

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

In This Issue

Corporate Affairs

- Company Fifth Amendment Rules
- EGM through VC
- Covid-19 Relaxations

Taxation

- GSTR-1 Liability after cancellation
- Higher TDS for non-filers

Legal

- POSH Policy
- Archived Judgements

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PoSH Policy & how does it affect your business?

These laws are applicable upon every workplace, establishment, company, and organization, inclusive of MNCs, firms employing **10 or more employees** (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

Read more on page 5

CORPORATE AFFAIRS



Companies' Fifth Amendment rules

In case a company fails to change its name or new name, within a period of three months from the date of issue of direction of MCA, the letters “ORDNC” (“Order of Regional Director Not Complied”), shall become the new name of the company without any further act or deed by the company, and the Registrar shall issue a fresh certificate of incorporation.

Conducting EGMs through VC/OAVM

It has been decided to allow companies to conduct their Extra Ordinary General Meetings through Video Conferencing or Other Audio Visual Means or transact items through postal ballot in accordance with the framework provided till December 31, 2021.





Offsetting the excess CSR spent

Keeping in view the spread of COVID-19 in India, the MCA clarified that where a company has contributed any amount to 'PM CARES Fund' on 31.03.2020, which is over and above the minimum amount as prescribed under section 135(5) of the Companies Act, 2013 for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) for FY 2020-21, then the same shall not be viewed as a violation subject to certain conditions.

Default Limit for pre-packaged insolvency resolution process

The Central Government has specified Rs. 10,00,000/- as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.



TAXATION

Liability to File GSTR-1 after cancellation

In case registration of a taxpayer under QRMP Scheme is cancelled, with effective date of cancellation being any date after 1st day of Month 1 of a quarter, they would be required to file Form GSTR-1 for the complete quarter, as the last applicable return.



Higher TDS for non-filers

The new norms also specify that there will be a levy of TDS at a higher rate for those whose income is liable for TDS deduction but they have not filed their ITR for over two years.

To enforce this rule, the Central Board of Direct Taxes has also introduced a utility tool called the Compliance Check for Section 206AB and 206CCA.



LEGAL



PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE

A law to prevent and to provide protection against, Sexual Harassment of women at the workplace as well as redressal of complaints of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the Rules (collectively known as POSH Laws) have been enacted.

APPLICABILITY

To every workplace, establishment, company or organization employing 10 or more employees (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

TRAINING PROGRAM

Orientation and training programmes are also required to be carried out by the organisation from time to time.

ANNUAL REPORT

The organizations are also required to file an annual report with the information of the number of sexual harassment complaints received in a year, the number of complaints disposed of in a year, cases pending etc. to the District Officer.

It is mandatory to disclose in the Director's Report of every company that it has implemented the provisions of the Sexual Harassment Act.

Q. What is ICC?

Internal Complaints Committee

Under POSH, if a woman is harassed, she can complain to a company/institution's ICC - which must inquire into the case.

Headed by a Presiding Officer, who has to be a woman employed at a senior level in the company.



If company/institution doesn't have one, it has to appoint a woman from outside the organisation.



At least 2 members committed to women's causes, having experience in social work, or legal knowledge.



1 member from an NGO for women's causes or familiarity with sexual harassment issues.



At least half of all the ICC's members should be women.

Under the POSH Act, an employer is legally required to comply with certain statutory requirements. One of these is the constitution of an Internal Complaints Committee ("ICC"), a body envisaged to receive complaints on sexual harassment at the workplace from an aggrieved woman, as well as to inquire into and make recommendations to the employer on the action required pursuant to its inquiry of such complaint made.

PENALTY PROVISION

An employer can be subjected to a penalty of up to **INR 50,000** for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.
- Where an employer repeats a breach under the Act, they shall be subject to:
- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

FROM THE ARCHIVES

Scooters India Ltd.
versus
Commissioner of Sales Tax, Delhi

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

Date of order: 12.09.2001

DST ACT, 1975; LEVY OF INTEREST VIOLATION OF THE THIRD PROVISIO TO SECTION 4(2)(a)(v), SECTION 27.

APPELLANT PURCHASED THE RAW MATERIALS AGAINST STATUTORY FORM ST-1 AND TRANSFERRED THE FINISHED GOODS TO ITS BRANCHES WITHOUT PAYING TAX.

THE APPELLANT THUS VIOLATED THIRD PROVISIO TO SEC. 4(2)(a)(v) OF THE ACT.

THE AC VI CONFIRMED THE ORDER OF AA. THE AT DELHI

HELD THAT THE RETURNS FILED BY THE APPELLANT WAS NOT 'TRUE AND CORRECT' .

THIS IS A CASE OF WILFUL OMISSION MAKING THE RETURNS NOT CORRECT AND COMPLETE, SINCE THE RETURNS ARE NOT CORRECT AS INTERPRETED BY THE HON'BLE SUPREME COURT IN J.K. SYNTHETICS CASE.

ON SUCH FACT THE APPEAL IS REJECTED.

The facts are that AC VI rejected the appeal against demand of interest of Rs.41,997.20 for short deposit of tax for the A.Y. 1981-82 by not including the turnover in respect of violation of the third proviso to section 4(2)(a)(v) of the Act.

The Appellant purchased raw materials against statutory form ST-I and instead of selling finished products in Delhi or in inter-state trade or in export out of India, transferred the goods to its branches outside Delhi, without paying tax and thus violated the third proviso to section 4(2)(a)(v) of the Act. The purchases were not in the returns as required u/s. 21(3) read with Rule 23A of the DST Rules , 1975 and tax was not paid accordingly.

It was contended that interest is not leviable so long as the tax paid is in accordance with the the returns filed and that should be taken as correct return but this is not so with the understanding of J.K. Synthetics case “true and correct” does not mean true and correct as to be held by the AA. But true and correct to the best of knowledge and belief of the dealer with out the dealer being guilty of wilful omission .

CASES REFERRED:

- | | | |
|----------------------------------|------------------------------|----------------------------|
| 1. 23 DSTC T-32 | 9. (1981) 48 STC 466 | 17. AIR 1980SC126 at 129 |
| 2. (1991) 81 STC 90 | 10. (1965) 16 STC318 | 18. AIR 1991 SC 672 |
| 3. 36. DSTC J-113 | 11. 120 STC 396 (Ker.) | 19. AIR 1992 SC 1593 |
| 4. 35 DSTC J-24 | 12. (1999) 112 STC 651 (SC)7 | 20. AIR 1993 SC 43 |
| 5. [1995) 94 STC 422 | 13. (1999) 113 STC 19 | 21. AIR1995 SC 1601 |
| 6. (1969) 24 STC 487 | 14. (1992) 86 STC 259 | 22. AIR 1996 (6) SC 665 |
| 7 . (2001) 10 Sales Tax Today 53 | 15. (1986) 62 STC227 | 23. (1979) 43 STC 13 (SC). |
| 8. 1994 (4) SCC 276 | 16. (1985) Cr.L.J.1325 | |

Further in case of doubt that interpretation should be preferred that promotes fair play as opposed to the one that promotes fraud on the statute. The AT, Delhi held ‘Hence , where finding of fact would be required to be recorded as to whether the returns are true and correct without wilful omission, the non- inclusion of turnover in accordance with the third proviso to section 4(2)(a) read with Rule 23A is per se wilful omission making the returns not correct and complete to the knowledge and belief of the appellant “ the return filed by the appellant are not correct and falls under the exclusion referred by the Hon’ble Supreme Court in J.K. Synthetics case. Thus in view of the matter, the appellant is liable to pay interest, Appeal fails.

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