

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

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## **Registering a Partnership firm in India**

A Partnership is one of the most important forms of a business organization. A partnership firm is where two or more persons come together to form a business and divide the profits in an agreed ratio. The partnership business includes any kind of trade, occupation and profession. A partnership firm is easy to form with fewer compliances as compared to companies.

*Read more on page 5*

# CORPORATE AFFAIRS



## Change in control of Sponsor/Manager of AIF

To streamline the process providing approval to the proposed change in control of the Sponsor and/or Manager of the AIF involving scheme of arrangement which needs sanction of National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013, above has been decided.

The provisions of this circular shall be applicable to all the applications for change in control of sponsor and/or manager of the AIF for which the scheme(s) of arrangement is filed with NCLT on or after April 01, 2022

## Change in UPI i.e., Unified Payment Interface Limits

NPCI vide circular reference no. NPCI/UPI/OC No. 127/ 2021-22 dated December 09, 2021, inter alia, has enhanced the per transaction limit in UPI from Rs. 2 lakhs to Rs. 5 lakhs for UPI based Application Supported by Blocked Amount (ASBA) Initial Public Offer (IPO).

“Mentioning UPI ID in order to block the funds. The investor may utilize the UPI mechanism to block the funds for application value up to Rs. 5 lakh per application.”

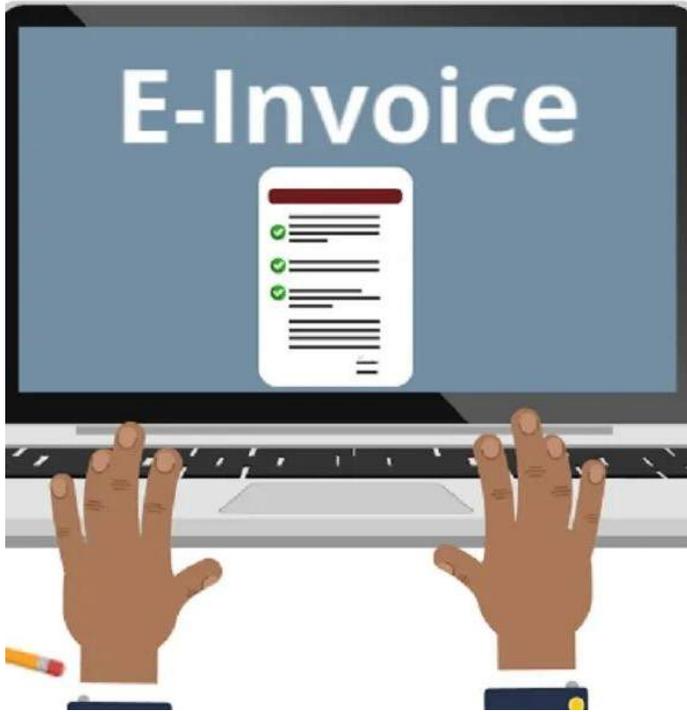


# TAXATION

## Auto-population of e-invoice details into GSTR-1

Generation of e-invoice is mandatory for certain class of taxpayers, as notified by the Government.

These taxpayers are required to prepare & issue their e-invoices by reporting their invoice data in the prescribed format and reporting the same on the Invoice Registration Portal (IRP). Invoices reported successfully on the IRP are given a unique Invoice Reference Number (IRN). The documents (invoices, debit notes, credit notes) reported on the IRP are then transmitted electronically to the GST system and are auto-populated in the respective tables of GSTR-1.



## Facility to file Form CMP-02 to opt into the composition scheme

All those persons who wish to opt into the compositions scheme for the supply of goods or services or both for the upcoming financial year 2022-23 must file Form CMP-02 on the GST portal by 31st March 2022. The GST portal has opened up the facility to file this form, and eligible persons must file the form at the earliest.





## UPSC Exams: Additional Attempts in Mains Not Possible

On a petition by three civil services aspirants, who missed out the papers of the UPSC Civil Services Main Examination due to COVID-19 seeking additional attempt to appear in the exam, Additional Solicitor General Aishwarya Bhati for the Union of India on Friday informed the Supreme Court that on consideration, additional attempts are found not to be possible and that an affidavit stating that position has been filed.

## Hijab Not Essential Religious Practice in Islam': Karnataka High Court

The Karnataka high court dismissed all the petitions filed by Muslim girls seeking permission to wear hijab in educational institutions. While delivering the final verdict, the Karnataka HC said that wearing hijab by Muslim women doesn't form an essential religious practice under the Islamic faith.





## **REGISTER A PARTNERSHIP FIRM IN INDIA.**

Partnership firm registration is required when two or more parties sign a formal agreement to manage and operate a business and share both the profits and losses. Registering a Partnership is the right choice for small enterprises as the formation is straightforward and there are minimal regulatory compliances.

### **FOLLOW THESE SIMPLE STEPS TO REGISTER FOR A PARTNERSHIP FIRM UNDER THE ACT:**

#### **Step 1: Choose name for a partnership**

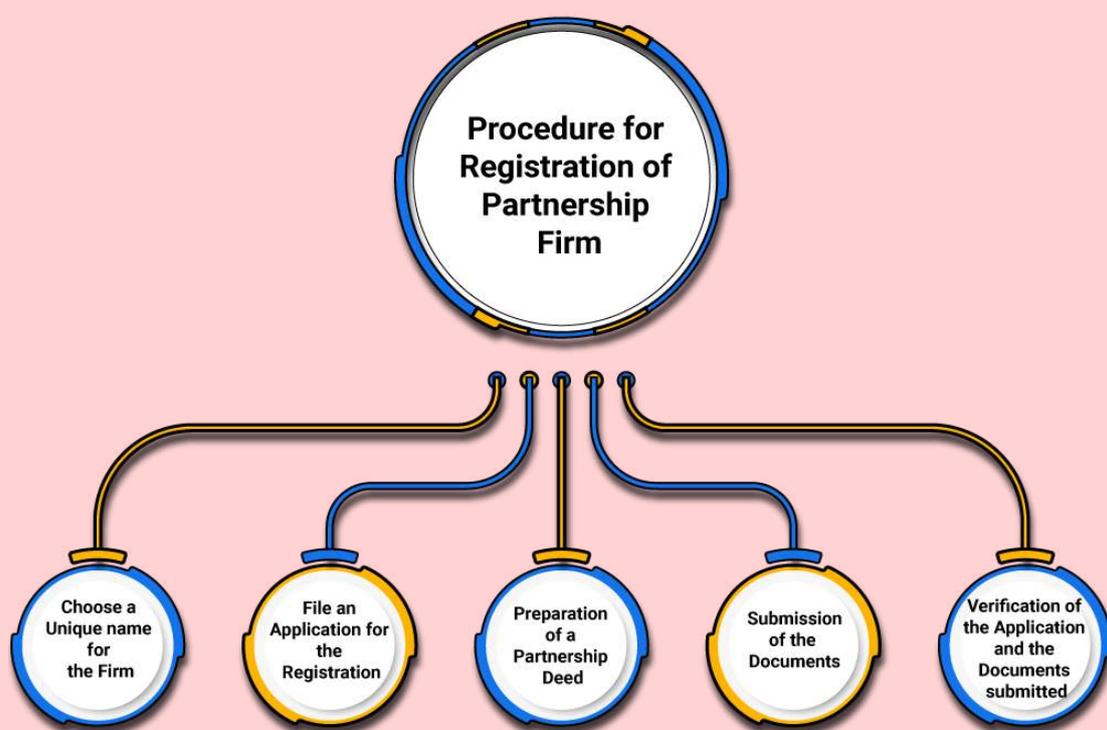
A firm should select a name that does not resemble the name or color-able imitation of the entity that is already public.

#### **Step 2: Draft a Partnership Deed**

The partnership deed is the most important document for the registration of the company as it provides the registrar.

#### **Step 3: Apply for a PAN Card in the Partnership Name**

A firm, irrespective of registration under the Act, has to apply for a Permanent Account Number to the Income Tax Department.



#### **Step 4: File a Registration Application**

The registration application requires a firm to provide information regarding the name of the firm, the nature of the business carried out, address of the business, names and addresses of all the partners, date of commencement of business. This form is further taken to the registrar in the region of the firm's main office.

#### **Step 5: Submit the Documents**

The following documents are to be submitted to the Registrar as a part of the registration process:

1. Application for registration of partnership (Form 1) with an INR 3 stamp on it.
2. A certified original copy of partnership deed
3. Specimen of Affidavit
4. PAN Card in the name of partnership firm
5. Proof of address of the partnership firm, ownership deed, lease and rent agreements, etc. are common acceptable documents
6. PAN Cards and address proofs of all the partners

#### **Step 6: Pay the Fees & Stamp duties**

A registration fee and a stamp duty need to be paid at the time of the submission of the documents with the Registrar. The fees vary across states.

# PARTNERS



## **Step 7: Finalize the Deed**

To legalize the Deed, it should be provided to each partner in a written form on a stamp paper. One stamp paper deed should be duly signed by all the partners in front of the notary. The value of the stamp varies from state-to-state. The signed copy is thereafter submitted to the Registrar during the registration process.

## **Step 8: Certification from the Registrar**

The registrar, after thorough examination of the documents, will issue a registration certificate.

The firm will be thus on record in the Register of Firms. On the date of this entry, the firm shall be deemed to be registered. The partnership firm is required to add '(Registered)' after its name from the date of registration.

# FROM THE ARCHIVES

***M/s. Ish Kumar & Company***  
***versus***  
***Commissioner of Trade & Taxes, Delhi***

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

*Date of order: 24.08.2016*

NOTICE OF ASSESSMENT OF PENALTY U/S 86(14) OF DVAT ACT ,2004 FOR NON-FILING OF DS-2- SHOW CAUSE NOTICE ISSUED MANUALLY – VATO ENFORCEMENT REPORTED WRONG VEHICLE NUMBER WHEREAS VEHICLE NUMBER MENTIONED IN DS-2 WAS CORRECT – THE APPELLANT FILED DS-2 ONLINE WITHIN TIME PRESCRIBED – VATO DID NOT CONSIDER THAT DS-2 WAS ALREADY FILED – MAXIMUM PENALTY IMPOSED U/S 86 (14) FOR Rs,50,000/-. THE TRIBUNAL HELD THAT PENALTY IMPOSED U/S 86(14) WAS AGAINST THE PROVISION OF LAW – FURTHER HELD THAT PENALTY WAS TO BE LEVIABLE U/S 86(9) FOR VIOLATION OF NOTIFICATION ISSUED BY THE COMMISSIONER OF VAT U/S 70 OF DVAT ACT EVEN FOR NON-FILING OR LATE FILING OF DS-2 THE APPELLANT HAD ALREADY FILED DS-2 WITHIN TIME AND THERE WAS NO VIOLATION OF SECTION 86(9) OF DVAT ACT- PENALTY DELETED.

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

THE APPELLANT WAS A REGISTERED DEALER OF WARD-63 HAVING TIN NO.07110240729.A PENALTY OF RS.50,000/- WAS IMPOSED BY VATO VIDE ORDER DATED 11.01.2016 U/S 86 (14) OF THE DVAT ACT FOR ALLEGEDLY NON-FILING OF DS-2 . EARLIER TO IMPOSING PENALTY , VATO HAD ISSUED SHOW CAUSE NOTICE DATED 02.01.2016 MANUALLY AND THEREAFTER PENALTY OF RS.50,000/- WAS IMPOSED WITHOUT VERIFYING THE FACT THAT DS-2 HAD ALREADY BEEN SUBMITTED ON 30.1.2015, MUCH BEFORE THE DATE OF ENTERING GOODS VEHICLE IN DELHI ON 02.01.2016. THAT THE VATO FAILED TO APPRECIATE THE LEGAL POSITION AND FACTS OF THE CASE THAT PENALTY ORDER PASSED BY VATO WAS NOT AS PER LAW.

AGAINST THE PENALTY ORDER OF VATO, APPELLANT FILED OBJECTIONS BEFORE OHA AND PRAYED THAT PENALTY ORDER BE SET ASIDE AS APPELLANT HAD ALREADY SUBMITTED DS-2 BEFORE THE GOODS ENTERED IN DELHI. IT WAS ALSO SUBMITTED THAT THERE WAS NO LOSS OF REVENUE TO THE DEPARTMENT DUE TO NON-FILING OF DS-2 BY THE APPELLANT BECAUSE DS-2 WAS JUST INFORMATIVE IN NATURE.

IT WAS ALSO SUBMITTED THAT VATO HAD NO AUTHORITY TO IMPOSE PENALTY U/S 86 (14) OF THE DVAT ACT AND NO DEFAULT ASSESSMENT U/S 32 HAD BEEN PASSED BEFORE THE ORDER OF PENALTY U/S 33 OF DVAT ACT. EVEN THEN, OHA REJECTED THE OBJECTIONS ON THE GROUND THAT NUMBER OF VEHICLE MENTIONED IN DS-2 DATED 30.12.2015 SUBMITTED BY THE APPELLANT.

AGAINST THE IMPUGNED ORDER DATED 08.03.2016 PASSED BY OHA, THE PRESENT APPEAL HAD BEEN FILED ON VARIOUS GROUNDS.

**HELD:**

IT WAS CLEAR FROM THE PERUSAL OF ABOVE PROVISION THAT NOTIFICATION U/S 70 WAS ISSUED ACCORDING TO WHICH DEALERS WERE SUPPOSED TO FILE DS-2 REGARDING VEHICLE ENTERING DELHI FROM 10.09.2015. IT WAS ALSO MENTIONED IN THE SHOW CAUSE NOTICE THAT DEPARTMENT OF TRADE AND TAXES GOVT. OF NCT OF DELHI VIDE NOTIFICATION DATED 10.09.2015 HAD NOTIFIED AND MADE IT MANDATORY TO FILE FORM SUGAM WITH EFFECT FROM 15.09.2015 IN RESPECT OF GOODS PURCHASED /RECEIVED AS STOCK TRANSFER RECEIVED ON CONSIGNMENT AGREEMENT FROM OUTSIDE DELHI BY THE REGISTERED DEALERS.

EVEN THEN PENALTY WAS IMPOSED U/S 86 (14) OF THE DVAT ACT, WHICH WAS AGAINST THE PROVISIONS OF LAW. APART FROM THIS , THERE WAS NO VIOLATION OF SECTION 86(9) OF THE DVAT ACT BECAUSE DS-2 WAS ALREADY FILED ON 30.12.2015 BY THE APPELLANT.

APPELLANT HAD ALSO ASSAILED THE IMPUGNED ORDER ON THE GROUND THAT AS NO ASSESSMENT OF TAX U/S 32 WAS MADE, PENALTY WAS WRONGLY IMPOSED AND IN SUPPORT OF THIS ARGUMENT HE REFERRED TO THE ORDERS PASSED BY THIS TRIBUNAL IN M/S GARG ELECTRONICS VS. COMMISSIONER OF TRADE AND TAXES DECIDED ON 09.04.2013 AND THE DECISION OF HON'BLE HIGH COURT OF DELHI IN COMMISSIONER , VAT VS A. K. WOOLEN INDUSTRIES DECIDED ON 19.02.2015.

CONSIDERED VIEW OF TRIBUNAL WAS ABOUT RATIO OF THE ABOVE CASES DID NOT APPLY TO THE FACTS OF THE PRESENT CASE BECAUSE IT WAS NOT NECESSARY THAT BEFORE IMPOSING PENALTY, DEFAULT ASSESSMENT OF TAX SHOULD BE FRAMED IN EVERY CASE .

THERE WERE CERTAIN SECTIONS UNDER THE DVAT ACT ON VIOLATION OF WHICH ONLY PENALTY MAY BE IMPOSED AND THE ONE CLEAR EXAMPLE OF THIS CLASS WAS VIOLATION OF NOTIFICATION ISSUED BY THE COMMISSIONER U/S 70 OF DVAT ACT. IN THIS CASE PENALTY U/S 86(9) COULD ONLY BE IMPOSED . IT WAS NOT NECESSARY THAT ORDER OF DEFAULT ASSESSMENT OF TAX ALSO BE FRAMED BECAUSE THERE WAS NO DEFAULT BY APPELLANT IN PAYMENT OF TAX.

ORDER BY OHA HEREBY SET ASIDE AND THE APPEAL ALLOWED.



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