

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

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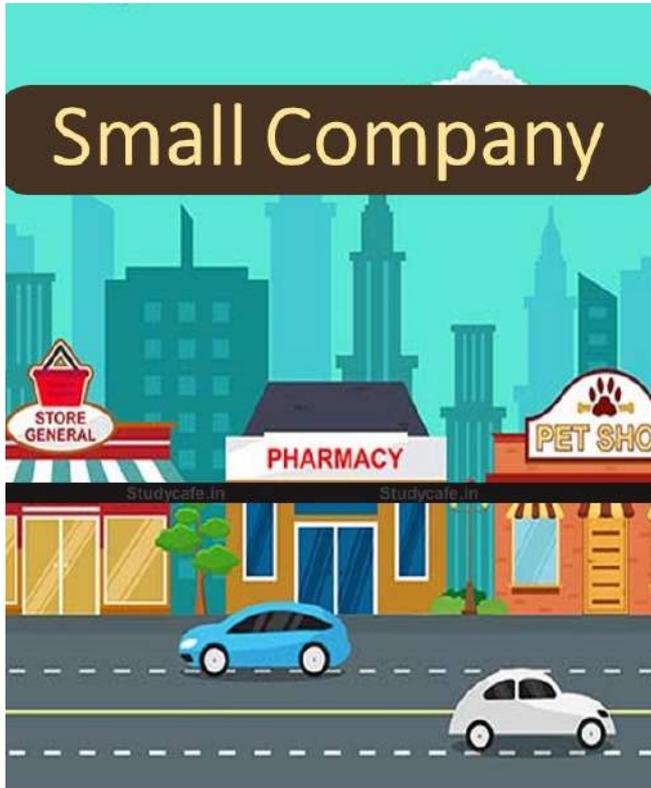


## What is Social Media Law?

Social media law is a developing area of the law that includes both criminal and civil aspects. Generally, it covers legal issues related to user-generated content and the online sites that host or transmit it. Some of the special legal concerns raised by social media include privacy, including the rights of both social media users and third parties (for example, when photos are posted and used online without the permission of the people depicted); defamation; advertising law; and intellectual property (IP) law.

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# CORPORATE AFFAIRS



## SEBI Reduces The Cap On I (ISINS) For Listed Debt Securities

This move from SEBI has come forth after the regulator observed issuers' representation that capping of ISINs and reissuing bonds in the same ISINs have aided them in better projection of cash flows and thus enabling them to effectively carry out their asset liability management requirements. Further, SEBI noted that procedurally, it has also helped in reducing the multiplicity in formalities such as filing of offer documents, creation of ISINs, tracking covenants, etc. Lastly, it was found that the issuers were not utilizing half of the maximum ISINs allotted.

## Amendment of the Companies (CSR Policy) Rules, 2014

In the said Rules, in rule 3:

(a) after proviso to sub-rule (1), the following proviso has been inserted, namely: –

“Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per section 135 (6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.”

## DIR-3 KYC



# TAXATION



## Advisory on sequential filing of GSTR-1

The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022–Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

## Implementation of mandatory mentioning of HSN codes in GSTR-1

As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digits of HSN Code in table-12 of GSTR-I on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.





## **Married Woman Being Asked to Do Household Work Does Not Mean She Is Treated Like Maid Servant.**

If a married lady is asked to do household work definitely for the purpose of the family, it cannot be said that it is like a maid servant. If she had no wish to do her household activities, then she ought to have told it either prior to the marriage so that the bride-groom can rethink about the marriage itself or if it is after marriage, then such problem ought to have been sorted out earlier", the court stated.

## **SC: Don't block wood-based industries with green protection**

In a significant judgment, the Supreme Court on Friday reversed a National Green Tribunal judgment quashing the Uttar Pradesh government's decision to grant 1,215 licences to wood-based industries to consume timber available from trees outside forest areas and ruled that importance of environment protection must be weighed with employment and livelihood of thousands of persons.





## **INTRODUCTION**

We live in the era of technology and social media has transforming our life a lot and become a integral part of our day to day functioning. Earlier there were print media like newspaper, radio, television but now the user can make their own content in the social media platform. There is also a concept of “viral” which has the ability to spread the information with thousands of users. Social media has become the major platform for interaction among the people whether it is of personal reason, professional work or related to academic and for entertainment purpose only. It also contains the personal details of ours, so it must be regulated by the government to protect the peoples form the cyber crime.

## **INDIAN LAWS REGARDING SOCIAL MEDIA**

Constitution of India- under article 19, it says about the freedom of speech and expression guaranteed to all citizen and state cannot curb them by making laws against them, but these freedoms are under the ambit of some reasonable restriction as mentioned in article16(2). So, any person can read, write, comment on any issue but these does not come under the reasonable restrictions, which the state imposes in interest of citizens and the country as well. Information technology Act- section 66A of the IT Act is focused completely on the social media contents and regulates it. It prohibits the any offensive video, audio, or text message or any recorded content to be transmitted. This also prohibits the information or any electronic mail which knows to be false but sent with the purpose of causing the annoyance, injury or insulting the others. This is done with the criminal intension and the spreading the hatred among the people. It may also mislead the person.



# FROM THE ARCHIVES

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***M/s Kent Electrical & Electronics***  
***versus***  
***Commissioner of Trade & Taxes, New Delhi***

*Present for the respondent: Mr. S.B. Jain*

AUDIT OF THE BUSINESS AFFAIRS OF DEALER UNDER DELHI VALUE ADDED TAX ACT, 2004 – NOTICE OF ASSESSMENT OF PENALTY U/S 86 (13) OF DVAT ACT – THE DEALER WAS SERVED NOTICE IN DVAT 37 FOR CONDUCTING THE AUDIT OF BUSINESS AFFAIRS – BOOKS OF ACCOUNT WERE SEEN EXCEPT STOCK REGISTER FOR CONSUMABLE ITEMS – THE DEALER EXPLAINED TO VATO AUDIT THAT STOCK REGISTER WAS KEPT WITH AUDITORS OF THE FIRM FOR AUDITING THE ACCOUNTS FOR ASSESSMENT YEAR 2006-07 – THE DEALER GAVE THE STATEMENT TO AUDIT TEAM THAT THE FIRM MAINTAINED STOCK REGISTER AS PER THE REQUIREMENT OF EXCISE ACT – VATO IMPOSED PENALTY OF RS.50,000/- FOR EACH QUARTER. OBJECTION HEARING AUTHORITY REJECTED THE OBJECTIONS. THE DEALER CARRIED THE MATTER IN VAT TRIBUNAL ON THE GROUND THAT THERE WAS NO TAX DEFICIENCY AND NO DEFAULT ASSESSMENT OF TAX & INTEREST WAS MADE – APPEALS ALLOWED AND PENALTY ORDERS QUASHED.

## **BRIEF FACTS OF THE CASE:**

THE DEALER WAS A REGISTERED DEALER OF WARD NO.106. THE DEALER RECEIVED NOTICE IN DVAT-37 OF DELHI VALUE ADDED TAX ACT, 2004 FOR CONDUCTING THE AUDIT FOR FINANCIAL YEARS 2005-06 & 2006-07. THE DEALER MAINTAINED ALL RECORDS PRESCRIBED UNDER DVAT ACT, 2004. ACCOUNTS BOOKS WERE ASKED AND PRODUCED EXCEPT STOCK REGISTER FOR CONSUMABLE ITEMS. THE DEALER EXPLAINED THAT THE STOCK REGISTER WAS TAKEN BY AUDITOR OF THE FIRM FOR CONDUCTING AUDIT FOR FINANCIAL YEAR 2006-07. STATEMENT OF HARJIT SINGH, PROPRIETOR OF THE FIRM WAS RECORDED. IN THE STATEMENT, THE DEALER STATED THAT THE FIRM HAS MAINTAINED STOCK REGISTER AS PER REQUIREMENT OF EXCISE

ACT. THE DEALER STATED THAT THE FINISHED GOODS WORTH RS.2,52,969/- COULD NOT BE ENTERED IN STOCK REGISTER BECAUSE THE BUYER DEALER COULD NOT SEND INSPECTING TEAM FOR CHECKING THE GOODS.

THE VATO AUDIT ISSUED A NOTICE IN DVAT-24A REGARDING ASSESSMENT OF PENALTY U/S 33 READ WITH SECTION 86(13) OF THE ACT FOR RS.50,000/- FOR EACH QUARTER WITH THE OBSERVATION THAT “THE STOCK REGISTER DOES NOT REFLECT THE TRUE POSITION OF THE STOCK OF THE FIRM AND ACCORDINGLY A PENALTY OF RS.50,000/- FOR THE QUARTER ENDING 30.06.06 AY 2006-07”.THE DEALER SUBMITTED BEFORE THE TRIBUNAL THAT IF STOCK REGISTER DID NOT REFLECT THE TRUE POSITION OF THE STOCK THEN VATO SHOULD HAVE CARRIED OUT DEFAULT ASSESSMENT BUT NOTHING WAS DONE DEALER FURTHER ARGUED THAT IF NO TAX DEFICIENCY WAS THERE, THEN THERE SHOULD BE NO ASSESSMENT OF PENALTY. DEPARTMENT ARGUED THAT FINISHED GOODS WORTH RS.2,52,969/- WERE NOT ENTERED IN STOCK REGISTER THEREFORE, PENALTIES HAVE BEEN RIGHTLY ASSESSED.

DEALER CITED VARIOUS JUDGEMENTS IN TRIBUNAL IN SUPPORT OF HIS CONTENTION.

**HELD:**

A CAREFUL PERUSAL OF SEC.86 (3) SHOWS THAT THE NOTICE OF ASSESSMENT OF PENALTY ISSUED FOR EACH OF THE FOUR QUARTERS OF 2006-07 WAS NOT FOR ANY VIOLATION AS ENUMERATED IN SEC. 86(13) . THE SUBMISSION OF THE LD. COUNSEL FOR THE APPELLANT GETS SUPPORTED BY THE JUDGMENT REPORTED AS INDOSWE ENGINEERING (O) LTD VS. STATE OF MAHARASHTRA; (1996) 101 STC 177 (BOM). IN THIS JUDGEMENT, THEIR LORDSHIPS REFERRED TO THE FOLLOWING PRINCIPLE OF LAW LAID DOWN BY THE APEX COURT IN CIT VS. VEGETABLE PRODUCTS LTD: (1973) 88 ITR 192 & C.A. ABRAHAM VS. INCOME-TAX OFFICER (1961) 41 ITR 425 (SC):

IT IS ALSO WELL-SETTLED THAT PROVISIONS DEALING WITH PENALTY SHOULD BE CONSTRUED STRICTLY WITHIN THE TERM AND LANGUAGE OF THE PARTICULAR STATUTE AND IN CASE OF DOUBT, IN A MANNER FAVOURABLE TO THE ASSESSEE. IF THE COURT FIND THAT THE LANGUAGE OF A TAXING PROVISIONS IS AMBIGUOUS OR CAPABLE OF MORE MEANING THAN ONE, THEN THE COURT HAS TO ADOPT THE INTERPRETATION WHICH FAVOURS THE

ASSESSEE, MORE PARTICULARLY SO WHERE THE PROVISION RELATES TO IMPOSITION OF PENALTY.

IF THE ORDER OF THE LD. VATO WAS JUDGED ON THE TOUCH STONE OF THE PRINCIPLE OF LAW LAID DOWN BY THE APEX COURT AND RELIED UPON IN THE CASE OF INDOSWE ENGINEERING (O) LTD, THEN THE OBVIOUS CONCLUSION WAS THAT THE ORDER OF THE LD. VATO WAS NOT AS PER THE PROVISIONS OF SEC. 86(13) OF THE ACT. THUS WHEN PENALTY WAS NOT ASSESSED FOR VIOLATION OF ANY OF THE PROVISIONS OF SEC 86(13) OF THE ACT, THEN THE PENALTY ASSESSMENT ORDERS WERE NOT SUSTAINABLE AND WERE LIABLE TO BE QUASHED. ACCORDINGLY ALL THE FOUR PENALTY ASSESSMENT ORDERS WERE QUASHED.



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