

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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A New Start

S.B. Jain and Associates is a law firm based in Delhi with its partners having a combined experience of more than 75+ years and we are pleased to announce the beginning of this newsletter series named "The Barrister" to give an insight to our readers about latest legal updates, corporate news and expert opinions on various fields of law. The firm sincerely hope this new series reach new heights and succeed in bringing out the information and present itself through this newsletter.

CORPORATE AFFAIRS

Waiver of additional fees on form filing on MCA portal

In continuation to the Ministry's Circular no 06/2021 and 07/2021 dated 3rd May 2021, wherein relaxation was provided to Companies and LLPs in filing of forms without payment of any additional fees, MCA has issued clarification by adding multiple forms like FORM AOC-5, FORM SH-7, FORM-15 etc. in that category.

CSR-1 Form is now available for filing

A social organisation, seeking CSR Funding then it is mandatory to get registered with MCA by filing Form CSR-1. On successful submission of Form CSR-1, a unique CSR Registration Number shall be generated by the system automatically to the applying organization.



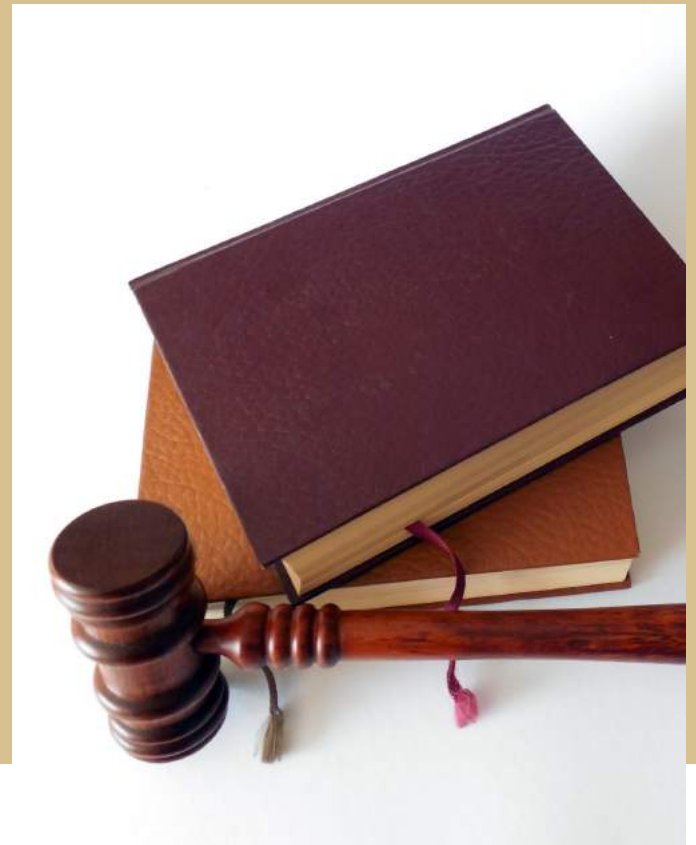


Extension in gap between Board Meetings

Due to the resurgence of COVID-19, the interval of holding Board Meetings has been extended by 60 days. The gap between two consecutive meetings of the Board may extend to 180 days during the two quarters i.e. April'21 to June'21 and July'21 to September'21 instead of 120 days as required in the Companies Act, 2013.

Exemption to SMC vis-à-vis Accounting Standards

An existing company which was not a SMC (Small and Medium sized Companies) and subsequently becomes a SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to a SMC until the Company remains a SMC for two consecutive accounting periods.



TAXATION

Functionality to check misuse of PAN

To address the complaint related to misuse of PAN for obtaining GST registration, a functionality to register such complaints on GST Portal has been introduced. It will check the misuses, control the frauds and help officers in enquiry and cancellation of such registration.



The Statement of Deduction of Tax

The SC had been approached by the Delhi govt. after the HC quashed Directorate of Education (DoE) orders that the Statement of Deduction of Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 31 A of the IT Rules, 1962 as extended to 30th June, 2021 may be furnished on or before 15th July, 2021.





Allahabad HC says govt. permission not necessary to prosecute a public servant

The division bench clarified that the protection of section 197 of CrPC is available to the public servant only for the offences committed while performing the duty. The permission for prosecution is not necessary if the offence is committed other than on duty.

SC refuses to stay Delhi HC order permitting Delhi private schools to collect development charges

The SC had been approached by the Delhi government after the High Court quashed Directorate of Education (DoE) orders issued in April and August last year.



FROM THE ARCHIVES

J.C. Decaux Advertising India Pvt. Ltd.
versus
Commissioner of Trade & Taxes, Delhi

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

Date of order: 20.05.2016

DISALLOWANCE OF INPUT TAX CREDIT – INPUT TAX CREDIT CLAIMED ON THE BASIS OF RETAIL INVOICES-VATO ISSUED NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND ISSUED NOTICE OF ASSESSMENT OF PENALTY.

APPELLANT RIGHTLY CLAIMED ITC ON FULFILLMENT OF SUBSTANTIAL CONDITIONS AS PROVIDED UNDER SECTION 9(1) OF DVAT Act, 2004 – ITC WAS DENIED ON MERE TECHNICAL GROUND THAT INSTEAD OF ISSUING TAX INVOICE AND TIN NO. WAS NOT MENTIONED ON THE RETAIL INVOICES - DIRECTION ISSUED TO REVENUE TO GIVE BENEFIT OF ITC.

FACTS OF THE CASE:

JC Decaux Advertising India Pvt. Ltd. (hereinafter referred to as (JCD/the appellant/ the company) was a company incorporated under the provisions of the Companies Act, 1956, in the year 2005. The Company was registered dealer under the Delhi Value Added Tax Act vide TIN No.07610329500.

During the Financial Year 2008-09, the appellant in the course of its business purchased printed banners from Jumbo Digital Prints (JDP) for re-selling the same to its customers. In this regard, JDP charged and collected VAT on the sale of printed banners and issued retail invoices to the appellant. Consequentially, appellant availed the VAT credit on the basis of the retail invoices issued by the JDP and utilized the same to discharge its output VAT liability on sale of printed banners to its customers. Later, an assessment order dated December 11, 2009 was passed by the VATO (SZ) for the financial year 2008-09.

In the assessment order, VATO observed that the company erroneously claimed Input Tax Credit of Rs. 3,61,737/- in all four quarters of 2008-09 on the basis of retail invoices instead of tax invoices. Further it had also been mentioned in the assessment order that the TIN NO. of the company was not mentioned on the said retail invoices. Consequentially, the VATO (SZ) disallowed input tax credit pertaining to all such invoices and levied applicable interest and penalty of equivalent amount on such tax credit. Against the said assessment order appellant filed objections before the Additional Commissioner (Zone V), Objection Hearing Authority who vide order dated 19.11.2012 upheld the assessment order of the VATO (SZ) and the demand of tax, interest and penalty were confirmed.

CASES REFERRED:

- Vodafone Essar Limited vs. Dispute Resolution Panel II (2011) 96 Taxman 423
- C. Damani & Co. vs. Commissioner of Trade & Taxes, Delhi (48 DSTC J-349)

HELD:

Appellant rightly claimed ITC on fulfilment of the substantial conditions as provided under section 9(1) of the DVAT Act, hence , there was no default on the part of the appellant in payment of taxes and as there was no default in payment of taxes, interest and penalty were wrongly levied by VATO vide assessment orders, so they were not sustainable as per the provisions of law and liable to be set aside.

Revenue in support of his argument referred to cases of Mahadevi Stores Vs. Additional Commissioner of Commercial Taxes Zone-1, Gandhi Nagar, Bangalore & Ors.

Perusal of judgment of Hon'ble Karnataka High Court showed that it was not applicable to the facts of the present case so no benefit could be given to the revenue on the basis of this judgment because facts of this case were entirely different from the present appeals. Tribunal was in considered view that impugned orders dated 19.11.2012 Passed by OHA were liable to be set aside and the appeals were allowed accordingly because ITC during the financial year 2008-09 was wrongly denied to the appellant on mere technical ground, that instead of issuing tax invoice the selling dealer issued to the appellant retail invoice and TIN No. was not mentioned on the retail invoice which was in Tribunal view was only a technical error hence VATO was directed to give benefit of ITC to the appellant as per law in the light of these orders.

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