dismissed the Department's appeal holding that no substantial question of law arose (see Pr. ***CIT vs. Shantilal Khushaldas and Brothers Pvt. Ltd. [2024] 470 ITR 73 (Bom)***).

On a petition for special leave to appeal the Supreme Court held as under:

"i) Having heard the learned Additional Solicitor General appearing for the petitioner at considerable length and after carefully perusing the material available on record, we are not inclined to interfere with the impugned order passed by the High Court.

ii) The special leave petition is, accordingly, dismissed."

2 ***Bharti Cellular Ltd. vs. ACIT; [2023] 462 ITR 247 (SC): Dated 28/02/2024***

Deduction of tax at source — Commission or brokerage — Assessee, cellular mobile telephone service provider, selling start-up kits and recharge vouchers of specified value to franchisees or distributors at discounted price — Assessee having no say in sale price at which franchisee or distributor sold to customer — Profits of franchisees or distributors consisting of difference between sale price received from customer and discounted price paid to assessee — Assessee at no stage either paying to or crediting account of franchisees or distributors with income by way of commission or brokerage — Assessee not privy to transactions between

franchisees or distributors and third parties — Impossible for assessee to deduct tax at source on profits of franchisees — Assessee cannot be made to ask for information from franchisee or distributor and deduct tax at source — Income earned by distributor or franchisee not remuneration paid by assessee as mobile telephone service provider — Assessee not under obligation to deduct tax at source on income or profit component in payments received by franchisees or distributors from third parties or customers, or while selling or transferring prepaid coupons or starter-kits to distributors: Ss. 194H and 204 of ITA 1961: A. Ys. 2003-04 to 2008-09

The assessees were cellular mobile telephone service providers operating under a licence granted to them by the Department of Telecommunications. To carry on business, the assessees had to comply with the licence conditions and the rules and regulations of the Department of Telecommunications and the Telecom Regulatory Authority of India. Under the prepaid business model, end-users or customers were required to pay for services in advance, by purchasing recharge vouchers or top-up cards from retailers. For new prepaid connections, customers or end-users purchased a start-up pack, which contained a subscriber identification mobile card, commonly known as a SIM card, and a coupon of the specified value as advance payment to avail of the telecom services. The assessees entered into franchise or distribution agreements with several parties and sold start-up kits and recharge vouchers of specified value at a discounted price to the franchisees or distributors. The discount was on the printed price of the packs. The franchisees or distributors paid the discounted price regardless of, and even before, the prepaid products being sold and transferred to the retailers or the actual consumer. The franchisees or distributors were free to sell the prepaid products at any price below the price printed on the pack. The retailers or outlets for sale promotion were appointed by the franchisees or distributors and not the assessees. The franchisees or distributors had to comply with statutory, regulatory and municipal permissions while conducting the business. All rights, title ownership and property rights in the cards rested with the assessees. The franchisees or distributors were solely responsible and liable for the safety and storage of prepaid start-up kits, recharge cards and other materials. The franchisees or distributors were to insure the prepaid start-up kits or recharge coupons. Upon termination, the franchisees or distributors were required to return all advertising and promotional material, etc. to the assessees by the effective date of termination. The assessees were not liable to the franchisees or distributors or any other party for any loss of profits or compensation or prospective profits or on account of any expenditure, etc., in the event of termination. The franchisees or distributors were responsible to collect all necessary agreement or contract forms and other related forms, after obtaining the signatures of the customers on them. These forms, duly completed in all respects and signed by the customers, were to be forwarded to the assessees for verification and record. The franchisees' or distributors' price and payment for services were specified by the assessees from time to time. All tax liabilities in connection with, or arising out of, the transactions pertaining to the agreement were the responsibility of the franchisees or distributors. The trademarks, logos, trade names or identifying marks and slogans, whether registered or not, were the exclusive property of the assessees or their affiliated companies.

The question before the Supreme Court was whether, as contended by the Department, the difference between "discounted price" and

"sale price" in the hands of the franchisees or distributors, was in the nature of "commission or brokerage" and income of the franchisees or distributors, the relationship between the assessees and the franchisees or distributors was in the nature of principal and agent, and therefore, the assessees were liable to deduct tax at source u/s. 194H of the Income-tax Act, 1961?

The Supreme Court held as under:

"i) Section 194H of the Income-tax Act, 1961, which imposes the obligation to deduct tax at source, states that any person responsible for paying at the time of credit or at the time of payment, whichever is earlier, to a resident any income by way of commission or brokerage, shall deduct Income-tax at the prescribed rate. The expression "any person responsible for paying" is defined in section 204 of the Act. According to clause (iii) of section 204, in the case of credit or in the case of payment in cases not covered by clauses (i), (ii), (iia), (iib), "the person responsible for paying" is the payer himself, or if the payer is a company, the company itself and the principal officer thereof.

ii) Payment received or receivable should be to a person acting on behalf of another person. Payment is receivable when the amount is actually credited in the books of the payer to the account of the payee, though the actual payment may take place in future. The words "another person" refer to "the person responsible for paying". The words "direct" or "indirect" in Explanation (i) to section 194H of the Act, which defines the expressions "commission" or "brokerage" are with reference to the act of payment. The legislative intent to include "indirect" payment ensures that the net cast by the section is plugged and not avoided, but does not dilute the requirement that the payment must be on behalf of "the person responsible for paying". This means that the payment or credit in the account should arise from the obligation of "the person responsible for paying". The payee should be the person who has the right to receive the payment from "the person responsible for paying". When this condition is satisfied, it does not matter if the payment is made "indirectly".

iii) The services rendered by an agent to the principal, according to the latter portion of Explanation (i) to section 194H of the Act, should not be in the nature of professional services. Further, Explanation (i) to section 194H of the Act restricts application of section 194H of the Act to services rendered by the agent to the principal in the course of buying and selling of goods, or in relation to any transaction relating to any asset, valuable article, or thing, not being securities. The latter portion of Explanation (i) to section 194H of the Act is a requirement and a precondition. It should not be read as diminishing or derogating the requirement of the principal and agent relationship between the payer and the recipient or payee. Explanation (i) to section 194H of the Act, by using the word "indirectly", does not regulate or curtail the manner in which the assessee could conduct business and enter into commercial relationships. Nor does the word "indirectly" create an obligation where the main provision does not apply. The tax legislation recognises diverse relationships and modes in which commerce and trade are conducted, albeit the obligation to tax at source arises only if the conditions as mentioned in section 194H

of the Act are met and not otherwise. This principle does not negate the compliance required by law.

iv) It is settled that the expression "acting on behalf of another person" postulates the existence of a legal relationship of principal and agent, between the payer and the recipient or payee. Whether in law the relationship between the parties is that of principal-agent is answered by applying section 182 of the Contract Act, 1872. Therefore, although in day to day life, the expression "agency" is used to include a vast number of relationships, which are strictly, not relationships between a principal and agent, the obligation to deduct tax at source in terms of section 194H of the Act arises when the legal relationship of principal-agent is established.

v) Agency in terms of section 182 of the Contract Act, 1872* exists when the principal employs another person, who is not his employee, to act or represent him in dealings with a third person. An agent renders services to the principal. The agent does what has been entrusted to him by the principal to do. It is the principal he represents before third parties, and not himself. As the transaction by the agent is on behalf of the principal whom the agent represents, the contract is between the principal and the third party. Accordingly the agent, except in some circumstances, is not liable to the third party.

vi) Agency is a triangular relationship between the principal, agent and the third party. In examining whether a legal relationship of a principal and agent exists, the following factors or aspects should be taken into consideration : (a) The essential characteristic of an agent is the legal power vested with the agent to alter his principal's legal relationship with a third party and the principal's co-relative liability to have his relations altered. (b) As the agent acts on behalf of the principal, one of the prime elements of the relationship is the exercise of a degree of control by the principal over the conduct of the activities of the agent. This degree of control is less than the control exercised by the master on the servant, and is different from the rights and obligations in case of principal to principal and independent contractor relationship. (c) The task entrusted by the principal to the agent should result in a fiduciary relationship. The fiduciary relationship is the manifestation of consent by one person to another to act on his or her behalf and subject to his or her control, and the reciprocal consent by the other to do so. (d) As the business done by the agent is on the principal's account, the agent is liable to render accounts thereof to the principal. An agent is entitled to remuneration from the principal for the work he performs for the principal.

vii) Three other relevant considerations are: first that the two terms "power" and "authority" though connected, are not synonymous. Authority refers to a factual position, that is, the terms of contract between the two parties. The power of the agent however, is not, strictly speaking, conferred by the contract or by the principal but by the law of agency. When a person gives authority to another person to do the acts which bring the law of agency into play, the law vests power with the agent to affect the principal's legal relationship with the third parties. The extent and existence of the power with the agent

is determined by public policy. The authority refers to the factual situation. The second consideration is that the primary task of an agent is to enter into contracts on behalf of his principal, or to dispose of his principal's property. Lastly, the substance of the relationship between the parties, notwithstanding the nomenclature given by the parties to the relationship, is of primary importance. The true nature of the relationship is examined by reference to the functions, responsibility and obligations of the so-called agent to the principal and to the third parties.

viii) An agent is distinct from a servant, in that an agent is subject to less control than a servant, and has complete, or almost complete discretion as to how to perform an undertaking. This distinction can be criticised, for servants may have very wide discretion, and may not really be subject to control at all in practice, while agents may have their power to act circumscribed by detailed instructions.

ix) To decide whether a contracting party acts for himself as an independent contractor, one must examine whether in the course of work, he intends to make profits for himself, or is entitled to receive prearranged remuneration. If the party is concerned about acting for himself and making the maximum profits possible, he is usually regarded as a buyer, or an independent contractor and not as an agent of the principal. This would be true even when certain terms and conditions have been fixed relating to the manner in which the seller conducts his business.

x) The legal position of a distributor is generally regarded as different from that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. The distributor in such cases is an independent contractor. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party. The distributor has rights of distribution and is akin to a franchisee. Franchise agreements are normally considered sui generis, though they have been in existence for some time. Franchise agreements provide a mechanism whereby goods and services may be distributed. In franchise agreements, the supplier or the manufacturer, i. e., a franchisor, appoints an independent enterprise as a franchisee through whom the franchisor supplies certain goods or services. There is a close relationship between a franchisor and a franchisee because a franchisee's operations are closely regulated, and this possibly is a distinction between a franchise agreement and a distributorship agreement. Franchise agreements are extremely detailed and complex. The facts of each case and the authority given by the "principal" to the franchisees matter and are determinative.

xi) An independent contractor is free from control on the part of his employer, and is only subject to the terms of his contract. But an agent is not completely free from control, and the relationship to the extent of tasks entrusted by the principal to the agent are fiduciary. As a contract with an independent agent depends upon the terms of the contract, sometimes an independent

contractor looks like an agent from the point of view of the control exercisable over him, but on an overview of the entire relationship the tests may not be satisfied. The distinction is that independent contractors work for themselves, even when they are employed for the purpose of creating contractual relations with third persons. An independent contractor is not required to render accounts of the business, as it belongs to him and not his employer.

xii) Thus, the term "agent" denotes a relationship that is very different from that existing between a master and his servant, or between a principal and principal, or between an employer and his independent contractor. Although servants and independent contractors are parties to relationships in which one person acts for another, and thereby possess the capacity to involve them in liability, the nature of the relationship and the kind of acts in question are sufficiently different to justify the exclusion of servants and independent contractors from the law relating to agency. In other words, the term "agent" should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts, or the disposition of the principal's property, viz., an independent contractor who may, incidentally, also affect the legal position of his principal in other ways. It is in the restricted sense in which the term agent is used in Explanation (i) to section 194H of the Act.

xiii) Failure to deduct tax at source has serious and quasi-penal consequences for an assessee. The deduction of tax provisions should be pragmatically and realistically construed, and not as enmeshes or by adopting catch-as-catch-can approach. In case of a legal or factual doubt in a given case, the assessee can rely on the doctrine of presumption against doubtful penalisation. Whether or not the doctrine should be applied, will depend on the facts and circumstances of the case, including past practice followed by the assessee and accepted by the Department. When there is apparent divergence of opinion, to avoid litigation and pitfalls associated, it may be advisable for the Central Board of Direct Taxes to clarify doubts by issuing appropriate instructions or circulars after ascertaining the view of the assessees and stakeholders. In addition to enhancing revenue and ensuring tax compliance, an equally important aim or objective of the Revenue is to reduce litigation. The instructions or circular, if and when issued, should be clear, and when justified—require the obligation to be made prospective.

xiv) When the obligation to deduct tax at source, and the time and manner in which the tax is mandated by law to be deducted at source, are fixed by the statute, they cannot be shifted or altered or modified or postponed on a concession in the court by the Department. The concession may be granted, when permissible, by way of a circular issued in accordance with section 119 of the Act.

xv) While the prepaid SIM cards were not the property of the franchisees or distributors and no right, title or interest was transferred to them, this was a mandate and requirement of the

licence issued to the assessees by the Department of Telecommunications. In actual practice, the right to use the SIM card and its possession was handed over and given to the end-user, who installed the SIM card in his phone to avail of the telecommunications services. Similarly, the franchisees or distributors had to ensure that post-paid customers or end-users filled up the form as prescribed with the documents to be submitted to the assessees. These were mandates prescribed by the licence issued by the Department of Telecommunications to the assessees. The contractual obligations of the franchisees or distributors, did not reflect a fiduciary character of the relationship, or the business being done on the principal's account.

xvi) The profits of the franchisees or distributors consisted of the difference between the sale price received by them from the retailer, end-user or customer and the discounted price at which they had "acquired" the product. Though the discounted price was fixed or negotiated between the assessees and the franchisees or distributors, the sale price received by the franchisees or distributors was within the sole discretion of the franchisees or distributors. The assessees had no say in this matter. The obligation to deduct tax at source was fixed by the statute itself, that is, on the date of actual payment by any mode, or at the time when income was credited to the account of the franchisees or distributors, whichever was earlier. The income of the franchisees or distributors, being the difference between the sale price received by the franchisees or distributors and the discounted price, was paid or credited to the account of the franchisees or distributors when they sold the prepaid product to the retailer, end-user or customer. The sale price and accordingly the income of the franchisees or distributors was determined by the franchisees or distributors and the third parties. Accordingly, the assessee did not, at any stage, either pay to, or credit the account of the franchisees or distributors with, income by way of commission or brokerage on which tax at source u/s. 194H of the Act was to be deducted.

xvii) The assessees neither paid nor credited any income to the person with whom they had contracted. The assessees were not privy to the transactions between the franchisees or distributors and third parties. It was, therefore, impossible for the assessees to deduct tax at source and comply with section 194H of the Act, on the difference between the total consideration received by the distributors or franchisees from third parties and the amount paid by the distributors or franchisees to them. The Department's contention that even if the franchisees or distributors received payment in the form of income from the retailer or end-user or customer, and the assessees were not making payment or crediting income to the account of the franchisees or distributors, the assessees would be liable to deduct tax at source as payment received or receivable, directly or indirectly, was to be subjected to deduction of tax, was not tenable.

xviii) The argument of the Department that the assessees should periodically ask for this information and thereupon deduct tax at source was far-fetched, imposing an unfair obligation and inconveniencing the assessees, beyond the statutory mandate. Further, it would be well-nigh

impossible to deduct, as well as make payment of the tax deducted, within the time limits prescribed by law, as these began when the amount was credited in the account of the payee by the payer or when payment was received by the payee, whichever was earlier. The payee received payment when the third party made the payment. This payment was not the payment received or payable by the assessee as the principal. The distributor or franchisee was not the trustee who was to account for this payment to the assessee as the principal. The payment received was the gross income or profit earned by the distributor or franchisee. It was the income earned by the distributor or franchisee as a result of its efforts and work, and not a remuneration paid by the assessee as a cellular mobile telephone service provider.

xix) Therefore, the assessees were not under a legal obligation to deduct tax at source on the income or profit component in the payments received by the franchisees or distributors from the third parties or customers, or while selling or transferring the prepaid coupons or starter-kits to the distributors. Section 194H of the Act was not applicable to the facts and circumstances of this case."

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3 ***CIT vs. Gurdaspur Co-Operative Sugar Mills Ltd.; [2023] 461 ITR 208 (SC): Dated 22/01/2024***

Penalty — Concealment of income or furnishing inaccurate particulars of income — Subsidy from State Government disclosed and claimed to be capital receipt — Subsidy whether capital or revenue receipt — Debatable question — No furnishing of inaccurate particulars — Penalty could not be imposed — Supreme Court dismissed SLP: S. 271(1)(c) of ITA 1961: A. Y. 2003-04

The grant-in-aid received from the State Government was treated by the assessee as capital receipt. The Assessing Officer held that it was a revenue receipt. The Tribunal upheld the order of the Assessing Officer. However, the Tribunal cancelled the penalty imposed by the Assessing Officer u/s. 271(1)(c) of the Income-tax Act, 1961 holding that the issue is debatable.

The Punjab and Haryana High Court upheld the decision of the Tribunal and held as under:

> "There was no dispute about the quantum of receipt of grant-in-aid from the State Government. The assessee had reflected the receipt as a capital receipt, whereas it had been treated as a revenue receipt. Whether the grant-in-aid was a capital or a revenue receipt was a debatable issue. There was no furnishing of inaccurate particulars, and that therefore, penalty could not be imposed."

The Supreme Court dismissed the petitions for special leave to appeal and held as under:

> "Mr. N. Venkatraman, learned Additional Solicitor General, has in his usual fairness stated the correct position of law as it exists in the facts and circumstances of the case. Taking note of the legal position, the special leave petitions are dismissed."

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DIRECT TAXES
High Court





Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***Nivas vs. CIT(IT) [2024] 160 taxmann.com 363 (Madras)***

Central Board of Direct Taxes- Instructions – Section 119 – Application for condonation of delay to file revised returns – 'genuine hardship' to be interpreted liberally - delay in filing returns due to COVID 19 pandemic - delay to be condoned

Facts

The Assessee, a resident of the United States of America, was assessed to tax in India and filed his return of income in India. During the financial year 2018-19, Assessee sold a residential property in India and claimed exemption under Section 54 of the Income Tax Act by depositing the entire sale consideration of ₹ 1.35 crores under the Capital Gains Accounts Scheme. Assessee returned to the United States of America on 16.03.2019. He travelled to India only during financial year 2021-22. The Assessee was unable to travel to India during the interregnum on account of the onset of the Covid 19 pandemic which affected his parents and his in-laws. Also, his father-in-law passed away in the year 2021. Further, there was a theft from his car in which several items, including his passport, were lost and complaint was filed with the police. In these circumstances, the Assessee failed to file the return of income for AY 2020-21 and AY 2021-22. The Assessee filed an application with the Commissioner of Income Tax under Section 119(2)(b) of the Income Tax Act seeking condonation of delay in filing his returns of income. The said application was dismissed by the Commissioner of Income Tax, primarily on the ground that returns could be filed on the e-filing-portal, and it did not require the Assessee to physically travel to India. Aggrieved the Assessee assailed the order before the Madras High Court by filing a Writ Petition.

Decision of the Hon'ble Court

Hon'ble High Court was pleased to allow the writ Petition filed by the Assessee by observing that section 119(2)(b) of the Act enables the CBDT to condone delay in cases of genuine hardship. The said provision has been interpreted in several judgments, including of this Court, and it has been held that the provision should receive a liberal construction. The primary consideration in such applications is whether genuine hardship would be caused to the applicant. In this case, the assessee has placed on record various documentary evidences which shows that the assessee was prevented by genuine hardships from filing his returns

due to COVID 19 Pandemic and theft of his documents from his car. Therefore, the returns of income filed by Assessee for AY 2020-21 and 2021-22 be processed in accordance with law.

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2 ***Genpact India Pvt. Ltd. vs. DCIT [WP No. 15296 of 2022, order dated 27 February 2024, Delhi High Court]***

Refund - Section 244A of the Income Tax Act, 1961 – Additional interest on refunds – delay in passing the order giving effect to the order passed by appellate authorities – Assessee is entitled to additional interest. [Section 244A(1A)]

Facts

The Assessee filed its return of income on 4th October 2010. The return filed by the assessee was selected for scrutiny assessment and the AO finalized the assessment order by making certain additions and disallowance. The Assessee challenged the assessment order before the Commissioner of Income-Tax (Appeals) [CIT(A)]. The CIT(A) passed an order on 24th May 2019, allowing part reliefs, which gave rise to certain refunds for the Assessee. The AO passed an appeal effect order dated 23rd December 2020, wherein refund along with applicable interest under section 244A(1) was allowed to the Assessee. However, the department issued an intimation under section 245 of the Act and the refund was proposed to be adjusted against outstanding demands. The Assessee aggrieved by the intimation, filed a letter with the AO on 15th January 2021 highlighting the correct computation along with the computation of interest under sections 244A(1) and 244A(1A) of the Act. Even after the passage of more than two years, the Assessee had not received the correct refund amount, hence, a letter was filed with the Central Board of Direct Taxes for issuance of correct refund amount together with interest.

Thereafter, the department sent another intimation under section 245 proposing to adjust the refund against various outstanding demands, which the Assessee objected to. The Assessee received part refund on 30th July 2021 and accordingly the Assessee requested the revenue to issue remaining refund along with statutory interest. On 19th May 2022, the department passed a rectification order and granted remaining refund to the Assessee along with interest under section 244A(1). Since the Assessee was not allowed additional interest under section 244A(1A), the Assessee filed a letter on 22nd June 2022. The department passed an order dated 18th November 2022 rejecting the Assessee's claim for additional interest under Section 244A(1A). Being aggrieved by the impugned order, the Assessee approached the Hon'ble Delhi High Court.

Decision of the Hon'ble Court

Hon'ble High Court was pleased to allow the Writ Petition filed by the Assessee and quashed the order denying additional interest under section 244A(1A) and directed the department to grant the additional interest with due expediency by observing that the interest under sections 244A(1) and 244A(1A) could be denied only when the delay is attributable to the Assessee as prescribed under section 244A(2) of the Act. Further, when department had granted refund to the Assessee along with interest under section 244A(1), there was no reason to deny interest under section 244A(1A) of the Act.

3 *CIT vs. Qualcomm Incorporated [2024] 159 taxmann.com 717 (Delhi)*

Limitation for passing the fresh assessment order - Section 153 of the Income Tax Act, 1961 – period of limitation would commence form the point of time officer of Department becomes aware of order - order passed beyond the limitation provided under section 153(2A) of the Act is bad in law

Facts

In the present Assessee's case the AO finalized the assessment order on 31st December 2007 under section 143(3) determining the total taxable income at ₹ 138,83,40,893/-. It also taxed the revenue of the assessee generated through BREW operator agreements as well as royalty on the sale of CDMA handsets. On appeal, the first appellate authority upheld the view of the AO. The assessee being aggrieved filed further appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal vide order dated 20th February 2015 deleted the additions with respect to revenue earned through BREW operator agreement and partially remanded the matter to the file of the AO to consider related issues afresh. The AO passed an appeal effect order on 12th March 2015 giving partial effect to the Appellate Tribunal order. Thereafter, on 27th December 2016 the AO passed a draft assessment order deciding the issues that were supposed to be decided afresh in terms of the Tribunal order dated 20th February 2015. The Assessee assailed the draft assessment order before the Dispute Resolution Panel, based on whose directions, the Assessing Officer passed a final assessment order on 31 October 2017. This final assessment order was assailed before the Appellate Tribunal.

Before the Appellate Tribunal, the assessee raised a legal ground that the final assessment order was barred by limitation, as prescribed by section 153(2A). The Assessee contended that the appeal effect order was to be passed by 31st March 2016, as the AO had complete knowledge of the Appellate Tribunal's order when the partial appeal effect order was passed on 12 March 2015. Accordingly, both the draft assessment order dated 27 December 2016 and the final assessment order dated 31 October 2017 were barred by limitation. The Appellate Tribunal agreed with the Assessee's contention and allowed the appeal on the limitation issue. Aggrieved the department filed an appeal before the Hon'ble High Court.

Decision of the Hon'ble Court

Hon'ble High Court was pleased to reject the appeal filed by the department by observing that though section 153(2A) used the term 'received', the issue was regarding when the department became aware of the order and not when the concerned Commissioner or Principal Commissioner may have been served or had derived knowledge. As the AO passed the partial order giving effect on 12th March 2015, though he had complete knowledge of the Appellate Tribunal's order. Hence, subsequent draft assessment order dated 27 December 2016 as well as final assessment order dated 31 October 2017 is barred by limitation.

4 *Anurag Bagaria vs. Income Tax Department [2024] 158 taxmann.com 546 (Karnataka)*

Offence and prosecution - Section 276C of the Income-tax Act, 1961 - Wilful attempt to evade tax - Claims in the original return accepted by AO - revised returns filed after search action, waiving claims of deductions - claims of deductions were not accepted or were not acceptable to revenue, that by itself would not amount to wilful evasion of tax. [Section 482 of the Code of Criminal Procedure, 1973]

Facts

The assessee for the relevant assessment year filed his returns under section 139 of the Act and claimed certain deductions under Chapter VI-A and in particular, deductions under the heads of Long Term Capital Gain/ Short Term Capital Loss. The return filed by the assessee was accepted by the department. Subsequently, the revenue conducted a search under section 132 and later registered a criminal case for offence punishable under section 276C(1) alleging that the assessee had declared bogus long term capital gain or short term capital loss which has resulted in wilful evasion of tax and were charged of offence under section 276C(1).

Decision of the Hon'ble Court

Hon'ble High Court was pleased to allow the writ petition filed by the assessee by observing that the assessee had filed revised return waiving off claims of deduction of long-term capital gain/short-term capital loss after search was conducted upon him and therefore, it was a case of delayed payment of tax. Hence, proceedings pending against assessee for offence punishable under section 276C(1) were to be quashed.

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"A fool may buy all the books in the world, and they will be in his library; but he will be able to read only those that he deserves to."

— *Swami Vivekananda*

"To give pleasure to a single heart by a single act is better than a thousand heads bowing in prayer."

— *Mahatma Gandhi*

ML-355

DIRECT TAXES
Tribunal





CA Nikhil Mutha CA Viraj Mehta CA Kinjal Bhuta

1 *Shri Girish bhai Vadilal Shah vs. DCIT [ITA No. 429/Ahd/2018 dt. 15.03.2024] (AY: 2013-14)*

Sec. 57(iii) – Interest expenditure claimed was more than the interest income- the AO disallowed those expenses where rate of interest was more than rate of lending- addition not justified – only condition is expenditure is wholly and exclusively for earning income

Facts

The assessee offered interest income in the return of income and against the same claimed interest expenses u/s. 57(iii) of an amount more than the offered income, thereby showing a net loss under the head Income from other sources. Out of the total interest expenditure claimed, the AO disallowed the expenses which were in relation to loans taken by assessee on which rate of interest was found to be more than the rate at which the loans were advanced. The assessee had charged interest at the rate of 12%, those loans have been advanced at the lower rates of 6% to 10%. The difference was not allowed as expenses u/s. 57(iii). The CIT(A) also upheld the additions made by the AO.

Held

It was held by the Hon'ble ITAT that, the fact that only those interest which has excess interest rate as compared to the interest charged on loans given, shows that the in sum and substance the AO accepts the usage of interest bearing funds for earning interest income when he allowed the portion of interest expenses which is in parity with the interest charged by the assessee on loans given. Further, it was held that once this is accepted, the AO is precluded from making any disallowance u/s. 57(iii) as the only requirement to be fulfilled for claiming expenses under the said section is that they must have been incurred wholly and exclusively for the purposes of earning income and quantum of the expenditure incurred therefore is of no consequence.

It was further held, that the Revenue authorities have misinterpreted the provision of section 57(iii) of the Act by stating that expenses under the section can be allowed only if income is earned from the incurrence of the said expense, and the term income means profit earned. The Revenue authorities have made the disallowance in the present case noting that assessee had made losses and therefore as earned no income. This basis of the Assessing Officer is completely devoid of

any merits, what the section requires is that expenses must have been incurred for the purpose of earning income to be eligible to claim the same against the said income. There is no question of interpreting the term "income as profits". The moment expenditure has been incurred for earning income, the expenditure incurred for the same qualifies for deduction u/s. 57(iii) of the Act. Accordingly, the appeal of assessee was allowed.

2 *Abhishek Doshi vs. ITO [ITA No. 2944/Mum/2023 dt. 20.03.2024] (AY 2013-14)*

Section 68 – Sale of Shares – All documents available – No penny Stock Transaction - Exemption cannot be denied

Facts of the case

Assesse's claim of exempt income of ₹ 2,56,67,731/- on account of Long Term Capital Gain (LTCG) from the sale of shares - "M/s Shreenath Commercial and Finance Ltd."; which was alleged as penny stock. Ld. AO considered such amount as sham transaction. CIT(A) also dismissed the appeal of the assessee. Being aggrieved, appeal is filed before Hon. ITAT.

Held

Hon. ITAT relied on coordinate bench decision of ***Veena Chaturvedi vs. DCIT (ITA No. 1702/Mum/2021)*** and held that there are no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. The revenue has not brought on record any materials linking the assessee in any of the dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. The assessing officer has applied the presumptions and concept of human probabilities to make the additions without their being any material against the assessee. Additions made are therefore deleted on the basis that lower authorities treated the transaction as penny stock without bring on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the person who has involved in manipulation/rigging of share prices, entry operator or exit provider. Hence, Hon. ITAT deleted the additions made.

3 *Premji Bhuralal Gala vs. ITO [ITA No. 3081/Mum/2022 dt. 28.02.2024] (AY 2012-13)*

Section 147, Section 68 – Reopening was made on account of information that cash loan of ₹ 2.45 crs has been received – Cash loans even if received cannot be treated as income – No addition can be made – Reopening quashed

Facts of the case

Case has been reopened u/s 148 on account that information has been received from investigation wing that assessee has borrowed cash loan of ₹ 2,45,00,000/- through Mr. Nilesh Bharani (M/s Evergreen Enterprises). AO confirmed the addition made merely on the basis of information received from Investigation Wing without considering the submissions of the assessee. CIT(A) also dismissed the appeal of the assessee. Being aggrieved, appeal is filed before Hon. ITAT.

Held

Hon. ITAT held that on the perusal of the 'reasons', it is seen that assessee has borrowed cash loan from/through Shri Nilesh Bharani/ M/s. Evergreen Enterprises of ₹ 2,45,00,000/-. It is not a case of deemed income taxable

u/s 68 that it has some kind of unexplained loan credit in the books of the assessee. The information is based on the fact that the assessee has received cash loans which in turn is based on certain documents seized in search and survey action u/s. 132 carried out at M/s. Evergreen Enterprises. If it is a cash loan, ostensibly it cannot be treated as income of the assessee unless conditions specified in Section 68 are satisfied. Once the very basis on which reasons have been recorded, i.e., cash loan of ₹ 2,45,00,000/- which has been stated to be chargeable to tax in the hands of assessee is not found to be taxable by the ld. AO, then the entire basis of re-opening gets vitiated. Further Hon. ITAT relied on decision of Bombay Hight Court in case of Sanjeev Amritlal Chhedda (WP No. 3620/2019 dt. 05.01.2022) and concluded that once the ld. AO has accepted cash loans, which cannot be been considered as income, there cannot be escapement of income & reassessment was thereby quashed.

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4 ***Eye Bank Coordination and Research Centre [ITA No.3660/Mum/2023 dated 21.03.2024] [AY 2016-17]***

Section 250 – CIT(A) order passed without considering additional evidences - order passed while adjournment period was going on- order held against the principles of natural justice – order restored back to the file of CIT(A)

Facts of the case

Appellant is a charitable trust carrying on activities of eye bank coordination and research. The appellant had filed the return of income claiming deprecation on capital assets. The case of the appellant was selected for scrutiny and the Assessing Officer disallowed the depreciation by assuming that cost of fixed assets is also claimed as application of income. The AO also did not allow to deduction of 15% of the income from the property held under trust. The appellant filed appeal against the said addition. Before the first appellate authority, the appellant filed additional evidences. To the notice received u/s 250, the appellant took an adjournment, as they were awaiting the remand report on additional evidences filed by the appellant. Before the expiry of adjournment, the CIT(A) was passed dismissing the appeal on non-appearance.

Held

The Hon'ble ITAT observed that the appellant had filed a paper book of additional evidences before the CIT(A) and the AO had also returned a finding on the same stating that assessee has failed to bring on record relevant documents to show that cost of fixed assets is not claimed as application of income though appellant had filed the computation of income. It was also observed that while taking adjournment, the appellant has specified that they are awaiting the comments in remand report of the AO to file further submissions. None of these documents, evidences are mentioned in the CIT(A) order. It was also observed that, the order was passed even though adjournment was granted to the appellant. It was held that therefore, the order of CIT(A) was in violation of principles of natural justice without considering any material on record and the order was set aside and restored back to the file of CIT(A) with directions to consider the additional evidences, calling for remand report from AO, and the comments of appellant on such report so issued.

5 *Meda Raja Kishor Raghuramy Reddy vs. ACIT [ITA No. 127/Panj./2022 dt. 28.02.2024] (AY 2014-15)*

Section 250 – Delay in filing appeal before ITAT on not knowing order is uploaded on portal – delay condoned – CIT(A) order was cryptic - advancing substantial justice is more important while considering condonation of delay - CIT(A) has to decide appeal on merits – appeal cannot be dismissed for non-prosecution

Facts

The assessee filed return of income electronically declaring income. Its case was selected for scrutiny and various notices including show cause notice were issued upon the assessee, however, the assessee failed to comply. The Assessing Officer made additions on account of sundry creditors under section 68 and cash deposits under section 69 as unexplained investment. Further, he had also made an addition on account of difference in 26AS statement and return of income. The Commissioner (Appeals) upheld the additions made by the Assessing Officer. The appeal was filed before the ITAT with delay of 1330 days.

Held

It was observed by the ITAT that, the assessee had filed written submission, containing, copy of ledger extract of various confirmation of accounts, copy of ledgers, identity and address proof of creditors, cash books, bills, vouchers, bank statement, affidavits and challans. In Form 35, the appeal form, it was observed that the assessee had made an application for admission of additional evidence under rule 46A.

It was held that, the Commissioner (Appeals) failed to follow the procedure laid down in rule 46A. The Commissioner (Appeals) have discretion to admit the additional evidence if there was sufficient cause for the assessee which prevented assessee from filing the documents during the assessment proceedings. The discretion has to be used in judicious manner and one must be able to reason out. In this case the Commissioner (Appeals) has not passed a speaking order for rejecting the additional evidence. The substantial justice is important not the procedure. In this case, the Assessing Officer has added entire sundry creditors under section 68 on the ground that assessee failed to file the details called for.

It was observed that some of the sundry creditors were Jaypee Cement and JSW Cement. These are renowned companies and it was possible for the Assessing Officer to collect the information directly from these companies under section 133(6) or 131. However, the Assessing Officer has not taken any proactive steps to find the exact details. It was also observed that the assessee had filed copy of audit report, balance sheet, and profit and loss account. Under section 68 the amount which was credited during the year only can be added. However, in this case there was carry forward from earlier years which has not been considered by the Assessing Officer and Commissioner (Appeals).

It was further held that admittedly the assessee failed to comply notices issued by the Assessing Officer, but the Assessing Officer also failed to carry out necessary investigations and to understand the facts in totality, the Assessing Officer always have access to the return of income of the assessee for earlier years. The Assessing Officer has not bothered to study the details shown in the balance sheets of earlier years. The aim of the assessment proceedings is to assessee the correct income of the assessee. Also, the Commissioner (Appeals) has not adjudicated

each and every ground raised by the assessee on merits. The Commissioner (Appeals) also failed to consider the documents filed by the assessee under rule 46A.

Owing to the above facts and circumstances of the case and relying on the SC decision in case of ***Gupta Emerald Mines (P) Ltd (156 taxmann.com 198)***, the Hon'ble ITAT condoned the delay in filing the appeal holding that substantial justice is more important than the technical delays. The ITAT also relied on the Bombay High Court decision in case of ***Hindalco Industries Ltd. vs. Union of India (158 taxmann.com 485)*** that principle of advancing substantial justice is of prime importance, while considering the question of condonation.

The Hon'ble ITAT while relied on the Bombay High Court decision in the case of ***Pr. CIT (Central) vs. Premkumar Arjundas Luthra (HUF) (240 Taxman 133)*** which has categorically held that Commissioner (Appeals) has to decide the appeal on merit and the Commissioner (Appeals) does not have any power to dismiss appeal for non-prosecution. Accordingly, the order of the Commissioner (Appeals) was held to be set aside for de novo adjudication.

6 *Hajaram Purohit vs. DCIT [MA No. 407/Mum/2022 dated 08.03.2024] [AY 2010-11]*

Section 254, Rule 24 of ITAT Rules – Original Matter before ITAT dismissed on exparte basis – MA filed to recall the appeal – MA filed after 4 years – 6 months time limit does not apply to Order passed on ex-parte basis – Rule 24 relied upon – MA allowed and order is recalled

Facts of the case

Miscellaneous Application ('MA') is filed to recall the ex-parte order dt. 31.08.2017. MA has been filed after a delay of 1779 days. Assessee mainly relied on Rule 24 of ITAT rules to allow the MA and recall the order. Department opposed the allowability of MA on account that such MA is barred by limitation by virtue of section 254(2) of the Act.

Held

Hon. ITAT held that original hearing was heard on ex-parte basis. Assessee submitted that due to uncordial relation hearing went unattended. It was held that since reason for not attending the original hearing was explained; Rule 24 of ITAT rules shall be applied. Reliance was placed on case of ***Cement Corporation of India Ltd. vs. ACIT (149 taxmann.com 192 Del. HC)*** in which Hon. Delhi HC condoned the delay of more than 6 months in filing application to recall the ex-parte order by placing reliance on Rule 24 of ITAT Rules. Further, Hon. ITAT also relied on decision of Bom. HC (425 ITR 581). On above basis Hon. ITAT concluded that section 254(2) time limit does not apply to the order which are dismissed on ex-parte basis. Avenue available to recall the same is as per the provisions of Rule 24 of ITAT Rules and no time limit is prescribed as per Rule 24 of ITAT Rules. Once Hon. ITAT is satisfied as to the reason for non-attendance for ITAT hearing are justified, matter can be recalled for fresh hearing. Hon. ITAT on being satisfied with the reasons, recalled the hearing and restored the matter for fresh hearing.

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INTERNATIONAL TAXATION
Case Law Update



Dr. CA Sunil Moti Lala
Advocate

A. HIGH COURT

1 *SFDC Ireland Ltd. vs. CIT [(2024) 160 taxmann.com 328 (Delhi)]*

Where assessee, an Irish company, entered into a reseller agreement with an Indian company for sale of its products in India and made application under section 197 to receive payments thereunder with Nil or low TDS, it was held that order denying Nil or lower TDS certificate to assessee was to be quashed and set aside, since technical assistance and training provided by assessee to its Indian counterpart did not bear characteristics of conferral of specialised or exclusive technical service

Facts

i. Assessee, a tax resident of Republic of Ireland entered into reseller agreement with SDFC India for sale of its products in India and made application under section 197 to receive payments thereunder with Nil or low TDS.

ii. Revenue passed order under section 197 determining TDS rate at 10 per cent on entire estimated receipts of ₹ 518.21 crores on the ground that assessee was not selling standard off-the-shelf and non-customized downloadable software and that it was in fact offering a comprehensive service experience or solution with help of technology embedded in software, hence, remittances so received were liable to be taxed as fee for technical services within meaning of section 9(1)(vii) read along with article 12 of India-Ireland DTAA.

iii. Aggrieved, the assessee filed a writ petition before the Hon'ble High Court.

Decision

i. It was observed that SDFC India was appointed as non-exclusive reseller without any technology transfer.

ii. Further, technical assistance and training imparted to SDFC India did not appear to bear characteristics of a conferral of specialised or exclusive technical service and did not constitute either core or foundational basis of consideration which was received by assessee and there was no transmission of specialised knowledge or skill.

iii. Imparting training or educating a person with respect to functionality and

attributes of a software or application did not amount to rendering of technical service under DTAA. Impugned order did not proceed on basis of any material or evidence which may have indicated that moneys remitted to assessee could be said to constitute consideration for technical services.

iv. Therefore, impugned order denying Nil or lower TDS certificate to assessee was to be quashed and set aside, with liberty to Revenue to examine issue in light of above observations.

2 *Shell India Markets (P.) Ltd. vs. Union of India [(2024) 160 taxmann.com 175 (HC - Bombay)]*

It was held that where assessee had entered into Cost Contribution Agreement (CCA) with SIPCL for provision of General Business Support Services (BSS) and AAR ruled that nature of General BSS was of consultancy services and thus it was technical service within meaning of article 13 of the India-UK DTAA, since list of services in General BSS showed that it related to managerial services and not involving anything of a technical nature, services availed could not be said to be technical service and article 13 was wholly inapplicable

Facts

i. Assessee, an Indian company, had network of retail fuel stations in India - SIPCL, a group company incorporated in UK was in business of providing consultancy services. Assessee had entered into Cost Contribution Agreement (CCA) with SIPCL for provision of General Business Support Services (BSS).

ii. Assessee construed the said BSS as management support services of advisory nature and approached AAR for determination of tax liability of payments made by assessee to SIPCL

iii. AAR ruled that nature of General BSS, viewed as such, was of consultancy services and since while providing General BSS, SIPCL worked closely with employees of assessee and supported/ advised them, it was clear that General BSS was made available to assessee and thus it was technical service within meaning of article 13 of the India-UK DTAA and, thus, payment received by assessee was chargeable to tax in India.

iv. Aggrieved, the assessee approached the Hon'ble High Court.

Decision

i. It was held that list of services in General BSS showed that it related to managerial services and did not involve anything of a technical nature. Thus, services availed could not be said to be technical service and article 13 was wholly inapplicable.

ii. The AAR had interpreted requirements to be satisfied for 'make available' based on its own general notion of said term without appreciating applicable law on subject and also reached an erroneous conclusion that services availed were technical services.

iii. Thus, the AAR's order suffered from legal infirmity and was to be set aside.

iv. However, without expressing any opinion, the Hon'ble HC made it clear that the Department was at liberty to take necessary steps as available to it in

law including as to whether the subject will be covered under Article 7 of the DTAA.

3 *CIT vs. Hireright Ltd. [(2024) 161 taxmann.com 45 (HC - Delhi)]*

It was held that where assessee, a UK based company, was engaged in business of undertaking employment background checks and verification of testimonials for various clients, since mere undertaking of background checks of employees or verification of testimonials could not possibly be recognized as entailing use of any technical knowledge, experience or skill as provided under article 13(4),receipts of assessee from its clients in India could not be regarded as Royalties or fee for technical services under provisions of Article 13 of India-UK DTAA

Facts

i. The assessee, a tax resident of UK, was engaged in business of undertaking employment background checks and verification of testimonials for various clients in India.

ii. The lower authorities observed that the fees so generated from the above exercise would fall within the ambit of 'fee for technical services' in terms of Article 13.

iii. On appeal, the Tribunal held that none of the requisites under Article 13(3) of the India-UK DTAA were satisfied so as to qualify such receipts as 'royalty. What the assessee was providing to the clients in India was merely a report summarizing its findings with respect to the background check undertaken by the assessee which was primarily a factual data and could not per se qualify as literary or artistic or any other copyrightable work. Further, it held that the services rendered by the assessee did not involve any technical skill/knowledge or consultancy or make available any technical knowledge, experience, skill, know-how or processes to the clients and the role of the assessee was limited to validation of data provided by the candidate and to provide relevant facts captured during the course of validation and hence, the services could not be considered as FTS under Article 13(4) of theDTAA.

iv. Aggrieved by the order of the Hon'ble Tribunal, the Revenue filed an appeal before the Hon'ble High Court.

Decision

i. The Hon'ble High Court that the mere undertaking of background checks of an employee or the verification of testimonials could not possibly be recognized as entailing the use of any technical knowledge, experience or skill as provided under article 13(4) of the India-UK DTAA.

ii. The assessee was merely verifying disclosures which activity could not be recognized as being imbued with any technological characteristic. There was also a complete absence of a transfer of data or information which could be described as 'technical' as the word is commonly understood.

iii. In view of the aforesaid, the Hon'ble HC upheld the order of the Hon'ble Tribunal and dismissed the Revenue's appeal.

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4 ***PCIT vs. Radhashir Jewellery Co. (P.) Ltd. [(2024) 160 taxmann.com 760 (HC - Bombay)]***

It was held that where assessee-company was engaged in rendering research and technical services and had started its business in relevant financial year, it could not be compared with companies which were doing business for many years.

B. TRIBUNAL

5 ***Golden Agri Resources (India) (P.) Ltd. vs. ACIT [(2024) 161 taxmann.com 19 (Delhi Tribunal)]***

It was held that where assessee was engaged in trading of edible oils and it adopted 'other method' for benchmarking its international transaction of purchase of traded goods and TPO applied TNMM, since assessee had considered all market quotations available while maintaining transfer pricing report and market quotes were available on corresponding dates , other method had been rightly applied by assessee and ,thus, determination of arm's length price by assessee by adopting quotations from various brokerage houses/ associations/exchanges could not be faulted with.

6 ***Lupin Ltd. vs. DCIT [(2024) 160 taxmann.com 691 (Mumbai Tribunal)]***

It was held that where assessee issued a letter of comfort towards credit facilities sanctioned by bank to assessee's subsidiaries, since terms of letter of comfort given by bank to borrower created an obligation on the borrower that borrower would prepay loan in case assessee ceased to hold 51 per cent stake in borrower company, what assessee had given to bank towards loan facility granted to its subsidiary was only a letter of comfort and not a guarantee and therefore, adjustment made by TPO was to be deleted.

7 ***Bank of Nova Scotia vs. DCIT [(2024) 160 taxmann.com 177 (Mumbai Tribunal)]***

It was held that where Indian division of assessee-banking company, engaged in trading and finance of precious metals, imported bullion on consignment basis from its London branch which was sold through various product offerings, since LBMA (London Bullion Market Association) database did not capture volatility in market because these rates were published at two times of date, high and low rate published by KITCO & Reuters would be MAM for comparison while benchmarking international transactions of trading in bullion and silver.

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INDIRECT TAXES
GST – Recent Judgments and Advance Rulings




CA Naresh Sheth CA Jinesh Shah

A. WRIT PETITON

1 *Sivakumar vs. State Officer - Madras High Court [W.P. Nos. 11637 of 2020 dated 09.02.2024]*

Facts and Issues involved

Petitioner had availed ITC of ₹ 79,66,750/- and transitional credit (i.e. unutilized credit of VAT) of ₹ 10,83,115/-. In all, a sum of ₹ 90,49,865/- was sought to be denied to the petitioner by the GST Authorities.

GST Authorities issued a Show Cause Notice (SCN) which culminated into an order, demanding that the whole ITC claimed be reversed along with applicable interest and penalty on the ground that the petitioner did not have valid inward and outward supply document to back their claim of ITC.

Discussions by and observations of High Court

It was observed that the denial of transitional credit can be justified only if the petitioner did not have unutilized credit as on 30.06.2017. The same can be verified by the GST Authorities by drawing information from its archives before denying any transitional credit. Hon'ble High Court directed the GST Authorities to examine the legacy records from its archives insofar as the claim of the petitioner for the transitional credit of ₹ 10,83,115/- notwithstanding the fact that none of the supporting documents are traceable.

As far as the denial of ITC is concerned, it was observed that on a combined reading Section 16(3) and Section 155 of the CCGST Act, 2017, credit can be allowed based on the peculiar facts and circumstances of each case. It was observed that in case where the petitioner had contravened Section 16(2) of the CGST Act, 2017 while claiming the disputed ITC, then the GST Authorities would have been justified in demanding the same.

Therefore, notwithstanding the non-availability of the documents such as invoices and the manual registers, the petitioner would be entitled to the input tax credit if they were validly availed, provided the details were captured and available in the system both at the end of the petitioner and the supplier and in the information furnished by the petitioner in various GSTR Forms with the department.

Decision of High Court

The impugned order was quashed, and the case was remanded back to GST Authorities. Writ petition was allowed.

2 *Malabar Fuel Corporation vs. Assistant Commissioner – Kerala High Court [W.P.(C) No. 26112 of 2023 dated 11.01.2024]*

Facts and Issues involved

The petitioner is engaged in bottling of Liquefied Petroleum Gas ('LPG') in cylinders for both domestic and commercial uses. On the bulk of LPG received by the petitioner from various refineries, the petitioner is required to pay GST @ 18%. However, after bottling, when the LPG is supplied in cylinders to domestic and commercial customers, GST at the rate of 5% and 18%, respectively, on the value of the cylinder is charged.

GST on inputs being higher GST on outward supply, petitioner claimed refund of unutilized ITC on account 'inverted rate duty structure'. GST Authorities rejected the petitioners' refund application on the basis of Circular No. 135/05/2020 – GST dated 31.3.2020 wherein it clarified that refund under inverted rate duty structure is not applicable when the input is the same is the output (i.e. trading in goods) regardless of attracting different GST Rates at the time of purchase and at the time of sale.

Discussions by and observations of High Court

Various High Courts in following cases had allowed the refund of unutilized ITC on account of inverted rate structure even where the input and output were of the same category

- ***BMG Informatics (P.) Ltd. vs. Union of India [(2021) 130 Taxmann.com 182]***
- ***Shivaco Associates vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes [(2022) 137 taxmann.com 213]***
- ***Baker Hughes Asia Pacific Ltd. vs. Union of India [(2022) 140 Taxmann.com 326]***
- ***Indian Oil Corporation Ltd. vs. Commissioner of Central Goods and Services Tax & Ors. [WP(C) No.10222/2023 & CM No.39561/2023 : 2023:DHC:8649-DB]***

Following the ratio laid down in above judgments it was held that the petitioner is entitled to refund of the accumulated ITC on account of inverted rate duty structure.

Decision of High Court

Writ petition was allowed.

3 *Sri Shanmuga Hardwares Electricals vs. State Tax Officer [W.P. No. 3804,3808 & 3813 of 2024]*

Facts and Issues involved

Sri Shanmuga Hardwares Electricals ('Petitioner') has assailed three adjudication orders disallowing the ITC claimed for FY 2017-18, 2018-19 and 2019-20.

GST authorities denied the petitioner's ITC claim on the ground that the petitioner had not claimed ITC in the GSTR3B return.

Petitioner states that he is eligible to claim ITC since the said ITC was duly reflected in its Form GSTR-2A as well as it was duly disclosed in Form GSTR-9 filed by them.

Discussions and observations of High Court

When the registered person asserts that he is eligible for ITC by referring to GSTR-2A and GSTR-9 returns, the assessing officer should examine whether the ITC claim is valid by examining all relevant documents. The ITC claim was rejected solely on the ground that GSTR-3B returns did not reflect the ITC claim.

Decision of High Court

Impugned orders were quashed and remanded for reconsideration. Petitioner is permitted to place all documents pertaining to its ITC claims before the assessing officer within maximum period of two weeks from the date of receipt of copy of this order. GST authorities are directed to provide reasonable opportunity of being heard before adjudicating the matter.

B. ADVANCE RULINGS

4 *Changejar Technologies Pvt. Ltd – Karnataka AAR – [Advance Ruling No. KAR ADRG 08/2024]*

Facts and Issues involved

Applicant is a company engaged in the business of providing an online micro-saving and investment platform by way of an application named "Jar". It has entered into a distribution agreement ("Agreement") with Digital Gold India Private Limited (DGIPL) offering to sell DGIPL's gold on its platform.

Applicant provides an icon or link on the platform allowing its customers to transact in the Gold owned by DGIPL. Applicant acts as a mere facilitator of sale of digital gold between DGIPL and the customers. Applicant only receives commission as a percentage of value of digital gold sold.

In the above factual backdrop, applicant sought an advance ruling for the following questions:

(1) Whether applicant can qualify as an 'Agent' for the purpose of GST and therefore be exempted from falling under the scope of Section 52 of the CGST Act, 2017 which mandates every E-Commerce operator ('ECO') to collect TCS on the net value of taxable supplies made by it?

(2) Whether applicant is liable to obtain registration as an E-Commerce operator as per Rule 12 of CGST Rules, 2017?

Applicant's submissions

Applicant submits that it is only providing a platform facilitating transaction of sale of digital gold.

ECO like Amazon and Flipkart take the responsibility for delivering the product to ultimate consumers. They even grant refunds to the customers, if the customers are not satisfied with the quality of product delivered to them. These ECO charge fixed fee/platform fee from sellers for providing E-commerce services to sellers of goods. Also, ECO list products sold by multiple sellers on their platform.

Whereas the applicant does not assume any responsibility for quality or delivery of the digital gold. It offers only the digital gold sold by DGIPL on its platform and is not offering digital gold sold by any other player. It only does not collect any fixed fee/platform

fee from DGIPL; it only charges a commission as a percentage of value of digital gold sold.

Applicant submitted that pursuant to certain clauses in the agreement, it qualifies as an 'agent' of DGIPL since it is DGIPL and not the applicant who bears the risk and reaps the gain of the sale of gold. The applicant is under no obligation to participate in the sale or quality control. The applicant's responsibility is restricted to platform management.

It further submits that DGIPL deducts TDS u/s 194H of the Income Tax Act, 1961, which applies to payment of commission to an agent [a person acting on behalf of another person for services rendered, not being professional services].

Hence, the applicant is of the view that it is operating as an agent for DGIPL and therefore, it is not required to comply with the provisions of Section 52 of the CGST Act, 2017.

Discussions by and observations of AAR

It was observed that as per Section 2(44) and 2(45) of the CGST Act, 2017, ECO means any person who owns, operates or manages digital or electronic facility or platform for the supply of goods or services or both, including digital products over digital or electronic network.

As per certain clauses in the agreement between the applicant and DGIPL, it was very clear that neither the applicant nor DGPIL are agents to each other. Therefore, since the sale of DGIPL products happens through the applicant's online platform, the applicant squarely fits into the definition of ECO.

Section 52 mandates that:

(i) TCS is to be collected by every ECO, not being an agent;

(ii) at the notified rate (0.5% CGST and 0.5% SGST);

(iii) on the net value of taxable supplies;

(iv) Taxable Supplies should have been made through the ECO;

(v) and consideration should be collected by the ECO.

Since the applicant satisfies all the above criteria, the applicant is liable to collect tax u/s 52 of the CGST Act, 2017 read with Notification No. 52/2018-CT(R) on the net value of the taxable supply.

Ruling by AAR

Applicant qualifies as an ECO, and hence is liable to obtain GST registration as an ECO. The applicant is not an agent of DGIPL and hence is required to collect TCS u/s 52 of CGST Act.

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5 ***Kannur International Airport Limited – Kerala [Aar] – [Advance Ruling No. KER/25/2023 dated 27.06.2023]***

Facts and Issues involved

Applicant is a company promoted by Government of Kerala, engaged in providing airport and related services since 09-12-2018.

It had entered into two major contracts with Larson and Toubro Limited (L&T):

- One is an EPC contract for constructing runway; and

- Other is a BOQ based contract for constructing a Passenger Terminal Building (PTB) in the airport.

The construction had started during the pre-GST period and was in progress into the GST period.

Applicant claimed ITC on certain specific services availed by it from L&T, contending that the same are not blocked under Section 17(5)(c) of the GST Act, 2017.

Applicant has sought advance ruling as to eligibility of ITC in respect of supplies received for executing the above contracts.

Applicant's submission

Section 2(119) of CGST Act defines works contract to cover contracts for building, construction, fabrication, completion, erection of an immovable property wherein transfer of property in goods involved in the execution of contract.

Applicant submits that Section 17(5)(c) and 17(5)(d) only block credit in respect of work contract services supplied and inputs received by a person for **'construction'** of immovable property.

If the work contract service is for any activity other than construction like **fabrication, completion, erection and so on, the same is out of the scope of disallowance as envisaged u/s 17(5)** of CGST Act and hence applicant is entitled to ITC on such input services.

Discussions by and observations of AAR

Both the contracts entered by applicant were in the nature of composite supply of works contract services for construction of immovable property.

Therefore, the **predominant and principal supply** involved in both the contracts is **construction of immovable property**.

Contracts cannot be artificially separated to consider it a contract for supply of various goods/services.

Ruling of AAR

ITC on input services received from L&T is blocked u/s 17(5) of CGST Act.

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"There is no limit to the power of the human mind. The more concentrated it is, the more power is brought to bear on one point"

— *Swami Vivekananda*

"It is easy enough to be friendly to one's friends. But to befriend the one who regards himself as your enemy is the quintessence of true religion. The other is mere business."

— *Mahatma Gandhi*

ML-369

INDIRECT TAXES
Service Tax – Case Law Update




CA Rajiv Luthia CA Keval Shah

1 *Shri Arvind Solanki vs. Principal Commissioner of Central Goods & Service Tax, Noida 2024 (3) TMI 983 – CESTAT Allahabad*

Backgrounds and facts of the case

- The Appellant is engaged in providing Security Agency Services. Audit was conducted and it was noticed that lesser amount was reflected in the value of taxable services shown in ST-3 Returns as compared to Revenue from operation in the Balance Sheet for the financial years 2015-16 and 2016-17.
- Accordingly, a Show Cause Notice dated 30th March, 2021 was issued by invoking extended period of limitation for the abovementioned financial years proposing demand of service tax, interest and imposition of penalty. The impugned order confirmed the demand as proposed in the SCN on the basis of mismatch of ST-3 Returns and Balance Sheets/26AS. Hence, the present appeal before the Tribunal.

Arguments on behalf of Assessee

- The Authorized Representative submits that the income shown to the Income Tax Authorities could not be considered as the basis to determine the service tax liability unless there is any proof that the income was towards taxable services. It was submitted that the allegation of suppressing the material facts and contravention of the provisions of the Act, are absolutely baseless and improper. It was also submited that it is trite law that figures of Form-26AS could not be used for determining service tax liability unless there is proof to show that it was on account of any taxable services.
- Ld. Advocate further states that extended period of limitation cannot be invoked as the Appellant was regularly filing ST-3 Returns, so the Department cannot take a stand that it is only on going through the Balance Sheets that it could examine the factual position.
- The Ld. Advocate referred to the CBEC Circular No. 113/7/2009-S.T., dated 23-4-2009 vide F.No.137/158/2008-CX. 4 and CBEC Circular No. 185/4/2015-ST dated 30.6.2015 vide F.No. 137/314/2012 and submitted that it clearly directs the Assessing Officer to effectively scrutinize the Returns at the preliminary

stage as held by the Tribunal in ***Gannon Dunkerley & Co Ltd. vs. CST(Adj) Delhi 2021 (47) G.S.T.L. 35 (Tri-Del)*** and ***Luit Developers (supra).***

Arguments on behalf of the Department

- The Learned D.R. justifies and reiterates the findings of the impugned order and prays that the appeal be dismissed being devoid of any merits.

Decision of the Hon'ble Tribunal

- It has been held in a catena of decisions that only the amount received by the Appellant was liable to Service Tax, amounts reflected in Balance Sheets cannot be used to determine the Service Tax liability. The Hon'ble Madras High Court in Firm Foundations and Housing Pvt. Ltd. vide order dated 06.04.2018 in W.P. No. 21799/2017 held that the reporting of income in the P & L is irrelevant for the purposes of determination of service tax payable and thus the basis of the impugned assessment is erroneous. Moreover, income reflected in the Balance Sheet is for Income Tax purposes, which cannot be used for the purpose of service tax without any corroboratory evidence as also supported by Luit Developers (supra) which held in Para 11 that :

  "11. I also find force in the submission of the learned Counsel for the Appellant that figures reflected in Form-26AS cannot be used to determine Service Tax liability unless there is any evidence shown that it was due to a taxable service as held in Kush Constructions (supra). Also, figures shown to Income Tax authorities cannot be used to determine Service Tax liability as held in Synergy Audio Visual Workshop Pvt. Ltd. (supra) and Deluxe Enterprises (supra)."

- Since the Appellant was filing ST-3 Returns regularly, the Department's stand that it could examine the correct facts only on going through the Balance Sheets cannot be sustained as CBEC Circular No.113/7/2009-S.T., dated 23-4-2009 *vide* F.No.137/158/2008-CX. 4 and CBEC CircularNo.185/4/2015-ST dated 30.6.2015 *vide* F.No137/314/2012 categorically puts duty on the assessing officer to effectively scrutinize the returns at the preliminary stage, as held in *Gannon Dunkerley & Co Ltd (supra)*.

- Also, the extended period of limitation cannot be invoked solely on audit queries and objections. We observe that the Department has not adduced any positive evidence to show mala fide intention for evasion of service tax and therefore extended period is erroneously invoked.

- In so far as the issue of limitation is concerned, we do not find any ingredient of fraud or suppression with intent to evade payment of tax. In the case of ***Pappu Crane Services vs. CCE, Lucknow*** (Final Order No. 71246/2019 in Service Tax Appeal No. 70707/2018), the Tribunal has held that where the demand is merely based on the data appearing in the Income Tax Portal, there cannot be any fraud or suppression so as to justify the invocation of extended period of limitation. Therefore, in the present

case, in our view, the demand raised is completely barred by limitation and accordingly the demand is set aside. Further, since there is no element of fraud or suppression, we are of the view that penalty under Section 78 is liable to be set aside. In view of the above discussions, the appeal filed by the Appellant is allowed with consequential relief, as per law.

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2 ***M/s Krah Woory India Pvt vs. Commissioner of GST and Central Excise Chennai 2024- TIOL-272-CESTAT-MAD***

Backgrounds and facts of the case

- The appellants imported capital goods under the EPCG scheme vide Notification No. 97/2004-Cus dated 17.9.2004. They were not able to fulfill the export obligation under the said Notification. Therefore, they paid import duty including CVD and SAD on the said imports and claimed refund of the CVD and SAD refund of CENVAT Credit of ₹ 2,78,703/- *vide* letter dated 23.8.21 and ₹ 6,80,807/- vide letter dated 23.8.21 as they could not be taken as credit in the GST regime. The refund sanctioning authority rejected the refund claim on the ground that the import conditions were not fulfilled.
- Aggrieved against the said order, the appellants preferred appeals before Commissioner (Appeals) who vide the impugned orders upheld the order passed by the refund sanctioning authority and rejected the refund on the ground that refund is available to only goods used as inputs and not as capital goods. Hence the present appeal.

Arguments on behalf of Assessee

- The appellant imported capital goods under EPCG scheme. As export obligation could not be fulfilled, the appellant paid Customs duties viz., BCD, CVD and SAD along with interest thereon. If the Central Excise levy had been continued in respect of the goods manufactured by the Tax payer, he would lawfully have been entitled to avail the duties of ADC and SAD paid as CENVAT Credit and utilize them for payment of duties of Excise on their finished products as the said capital goods were used in the manufacture of finished goods removed for home consumption. However, on the date of import, these things could not have been envisaged by anyone.
- Precisely for this reason the transitional provisions have been introduced in the GST statute to allow refund of CENVAT credits eventually accrued which was not brought forward under TRAN-1 to be refunded in cash under Section 142(3) and 142(6) of the CGST Act, 2007 and also the saving provisions in Section 174(2)(C) of the CGT ACT 2017. The Learned Commissioner has rejected their appeals by citing Sec 11B(2)(c) of the Central Excise Act, 1944 which states, that refund of credit of duty paid is eligible on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act. It was his opinion that only duty paid on excisable goods which are inputs alone are eligible and duty paid

on capital goods cannot be refunded. However, LAA has not disputed about the eligibility to CENVAT credit under the existing law viz., CCR, 2004.

- LAA failed to consider that CENVAT Credit Rules, 2004 itself was issued under notification 23/2004 CE (NT) dated 10-09-2004 as amended wherein as per Rule 3(1) (vii) and (vii a) duties paid on goods imported is allowed to be availed and utilized as CENVAT Credit. This apart, no factual allegation/evidence has been laid against the appellant that the capital goods were not at all used for manufacture and removal of finished goods for home consumption by the appellant.

Arguments on behalf of the Department

- The appellants imported capital goods under the EPCG scheme but they were not able to fulfill the export obligation under the said Notification. Claiming input credit upon failure to meet export obligations would defeat the very purpose of the EPCG scheme. Further refund of credit of duty paid is eligible on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act.

- Duty paid on excisable goods which are inputs alone are eligible and duty paid on capital goods cannot be refunded. He stated that the matter was covered by the Final Order No 40098/2020 dated 05/02/2020, of the Hon'ble CESTAT in ***M/s Servo Packaging Ltd vs The Commissioner of Central Excise, Puducherry [2020-VIL-72-CESTAT-CE] = 2020-TIOL-664-CESTAT-MAD***.

Decision of the Hon'ble Tribunal

- CENVAT Credit Rules 2004 includes capital goods in the definition of 'inputs'. The reason and legal provisions why the learned Commissioner (Appeals) came to the conclusion that duty paid on excisable goods which are inputs alone are eligible and duty paid on capital goods cannot be refunded, is not discussed and is hence not clear. It is also noted that the Original Authority had not disputed the eligibility to CENVAT credit for the capital goods under CCR,2004. The impugned order is hence based on a new ground.

- A rounded examination of the issue has not been done. The reasons given by the Original Authority and the judgment of M/s Servo Packaging ltd (supra) do not form a part of the impugned order into which the OIO has merged.

- The Hon'ble Apex Court in ***State Bank of India and Another vs. Ajay Kumar Sood*** [Civil Appeal No 5305 of 2022, dated August 16, 2022] stated as under:

  16. A judgment culminates in a conclusion. But its content represents the basis for the conclusion. A judgment is hence a manifestation of reason. The reasons provide the basis of the view which the decision maker has espoused, of the balances which have been drawn. That is why reasons are crucial to the legitimacy of a judge's work. They provide an insight into judicial analysis, explaining to the reader why what is written has been

written. . . . . At a secondary level, reasons furnish the basis for challenging a judicial outcome in a higher forum. The validity of the decision is tested by the underlying content and reasons."

- Hence while brevity is the ingredient of a good judgment the greatest hallmark is clarity and the citing of legal provisions which led to the decision. I do not find any legal grounds in the impugned order to have rejected the claim for refund. The appellant on the other hand has made out a strong case in their favour as per their averments stated above.
- The outcome of the discussions is that the impugned orders are set aside and the appeals are allowed with consequential relief, as per law.

3 *India Advantage Fund III vs. the Commissioner of Central Tax, Bangalore (Karnataka HC) CEA 20/2021 (TAXMANN) 8TH FEBRUARY,2024*

Backgrounds and facts of the case

- The Assessee is a venture capital trust. Institutional investors contribute money to the trust fund and the same is managed by an Investment Manager.
- An investigation was conducted by Anti-Evasion Unit of the Jurisdictional Commissionerate against Assessee. The investigating team took a view that Assessee had retained certain portion of income distributable to the contributors which appeared to be service charge/ fee for having managed the asset of the trust/fund on which service tax was required to be paid under the category of 'banking and other financial services' as defined under Section 65(105)(zm) of the Finance Act, 1994.
- A show cause notice was issued to assessee proposing to demand service tax on 'expenses incurred by the assessee' and 'the amount paid to Class 'C' investors as return on investment'.
- Assessee submitted its reply contending inter alia that it was not liable to pay service tax because:

  a) assessee was not covered within the definition of a 'person' as defined under the Act;

  b) assessee is not providing any service to the contributors; and

  c) assessee is not receiving any consideration from the contributors.
- The proposal of demand was confirmed by the Commissioner of Service Tax, Bangalore North vide Order in Original dated 27.02.2012. On appeal, the CESTAT has confirmed the demand. Hence, this Appeal was filed before the Hon'ble High Court.
- Thought the Appeal filed had been admitted considering eight questions of law, but at the time of hearing the following three main questions were relevant and the arguments based on the following three questions were addressed:

  i. Whether the CESTAT has erred in holding the Appellant to be a juridical person?

  ii. Whether the CESTAT has erred in holding that the Appellant cannot

be treated as a "trust" and failed to recognize its pass-through status, for the purpose of taxation statues?

iii. Whether the CESTAT has erred in ignoring that the moneys and funds contributed by the Contributors, being the property of the Appellant, the asset management service, if any rendered, is by the Appellant for its own self?"

Arguments on behalf of Assessee

The representative for the Assessee, submitted the following arguments:

- The Assessee did not provide any services to the contributors, only acts as a "pass through", wherein the funds from the contributors are consolidated and are invested by the investment manager;
- In the whole process, there were certain expenses in form of reimbursement received by the Assessee and the same are not liable to service tax as per Notification dated May 15, 200. It is submitted that the same are received is in the capacity of the agent and the hence is exempt from Service Tax according to Section 5(2)(1) of the Service Tax (Determination of Value) Rule, 2006.
- Assessee is not a 'person' in accordance with the definition in Section 65(B)(37) of the Finance Act, 1994 and hence not liable to pay service tax.
- The activity undertaken by assessee is covered under ambit of mutuality, therefore assessee and contributors cannot be dissected as two separate persons for levy of service tax.

Arguments on behalf of Revenue

The representative appearing for the revenue opposed the Appeal based on the following grounds:

- The instant Appeal is not maintainable as issue involves determination of the rate of duty and as per Section 35L of the CE Act, appeal shall lie before Supreme Court for determination of any question with regard to the rate of duty,
- The Assessee retains some portion of the returns on investment to its benefit,
- The Assessee 's funds are registered under the Venture Capital Fund regulations issued by SEBI, 1992 and accordingly the assessee is a different entity all together. Further, the Assessee has a bank account, obtains necessary approvals, deducts TDS and has registration from SEBI, which only a 'person' can qualify,
- Doctrine of mutuality does not apply to the instant case, since definitions in the contribution agreements indicate a relationship between a buyer and a seller as the phrase term used is 'Purchase of units', further various articles of IOT of the fund are contrary to the principles of mutuality.

Decision of the Hon'ble Bench

- At the outset it was settled that that except an appeal involving the rate of duty, all other appeals are maintainable before the High Court and referred to the decision of ***Commissioner of Central Excise, Hyderabad vs. M/s. Shriram Refrigeration Industries***). In the present case there is no dispute of the rate of duty, rather the question

being whether the Assessee is liable to pay the duty. Therefore, the Appeal was maintainable before the Karnataka High Court.

- The definition clauses of each statute must be read with the object and purpose of that statute only as intended by the legislature. Various statutes such as SEBI, GST, IBC recognize 'trust' as a person whereas the Finance Act does not. The finance act is the relevant statute in this case, as the issue involved in this case is liability to pay Service tax. The CESTAT had recorded in the impugned Order that, since the trust is treated as juridical person under SEBI, there is no reason why it should not be treated as a juridical person for taxation. This view of the CESTAT was untenable because, for the purpose of levy of tax, the entity has to be recognized under the said Act. On basis of the same, the court held that the answer to first question was answered affirmatively and in the favour of Assessee.
- The Assessee submitted that the Trust collects funds from entity like LIC, SBI etc. Based on Investment Manager's advice the trusts invest in portfolio companies. The same was explained by the Ld. Counsel for the Assessee by giving a detailed hypothetical example showing that the total amount remaining with the trust will be NIL therefore the fund does not make any profit, nor does it provide any service, therefore, imposition of Service tax is untenable. It merely acts as a trustee holding the money belonging to contributors to be invested as per the advice of the investment manager. On basis of the same, the court held that the answer to second question was answered affirmatively and in the favour of Assessee.
- It was held that the doctrine of mutuality applies when commonality is established between the contributors and participators. In the instant case, the contributors and the trust cannot be dissected as two different entities because, it is an admitted fact that contributor's investment is held in trust by the fund, and it is invested as per the advice of investment manager. In substance, fund does nor do an act. On basis of the above the doctrine of mutuality was applied in this case and the answer to third question was answered affirmatively and in the favour of Assessee.
- The Hon'ble High Court allowed the Appeals filed by the Appellant by setting aside the Order passed by CESTAT.

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"Where can we go to find God if we cannot see Him in our own hearts and in every living being."

— *Swami Vivekananda*

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CORPORATE LAWS
Case Law Update

CS Makarand Joshi

Companies Act – Case 1

In the matter of Rajiv Sharma (Petitioner) Versus Registrar of Companies (ROC), Mumbai (Respondent), Bombay High Court order dated 9th February 2024.

Facts of the case.

- Mr. Rajiv Sharma (hereinafter called petitioner) gave consent to act as director of Local Search Solutions Private Limited (hereinafter called as company) on 14th August 2020. However, the operations of the company never commenced and the company never filed form INC-20A for commencement of business under section 10A of the Companies Act 2013 (the Act).
- As a result, the petitioner submitted his resignation from the position of director of the company on 24th August 2021 and the same was taken on record by the board through circular resolution dated 1st September 2021.
- In spite of taking the resignation on record and after continuous follow-up from the petitioner, the company did not take any steps to inform the ROC about the resignation through form DIR-12. Also, the petitioner himself could not intimate the ROC about his resignation by filing form DIR-11 for the reason that the company had not filed form INC-20A.
- On observing that no steps are being taken by the company for the updation of records, the petitioner himself wrote a letter dated 12th July 2022 to the ROC Mumbai informing him about the petitioner's resignation and his inability to file the form.
- On receipt of a complaint from the petitioner, the ROC wrote to the company asking for clarification about the said complaint. But the letter sent to the company returned undelivered and hence ROC did not take the petitioner's resignation on record.
- As a result, the petitioner has filed the present writ petition before the Bombay High Court praying:

  a) The Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or direction directing the ROC to remove the name of Petitioner as a Director of the Company with effect from 1st September, 2021 i.e. the date of resignation;

  b) The Hon'ble Court may be pleased to issue a Writ of Mandamus or

any other appropriate Writ or direction directing the Respondent No. 1 to initiate appropriate action/ steps against Respondent No. 4 for default in complying with the provisions of the Companies Act, 2013 regarding the resignation of the Director."

Petitioner's contentions

The petitioner contended that:

- The consent to act as director was given during COVID period.
- After incorporation, the company never commenced its business
- The company took the resignation of the petitioner on record by passing a resolution but made no efforts to file the form with ROC in spite of follow-up by the petitioner.

Respondent's contentions

- The company had not fulfilled some of the compliances required to be made under the provisions of the Act more particularly under Sections 10A, 12, 92, 137 and 96 thereof.
- The Directors are in default as per Section 166(3) of the Act.
- Both the directors of the Company, including the petitioner were in default for having not complied with the provisions of Rule 12A of the Companies (Appointment and Qualification of Director) Rules, 2014, by not submitting form DIR-3 within the prescribed time period
- The contention of the Petitioner is not valid as the Company has not filed Form INC - 20 as per the provisions of Section 10A of the Act and as a result form DIR-11 and Form DIR 12 cannot be filed. Hence the Petitioner cannot claim relief on the basis that his resignation was not communicated to the Respondent through Form DIR-11 and DIR-12 due to failure on the Petitioners part to file the necessary forms relating to the commencement of business.
- It is the responsibility of the Directors of the Company to file all the necessary forms as per the provisions of the Act, and since both the Directors have defaulted in filing the commencement of business, the Company and its Directors are not capable of filing any other forms.

Held

- It appears to be not in dispute that the company never commenced its business, there were hence defaults in undertaking various compliances.
- The petitioner tendered his resignation by the letter dated 24th August 2021, which was during the pandemic period, which was duly noted by the Board of Directors and a resolution to that effect was also passed.
- It appears that, however, what had remained on the part of the company, was to make necessary compliances with the ROC, so that the records of the ROC qua the company stand updated inter alia also in regard to the resignation of the petitioner. As the business of the company itself did not commence such compliances had remained to be undertaken.
- Insofar as the legal position is concerned, by virtue of sub-section (2) of Section 168, the resignation of a

director shall take effect from the date on which the notice is received by the company, which in the present case was on 24th August 2021 and which stood confirmed by the resolution of the board of directors of the company dated 1st September 2021.

- Hence, by operation of law, the petitioner ceased to be a director of the company with effect from 1st September 2021. If this be the position the law would bring about, then certainly it would be an obligation on the ROC to give effect to such legal position in its records, and more particularly when an intimation to that effect was received from the petitioner.

- In our opinion, although certain compliances on the part of the company, as noted by us hereinabove were necessary, however, in the peculiar facts of the present case, it is clear that the company itself did not commence its business, as also the other director being a foreign director did not take any steps in that regard. Added to this was the Covid-19 pandemic period during which such compliances could not be made. All these circumstances ought not to weigh against the petitioner, for deletion of his name as a director from the record of the ROC.

- Except for certain forms not being filled by the company within the prescribed time, there does not appear to be any other gross default or illegality or any other justifiable reason for the ROC to give effect to the resignation of the petitioner, in the official records, as maintained by him. This is fortified from the contents of the reply affidavit of the official respondents which categorically state that even the explanations/comments and/or compliances as demanded by the ROC from the company were reported to be not answered by the company. This was a default on the part of a non-functional company. Thus, this is clearly a case where the company itself was stillborn.

- In the light of the above discussion, the petition needs to succeed, it is accordingly allowed in terms of prayer clause (a).

- It is clarified that, however, in regard to any other compliances and/or defaults of respondent No.4-company, it is open to the ROC to take appropriate actions as the law may mandate.

Case: 2 SEBI

Final Order in the matter of Vedanta Ltd regarding non-payment of dividend to Cairn UK Holdings Limited

Facts of the order

1. Securities Exchange Board of India had received a complaint dtd. April 13, 2017 against Cairn India limited ('CIL'/Noticee No 1) (now known as Vedanta limited) alleging non-payment of dividend of ₹ 340.64 crores to Cairn UK holdings limited ('CUHL') .

2. This dividend was in respect of 18,41,25,764 equity shares owned by CUHL in CIL.

3. On September 14, 2017, the Securities Exchange Board of India ('SEBI') disposed of the complaint on the ground that the unpaid dividend was handed over by the company to the Income-tax authorities and, therefore, it would not be appropriate for SEBI to take any further action and, accordingly, closed the complaint.

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4. CUHL being aggrieved by the disposal of the complaint filed an appeal against SEBI's order dtd. September 14, 2017. Securities Appellate Tribunal ('SAT') allowed the appeal and disposed of the appeal directing SEBI to reconsider the complaint of the appellant and pass appropriate orders.

5. Thereafter SEBI reconsidered the matter and by the impugned order dtd December 26, 2019 held that the violation of section 127 of the Companies Act 2013 and regulation 4(2)(c) of SEBI (Listing Obligation and Disclosure Requirement), Regulations ('LODR Regulations') by CIL was not established and accordingly rejected the complaint of CUHL.

6. CUHL thereafter preferred another appeal before SAT against SEBI communication dtd December 26, 2019 wherein SAT *vide* order dtd on July 5, 2022 held that as the dividend was not paid by CIL to CUHL within the stipulated time period it was a prima facie violation of Section 127 r/w section 124 of the Companies Act 2013. SAT also commented that relevant documents were not considered by SEBI.

7. Against this SAT verdict, SEBI preferred an appeal with the Hon'ble Supreme Court of India wherein the Supreme Court vide order dated October 14, 2022 extended the time for completing the enquiry by a period of six months from the date of the order and disposed the said appeal.

8. Thereafter, SEBI carried out an investigation to ascertain whether CIL had violated the provisions of the Companies Act, 2013, LODR Regulations by withholding the dividends payable to CUHL during the period January 22, 2014 to June 20, 2017 (Investigation period/'IP').

9. In its investigation, SEBI observed that the dividend was declared by the board of directors of CIL during the financial years 2013-2014, 2014-2015, 2015-2016, 2016-2017. But such dividend was not paid to the CUHL.

10. It transpired that the Income-tax department had initiated assessment proceedings against CUHL on January 22, 2014 and passed a provisional attachment order under section 281B of the Income-tax Act, 1961.

11. The provisional attachment order mentioned that: '*So far as the receivables by Cairn UK Holdings Ltd in the books of Cairn India Limited are concerned the Principal Officer of Cairn India Limited is directed not to remit/pay any amount to Cairn UK Holdings Ltd.*'

12. The provisional attachment order was extended from time to time and expired on March 31, 2016. As a result of the attachment order, the dividend could not be released by CIL to the CUHL.

13. However, even after the expiry of the attachment order on March 31, 2016, there was no embargo upon CIL from not releasing the dividend in favour of the CUHL.

14. In this regard, it was found that certain correspondence had taken place between CIL with the income-tax authorities with regard to the release of the dividend and with regard to the effect of the attachment order.

15. After receipt of the income tax department's letter dated March 31, 2016, CIL wrote letters dtd. September 22, 2016, January 31, 2017 and March

27, 2017 to the income tax department seeking clarification on the release of dividends to CUHL.

16. Income tax authorities internal communication dated March 01, 2017 inter-alia stated "...So far as the payment of the dividend is concerned, it is a matter between the company (CIL) and its shareholder (CUHL). This office presently has no role to play in this matter. In spite of aforesaid, dividend was not paid. Thereafter income tax authorities issued a recovery notice dated June 16, 2017, directing CIL that if any amount is due from them or held by them for or on account of CUHL, the same has to be transferred to the income tax department. Accordingly, the amount of dividend due to CUHL (i.e. ₹ 666.53 crore) till June 2017 was transferred by CIL to the income tax department on June 19 & 20, 2017 in terms of the said directions.

17. Thereafter on February 14, 2022 the income tax department declared that the assessment order against CUHL stands nullified.

18. Accordingly, the tax demand of CUHL of ₹ 10,247 crore was nullified by the income tax department subsequent to amendment in retrospective tax laws in 2021 and a refund of ₹ 7,975 crores was made by the income tax department to CUHL against the recoveries made by way of dividend and sale of shares of Vedanta. Accordingly, CUHL received the said dividend amount by way of this settlement on February 24, 2022.

19. SEBI observed that CIL declared a dividend, however, it failed to pay the dividend to CUHL within the timelines prescribed in Section 127 of the Companies Act, therefore, the CIL has to pay simple interest at the rate of eighteen percent per annum on the dividend due to CUHL for the period there was delay in payment of the dividend to CUHL.

20. SEBI also observed that Noticee No 2 to 11 were aware that the Noticee No. 1 owed a substantial amount of dividend to CUHL which was being kept in abeyance and clarifications were being sought from the income tax department. The Noticee No. 2 to 11 (as mentioned below in tabular format) were aware of the failure on the part of Noticee No. 1 to distribute dividends in the manner and within the period prescribed in section 127 of the Companies Act. Hence Noticee no. 2 to 11 have also violated applicable laws:

Noticee No	***Name***	***Designation***
2	Mr. Navin Agarwal	Chairman/Non-Executive Chairman DOC*- CIL merged with Vedanta effective 11.04.2017
3	Mr. Tarun Jain	Whole-Time Director/Non-Executive Director DOC- CIL merged with Vedanta effective 11.04.2017
4	Mr. Thomas Albanese	Whole-Time Director & Chief Executive Officer
5	Mr. GR Arun Kumar	Whole-Time Director & Chief Financial Officer
6	Ms. Priya Agarwal	Non-executive director

Noticee No	*Name*	*Designation*
7	Mr. K Venkataramanan	Independent director
8	Ms. Lalita D Gupte	Independent director
9	Mr. Aman Mehta	Independent director
10	Mr. Ravi Kant	Independent director
11	Mr. Edward T Story	Independent director

21. Based on the investigation Show cause notice('SCN') was sent to all the Noticee and SEBI observed in the investigation that even after the expiry of the provisional attachment order issued by the income tax department on March 31,2016 and CUHL repeatedly claiming the dividend, CIL along with other Noticees didn't take steps to pay dividend to CUHL hence violated applicable laws.

Charges levied

Noticee No. 1 to Noticee No. 11 were alleged to have violated section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c) of SEBI LODR Regulations 2015.

Common submission were submitted by Noticee No 1, 2, 4-6, 8, 10, 11 (together addressed as Noticees)

Contention by Noticee's:

1) CUHL has not approached SEBI with clean hands

- Noticees contended that CUHL was well aware that CIL did not withhold payment of dividend as a free agent of its own free accord and was only following instructions of the income tax department.
- Noticees further stated that CUHL had filed a complaint dt. April 13, 2017, on SCORES portal alleging non-payment of dividend by CIL and along with it has also approached arbitration proceedings which was going on between CUHL and the Government of India prior to and at the time of the complaint dated April 13, 2017.
- Further between April 2016 and June 2017, CUHL pursued various legal avenues, including appeals before the International Arbitral Tribunal and the Income Tax Appellate Tribunal ('ITAT'), regarding the release of dividend by the Government of India. Despite CUHL's efforts, the ITAT upheld the tax demand by the Income Tax Department ('ITD') on March 9, 2017. Subsequently, the ITD demanded tax payment from CUHL by June 15, 2017, and issued a garnishee order on June 16, 2017, directing CIL to transfer CUHL's dividend amount to the ITD. As a result, CIL transferred ₹ 666.53 Crore of CUHL's dividend to the ITD on June 19 and 20, 2017.
- Hence Noticees contended that CUHL was actively pursuing the matter against the Government of India before the Arbitral Tribunal and was also anticipating recovery of tax demand upheld by ITAT, CUHL had also filed a complaint

on SCORES without disclosing crucial details of adjudication of the dividend matter in the Arbitration and existence of ITAT order against CUHL.

2) **Section 127(a) of the Companies Act- Dividend was not paid on account of operation of law and Section 127(c) of the Companies Act- Dispute Regarding Right to Receive Dividend**

- Noticees contended that ITD vide letter dated March 31, 2016, marked to CIL, prohibited CUHL from creating a charge on its assets without previous permission from the ITD.
- Noticees further contended that ITD also restricted any other person to create a charge or part with possession by any mode of transfer whatsoever without prior approval of ITD. The language of the said letter was similar to the attachment order issued by ITD previously. Thus, CIL could not have parted with the assets of CUHL unless ITD permitted for the same. Hence Noticees complied with section 127(a) of the Companies act 2013.
- Noticees contended that CIL was being penalized for having complied with the order from ITD.
- Noticee pointed out that Section 127(c) of the Companies Act 2013 isn't restricted to disputes solely between the company declaring dividends and the shareholder expecting them. The provision doesn't specify that the dispute must be solely between the company and the shareholder.

3) **Non payment of dividend was on the basis of regulatory and public authority**

- Noticees contended that section 127(e) of the Companies Act states that dividends may not be paid if the default is not the fault of the company.
- Noticees further contended that the ITD did not provide a clear response that could have absolved CIL of its obligation to pay dividends, nor had CUHL obtained a decree or order confirming its entitlement to dividends.
- Noticees further contended that right to receive dividend was similar to the feature of free transferability of shares of a listed company. Shareholding of CUHL in CIL was put under freeze by NSDL during April 01, 2016 till February 23, 2018, date of direction from ITD. Similar to NSDL, CIL kept a freeze on pay-out of dividends to CUHL. As no action had been taken against NSDL for freeze of shares during the said period, therefore, no action should be taken against CIL.

4) **Directors cannot be held liable for non-payment of dividend**

- Noticees contended that even if CIL was held to be in default, the directors cannot be roped in merely due to their designation. In absence of precise roles of directors in the alleged violations, the directors cannot be held responsible for alleged violation.
- Noticees further contended that directors aren't in charge of the daily running of the company.

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Even if they know about some conversations between the company and tax authorities, it doesn't mean they're responsible for paying dividends. Directors' main job was to give advice and oversee the company's big picture plans, not to handle day-to-day tasks.

- Further Noticees contended that Noticee no. 6 to 11, being independent directors at CIL were not involved in the company's day-to-day operations. Independent directors are supposed to guide and support the company that hires them. They also help improve the company's reputation and make sure it follows rules, but they're not responsible for running things every day.

5) All Similarly placed shareholders were treated similarly

- The Noticees had submitted that the SCN had alleged violation of Regulation 4(2)(c)(i) of LODR Regulations which was a principle to be applied in interpreting rest of LODR Regulations and cannot be a charging provision.

SUBMISSION BY SEBI

1) CUHL has not approached SEBI with clean hands

- SEBI stated that the Noticee No 1, 2, 4 to 6, 7, 8 and 10 & 11 had submitted that the arbitration proceedings covered the issue of dividends, which is connected to the tax demand from the ITD. When CUHL settled its dispute with the Indian government, the issue of delayed dividend payment had also ended. CUHL filed claims between April 2016 and June 2017, seeking directions from the arbitration tribunal to release dividends from CIL. The tribunal did not address the delay in dividend payments by CIL to CUHL. The tribunal ruled that the matter of dividend release was between CIL and CUHL, and it had no jurisdiction to intervene. The Indian government clarified that it had not instructed CIL to withhold dividends from CUHL. Therefore, SEBI was of the view that the arbitration tribunal did not rule on the delay in dividend payment by CIL to CUHL.

2) Section 127(a) of the Companies Act- Dividend was not paid on account of operation of law and Section 127(c) of the Companies Act- Dispute Regarding Right to Receive Dividend

- SEBI stated that Noticee no. 1, 2, 4-6, 7, 8, and 10-11 claimed that CIL was advised by tax authorities to withhold dividends, but there was no evidence to support this. The tax authority denied giving such advice, and there was no record of the Revenue Secretary instructing CIL to withhold dividends. Even after the tax authority's order expired on March 2016, CIL continued to hold back dividend payments to CUHL until June 2017.
- Therefore, SEBI was of the view that Noticee No. 1 violated Section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c) of LODR Regulations.

3) Non payment of dividend was on the basis of regulatory and public authority

- SEBI stated that Noticee No. 1, 2, 4-6, 7, 8, and 10-11 had argued that CIL's freeze on dividend payments to CUHL was similar to NSDL's freeze on CUHL's shares. However, SEBI was of the view that the circumstances regarding CIL and NSDL were different, so they can't be compared. The tax authority's order restricting dividend payments to CUHL had expired on March 2016, but restrictions on share transfers continued. Therefore, CIL cannot claim parity with NSDL.
- SEBI pointed out that Noticees also argued that CUHL's grievance about not receiving dividends from CIL was already settled. However, SEBI was of the view that the arbitration proceedings didn't address the delay in dividend payments, and CIL's reasons for withholding dividends were based on its own interpretation, as no direct instructions were received from the tax authority. Therefore, CUHL's grievance wasn't fully settled by the arbitration proceedings.

4) Directors cannot be held liable for non-payment of dividend

- SEBI submitted here that the audit committee meeting of CIL was held on February 9, 2017 and in that meeting it was noted that CIL was seeking clarification from the ITD regarding the release of dividends due to CUHL. Noticee No. 3, along with others, attended this meeting. The minutes were later presented to the Board of Directors on March 30, 2017, attended by Noticee No. 2, 3, 6, 9, and 11.
- Further SEBI submitted that during a subsequent Board meeting on May 15, 2017, the CEO i.e. Noticee no mentioned efforts to obtain formal communication from the ITD before releasing funds, as there was a demand on CUHL post ITAT order due by June 15, 2017. This meeting was attended by Noticee No. 2, 3, 4, 5, 7, 8, and 10.
- Hence SEBI concluded by mentioning that Noticee No. 2 to 11, being responsible for the affairs of Noticee No.1, and also were party to the decision to withhold dividend payments to CUHL after March 31, 2016. Their omission to release dividends was seen as consent to the decision. Therefore, Noticee no. 2 to Noticee no 11 were held responsible for the violations committed by Noticee No. 1.

5) All Similarly placed shareholders were treated similarly

- SEBI noted that Regulation 4(2)(c)(i) of LODR Regulations was part of Chapter II of LODR which provides for principles governing disclosures and obligations of listed entity. Such principles are required to be followed by the listed entity while making disclosures and discharging its obligations. In case of failure to follow or abide by such principles, the listed entity is liable to be attended with necessary directions or penalty or prosecution in accordance with the gravity of the violation.

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- In the present case, the SCN had called upon the Noticee(s) to show cause as to why necessary directions in the exercise of power under Section 11(1), 11(4), 11B(1) of the SEBI Act should not be issued against them for violation of Section 127 of the Companies Act, 4(1)(g) and 4(2)(c)(i) of LODR Regulations. Further SEBI noted that CIL had failed to make payment of dividend to CUHL after cessation of restraint on payment of dividend on March 31, 2016. CIL made payment of dividend to other shareholders when there was no restraint on release of dividend.
- In view thereof, SEBI was of the opinion that CIL failed to treat CUHL at part with other shareholders in respect of payment of dividend. Accordingly, SEBI established that CIL violated Regulation 4(1)(g) and 4(2)(c)(i) of LODR Regulations.

Penalty

a) Noticee No. 1 to pay to CUHL ₹ 77,62,55,052/- (Rupees Seventy Seven Crore Sixty Two Lakh Fifty Five Thousand and Fifty Two Only) i.e. simple interest @ 18%per annum for delayed payment of dividend, due and payable by Noticee No. 1 to CUHL, within 45 days from the date of this order;

b) The Noticee No. 2 to 5 were, restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of Two Months, from the date of coming into force of this order;

c) The Noticee No. 6 to 11 were restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of One Month, from the date of coming into force of this order.

Case: 3 IBC

In the matter of M/s EPC Constructions India Limited through its Liquidator *Mr. Abhijit Guhathakurtha (Petitioner/Financial Creditor) vs. M/s Matix Fertiliser and Chemicals Limited (Respondent/Corporate Debtor)* at National Company Law Tribunal at the Kolkata Bench dated 26 July 2023.

Facts of the case

- M/s. EPC Constructions India Limited, the Petitioner and Financial Creditor (EPC/FC), infused an amount of ₹ 250,00,00,000 (Rupees Two Hundred and Fifty Crores) as sub-debt into the capital of M/s. Matix Fertiliser and Chemicals Limited, the Corporate Debtor (Matix/CD). In exchange for this infusion, 25,00,00,000 (Twenty-Five crore) Cumulatively Redeemable Preference Shares (CRPS) were issued to EPC with a face value of ₹ 10 (Rupees Ten) each. These shares carry a cumulative dividend of 8% every year, payable at par after 3 (three) years.
- The EPC filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) to initiate a Corporate Insolvency Resolution Process (CIRP) against the CD due to default in redemption and

payment of ₹ 310 Crore (Rupees Three Hundred and Ten Crore Only). This amount became due and payable upon the maturity of 25 Crore CRPS with a face value of ₹ 250 crores since 26 August, 2018. Additionally, it includes dividends on the ₹ 250 Crore principal amount at a rate of 8% per annum until the entire amount is realized.

- The EPC submitted that the liability of ₹ 310 Crore arose pursuant to a contract dated 29 July 2010 (as amended from time to time). For each year that the CRPS remained unpaid, an interest of ₹ 20 Crore was added. Therefore, the claim of ₹ 310 Crore represented the sum of three years' unpaid dividends along with the principal amount of ₹ 250 Crore. According to the terms, this amount would continue to accrue until the CRPS were redeemed.

- Further, after the CRPS became due and payable, EPC through then RP issued a letter to CD, *inter alia*, calling upon CD to plan for redemption on the due date and arranged for remittance of redemption proceeds, including dividend, aggregating to ₹ 310 Crore.

- In response, the CD admitted liability for the CRPS redemption proceeds but requested an adjustment of this liability against its purported claim submitted in the CRPS of the FC. After adjusting the redemption proceeds of ₹ 310 Crore against the submitted claim, the CD asserted that the dues towards CRPS would become NIL. The CD did not dispute, in any manner whatsoever, that the redemption proceeds were not due and payable; rather, the liability was categorically admitted.

  A demand notice was issued to the CD claiming an amount of ₹ 632.71 Crore. This amount comprised ₹ 310 Crore, representing the redemption amount due on the maturity of the CRPS, and ₹ 322.71 Crore, representing outstanding receivables for services rendered by EPC.

- The CD disputed the amounts on the grounds of vulnerable economic conditions and non-completion of the assigned tasks.

- Due to the CD's default in payment of the redemption amount of CRPS, EPC filed a petition under Section 7 of the IBC seeking to initiate a Corporate Insolvency Resolution Process (CIRP) against the CD.

Arguments of the Petitioner – EPC

- The amount due from CD to EPC falls within the definition of debt as defined under Section 3(11) of the IBC. The issuance of 25 Crore Preference Shares by the CD against a portion of the outstanding receivables, amounting to ₹ 250 Crore, due to be paid to EPC under the Subject Contracts, constituted an infusion by EPC into the CD, akin to a loan, with redemption due after 3 years. Therefore, the aforementioned debt was undisputedly classified as a financial debt under Section 5(8)(f) of the IBC.

- It was argued that the said financial debt was an admitted liability in the books of account of the CD as recent as the Financial Year 2020-21. Therefore, the non-payment of the aforementioned financial debt, which had become due and payable, amounted to default as defined under Section 3(12) of the IBC.

- While the CRPS dues of ₹ 310 Crore were never disputed by the CD, the

remaining balance amount of ₹ 322.72 Crore, which continued to remain outstanding, was neither acknowledged nor paid by the CD. In a high-handed and potentially fraudulent manner, the CD refused to acknowledge the liability towards the balance amount, and astonishingly, this balance was miraculously wiped off from the books of accounts. This action caused significant losses not only to the Applicant but also to all stakeholders of EPC/FC, which was under liquidation.

- Reliance was placed on the following judgements:
  - *Preference shares are a 'financial debt' having 'commercial effect of borrowing' in terms of Sec. 5(8) (f) of the IBC* - ***HDFC Ventures Trustee Company Limited vs. Kakade Estate Developers Private Limited.***
  - *IBC is a complete code - Judgments passed in the context of the Companies Act, 2013 or 1956 cannot be relied upon to infer the purport, meaning and ambit of provisions contained in the Code* - ***Moser Baer Karamchari Union vs. Union of India and Gujarat Urja Vikas Nigam Limited vs. Mr. Amit Gupta and Ors***
  - *Balance sheets and financial statements are mandatory to be filed by a company, and therefore, the entries made therein qua admission and liability of debt ought to be considered - Juxtaposed to the arguments that statutory provisions of the Companies Act should not be looked into, the following decisions were referred to* - ***Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Ors.,***
- It was argued that the petition u/s 7 of IBC was maintainable at the instance of a preference shareholder and FC fall under 'financial debt'.
- The argument put forth by the CD, stating that once the debt is converted into shares, it leads to the extinguishment of debt and loses its character, is contrary to law and inapplicable in the case of redeemable preference shares. Unlike equity shares, redeemable preference shares are liable to be redeemed or repaid.
- To counter the contention of the CD that it has no obligation to redeem preference shares because it hasn't made any profit or declared dividends, and thus redemption of CRPS is barred by Section 55 of the Companies Act, 2013 (the Act) – it was highlighted that the Section 55 of the Act merely outlines the manner in which preference shares can be redeemed, namely, out of the profits of the company or out of the proceeds of a fresh issue of shares made specifically for the purpose of such redemption. It does not absolve the CD from its obligation to redeem preference shares.
- The contention of the CD that CRPS was in the nature of investment, and hence, not a 'financial debt' is a position contrary to the IBC.

Arguments of the Respondent - CD

- There was never any financial debt advanced by the EOC to them. The transaction between the parties was a contract under which the EPC was

obligated to construct a green field fertiliser complex and handover the same to the respondent after completing installation, commissioning and issue final acceptance certificate. Therefore, the receivables of the CPC if any, from the respondent, at the highest, would be an Operational Debt under the IBC.

- The argument posited against the allegation made by the EPC, asserting that the respondent failed to redeem the CRPS on the maturity date, thereby constituting a default in payment of financial debt, is fundamentally flawed. Section 55 of the Act explicitly states that preference shares can only be redeemed by a company utilizing profits available for dividend distribution or from fresh equity raised specifically for the purpose of redeeming the preference shares. At the pertinent time, they neither recorded profits nor raised fresh equity for redemption purposes. Consequently, there existed no obligation on them to redeem the CRPS issued to the EPC. Without such an obligation, the EPC cannot reasonably claim that the respondent was in default.
- The respondent vide letter dated 7 December, 2018 categorically denied any liability to redeem the CRPS since the respondent has not earned any profit in the immediately preceding and the current financial year, rather, it had accumulated losses of ₹ 589.46 Crore.
- Reliance was placed on the following judgements:
  - *Once a Debt is converted into shares, it leads to the extinguishment of liability and loses the character of Debt - It is a settled position of law that once a debt has been converted into shares, it irrevocably loses all characteristics of debt*
    - ***Commissioner of Income Tax-V vs. Rathi Graphics Technologies Limited***
    - ***Canara bank vs. IBRCL Limited***
    - ***Anup Jhunjhunwala vs. Adea Powerquips Private Limited***
    - ***Karnataka State Financial Corporation vs. Namasthe Exports Private Limited***
  - *A Preference Shareholder is not a creditor or financial creditor of a Company*
    - ***Radha Exports vs. KP***
    - ***Aditya Prakash Entertainment Private Limited vs. Magikwand Media Private limited***
    - ***Lalchand Surana vs. M/s Hyderabad Vanaspathu Ltd.***
    - ***State Bank of India vs. Alstom Power Boiler Ltd***
    - ***Hindustan Gas & Industries Ltd. vs. Commissioner of Income Tax***
  - There was no obligation to redeem preference shares when the company has not made any profit and dividend had not been declared.
    - ***Roop Kumar vs. Mohan Thedani***
    - ***Rajasthan State Industrial Development & Investment***

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Corpn. vs. Diamon & Gem Development Corpn. Ltd

— Accounting Standards and entries in the balance sheet cannot override the contract between the parties - ***Union of India vs. Assn. of Unified telecom Service Providers of India and other judgements***

— ***I&B Code, is a complete code in itself - Innoventive Industries Ltd. vs. ICICI Bank***

- It was highlighted that the Preference Shareholder is also a Shareholder - The preference shareholder has all the rights of an equity shareholder and in addition thereto has certain preferential rights to share in the profits available for dividend and for return of capital in priority to that of an equity shareholder. Preference Shares' are not defined, or described or discussed in the IBC which itself will demonstrate that a claim based on non-redemption of 'Preference Shares' cannot form the basis of a claim under Section 7 of IBC.
- It was also highlighted that there is no absolute entitlement to redeem a preference share. This is primarily due to the fact that any redemption of preference shares outside the provisions outlined in Section 55 of the Act would constitute preferential treatment to shareholders over the company's creditors, thus violating the law. This contravention includes the stipulations of the waterfall mechanism under Section 53 of the IBC, which expressly prohibits such preferential actions. When paid out of profits, the lenders/ financial creditors are not affected, which highlights that CRPS is not a debt.
- It was further contended that the amount claimed represents an investment rather than a debt, despite exhibiting the commercial characteristics of borrowing. The assertion is that the EPC's claim does not qualify as a debt, let alone a financial debt.
- The classification of CRPS as a financial liability in the respondent's balance sheet, done to adhere to the classification norms of Ind AS, does not automatically equate to the liability under CRPS being considered a financial debt under the IBC. Hence, relying on the respondent's balance sheets to argue the existence of a financial debt is misguided and legally incorrect.

Held

- After analysing in detail whether a preference share is an instrument having the commercial effect of borrowing and after examining the definition of equity and preference share capital u/s 43 of the Act - it was observed that a preference shareholder has a preferential right to —
  — A share in the profits of the company that are available for dividend; and
  — Return of capital of the company in priority to equity shareholders in the event of the company's liquidation.
- The NCLT also examined Sections 2(55) and 47 of the Act - which defines voting rights of preference and equity shareholders and observed that:
  — Both equity and preference shareholders are members of a company and therefore the Petitioner who was issued

25,00,00,000 (twenty-five crore) CRPS too is a member of the Corporate Debtor;

— Preference shareholders are also entitled to enjoy voting rights in every resolution placed before the company.

- The NCLT noted that a preference shareholder cannot step into the shoes of a creditor and examining the Section 55 of the Act which defines the issue and redemption of preference shares and observed that:

  — Preference shares can only be redeemed out of (a) the profits of the company which would otherwise be available for dividend; or (b) the proceeds of a fresh issue of shares made for the purpose of such redemption;

  — Preference shareholders cannot be paid unless the company fully discharges its debt obligations;

  — Thus, non-redemption of preference shares does not result in preference shareholders becoming creditors or the carrying value of preference shares and dividends becoming a debt.

- CRPS are in the nature of an investment and not a debt unless it becomes redeemable, as it is not obligatory for a company to pay a dividend to preference shareholders since a dividend is usually a part of the profit that the company shares with its shareholders. Thus, unless the company earns profits, no dividend is payable against CRPS.

- NCLT also examined Sections 3(11) and (12) of the IBC which defines debt and default respectively, and accordingly observed that if payment against CRPS is not due, no liability can arise; and the necessary corollary would be that unless CRPS is payable, non-payment against CRPS cannot be termed as a default.

- Further, NCLT also observed that a perusal of the Balance Sheet of the CD for 2018-19 and 2020-21 manifests losses incurred by the CD. As such, since the dividend is not payable out of losses and unless the CRPS becomes redeemable, it cannot be termed as a debt, much less a financial debt, which is the *sine qua non* for a petition u/s 7 of the IBC to be maintainable.

- The NCLT summarized the fundamental difference between raising of capital through debt instruments and *via the* issuance of shares. The decision is a classic example of the doctrine of literal interpretation while construing statutes. Section 55 of the Act squarely covers the position that preference shares can only be redeemed out of the profits of the company available for dividend or through the issuance of fresh shares. This decision removes the ambiguity surrounding the issue concerning the treatment of preference shareholders, and conclusively holds that non-redemption of preference shares does not result in preference shareholders becoming creditors.

- NCLT dismissed the petition filed u/s 7 of the IBC on the ground of maintainability.

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OTHER LAWS

FEMA – Update and Analysis





CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars and Press Notes & Press Releases.

Amendment by Central Government through Notification of MoF

Amendment to Foreign Exchange Management (Non – Debt Instrument Rules), 2019[hereinafter referred to as "NDI Rules, 2019"]

The following explanation is added to Rule 2(aq) which defines the term 'unit':

"*Explanation* - **For the purposes of this clause, unit shall include unit that has been partly paid up, which is permitted under the regulations framed by the Securities and Exchange Board of India, in consultation with Government of India;"**

(Source: Notification No. S.O. 1361(E) [F. No. 1/8/EM/2019] dated 14th March 2024 by the Ministry 0f Finance in the Official Gazette)

Comments:

"Unit" has been defined in NDI Rules, 2019 to mean a beneficial interest of an investor in an investment vehicle. With the insertion of the explanation, the ambiguity with respect to applicability of NDI Rules, 2019 to partly paid units is cleared.

In 2021, SEBI had amended the AIF regulations to permit issuance of partly paid units. Various AIFs over the years were thus issuing partly paid units in line with SEBI AIF regulations. At the time, in the absence of a clear communication, it was presumed that the NDI Rules, 2019 definition of unit would also include partly paid units. However, a recent amendment in October 2023 to Form InVi (which is to be filed when an investment vehicle issues units to a person resident outside India) caused confusion among stakeholders as to whether the FEMA Rules included partly paid units or not.

In light of the same, by way of a much-needed clarification, the Ministry of Finance has amended the definition of "unit" by way of insertion of an explanation.

As a natural corollary, Form InVi shall need to be amended appropriately to enable reporting of partly paid units by AIFs to persons resident outside India.

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Best of The Rest





Rahul Hakani
Advocate

Niyati Mankad
Advocate

MR. SHIV CHARAN AND ORS. VS. ADJUDICATING AUTHORITY UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND ORS. – ORDER DT. 01/03/2024 PASSED IN WRIT PETITION (L) NO. 9943 OF 2023 & WRIT PETITION (L) NO. 29111 OF 2023 [BOMBAY HIGH COURT]

Sections 31, 32A and 60(5) of the Insolvency and Bankruptcy Code, 2016 – both Sections 32A and 60(5) of IBC are non-obstante provisions – overrides provisions of Prevention of Money Laundering Act, 2002 - The NCLT has power to direct ED to release all attachments over properties of a corporate debtor once Section 32A is invoked

Facts

The case revolves around the resolution of DSK Southern Projects Private Limited ("Corporate Debtor" OR "CD") under the Insolvency and Bankruptcy Code, 2016 (IBC). The CD had been undergoing Corporate Insolvency Resolution Process (CIRP) since December 9, 2021, initiated by a financial creditor. A resolution plan put forth by Mr. Shiv Charan, Ms. Pushpalata Bai, and Ms. Bharti Agarwal ("Resolution Applicants") was approved by the National Company Law Tribunal, Mumbai ("NCLT") on February 17, 2023.

However, prior to the initiation of CIRP, various First Information Reports (FIRs) alleging offenses such as cheating and criminal breach of trust had been filed against the CD and its former promoters. These offenses fell under "scheduled offenses" as per the Prevention of Money Laundering Act, 2002 ("PMLA"). Subsequently, an Enforcement Case Information Report (ECIR) was filed by the Directorate of Enforcement ("ED") estimating the "proceeds of crime" to be around Rs. 8,522.27 crores. Assets of the CD, including bank accounts and constructed flats, were attached under provisional and confirmatory orders under the PMLA.

Two writ petitions were filed: WPL/9943/2023 by the Resolution Applicants seeking quashing of the ECIR, the orders attaching the assets, and the original complaint based on which the attachment was made, and WPL/29111/2023 by the ED challenging the authority of the NCLT to pass orders invoking Section 32A of the IBC, 2016, which according to the ED, undermines the objectives of the PMLA. The NCLT, in an April 2023 Order, directed the ED to release the attached properties, citing Section 32A of the IBC. The ED, however, contested this order, arguing that the PMLA should take precedence over the IBC.

Issue Involved

Whether the NCLT had the jurisdiction to direct the ED to release the Attached Properties, invoking Section 32A of the IBC, 2016, since Section 32A provides that all attachments over properties of a corporate debtor would cease once a resolution plan in respect of the said corporate debtor is approved.

Held

After considering the scheme of the IBC, particularly, sections 31, 32A and 60(5) of the IBC and also the relevant provisions of the PMLA, and also various case laws, the court *inter alia* concluded that:

i. The NCLT has the authority to declare, through both the Approval Order (February 17, 2023) u/s 31 of the IBC and the April 2023 Order u/s 60(5) of the IBC, that the CD would be discharged from prior offenses and that the attached properties identified in the Approval Order would be free of attachment upon approval of a resolution plan eligible for Section 32A benefits. The NCLT's exercise of jurisdiction was accurate based on the facts of the case.

ii. Section 32A of the IBC applies when a qualifying resolution plan is approved u/s 31, providing immunity once ownership and control of the CD change. These protections commence upon plan approval.

iii. The attachment u/s 5 of PMLA is a measure in aid of eventual potential confiscation u/s 8(5) of the PMLA. Confiscation of the property of the CD can only be effected upon conviction of the CD for an offence of money laundering. Where Section 32A(1) of the IBC confers immunity to the CD from prosecution, there can be no conviction that can follow. Consequently, it is but logical that the property of the CD would have protection from any continued attachment by reason of Section 32A. Therefore, when there is no potential in law for an eventual confiscation, the attachment, which is only an interim measure in aid of the final measure of confiscation must necessarily abate and come to an end, since it cannot continue in a vacuum.

iv. Section 14 of the IBC ceases to apply once Section 32A comes into force. Conflicts between the PMLA, 2002, and Section 14 became irrelevant after February 17, 2023.

v. The ED must release attached properties due to Section 32A's operation. Opinions on the attachment during the CIRP and u/s 14 were deemed unnecessary for the current case.

vi. The ED's challenge pertains to the April 2023 Order based on Section 32A, not the unchallenged Approval Order. Even if the April 2023 Order were overturned, the Approval Order still requires the release of attached properties.

CARDINAL ENERGY AND INFRA STRUCTURE PRIVATE LTD. VS. SUBRAMNYA CONSTRUCTION AND DEVELPOMENT CO. LTD. – ORDER DT. 02/01/2023 PASSED IN COMMERCIAL ARBITRATION PRETITION (L) NO. 2603 OF 2023 [BOMBAY HIGH COURT]

Arbitration and Conciliation Act, 1996 - merely by there being no prayer for

impleadment of a non-signatory in the Section 11 Application, the applicability of the doctrine of 'group of companies' by the Sole Arbitrator cannot be excluded - The Arbitrator has the power/authority to implead the non-signatory if such non-signatory is otherwise liable to be impleaded on the basis of the 'group of companies' doctrine – such decision of Tribunal can be later challenged under Section 34 of the Act

Facts

The present case was concerning the challenge to an Interim Award/Interlocutory Order dated 02.01.2024 under section 34 of the Arbitration and Conciliation Act, 1996. An MoU containing an Arbitration Agreement was executed between the parties. Following invocation, a Sole Arbitrator was appointed. Disputes arose regarding the impleadment of the Petitioners as Party Respondents, with objections raised by the Respondent. The Arbitral Tribunal passed an Order/Award on 02.01.2024, leading to the filing of Commercial Arbitration Petition (L) No. 2603 of 2024 by the Petitioner, challenging the impleadment of a non-signatory by the Arbitral Tribunal without court referral. The Respondents defended their position mainly on the 'group of companies' doctrine.

Issues Involved

Whether the Arbitral Tribunal had the authority to decide the impleadment of the Petitioners, who were non-signatories to the Arbitration Agreement, without explicit endorsement from the Referral Court? Can the validity of such decision of the Tribunal be later challenged in section 34 of the Act?

Held

The court deliberated on whether the Sole Arbitrator had the authority to allow the impleadment of the Petitioners, who were non-signatories to the Arbitration Agreement, without explicit endorsement from the Referral Court. Referencing the 'Group of Companies' doctrine, the court cited a Supreme Court decision in the case of ***Cox and Kings Ltd. vs. SPA India Pvt. Ltd. (2023 SCC OnLine SC 1634),*** elaborating on the role of the Referral Court and the Arbitral Tribunal in determining the status of non-signatories to an arbitration agreement. The court concluded that the Arbitral Tribunal indeed possesses the power to decide on the impleadment of non-signatories based on this doctrine. Additionally, the court rejected arguments regarding the Tribunal's lack of authority in considering applications for impleadment and emphasized the Tribunal's obligation to follow Supreme Court precedent. It clarified that while the Referral Court decides on the existence and validity of the Arbitration Agreement, the Arbitral Tribunal can still decide on impleadment, especially when not addressed by the Referral Court. Furthermore, the court emphasized the Tribunal's jurisdiction to decide on issues concerning non-signatories, which could be challenged under Section 34 of the Arbitration Act after the final award. The court dismissed the Arbitration Petition, finding no valid grounds for setting aside the interim award.

NEETA GUPTA VS. SUMAN ANAND – ORDER DATED 02/02/2024 PASSED IN CRIMINAL MISCELLANEOUS COMPLAINT NO. 2067 OF 2023 AND CRIMINAL MISCELLANEOUS APPEAL NO. 7641 OF 2023 [DELHI HIGH COURT]

Section 138, 139, of the Negotiable Instruments Act, 1881 ("NI Act") - Dishonour of cheque for insufficiency etc. of funds in account - Whether for initiation of

prosecution under section 138, a prior statutory notice is mandatorily required to be given to drawer, to make good payment of amount mentioned in cheque and only when drawer receives a notice and fails to make payment within time provided by Statute does dishonour become an offence - Held, yes - The issue as to whether notice was issued or not was a matter of trial - However, complaint case must fail owing to a more fundamental issue - Subject cheque, copy of which had been placed on record, was signed only by late husband of accused - Although conceded that cheque was issued from a joint account but subject cheque did not bear signature of accused - Whether thus, criminal complaint filed against accused was clearly an abuse of process of law - Held, yes

Facts

The case involves a dispute regarding the criminal liability of a drawer under Section 138 of the Negotiable Instruments Act, 1881. The petitioner borrowed Rs. 20,00,000/- from the respondent and issued a cheque dated 08.06.2016 to repay the loan. However, the cheque was dishonoured due to 'stop payment'. The respondent sent a demand notice under Section 138, which was allegedly refused by the petitioner. The petitioner denies receiving the notice and claims she became aware of the case in November 2022. She argues that the cheque was issued by her late husband and not by her, thus the complaint is not maintainable. Moreover, she claims the amount was adjusted as part of a sale consideration for a flat, at the respondent's request. The respondent insists the petitioner is liable and that the notice was served properly. The petitioner seeks to quash the complaint through a petition under Section 482 Cr.P.C read with Article 227 of the Constitution of India.

Issues Involved

Whether the criminal complaint was an abuse of process of law and thereby, liable to be quashed under section 482 of the Cr.P.C.?

Held

The court held that for initiation of prosecution under Section 138 NI Act, a prior statutory notice is mandatorily required to be given to the drawer, to make good the payment of the amount mentioned in the cheque and only when the drawer receives a notice and fails to make the payment within the time provided by the Statute, does the dishonour become an offence. However, in the present case, whether the notice was issued or not was a matter of trial. The court held that the complaint case must fail owing to a more fundamental issue that the subject cheque was solely signed by the petitioner's late husband from their joint account, not by the petitioner herself. The court relied on Supreme Court's judgement in the cases of ***Aparna A. Shah vs. Sheth Developers Pvt. Ltd. & Ors. (2013) 8 SCC 71*** and ***Alka Khandu Avhad vs. Amar Syamprasad Mishra & Anr (2021) 4 SCC 675*** to support their ruling. Finally, the court ruled that the criminal complaint filed against the Petitioner was an abuse of process of law and was liable to be set aside. Consequently, the present petition was allowed and the Criminal Complaint against the petition was squashed. Pending application was also disposed of as infructuous.

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THE CHAMBER NEWS



CA Neha Gada
Hon. Jt. Secretary



CA Vitang Shah
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **March 1, 2024 to March 31, 2024** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on March 28, 2024 are as under:

Type of Membership	No. of Members
Life Member	07
Ordinary Member	05
Student Member	0
Total	**12**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
		ACCOUNTING & AUDITING	
1.	19.03.2024	Webinar on Key learnings from NFRA orders/ QRB reports	CA Naysar Parekh
		DIRECT TAXES	
1.	13.03.2024	Recent Important Decisions Under Direct Tax	Mr. Chirag Wadhwa, *Advocate*
2.	The Direct Taxes Committee oragnised "Restructuring of Family Owned Businesses" (Jointly with IMC & BCAS. The session-wise detail of the program is as under:		

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Sr. No.	*Date*	*Topics*	*Speakers*
a.	15.03.2024	Family-owned Business –Succession/Estate planning (Live case studies) – Including to cover conversion from firm/LLP/Companies – Private Trust etc.	*Panelists*: CA Amrish Shah, *Partner, Deloitte India* CA Anup Shah, *Partner, Pravin P. Shah & Co* CA Shweta Shah, *Head Wealth Structuring & Tax, Nuvama Wealth Advisor* *Moderator from BCAS*
b.		Restructuring of Businesses – including getting ready for IPO and fund-raising and for that purpose undertaking Merger/Demerger, Slump Sale to carve out core business vs Investments vs separating Brands/Patents etc. (live Case Studies)	*Panelists*: CA Ketan Dalal, *Managing Director, Katalyst Advisors* CA Pranav Sayta, *Partner & National Leader – International Tax and Transaction Services, EY India* CA Girish Vanvari, *Partner, Transaction Square.* *Moderator from CTC*
c.		Family Governance and need for family constitution- Impact on private vs public companies – Binding nature – can it over-ride AOA etc.	*Speaker:* CA Dinesh Kanabar, *Managing Partner, Dhruva Advisors LLP* *Moderator from IMC*
INTERNATIONAL TAXATION			
1.	6.03.2024	US Taxation	CA Maneet Singh Sabharwal
2.	31.01.2024	Compounding & LSF under FEMA, Practical insights on how to deal with RBI Show Cause Notice and Proceedings before Enforcement Directorate	CA Pankaj Bhuta CA Naisar Shah
MEMBERSHIP & PR COMMITTEE			
1.	Full Day Joint Seminar on Direct Taxes jointly with Tax Bar Association, Amravati and Vidarbha Tax Practitioners' Association, Nagpur		

Sr. No.	*Date*	*Topics*	*Speakers*
a.	16.03.2024	Practical approach to Reassessment in Income Tax	Adv. (CA) Dharan Gandhi
b.		Applicability of Section 68, 69A and 115BBE in cases of cash deposits and cash transactions	CA Ashok Mehta
c		Tax planning through Wills, Private Trusts & Family arrangements	CA Anish Thacker
d		Issues in assessments of Charitable Trusts	CA Premal Gandhi
e		Invoking of writ jurisdiction for Direct Tax Matters	Adv. (CA) Milind Sharma, Bhopal
STUDENT			
1.	The Student Committee organised "Webinar Series on CA Student Orientation Course) The session-wise detail of the program is as under:		
a	11.03.2024	Exploring Diverse Practice Areas for CAs	CA Jayant Gokhale
		Masterclass in Professionalism: Soft Skills and Office Etiquette Training	CA Srinivas Vakati
b	12.03.2024	Mastering Income tax filings	CA Charmi Shah
c	13.03.2024	Valuation Overview and Methodologies'	CA Sujal shah CA Vitang Shah
d	14.03.2024	GST Landscape: Best Practices for Returns and Compliance	CA Yash Parmar
e	15.03.2024	Audit Insights 2.0: Checklist, AI tools and Best practices	CA Priya Vora
2	16.03.2024 & 30.03.2024	1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition jointly with ILS Law College, Pune	
STUDY CIRCLE & STUDY GROUP			
1.	7.03.2024	Recent Judgements under Income Tax Act	Mr. Kapil Goel, Advocate, New Delhi
2	20.03.2024	New Reassessment Regime & Latest Updates	Mr. Dharan Gandhi, Advocate

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ML-399

Student Committee

1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2024 held on 16th and 30th March 2024 in association with ILS Law College, Pune (Valedictory function)



CA Haresh Kenia, President presenting memento to Hon'ble Shri. Justice Prithviraj Chavan



Hon'ble Shri. Justice Prithviraj Chavan imparting insightful wisdom to the audience and students



Hon'ble Shri. Justice Prithviraj Chavan presenting the trophy to School of Law, Christ (deemed to be University) Bangalore- Winner Team



Hon'ble Dr. Justice Neela Kedar Gokhale presenting the trophy to Rajasthan University - Runner-up Team



Shri. Devendra Nagvenkar presenting certificate to Mr. Prakhar Arora- 2nd Best Speaker



CA Neha Gada, Jt. Hon. Secretary CTC presenting memento to the Moot Drafter Ms. Ankita Vashistha



The Chamber of Tax Consultants team with the dignitaries.



ILS Law College core team with the dignitaries.

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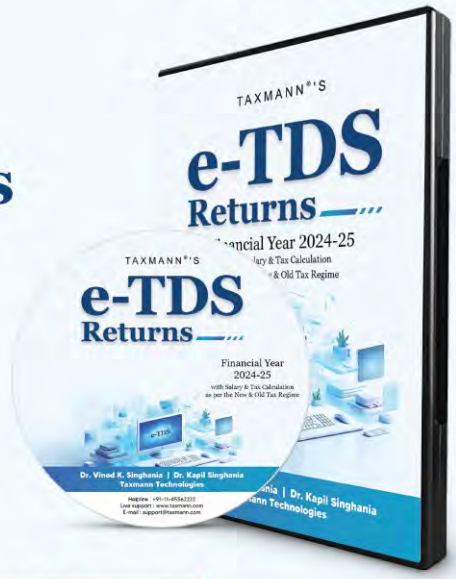



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