

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

## *In This Issue*

### Corporate Affairs

- SEBI restores validity period of OLS
- Relaxation on levy of additional fees

### Taxation

- Swiggy, Zomato to collect 5% GST
- GST Council defers hike in GST on textiles
- Deadlines for Filings Extended

### Legal

- Bill to Raise Age of Marriage For Women
- Shelter Home Scheme for LGBTQIA+ community
- Archived Judgements

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## Registering Trademarks in USA

A trademark is a brand which companies utilize to assist the people to differentiate and identify their product among the rest of the market. By registration, the companies can safeguard the brand identity from being duplicated or stolen from other competitors. Utilizing the same slogan or logo is illegal.

*Read more on page 6*

# CORPORATE AFFAIRS



## SEBI restores validity period of OLs for launching NFOs

The Securities and Exchange Board of India restored the six-month validity period of the observation letter given to mutual fund houses by the markets regulator to launch new fund offers (NFOs). The regulator, in March 2020, had extended the validity period of observation letter from six months to one year from the date of SEBI letter.

## Relaxation on levy of additional fees in filing of e-forms

The govt. has decided that no additional fees shall be levied upto **February 15, 2022** for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and upto **February 28, 2022** for filing of e-forms MGT-7/MGT-7A in respect of the financial year ended on March 31, 2021.



# TAXATION



## Swiggy, Zomato to collect 5% GST from customers

A GST rate of 5% will now be levied on food delivery apps like Swiggy and Zomato. The change in rule means that apps will collect the 5% GST from customers instead of restaurants from where they are delivering food orders. The decision to levy 5% GST on food delivery apps was made by the central government to prevent revenue leakage by unregistered restaurants.

## GST officials to make surprise recovery visits from 1st Jan'22

Starting from 1st January 2022, GST officials can make surprise visits if your tax liability shown in the requisite form is less than what invoices, mentioned in the outward supply form, should draw. The relevant provision in the Finance Act, 2021, will come into effect from January 1, 2022.





## Deadline To File Annual GST Returns Extended Till February 28

The government has extended the deadline for businesses to file the goods and services tax (GST) annual returns for the financial year 2020-21 by two more months. The Central Board of Indirect Taxes & Customs has allowed the furnishing of annual return in FORM GSTR-9 & self-certified reconciliation statement in FORM GSTR-9C till February 28, 2022.

## GST Council defers hike in GST on textiles from 5% to 12%

In a major relief to the textile industry, the GST Council has decided to defer a decision on increased tax on textiles from earlier 5 percent to the proposed 12 percent in the GST (Goods and Services Tax) Council meeting.





## Centre Introduces Bill to Raise Age of Marriage For Women

The introduction of the Prohibition of Child Marriage (Amendment) Bill, 2021, a bill that seeks to fix 21 years as the uniform age of marriage for women and men was introduced in Lok Sabha. The amendments to the bill will become effective two years from the date it receives Presidential assent so as to provide sufficient opportunity to one and all in the collective efforts and inclusive growth, and to make effective other provisions immediately.

## Madras HC extends the Shelter Home Scheme to all members of LGBTQIA+ community

The Madras HC directed the Union Govt. to extend the scope of the "Garima Greh" Scheme to all members of the LGBTQIA+ community and not just the transgenders, stating that the welfare scheme would become wholesome and non-discriminative only when its benefits are extended to the whole community as members of such communities do not have support from their families or societies.





A trademark is the brand which companies utilize to assist the people to differentiate and identify their product among the rest of the market. By registration, the companies can safeguard the brand identity from being duplicated or stolen from other competitors. Utilizing the same slogan or logo is illegal. After registration, the company is handed over with trademark licence and registered TM number that assists to identify the brand.

#### **BENEFITS OF REGISTERING INTERNATIONALLY:**

- Gives the company exclusive right to commercialise in those markets.
- Prevents counterfeiting and ensures the company exclusive rights to monetise their brand.
- Provides a basis for franchising and building expansion strategies.

#### **DOCUMENTS REQUIRED FOR TRADEMARK:**

- Application Form
- Copy of applicant's ID and Address Proof. (Valid Driver's License/Property Tax Receipt/Utility Bill/Insurance Card/Voter Registration card/College Enrollment Papers).
- Copy of the business /company certificate.
- Letter of Power of Attorney.
- Print and digital version of proposed trademark.
- Copy of the passport of applicant.



## **PROCESS/STEPS TO GET TRADEMARK REGISTERED**

- Step 1 : Applicant needs to fill in the online trademark application form & submit the documents.
- Step 2 : To make sure that applicant gets a unique logo, a trademark search is conducted.
- Step 3 : As per the nature of applicants' products, appropriate class from the list of 45 classes has to be selected.
- Step 4 : Application is created and applicants receive the TM(Trademark) number.
- Step 5 : In case no competitor objects applicant's trademark, then it will be registered within a span of 1.5-2 years.

## **PERIOD OF VALIDITY AND RENEWAL**

In the U.S.A, a registered trademark is lawfully protected for ten years from the date of its certified registration. After ten years, if the owner desires for additional growth for it to be unbroken operational, further official charges are to be paid to the USA Ministry of Economy. If the renewal isn't done as soon as possible, there will still be a grace period of 6 months.

## **STATUTORY FEES FOR THE REGISTRATION:**

\$250 per class of goods/services. Pay for all classes with your initial application.

# FROM THE ARCHIVES

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***M/s. Foam Home  
versus  
Commissioner of Trade & Taxes, Delhi***

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

*Date of order: 28.11.2017*

SEARCH AND SURVEY – SEIZED LOOSE PAPERS AND VARIATION IN CASH AND STOCK FOUND – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OBJECTION PETITION FILED AND WAS REJECTED – BEFORE TRIBUNAL IT WAS ARGUED THAT NO DIFFERENCE FOUND IN THE QUANTITY OF STOCK AT THE TIME OF VISIT OF ENFORCEMENT STAFF AND DIFFERENCE ARRIVED ON ACCOUNT OF VALUE TAKEN AND CALCULATED BY SURVEY TEAM. VALUE DECIDED OF STOCK WAS ON THE BASIS OF THE ORAL STATEMENT AND NOT ON THE BASIS OF ACTUAL VALUE – EXPLANATION OF EVERY SEIZED PAPER TENDERED - NEITHER VATO NOR OHA HAD TAKEN TROUBLE TO EXAMINE THE EXPLANATION - ADDITION IN SALES FOUND DEVOID OF REASON AND UNSUSTAINABLE – EXPLANATION OF SHORTAGE OF CASH WAS WITHOUT DOCUMENTARY EVIDENCE REGARDING ILLNESS HAD BEEN CORRECTLY REJECTED. APPEAL PARTLY ALLOWED.

**BRIEF FACTS OF THE CASE:**

The appellant was a registered dealer with TIN No.07090008522 and trading in PU Foam Sheet, mattresses, adhesives etc. taxable @ 5% and 12.5% and is filling his return quarterly. A survey of the appellant was conducted by the enforcement branch of Trade & Tax Department on 16.11.2011 and during such survey visiting team seized 14 (fourteen) loose papers and found cash short by Rs.33,420/- and also took the physical stock at the time of survey which was found short by Rs.23,10,065/-. Default assessment of tax, interest and penalty was carried out by the VATO creating demands.



Objections filed by the appellant were rejected by the Additional Commissioner / OHA vide orders dated 24.04.2012. Aggrieved with the orders passed by the OHA, appellant had come in appeal before the Tribunal.

**HELD:**

The appellant by giving the details of stock position and explanation in respect of each of the seized paper had tried to explain these with reference to the record, it was apparent that neither the VATO nor the OHA had taken trouble to examine each of the explanation with reference to the record maintained by the appellant and by summoning the record of the sister concern if necessary and then give findings on the grounds taken by the appellant. Instead, the explanation had been rejected by simply treating these as afterthought without looking into the records and critically examining the explanations of the appellant with reference to the record maintained and produced. The orders passed by both the authorities were devoid of reason and were unsustainable on these accounts.

Now coming to the shortage of cash, on physical counting it was found to be Rs. 19,500/- as against Rs. 52,900/- as per books of accounts and the explanation given by the appellant was that son of the proprietor who was sick took Rs. 33,000/- with him while leaving the office.

The difference of Rs. 420/- was due to the fact that loose money of small denomination was missed to be counted at the time of survey.

Assessing Authority rejecting the explanations of cash shortage observed that the clarification given by the dealer in respect of variation in cash was considered as afterthought and unconvincing.

Assessing Authority noticed that as per the survey report appellant did not record the sale properly which was confirmed by the dealer in his statement given to the survey team and was reproduced as under.

“That for the purpose of local cash sales, the electronic cash register with bill issuing facility is being used by the firm and we are not issuing retail invoices for the same. This electronic cash register is being used on day-to-day basis and no record is maintained by the firm i.e., only one day entries are available as sales records.”

The explanation of the appellant did not stand and had been correctly rejected. No documentary evidence regarding illness and the requirement of the money allegedly required for that purpose has been adduced by the appellant. The explanation tendered by the appellant for not maintaining the daily account of cash transactions and retaining only the daily account only for one day was without a rationale and was also sufficient to reject the explanation with reference to the shortage of cash.

In view of the foregoing the appeals were partly allowed. While the appeal was accepted in respect of creation of demand on rejection of enhancement made on account of loose papers and the variation in stock the plea on account of variation of cash was rejected.

The matter was remanded back to the VATO to reframe the assessment in respect of stock variation and loose papers seized after examining the record of the case and give specific findings in respect of each of the paper after referring to the facts of the case. Further the matter was also remanded back to the VATO to reframe the assessment in respect of imposition of penalty after giving an opportunity of hearing to the appellant.



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