

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

## *In This Issue*

### Corporate Affairs

- Madras HC orders for winding up of SpiceJet
- Important Due Dates

### Taxation

- GST Rate Hike for Apparels, Footwear etc.
- GST Rate Hike for Ice Cream Parlours

### Legal

- Drug License in India
- New IPR Division - HC
- Maintenance of Minor - SC
- Archived Judgements

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## **Procuring Drug License in India**

Drug License is crucial for every business that is dealing with drugs and pharmaceuticals. This license would provide the basic requirements for a pharmaceutical business to carry out its operations daily. Hence, the government has stringent rules for granting license for manufacturing and selling of drugs and medicine.

*Read more on page 5*

# CORPORATE AFFAIRS



## Madras HC orders for winding up of SpiceJet

The Madras HC has ordered for the winding up of private carrier SpiceJet Limited after a plea was filed by a Swiss Company over unpaid dues. SpiceJet rendered itself liable to be wound up for its inability to pay debts under Sec 433 of the Companies Act..

## Companies Due Dates in December, FY 2020-21

- 14.12.2021 - Form ADT 1
- 31.12.2021 - Form AOC 4 (CFS, XBRL, Normal)
- 31.12.2021 - Form MGT 7/ 7A



# TAXATION



## CBIC notifies GST rate hike on Fabrics, Apparel, Footwear

The Central Board of Indirect Taxes and Customs notified the hike in GST rate from 5% to 12% on Fabrics, Apparel, and Footwear w.e.f.

January 2022. The objective behind the proposed increase is to correct the problem of Inverted Duty Structure faced by a small segment of the textile value chain.

## Ice-cream parlors to attract a GST rate of 18 %

Ice-cream parlors that sell already manufactured ice-cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.



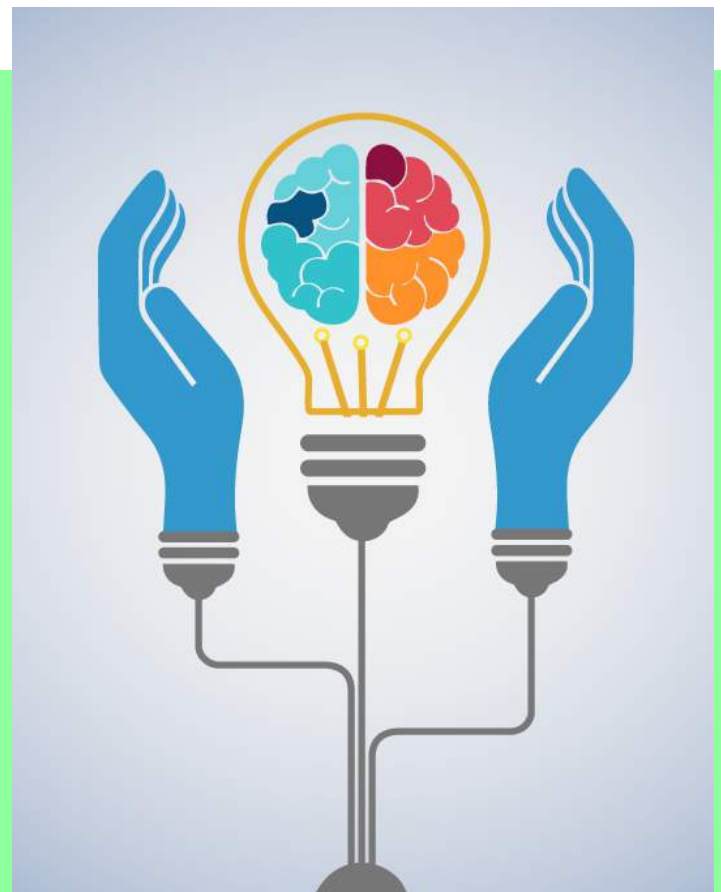


## Liability and Responsibility of the father for minor child

In the case of *Neha Tyagi vs. Lt. Col. Deepak Tyagi*, 2021 SC 700, the SC through a two judge bench, presided by Justice MR Shah and Justice AS Bopanna observed that during the dissolution of a marriage between the husband and wife, the liability and responsibility of the father to maintain the child continues till the child attains the age of majority, irrespective of the differences that might have transpired between the couple.

## Delhi HC introduces a new division for handling IP matters

The Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 abolished the IPAB which dealt with appeals from IP offices. Due to this there has been an influx of IPR cases in the Delhi HC, thereby leading to the creation of The Intellectual Property Division (IPD) to deal with matters related to IPR.





# DRUG LICENSE

Drug License is crucial for every business that is dealing with drugs and pharmaceuticals. This license would provide the basic requirements for a pharmaceutical business to carry out its operations daily. Hence, the government has stringent rules for granting license for manufacturing and selling of drugs & medicine. The Act that governs the end to end process, from manufacture to the sale of drugs in India is the Drugs & Cosmetics Act, 1940.

## TYPES:

- Manufacturing License– License issued to a business that manufactures drugs inclusive of allopathic/ homeopathy medicines.
- Sale License – License issued for the sale of drugs. It has the following bifurcations: – Wholesale Drug License – Retail Drug License – Restricted Drugs
- Loan License – License issued to a business that does not own the manufacturing unit but uses the manufacturing facilities of another licensee.
- Import License – License issued for the import of drugs.
- Multi-Drug License – License issued to businesses that own pharmacies in multiple states with the same name.



## **PREREQUISITES FOR OBTAINING A LICENSE**

- Pharmacist/ Competent Individual: The pharmacist must be qualified in the case of a retail business. In case of a wholesale business, the individual must be a graduate with 1-year experience or an undergraduate with 4 years of experience.
- Space Requirement: The other important requirement is space, that is the area of the pharmacy/unit. – For both wholesale and retail license – 15 square meters. -In all other cases – 10 square meters. – The clear height of the sales premises shall be as per the guidelines laid down under the National Building Code of India, 2005.
- Storage Facility: The other important requirement is storage facility since some drugs require to be stored in low temperatures, refrigerators and air conditioners are a must.

## **BENEFITS OF OBTAINING A DRUG LICENSE CERTIFICATE**

- Businesses must file such a drug license application because it is illegal to engage in the manufacturing or sale of drugs in India without it.
- Having such a drug license helps the government monitor and regulate the sale of medicines in India, making your business credible and trustworthy.
- A drug license certificate proves to your consumers that you follow stringent quality measures while manufacturing drugs.
- Having such a valid license proves to customers that your medicines and drugs are safe and pose no health hazards.
- Applicants can use the import drug license to grow their business and expand their products to foreign countries

# FROM THE ARCHIVES

## ***Spectrum Light & Electricals & Ors versus Commissioner of Trade & Taxes***

*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 TAXINVOICES 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 APPELLANTS FILED OBJECTIONS BUT COULD NOT SUCCESS – THE APPELLANT FILED APPEALS BEFORE VAT TRIBUNAL AND ARGUE – 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 SECTON 40A(2) (B) AND REFERRED THE CASE BY MADRAS HIGH COURT – 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 AS ALSO IT DID NOT REQUIRE TO BE – 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.

## **CASE LAW CITED:**

- *Jayam & Co. v. Assistant Commissioner (CT) Main Amaindakara Assessment Circle, Chennai and Another.*

## **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 willful 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 Amaindakara Assessment Circle, Chennai and Another.

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