

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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Income Tax Return or IT Return

An Income tax return (ITR) is a form used to file information about your income and tax to the Income Tax Department. The tax liability of a taxpayer is calculated based on his or her income. In case the return shows that excess tax has been paid during a year, then the individual will be eligible to receive a income tax refund from the Income Tax Department.

Read more on page 6

CORPORATE AFFAIRS



Clarification on Certificate of Incorporation by MCA

Stakeholders please note that issue of COI is a fully automated process. For any help or assistance on COI or any other e-forms, please reach out either to helpdesk or write to MCA. Beware of any third person making a call for extending any help

Clarification on passing ordinary resolution by the companies under Companies Act 2013

It has been decided to allow companies to conduct their EGM through video conference (VC) or other audio visual modes (OAVM) or transact items through postal ballot in accordance with framework provided in the ministry's general circular upto 31st December 2022.



TAXATION

GSTR-2B

Availing ITC as per law and GSTR2B

For some of the taxpayers, there was an issue in relation to duplicate entries in GSTR2B. In this regard, taxpayers while filing GSTR3B are advised to check and ensure that the value of ITC they are availing is correct as per the law. They may check the correct ITC value from download of Auto drafted ITC statement GSTR2B or pdf of System Generated GSTR3B or on the ITC observed on the mouse hover of Table 4 in GSTR3B, particularly in any such case where there is any difference observed between the correct figures available.

Addition of 6% tax rate in GSTR-1 online

It may be noted that 6% tax rate has been added in the item details section of all the tables of form GSTR-1, except HSN table 12. In case your outward supplies attract 6% tax rate, you are required to upload the details against 6% tax rate in the item details section.

In respect to HSN table 12 of form GSTR-1, 6% tax rate shall be added shortly. Meanwhile, you may report the HSN details of supplies attracting 6% tax rate under tax rate 5% by updating the values/tax amounts as per the actual supplies made by you.

NEW 6%
GST RATE IN
TABLE OF GSTR 1



47th meeting of GST Council

- Extension of compensation to states beyond June, 2022
- Fitment Committee recommendations on GST rates
- Rationalization of inverted duty structure on certain goods
- Composition scheme for online sellers (e-commerce)
- Registration norms for small e-commerce businesses
- Review of National Anti-Profiteering Authority
- Rationalization of Input Tax Credit (ITC) norms
- Allowing amendments to GSTR-3B return
- Issuance of SCNs by both-center and states

Module wise new functionalities deployed on the GST Portal for taxpayers

Various new functionalities are implemented on the GST Portal, from time to time, for GST stakeholders. These functionalities pertain to different modules such as Registration, Returns, Advance Ruling, Payment, Refund and other miscellaneous topics. Various webinars are also conducted as well informational videos prepared on these functionalities and posted on GSTNs dedicated YouTube channel for the benefit of the stakeholders.





Reasons For Handcuffing Accused Must Be Recorded in Case Diary

The Karnataka High Court has held that an accused who is arrested can normally not be handcuffed. It is only under "extreme circumstances", for instance where there is possibility of the accused/ under trial prisoner escaping custody or causing harm to himself or causing harm to others, that handcuffing of an accused can be resorted to.

A single judge bench of Justice Suraj Govindaraj sitting at Dharwad said, "If there is a violation by the Arresting officer in putting handcuffs on the petitioner, the petitioner would be eligible for compensation."



Hindu Adoptions & Maintenance Act Does Not Envisage Agreement To Adopt 'Unborn Child'

The Punjab and Haryana High Court while dealing with a case of adoption of an unborn child, held that no such provision as to give effect to adoption of an unborn child is envisaged under the Hindu Adoptions and Maintenance Act, 1956.

The bench comprising Justice M.S. Ramachandra Rao was dealing with a habeas corpus petition by the natural mother of a new born baby boy to get him in adoption way before he was born.



WHAT IS ITR FILING?

ITR filing is the process by which taxpayer has to file a report of his total income earned on financial year. Through Income Tax Department official portal individual can complete their filing of returns. It has notified with seven various forms - ITR 1, ITR 2, ITR 3, ITR 4, ITR 5, ITR 6 and ITR 7

Which ITR form to file?

ITR Form Name Applicability:

- ITR-1 or Sahaj The form must be used by individuals who make an annual income of less than Rs.50 lakh via pension or salary and from only one house property.
- ITR-2 The form must be used by shareholders of private companies, Directors of Companies, Non-Resident Indians (NRIs), or individuals who make an income via capital gains, from two or more house properties, and from foreign sources. However, the income of the individual must be more than Rs.50 lakh.
- ITR-3 The form must be used by individuals who run a proprietorship or are professionals in India.
- ITR-4 or Sugam Individuals who are under the presumptive taxation scheme must use this form. In order for individuals to join the scheme, they must earn less than Rs.50 lakh from professional income or less than Rs.2 crore from business income.

Efiling Income Tax Process



- ITR-5 In order for association and body of individuals, Limited Liability Partnerships (LLPs), and partnership firms to report their income and tax computation, this form must be used.
- ITR-6 Companies that are registered in India must use this form.
- ITR-7 In case entities are claiming an exemption as universities or colleges, scientific research institutions, political parties, and religious or charitable trusts, this form must be used.

BENEFITS OF FILING ITR :

- Proof of income & Financial Record
- Quick Visa Processing
- Easy loan approval
- Claim tax refunds
- High Life insurance cover
- Set-off and carry forward losses
- Avoid Penalties

The Due Date for Filing ITR for Assessment Year 2022-23 :

For the Assessment Year 2022-23, the due date for return filing as per section 139(1) is 31st July 2022, unless extended by the government.

Many taxpayers believe that they have no further obligation if they have paid their taxes. However, missing the ITR filing deadline has legal consequences. Effective from the financial year 2017-18, a late filing fee is applicable for filing returns after the due date.



WHAT HAPPENS IF INDIVIDUALS FAIL TO FILE THEIR ITRS?

1. Penalty
2. Reduced Time for Updating Your Income Tax Returns
3. Interest on the Tax Amount
4. No Carry Forward of Losses
5. Delay in the Method of Return of Income

FROM THE ARCHIVES

M/s. Indo Arya Central Transport Ltd.
versus
Commissioner of Trade & Taxes, Delhi

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

Date of order: 17.09.2011

DETENTION OF GOODS – NOTICE OF ASSESSMENT OF PENALTY UNDER SECTION 33 READ WITH SECTION 86(19) READ WITH PROVISIO TO SECTION 61(5) OF DVAT ACT – APPELLANT A TRANSPORTER BOOKED GOODS OF CONTAINER CORPORATION OF INDIA LTD. AND SENT THE SAME IN CONTAINER NO. IXNU 223391, IXNU 2230425, IXNU 2221233, IXNU 2229626 AND CXNU 2227817 – THE CONTAINERS WERE DETAINED BY VATO, ENFORCEMENT BRANCH – THE TERMINAL MANAGER CONTAINER CORPORATION OF INDIA LTD. INFORMED THE VATO THAT CONSIGNEE OF THOSE CONTAINERS WAS M/S INDO ARYA TRANSPORT AND THEY WOULD PRODUCE THE PAPERS CONCERNING THOSE CONTAINERS BEFORE THE VAT DEPARTMENT – VATO ASSESSED PENALTY OF RS. 2,48,710/- BEING 3.5 TIME OF THE AMOUNT OF TAX INVOLVED – APPELLANT FILED OBJECTIONS AGAINST THE NOTICE OF ASSESSMENT OF PENALTIES BUT THE OHA REJECTED THE OBJECTIONS – THE APPELLANT FILED APPEALS AGAINST THE ORDERS OF OHA – THE APPELLANT CITED THE JUDGMENT OF THREE JUDGES BENCH OF THE APEX COURT REPORTED AS STATE OF RAJASTHAN AND ANOTHER V/S D.P. METALS (2001) 124 STC 611 (SC) – TRIBUNAL ACCEPTED THE APPEALS AND QUASHED THE ORDERS.

BRIEF FACTS OF THE CASE:

THE APPELLANT WAS ENGAGED IN THE BUSINESS OF TRANSPORTATION OF GOODS. APPELLANT BOOKED THE CONSIGNMENTS OF THE CUSTOMERS FOR TRANSPORTATION IN THE CONTAINERS OF CONTAINER CORPORATION OF INDIA LTD. (IN SHORT 'CONCOR'). APPELLANT BOOKED SOME GOODS AND SENT THE SAME IN THE CONTAINER NO. IXNU 223391, IXNU 2230425, IXNU 2221233, IXNU 2229626 AND CXNU 2227817 OF THE CONCOR.

WHEN THESE CONTAINERS REACHED IN THE PREMISES OF THE CONCOR AT TUGHLAKABAD ON 27.04.06, THESE CONTAINERS WERE DETAINED BY VATO (BORDER DUTY CELL).THE TERMINAL MANAGER CONCOR VIDE HIS LETTER DATED 03.05.06 INFORMED THE VATO THAT THE CONSIGNEE OF THESE CONTAINERS WAS M/S INDO ARYA TRANSPORT AND THEY WOULD PRODUCE THE PAPERS CONCERNING THESE CONTAINERS BEFORE THE VAT DEPARTMENT. THE VATO (BORDER DUTY) ASSESSED PENALTY OF RS.92761/- BEING 3.5 TIMES OF THE AMOUNT OF RS.26,503/- THE AMOUNT OF TAX INVOLVED, U/S 86 (19) OF DELHI VALUE ADDED TAX ACT,2004 (IN SHORT THE ACT) R/W PROVISIO TO SEC. 61(5) OF THE ACT IN RESPECT OF THE GOODS TRANSPORTED IN CONTAINER NO.CXNU2227817 WHICH WAS THE SUBJECT MATTER OF APPEAL NO.228 BEFORE THE TRIBUNAL.

THE VATO (BORDER DUTY) ASSESSED PENALTY OF RS.2,48,710/- BEING 3.5 TIMES OF THE AMOUNT OF TAX INVOLVED, U/S 86(19) OF THE ACT, R/W PROVISIO TO SEC. 61 (5) OF THE ACT, IN RESPECT OF THE GOODS TRANSPORTED IN CONTAINER NOS. IXNU 223391, IXNU 2230425, IXNU 2221233,IXNU 2229626 WHICH WAS THE SUBJECT MATTER OF APPEAL NO.227 BEFORE THE TRIBUNAL.

HELD:

THE APPELLANT HAD RIGHTLY CONTENTED THAT NO PENALTY COULD BE ASSESSED UNDER PROVISIO TO SEC. 61 (5) OF THE ACT AFTER THE GOODS HAD BEEN DETAINED AS THIS PROVISIO CLEARLY PROVIDED THAT THE POWER TO IMPOSE A PENALTY OF 3.5 TIMES THE TAX COULD BE EXERCISED PRIOR TO DETAINING OR IMPOUNDING THE GOODS OR THE GOODS VEHICLE. IT WAS HELD THAT THE PENALTY ASSESSED UNDER PROVISIO TO SEC.61 (5) WAS LIABLE TO BE QUASHED. ACCORDINGLY APPEAL NO.228 STOOD ACCEPTED.

COMING TO THE CONSIDERATION OF APPEAL NO.227, THE APPELLANT SUBMITTED THAT THE DEPARTMENT HAD CONTACTED CONCOR FOR PRODUCTION OF THE DOCUMENTS CONTAINED IN THOSE CONTAINERS AND THE DEPTT. DID NOT CONTACT THE APPELLANT. THE APPELLANT HAD BOOKED THESE GOODS FROM BANGALORE TO DELHI AND THEY HAD PRODUCED ALL THE DOCUMENTS FOR RELEASE OF THE CONTAINERS WHICH WERE ACCEPTED BY THE DEPARTMENT AT THE TIME OF RELEASE BUT DESPITE THAT THE PENALTY IN QUESTION WAS IMPOSED. THE APPELLANT VEHEMENTLY ARGUED THAT SINCE THE DEPARTMENT DID NOT CONTACT THE APPELLANT AND SO NO PENALTY WAS LEVIABLE ON THE APPELLANT.

HE ALSO SUBMITTED THAT SETTLED LAW IS THAT EVEN IF A TRANSPORTER WAS NOT CARRYING THE DOCUMENTS THEN THE TRANSPORTER / OWNER OF THE GOODS HAS TO BE GIVEN AN OPPORTUNITY TO PRODUCE THE DOCUMENTS. THE APPELLANT PRAYED BEFORE THE TRIBUNAL FOR VERIFYING THE FACT FROM THE CONCERNED VATO AS TO WHETHER OR NOT THE APPELLANT HAD PRODUCED THE DOCUMENTS OF THE SEIZED GOODS.

IT WAS ALSO A MATTER OF RECORD THAT THE CONCERNED VATO APPEARED BEFORE THE TRIBUNAL AND CONFIRMED THAT THE APPELLANT HAD PRODUCED THE RELEVANT DOCUMENTS OF SEIZED GOODS IT WAS ALSO A MATTER OF RECORD THAT PHOTOCOPIES OF THOSE DOCUMENTS WERE FILED BY THE APPELLANT.

THE TRIBUNAL CAREFULLY CONSIDERED ABOVE-NOTED SUBMISSIONS OF THE APPELLANT. THE APPEAL WAS AGAINST THE ASSESSMENT OF PENALTY TO THE TUNE OF RS.92,761/- ASSESSED U/S 33 R/W 86 (19) OF THE ACT. SEC. 86(19) READS AS UNDER:-

“WHERE GOODS ARE BEING CARRIED BY A TRANSPORTER WITHOUT THE DOCUMENTS OR WITHOUT PROPER AND GENUINE DOCUMENTS OR WITHOUT BEING PROPERLY ACCOUNTED FOR IN THE DOCUMENTS REFERRED TO IN SUBSECTION (2) OF SECTION 61 OF THIS ACT, THE TRANSPORTER SHALL BE LIABLE TO A PENALTY EQUAL TO THE AMOUNT OF TAX PAYABLE ON SUCH GOODS.”

A CAREFUL PERUSAL OF SEC. 86 (19) REPRODUCED AS ABOVE SHOWED THAT A PENALTY COULD BE ASSESSED UNDER THIS PROVISION WHEN EITHER THE DOCUMENT WERE NOT CARRIED BY TRANSPORTER OR WITHOUT PROPER AND GENUINE DOCUMENTS OR WHEN THE GOODS BEING TRANSPORTED WERE NOT PROPERLY ACCOUNTED FOR IN THE DOCUMENTS. SEC. 86 (19) ENCOMPASSES THREE SITUATIONS IN ITS' FOLD NECESSARY FOR ASSESSMENT OF PENALTY UNDER THIS PROVISION VIZ I) THE TRANSPORTER WAS TRANSPORTING THE GOODS WITHOUT DOCUMENTS ; OR II) TRANSPORTER WAS HAVING THE DOCUMENTS BUT THESE DOCUMENTS WERE NOT PROPER AND GENUINE ; OR III) THE TRANSPORTER FAILED TO ACCOUNT FOR THE TRANSPORTED GOODS IN THE DOCUMENTS. IT WAS NOT THE CASE OF THE RESPONDENT THAT THE DOCUMENTS PRODUCED SUBSEQUENTLYPHOTOCOPY OF WHICH WERE ON RECORD DID NOT PERTAIN TO THE GOODS FOUND CONTAINED IN THE CONTAINERS IN QUESTION.

THE POINT FOR CONSIDERATION WAS AS TO WHETHER WHEN THE APPELLANT HAD PRODUCED THE DOCUMENTS PERTAINING TO SEIZURE OF THE GOODS IN THE CONTAINERS OF CONOR, SUBSEQUENTLY THEN WHETHER THE PENALTY U/S 61 (5) OF THE ACT COULD BE ASSESSED. HERE IT WAS USEFUL TO REFER TO A JUDGMENT OF A THREE JUDGES BENCH OF THE APEX COURT REPORTED AS STATE OF RAJASTHAN AND ANOTHER VS. D.P.METALS: (2001) 124 STC 611 (SC). IN THAT CASE THE DRIVER OF A TRUCK WAS FOUND CARRYING ON GOODS WITHOUT THE DECLARATION FORMS ST- 18A DUE TO WHICH A PENALTY WAS ASSESSED U/S 78(5) OF RAJASTHAN SALES TAX ACT, 1994. IN THAT CASE THEIR LEADERSHIP HAD HELD IN PARA 31 OF THE JUDGEMENT THAT IF BY MISTAKE SOME OF THE DOCUMENTS WERE NOT READILY AVAILABLE AT THE TIME OF CHECKING, PRINCIPLES OF NATURAL JUSTICE REQUIRED SOME OPPORTUNITY BEING GIVEN TO PRODUCE THE SAME. THUS THE PRINCIPLES OF LAW LAID DOWN IN THAT JUDGMENT WAS THAT AN OPPORTUNITY TO PRODUCE THE DOCUMENTS HAD TO BE GRANTED BY THE SALES TAX AUTHORITIES. THAT JUDGEMENT WAS RELIED UPON BY ORISSA HIGH COURT IN A CASE REPORTED AS ASSAM TRANSPORT SERVICE AND OTHERS V.STATE OF ORISSA AND OTHERS: (2008) 14 VST 557. IN THIS CASE BEFORE HON. ORISSA HIGH COURT THE DOCUMENTS PRODUCED SUBSEQUENTLY WERE NOT CONSIDERED ONLY FOR THE REASON THAT THE SAME WERE PRODUCED BY WAY OF AFTERTHOUGHT AND PENALTY, FIVE TIMES THE TAX, WAS IMPOSED. BY RELYING UPON THE JUDGEMENT OF THE APEX COURT IN DP METAL CASE THIS PENALTY WAS QUASHED.

THE PRINCIPLES OF LAW LAID DOWN BY THEIR LORDSHIPS IN DP METAL'S CASE WAS DIRECTLY APPLICABLE TO THE FACTS OF THE PRESENT APPEALS. THUS, WHEN IT WAS NOT DISPUTED THAT APPELLANT HAD PRODUCED THE DOCUMENTS SUBSEQUENTLY THEN, THE CONSIDERED VIEW OF THE TRIBUNAL WAS THAT TRANSPORTED GOODS STOOD ACCOUNTED FOR. THUS NO PENALTY COULD BE ASSESSED UNDER SEC.86 (19) UNDER THESE FACTS AND CIRCUMSTANCES. THE TRIBUNAL ACCORDINGLY QUASHED THIS PENALTY AS WELL. APPEAL NO.227 WAS ALSO ACCEPTED. APPELLANT WAS ENTITLED TO THE REFUND OF THE AMOUNT OF PENALTIES PAID AS PER LAW.

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