

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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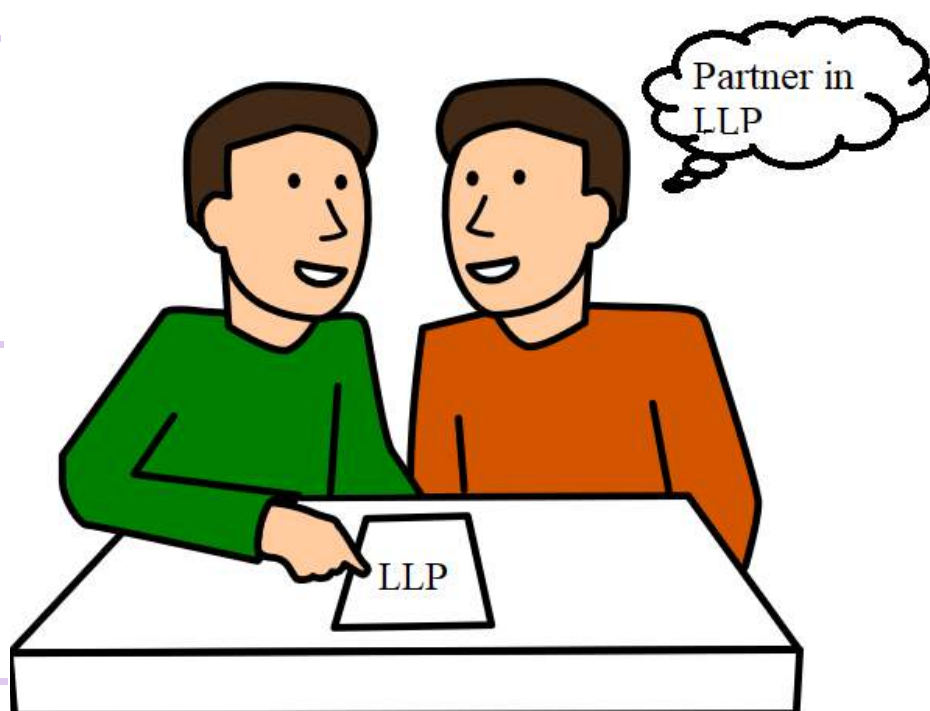
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LLP Registration in India

The concept of the Limited Liability Partnership (LLP) was introduced in India in 2008. Limited Liability Partnership (LLP) has become a preferred form of organization among entrepreneurs as it incorporates the benefits of both partnership firm and company into a single form of organisation. Minimum two partners are required to incorporate an LLP. However, there is no upper limit on the maximum number of partners.

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CORPORATE AFFAIRS



New Way of e-filing for LLPs

The Ministry of Corporate Affairs is launching a new way of e-filing for LLPs on MCA21 portal. All LLP filings going forward will be web based. This application is proposed to be launched on 06th Mar 2022 at 12:00 AM. LLP e-Filings on MCA21 portal will be disabled from 25th Feb 2022 12:00 AM. All stakeholders are advised to ensure that there are no SRNs in pending payment status.

No IPC Provision For Vicarious Liability On Company Directors

While adjudicating upon a batch of applications filed by Directors of the India Today TV news channel, the Kerala High Court ruled that Directors of a company cannot be implicated without specific averments indicating their role in the offence, particular because no provision in the Indian Penal Code provides for vicarious liability upon them.



TAXATION



Implementation of Rule-59(6) under GST

This means that from 1st January 2022 onwards, if a monthly filer has not filed the GSTR-3B for the preceding month, then such taxpayer will not be allowed to file the GSTR-1 for the subsequent month, till the GSTR-3B for the preceding month is filed.

Mandatory Aadhaar authentication for registered person

It is mandatory for the registered person to undergo Aadhaar authentication for the below purposes:

- Filing of application for revocation of cancellation of registration.
- Filing of refund application in FORM RFD-01.
- Refund of the IGST paid on goods exported out of India.





Deployment of Interest Calculator in GSTR-3B

The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B. This functionality will inform the taxpayers about the manner of system computed interest for each tax-head and hence will assist the taxpayers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.

CBIC Guidelines for Recovery Proceedings in GST

Any amount of self-assessed tax in accordance with the return furnished under sec 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under sec. 37, but not included in the return furnished under sec. 39.



LEGAL

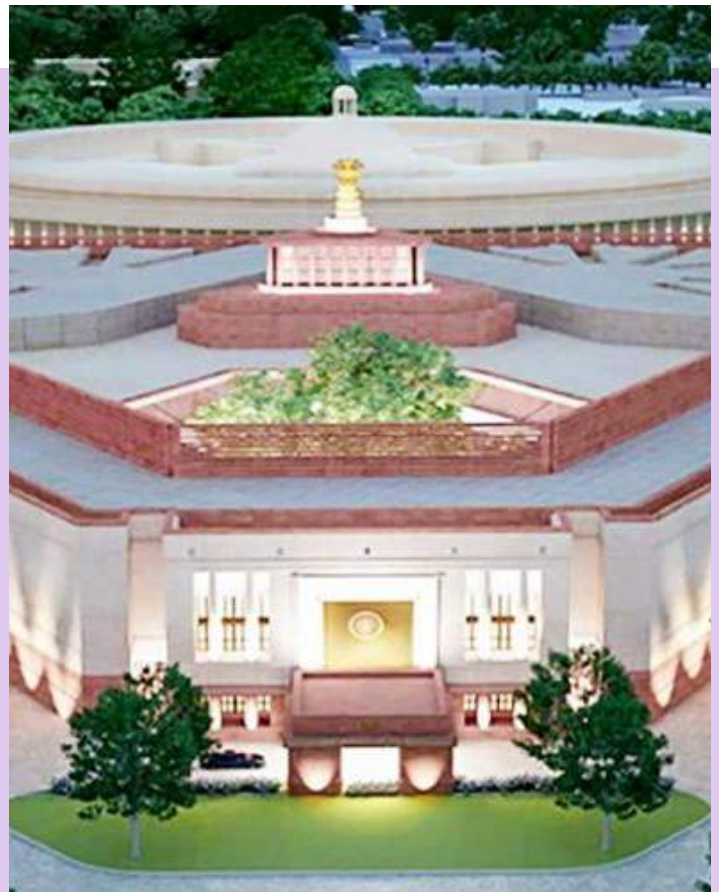


30 Days' Notice not a mandate under Special Marriage Act

The Allahabad High Court held that couples planning to marry under the Special Marriage Act might choose not to issue a 30-day notice before registering their marriage. Acting on its own terms, it is a violation of fundamental rights of liberty and privacy. It's an invasion of their privacy to post a notice that includes the names and contact information of the wedding couple..

Supreme Court's Green Signal to Central Vista Project

The Supreme Court ruled in favour of the Central Vista Project on January 5, 2020. The Lutyen's Garden in New Delhi will be renovated as part of the Central Vista project. It includes the Rashtrapati Bhavan, Parliament, India Gate, and North and South Blocks of the Indian government.





LLP was launched in India via the “Limited Liability Partnership Act, 2008”. The most important benefit of a “Limited Liability Partnership” is that, one partner is not liable for another partner’s misconduct or negligence. LLP is favoured by Professionals, Micro and Small businesses which are family-owned or closely-held. LLP offers the benefit of “limited liability” to it’s owners and requires very minimal maintenance.

WHY SHOULD YOU CHOOSE LLP?

- It has a separate legal entity just like companies.
- No partner will be responsible for any kind of misconduct by the other partner.
- No requirement of minimum capital contribution.
- Less compliance and regulations.

The minimum number of partners to incorporate an LLP is 2. There is no upper limit on the maximum number of partners. Among the partners, there should be a minimum of two designated partners who shall be individuals, and at least one of them should be resident in India.

The rights and duties of designated partners are governed by the LLP agreement. They are directly responsible for the compliance of all the provisions of the LLP Act 2008 and provisions specified in the LLP agreement.

If you want to start your business with a Limited Liability Partnership, then you must get it registered under the Limited liability Partnership Act, 2008.



PROCESS/STEPS TO GET LLP REGISTERED

- Step 1 : Name Approval
- Step 2 : Obtain Digital Signature Certificate (DSC)
- Step 3 : Obtain DIN/DPIN (Director/Designated Partner Identification Number)
- Step 4 : Incorporation of LLP
- Step 5 : File Limited Liability Partnership (LLP) Agreement

WHAT IS THE DIFFERENCE BETWEEN LLP AND A PARTNERSHIP FIRM?

An LLP must be registered under the LLP Act to operate its business. However, the registration of a partnership firm is voluntary under the Partnership Act, 1932. The liability of each partner is limited to the contribution made by the partner in an LLP. But in a partnership firm, all partners are personally liable for the loss/debts of the firm.

The LLP has a separate legal entity, i.e. it can buy property, sue and be sued in its name. Partnership firms cannot buy a property or sue anyone in the partnership firm's name. It has to be in the name of the authorised partner as the partnership firm does not have a separate legal entity.

TIME INVOLVED FOR LLP REGISTRATION

LLP formation starting from obtaining DSC to Filing Form 3 takes approximately 10 days, subject to departmental approval and revert from the respective department.

FROM THE ARCHIVES

M/s. Spectrum Light & Electricals & Ors
versus
Commissioner of Trade & Taxes, Delhi

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

Date of order: 28.07.2014

INPUT TAX CREDIT- POST SALE DISCOUNT – INCENTIVES GIVEN BY SELLING DEALERS TO APPELLANTS THROUGH CREDIT NOTES ON THEIR TARGET ACHIEVED – SELLING DEALERS PAID FULL TAX AND DID NOT CLAIM REFUND AND ISSUED CERTIFICATES TO APPELLANTS – THE APPELLANTS CLAIMED ITC ON THE BASIS OF TAX INVOICES ISSUED BY SELLING DEALERS - CREDIT NOTES DID NOT REFLECT TAX ELEMENT AND WERE NOT IN THE TERM OF SECTION 51 OF THE ACT – REVENUE REVERSED INPUT TAX CREDIT OF APPELLANTS AND CARRIED OUT DEFAULT ASSESSMENT OF TAX & INTEREST AND ASLO ISSUED NOTICE OF ASSESSMENT OF PENALTY.

THE APPELLANT FILED APPEALS BEFORE VAT TRIBUNAL AND ARGUED THAT THEY WERE NOT REQUIRED TO REVERSE ITC UNDER SECTION 10(1) - FURTHER ARGUED THAT SELLING DEALERS DID NOT REVERSE THEIR OUTPUT TAX AND SECTION 10(5) WAS NOT APPLICABLE AS IT WAS MADE APPLICABLE W.E.F. 01.04.2010 – REVENUE ARGUED THAT POST SALE DISCOUNT WERE NOT PROVIDED IN ACT – FURTHER ARGUED THAT CREDIT NOTES WERE MEANT FOR REMOVAL OF ERROR OR MISTAKE AND NOT TO BE USED AS A TOOL TO REDUCE OR EVADE THE TAX – TRANSACTIONS WERE COVERED UNDER SECTION 40A (2) (B)– TRIBUNAL HELD THAT NATURE OF TRANSACTIONS WERE COVERED U/S 40A OF THE DVAT ACT – THE RELEVANCY OF THE PROVISIONS OF SECTION 10 (5) COULD NOT BE ALLOWED TO BE DILUTED BECAUSE LEGISLATURE HAD NOT SPECIFICALLY MADE RETROSPECTIVE OPERATION OF THE PROVISIONS OF SECTION 10 (5) IN NATURE. THE APPEALS FOR TAX AND INTEREST DISMISSED BUT PENALTY REMITTED TO 50%.

BRIEF FACTS OF THE CASE:

Appellants were registered dealers in different Wards of the Trade & Taxes Department having different Registration Numbers. The assessments of the appellants were carried out in each case under the Delhi Value Added Tax Act, 2004 for different assessment years/periods of assessment by the VATO's and the additional demands were created against the appellants in respect of tax, interest and penalty for the assessment year/period as per tax period of the appellants. The demands were created by disallowing adjustment of the Input Tax Credit (ITC) claimed by the appellant and reversed the ITC on credit note received by the appellants, which was stated to be in the nature of incentives received from suppliers. The demands were challenged before the Objection Hearing Authorities who rejected the objections and upheld the orders of assessment of tax, interest and penalty. Aggrieved by the impugned orders passed by OHA's the appellants filed the appeals before VAT Tribunal.

HELD:

The arrangement of issue of credit note was nothing but a plan or understanding in collusion with the partner in transaction which could easily be termed as tax advantage in term of clause (b) of Section 40A, clause (2) which has in effect reduce the tax liability of the purchasing dealer to pay tax and also the reduction in liability of the appellant to collect more tax for adjustment with the input tax claim. Such an arrangement was a case of tax advantage which increased the entitlement of the appellant to claim input tax credit or carry forward to his advantage or refund as well as reduction in the sale price or purchase price receivable or payable by the dealers like appellant.

The Tribunal was of the considered view that the appeals filed by the appellants were devoid of any merit and substance as the relevancy of section 10(5) to the assessment prior to the period of its incorporation in the DVAT Act w.e.f. 01.04.2010 could not be ruled out in the peculiar facts and nature of the transactions which were covered otherwise u/s 40A of the DVAT Act. The relevancy of the provisions of Section 10(5) could not be allowed to be diluted because Legislature has not specifically made retrospective operation of the provisions of Section 10(5) in nature as also it did not require to be it had got explanatory and clarificatory effect considering the related provisions of DVAT Act.

The tribunal further held that the appeals failed and the orders impugned before the Tribunal which upheld the default assessment of tax & interest, which was to be counted in term of section 42 of the DVAT Act r/w the observations of Their Lordships in the case of CST vs. STAT (2001) 10 STT 53 that if returns filed by the appellant were not true and correct to his knowledge and belief, the dealer was guilty of wilful omissions and as such interest was chargeable with effect from the date of assessment u/s 42 clause 2 of the DVAT Act. However, in respect of penalty, the tribunal was of the considered view that challenge made to the same on account of the violation of natural justice was not at all tenable in view of the judgement of the Hon'ble High Court of Delhi in the case of Sales Tax Bar Association (Regd.) Vs. Govt. of NCT of Delhi dated 7.12.2012 passed in Writ Petition (C) No.4236/12 wherein constitutionality of provisions containing section 32 & 33 was upheld with a view that “the fact that a statute did not provide for a pre-decisional hearing was not contrary to the rules of natural justice because the decision did not ipso facto takes away any right and the post-decisional hearing satisfies the principles of natural justice”.

It being so, the facts and circumstances of the case could not be over looked which inclined the tribunal to invoke Second Proviso to Section 86 (2) which provides that “the penalty imposed under this section can be remitted where a person was able to prove existence of a reasonable cause for the act or omission giving rise to penalty during objection proceedings under section 74 of this Act” penalties imposed u/s 86 (10) Or 86 (12) in the respective appeals was remitted to 50% of the penalty because of question of law and facts involved and there was no final decision on the point in issue which has been settled in a better perspective by Their Lordship of the Hon'ble Madras High Court in the case of *Jayam & Co. vs. Assistant Commissioner (CT) Main Amaindakarai Assessment Circle, Chennai and Another.*



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