

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

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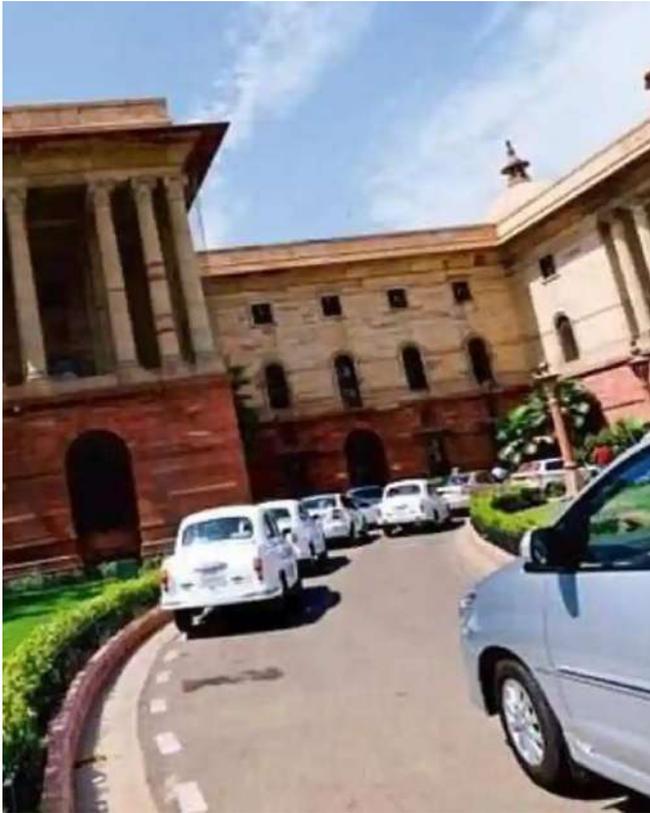


## What is Immigration Law?

Immigration law refers to the national statutes, regulations, and legal precedents governing immigration into and deportation from a country. Strictly speaking, it is distinct from other matters such as naturalization and citizenship, although they are sometimes conflated. Countries frequently maintain laws that regulate both the rights of entry and exit as well as internal rights, such as the duration of stay, freedom of movement, and the right to participate in commerce or government.

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# CORPORATE AFFAIRS

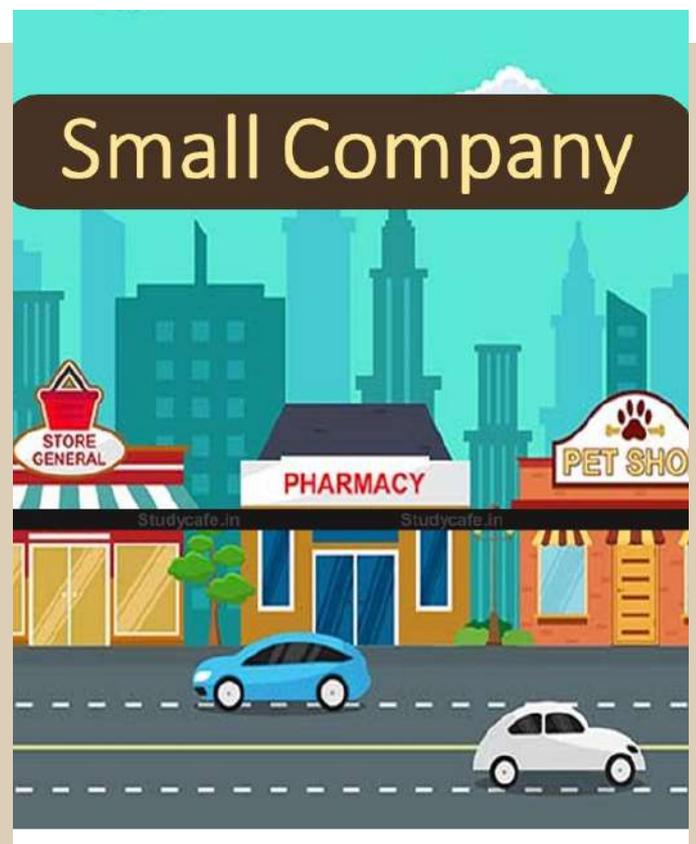


## Centre revamps rules on valuers

The ministry of corporate affairs has revamped the rules governing entities performing valuation of corporate assets such as plant, machinery, securities and goodwill, for improving their ease of doing business and for greater regulatory oversight. The amendments said that no partnership entity or company shall be eligible to be a registered valuer if it is not a member of a registered valuer organisation. Also, the new rule stipulates that these entities should not be registered with more than one registered valuer organisations at one point in time.

## Centre to soon merge social security contributions by small firms

The Centre may soon do away with separate contributions towards provident funds, pensions and insurance for small enterprises, allowing them to make a single payment towards the social security of their employees. This is expected to boost compliance among small firms. Currently, companies have to make separate payments towards the Employees' Provident Fund Organisation (EPFO) and Employees' State Insurance Corporation (ESIC).



# TAXATION



## Restriction on refund of unutilized ITC in certain cases

The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilized input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. The restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022.

## CBIC issues fresh guidelines on transitional credit

The Central Board of Indirect Taxes and Customs (CBIC) has issued fresh guidelines on verification of tax credit claims by businesses relating to their transition to the Goods and Services Tax (GST) regime in 2017. Businesses were recently allowed to file forms on the Goods and Service Tax Network (GSTN) for availing transitional GST credit through forms TRAN-1 and TRAN-2 for two months based on a Supreme Court order.





## SC: Collegium system law of the land, government has to follow it

The Supreme Court on Monday made it clear that the collegium system for appointment of judges is the law of the land and the Centre would have to follow it till. The judiciary and the executive keep clashing over the collegium system for appointment of judges in higher judiciary, with the Centre alleging it to be "opaque and non-transparent" and retired and current chief justices and judges of the SC holding it as the best system. The two organs of the states have always been in a tug of war on this issue.

## Data protection bill: Privacy can't be violated

The National Data Governance Framework Policy has provision for handling anonymisation of data which is not part of the draft Digital Personal Data Protection (DPDP) Bill 2022. The government will not be able to violate the privacy of citizens under the proposed data protection law as it will get access to personal data only in exceptional circumstances like national security, pandemic and natural disasters,





## INTRODUCTION

Immigration Law is the law which exclusively governs immigration in a nation. So far as foreign citizens are concerned, Immigration Law is related to Nationality Law of a nation governing the matters of citizenship. International Law regulates Immigration Law concerning the citizens of a country.

## IMMIGRATION LAWS IN INDIA

Immigration Law is the law which exclusively governs immigration in a nation. So far as foreign citizens are concerned, Immigration Law is related to Nationality Law of a nation governing the matters of citizenship. International Law regulates Immigration Law concerning the citizens of a country. In this regard the United Nations International Covenant on Civil and Political Rights is relevant. The International Organization for Migration is the main intergovernmental organization in the field of Migration. It was initially formed in 1951 as the Intergovernmental Committee for European Migration to help the people displaced during the Second World War. This Organization is committed to the promotion of humane and orderly migration for the benefit of all.

The objective of immigration is gaining citizenship or nationality in a different country. In India, the law relating to citizenship or nationality is mainly governed by the provisions of the Constitution. The Constitution of India provides for single citizenship for the entire country. The provisions relating to citizenship are contained in Articles 5 to 11 in Part-II of the Constitution of



India. Articles 5 to 9 of the Constitution determine the status of persons as Indian citizens at the commencement of the Constitution. Article 10 provides for their continuance as such citizens subject to the provisions of any law that may be enacted by the legislature. Under Article 11, the Constitution expressly saves the power of Parliament "to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship". Article 5 states that at the commencement of this Constitution, every person belonging to the following categories, who has his domicile in the territory of India, shall be a citizen of India:

- 1) Who was born in the territory of India; or
- 2) Either of whose parents was born in the territory of India; or
- 3) Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement;

Article 6 of the Constitution provides for the rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 of the Constitution has made provisions for citizenship of certain migrants to Pakistan and Article 8 of the Constitution provides for the rights of citizenship of certain persons of Indian origin residing outside India.

# FROM THE ARCHIVES

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***Madhura Garments  
versus  
Commissioner of Trade & Taxes, New Delhi***

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

*Date of order: 29.03.2019*

STOCK TRANSFER U/S 6A OF CENTRAL SALES TAX Act, 1956 – STOCK TRANSFERRED TO BRANCH IN MARCH, 2013 – BRANCH RECEIVED GOODS IN APRIL- “F” FORMS ISSUED FOR APRIL MONTH – EXEMPTION DENIED – DEFAULT ASSESSMENT U/S 9(2) OF CST ACT – WHETHER CORRECT, HELD NO. PROCEDURAL IRREGULARITIES AND TECHNICALITIES CANNOT OVERRIDE THE SUBSTANTIVE PROVISIONS AND BENEFIT OF “F” FORM CANNOT BE DENIED.

**BRIEF FACTS OF THE CASE:**

THE APPELLANT WAS ENGAGED IN THE BUSINESS OF SALE OF READY-MADE GARMENTS. THE DEFAULT ASSESSMENT U/S 9(2) OF THE CST ACT WAS COMPLETED BY THE LD.ASSESSING AUTHORITY ON 29/3/2017, CREATING AN ADDITIONAL DEMAND OF RS.33,13,978/- INCLUDING INTEREST OF RS.12,10,388/-.

THE APPELLANT FILED OBJECTIONS BEFORE THE LD.SOHA ALONG WITH 3-FORMS WORTH RS.3,23,15,009/- AND ONE F-FORM PHOTOCOPY FOR RS 77,19,879/- AS ORIGINAL FORM PERTAINS TO ASSESSMENT YEAR 2013-14.

THE DEALER IN DELHI SENT THE GOODS ON TRANSFER TO MAHARASHTRA BETWEEN 26/3/2013 TO 29/3/2013 AND AT MAHARASHTRA THESE GOODS WERE RECEIVED IN APRIL,2013.

THE DELHI OFFICE OF THE APPELLANT CORRECTLY DECLARED TRANSFER IN THE MONTH OF MARCH-2013 AND BRANCH AT MAHARASHTRA RECEIVED THE GOODS IN APRIL, 2013 AND ISSUED F-FORM NO.27031643854559, WHICH INCLUDES AMOUNT OF RS.77,19,879/- WHICH THE DELHI DEALER HAS DESPATCHED TO MAHARASHTRA BRANCH FROM 26/3/2013 TO 29/3/2013 AND BRANCH AT MAHARASHTRA RECEIVED THE SAID GOODS FROM 1ST APRIL TO 3RD APRIL. HENCE ONLY ONE CONSOLIDATED F-FORM HAS BEEN ISSUED IN APRIL,2013.

THE APPELLANT FILED PHOTOCOPY OF F-FORM AND SHOWED ORIGINAL F-FORM TO THE LD.SOHA IGNORED THIS FORM AND DID NOT ALLOW BENEFIT OF RS.77,19,879/- ON THE BASIS OFF-FORM AND LEVIED BOTH VAT & INTEREST ON SUCH SALES.

**HELD:**

APPELLANT HAD FILED A CHART SHOWING DETAILS OF STOCK TRANSFER MADE IN MARCH, 2013 WHICH WAS RECEIVED AT MAHARASHTRA OFFICE IN APRIL 2013 ALONGWITH F-FORM, COPY OF GR SHOWING MOVEMENT OF GOODS FROM DELHI TO MAHARASHTRA AND TRANSFER OUT NOTE, WHICH AMPLY PROVED THAT IT WAS A CASE OF TRANSFER OF GOODS WHICH HAS BEEN REFLECTED IN THE F-FORM OF MAHARASHTRA OFFICE OF THE MONTH OF APRIL, 2013. IN TRIBUNAL VIEW, IN THESE CIRCUMSTANCES BENEFIT OF THIS F-FORM WAS WRONGLY DENIED BY THE LD.SOHA VIDE IMPUGNED ORDERS DATED 10/10/2017. IF BENEFIT OF THIS STATUTORY FORM WHICH WAS ISSUED IN THE MONTH OF APRIL,2013 WAS REFUSED, THEN IT MEANS NOBODY WILL DO BUSINESS IN THE LAST 3-4 DAYS OF EVERY QUARTER, SO FAR AS TRANSFER OF GOODS FROM ONE STATE TO ANOTHER STATE WAS CONCERNED. SO TAX AND INTEREST WAS WRONGLY IMPOSED. PROCEDURAL IRREGULARITIES AND TECHNICALITIES COULD NOT OVERRIDE THE SUBSTANTIVE PROVISIONS AND BENEFIT OF F-FORM COULD NOT BE DENIED TO THE APPELLANT IN SUCH CIRCUMSTANCES . ACCORDINGLY, THE APPEAL WAS ALLOWED AND IMPUGNED ORDERS DATED 10/10/2017 PASSED BY LD,SOHA WAS HEREBY SET-ASIDE AND MATTER WAS REMANDED BACK TO THE CONCERNED VATO TO RE-FRAME ASSESSMENT AFRESH AFTER GIVING AN OPPORTUNITY OF HEARING TO THE APPELLANT AND AFTER CONSIDERING THE F-FORM AND OTHER DOCUMENTS SUBMITTED BY THE APPELLANT TO PROVE THAT IT WAS A CASE OF TRANSFER OF GOODS FROM ONE STATE TO ANOTHER,

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