EY Tax and Regulatory Alert

May 2022

Prepared for ACMA

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2.	**M/s NORTHERN OPERATING SYSTEMS PVT LTD. vs C.C.,C.E. & S.T. – BANGALORE (ADJUDICATION) ETC [CIVIL APPEAL NO. 2289-2293 OF 2021]**	Ruling wherein the Hon'ble Supreme Court held that the secondment of employees from a Foreign company to Indian company is manpower supply service and hence, is a taxable service.

	Direct Tax	
1.	**SC validates reassessment notices issued between April and June 2021 following old procedure**	Ruling wherein the SC has upheld the validity of reassessment notices issued between 1 April 2021 and 30 June 2021 following the old reassessment regime, by exercising its extraordinary power under Article 142 of the Constitution of India for complete justice.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax (GST)

This section summarizes the regulatory updates under GST for the month of May 2022

- **Notification No.05/2022 dated 17.05.2022** was issued by the CBIC to extend the due date for furnishing the return in form GSTR-3B for the month of April,2022 till the 24th of May, 2022.

- **Notification No.06/2022 dated 17.05.2022** was issued by the CBIC to extend the due date for depositing tax under the proviso to sub-section(7) of section 39 of The Central Goods and Service Tax,2017 in Form GST PMT-06 for the month of April,2022 till the 27th of May,2022.

- **GSTN-GSTR-1/IFF enhancement dated 27.04.2022** was issued by the CBIC introducing the following changes:

- Removal of 'Submit' button before filing : The present two-step filing of GSTR-1/IFF involving 'Submit' and 'File' buttons will be replaced with a simpler single-step filing process . The upcoming 'File Statement' button will replace the present two-step filing process and will provide taxpayers with the flexibility to add or modify records till the filing is completed by pressing the 'File Statement' button.

- Consolidated Summary : Taxpayers will now be shown a table-wise consolidated summary before actual filing of GSTR-1/IFF. This consolidated summary will have a detailed & table-wise summary of the records added by the taxpayers. This will provide a complete overview of the records added in GSTR-1/IFF before actual filing.

- Recipient wise summary: The consolidated summary page will also provide recipient-wise summary, containing the total value of the supplies & the total tax involved in such supplies for each recipient. The recipient-wise summary will be made available with respect to the following tables of GSTR-1/IFF, which have counter-party recipients :
  - Table 4A : B2B supplies
  - Table 4B : Supplies attracting reverse charge
  - Table 6B : SEZ supplies
  - Table 6C : Deemed exports
  - Table 9B : Credit/Debit notes

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of May 2022

- **Notification No. 25/2022-Customs dated 21.05.2022** is issued by the CBIC to wherein the Central excise duty has been reduced by ₹ 8 per litre for Petrol and by ₹ 6 per litre for Diesel.

- **Notification No. 39/2022-Customs (N.T) dated 30.04.2022** issued by the CBIC notifies the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules.

- The said notification specifies rules and other details in relation to Comprehensive Economic Partnership Agreement between India and the United Arab Emirates.

- **Notification No. 44/2022-Customs(N.T) dated 20.05.2022** issue by the CBIC specifies amendments in the Customs Tariff Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan).

- The amendments in the said rules shall come in force when published in the official gazette.

- **Public Notice No. 08/2022-Customs dated 02.05.2022** was issued by CBIC to waive off the 'Late Fees' in regards to the Bills of Entry for the vessel arrived on 01.05.2022 & 02.05.2022 due to Systems Error code 523.

- Late Fee imposable in terms of Bill of Entry (forms) amendment Regulations, 2017 vide Notification No. 27/2017-Customs (N.T.) dated 31.03.2017 will be waived off in respect of Bills of Entry filed belatedly, which pertains to IGM's filed on 01.05.2022 & 02.05.2022 on production of negative acknowledgement.

- **Trade Notification No. 04/2015-2020 dated 11.05.2022** was issued by the Central Government to notify an Appendix 4R which is aligned with the Finance Act , 2021.

- The Appendix 4R shall be effective from 01.01.2022.

- This new Appendix 4R, with effect from 01.01.2022, containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal www.dgft.gov.in under the link 'Regulatory Updates>RoDTEP'.

- **Public Notice No. 05/2015-2020 dated 29.04.2022** was issue by the DGFT to amend Appendix 2B of the FTP by including the list of authorised agencies allowed to issue CoO for India-UAE Comprehensive Economic Partnership Agreement (CEPA).

- The list has been notified in the said notification with the Authorizing agents and Products assigned to each agency.

- **Public Notice No. 06/2015-2020 dated 01.05.2022** was issued by the DGFT to revise Para 2.107 of Handbook of Procedure 2015-2020 and Appendix 2A of FTP, 2015-20 in order to incorporate the items mentioned under Tariff Rate Quota (TRQ) under India – UAE Comprehensive Economic Partnership Agreement (CEPA), besides laying down the procedure for import of the items under TRQ as Annexure IV of Appendix 2A in

accordance with Notification No. 22/2022-Customs dated 30th April 2022.

- The Annexure IV of Appendix 2A is also enclosed within the notification.

- **Public Notice No. 08/2015-2020 dated 19.05.2022** was issued by the DGFT to amend condition (f) of Annexure-IV of Appendix-2A notified earlier vide Public Notice No. 06/2015-20 dated 01.05.2022 and extends the last date for inviting TRQ applications from 18.05.2022 till 31.05.2022.

- The last date for submission of online applications for allocation of Tariff Rate Quota (TRQ) under India—UAE CEPA first two quarters of FY 2022-23 (01 May 2022 to 30 Sep 2022) has been extended till 31.05.2022.

- **Trade Notice No. 03/2022-23 dated 26.04.2022** was issued by the DGFT as part of the IT revamp.

- As a part of the revamp, the DGFT proposes a new online module for filing of application for recognition as Pre-Shipment Inspection Agency (PSIA), electronic issuance of Pre-shipment Inspection Certificates (PSICs) and electronic verification of authenticity of the PSICs with effect from 01.05.2022.

- In this regard, it is submitted that all existing PSIAs as recognized under Appendix 2G of the FTP are required to register online on the DGFT Website (https://dgft.gov.in) → My Dashboard → Register and selecting 'Register User As' - 'Pre-Shipment Inspection Agency'.

- The said PSIA official shall thereafter navigate to Services → Pre-Shipment Inspection → Apply for PSIA and submit required details for activation of their specific online account.

- Further, any application for amendment in instruments and/or areas of operation of existing PSIA may also be made online post-login as PSIA by navigating to the DGFT website → Services → Pre-Shipment Inspection → Amendment in Area of Operation/Instruments.

- Further, on successful activation of account, the PSIA may generate and upload Pre-Shipment Inspection Certificates (PSIC) online through the following navigation: DGFT website → Services → Pre-Shipment Inspection → Generate and upload PSIC.

- The PSIC shall may be generated by the PSIA after the required inspection has been carried out. Required Video and photographic evidence is to be uploaded by the PSIA during this online PSIC process.
- Further, the PSIC generated online can be downloaded by the Indian Importer by navigating to the DGFT website → Services → Pre-Shipment Inspection → Download Pre-shipment Inspection Certificate (PSIC). The Importer would be required to enter the PSIC certificate number and the name of PSIA to download any such PSIC.

- The Customs Authorities at the Indian Port may also consider verifying the genuineness of online PSIC generated using the steps as summarized under para 6 above. The Importer or the Customs Authorities shall not be required to login to the DGFT Website to access the PSIC download or PSIC verification services

- The given online process shall not be mandatory in the initial period of go-live and the PSIAs as well as the importers are provided time till 30.06.2022 to onboard and familiarise with the said online process. All PSICs shall be mandatorily generated online through the DGFT

Website w.e.f. 01.07.2022. PSICs dated on or after 01.07.2022 not generated using the DGFT online systems may not be accepted by the Indian Customs Authorities.

- For any help and guidance on this new process, the Help manual & FAQs may be accessed on the DGFT Website → Learn → Application Help & FAQs. For any further assistance, guidance and resolution of issues faced, any of the following channels may be assessed
  - i. Raise a service request ticket through the DGFT Helpdesk Service on DGFT Website – Services – DGFT Helpdesk Service
  - ii. Call the toll-free-Helpline number
  - iii. Send an email to the Helpdesk on dgftedi@gov.in.

- **Trade Notice No. 04/2022-23 dated 27.04.2022** was issued by the DGFT to inform that the transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been further extended till **01st August 2022**.

- While the exporters and NP CoO Issuing Agencies would have the option to use the online system, the same shall not be mandatory till 01st August 2022. The existing systems of processing non-preferential CoO applications in manual/paper mode is being allowed. For guidance on registration and online application submission process, the Help Manual & FAQs may be seen on the landing page at **https://coo.dgft.gov.in**.

- All stakeholders may note that issuing agencies who do not use the Online System for issue of non-preferential CoOs after 1st August 2022 will invite penal action and can be subject to 'de-listing' as an authorized agency.

- **Trade Notice No. 05/2022-23 dated 29.04.2022** was issued by the DGFT to inform that that the electronic platform for Preferential Certificate of Origin (CoO) is being expanded further to facilitate electronic application of Preferential Certificates of Origin under the India-UAE Comprehensive Economic Partnership Agreement.

- The Preferential Certificate of Origin for Exports to UAE under India-UAE CECPA shall be issued from the CoO e-platform with effect from **01st May 2022**.

- It is informed that applications under the above-mentioned Trade Agreement may be submitted on the eCoO Website (https://coo.dgft.gov.in).

- The eCoO generated shall bear the image signature of the officer and stamp of the issuing agency. The eCoO shall also bear a Quick-Response(QR) code for electronic verification and authenticity of eCoO so issued. The authenticity of the eCoO may additionally be verified by keying in the Certificate Number on the 'Verify Certificate' link on the eCoO Website.

- On issue, the e-CoO system shall generate an original copy and a duplicate copy besides the electronic copy. Accordingly, paper copies of the eCoO may also be collected by post or in person, from the concerned issuing agency, after necessary ink-signatures/stamping, if required.

- The concerned Indian Exporters may please take note of the following points with regard to the process being notified herewith:

- Digital Signature Certificate (DSC) would be required for the purpose of electronic submission.

- The digital signature would be the same as used in other DGFT applications; and should be a Class III DSC; Any new applicant exporter would be required to initially register at the portal.

- The password would be sent on the email and mobile number of the IEC holder. In case the IEC holder desires to update their email on which communication is to be sent, the same may be done by using the 'IEC Profile Management' service on the DGFT website https://dgft.gov.in

- Once registration is completed, the IEC branch details would be auto-populated as per the DGFT-IEC database.

- Applicant is required to ensure that updated IEC details are available in the DGFT system. Necessary steps may be taken to modify the IEC details online, whenever required.

- For further guidance on registration and application submission, the Help manual & FAQs may be accessed on the landing page at https://coo.dgft.gov.in.

- For any further assistance you may utilize any of the following channels — Raise a service request ticket through the DGFT Helpdesk Service on DGFT Website — > Services — >DGFT Helpdesk Service Send an email to DGFT CoO Helpdesk at coo-dgft@gov.in Call the Toll-Free DGFT Helpdesk Numbers.

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of May 2022

1. Notification No.48/2022 dated 30 April 2022 issued by the Central Board of Direct Taxes (CBDT) notifies tax return form (Form ITR-U) and the manner to furnish updated return

Background

- FA 2022 introduced a new scheme under the ITL, effective from 1 April 2022, permitting all taxpayers to file an "updated return" within 36 months from the end of the relevant tax year, subject to various conditions. While furnishing updated return, the taxpayer is also required to pay an additional tax of 25% or 50% (as the case may be) on tax and interest due on such updated return while providing for immunity from penalty and prosecution. The scheme also applies even where no tax return was filed previously for a given year. This new scheme has been introduced with the object of providing an opportunity and additional time for voluntary compliance by taxpayers in rectifying errors in the last valid return filed and to reduce litigation. Further, the updated return is required to be filed in a form to be prescribed by CBDT under the new scheme.
- In deference to powers conferred, the CBDT, vide Notification No. 48/2022 dated 30 April 2022, has inserted Rule 12AC which notifies a new tax return form, namely Form ITR-U and the manner for filing updated returns by all categories of taxpayers. The instructions and e-utility facility for filing of Form ITR-U are awaited.

- This Tax Alert summarizes the key highlights of the Rule 12AC, Form ITR- and the manner of furnishing the updated return.

- **Rule 12AC and manner of filing updated return –**

- Rule prescribes Form ITR-U as the return form in which taxpayer can file updated return. Taxpayer can file updated return for the tax year 2019-20 and onwards.

Manner of furnishing and verification of Form ITR-U: -

Category of taxpayer(s)	Manner of furnishing and verification of Form ITR-U
1. Non-corporate taxpayers who are required to get their accounts audited under ITL 2. Corporate taxpayers 3. Political party who is required to furnish tax return in Form ITR-7	Electronically under Digital Signature Certificates (DSC)
4. Non-corporate taxpayers other than covered in point (1) above 5. Persons who are required to furnish tax returns in Form ITR-7 under section 139(4A)/ (4B)/ (4C)/ (4D), other than taxpayers covered in (1) to (3) above.	A. Electronically under DSC B. Transmitting the data electronically in the tax return under electronic verification code (EVC)

- **Form ITR-U:**

A. **Part A - general information**: The taxpayer is required to furnish following information under Part A:

i. Basic information such as name, PAN, Aadhar number, assessment year relevant to the tax year and details of last valid return filed, if any, for such tax year. If taxpayer has filed tax return previously, then the taxpayer is required to select the relevant provision and the tax return form (viz. Form ITR 1 - 7) in which such earlier return was furnished and specify the acknowledgment number thereof.
ii. The new scheme of ITL enabling filing of "updated return" contains certain provisions which disqualifies/restricts taxpayer from furnishing such updated return. Form ITR-U contains a field wherein taxpayer is required to confirm whether the taxpayer is eligible to furnish updated return as per the conditions laid out in such disqualification provisions.
iii. As it appears, along with filing of Form ITR-U, taxpayer will also have to update the taxpayer's last valid return filed, by information generated in e-filing utility (modified ITR). For filing modified ITR, taxpayer will have to select the applicable ITR form from ITR-1 to ITR- 7 from the drop-down options.
iv. The taxpayer is to select the reason for updating income, from the following options:

   a. Return previously not filed
   b. Income not reported correctly
   c. Wrong heads of income chosen
   d. Reduction of carried forward loss
   e. Reduction of unabsorbed depreciation (UAD)
   f. Reduction of MAT credit or AMT credit
   g. Wrong rate of tax
   h. Any other reason, other than Above

- The reduction of carried forward losses, UAD and MAT credit/AMT credit in a particular tax year for which updated return is being filed, may affect (reduce) the claim of set-off of such losses in the tax returns furnished for subsequent tax year(s). Accordingly, where updated return furnished is to reduce carried forward losses, UAD or MAT credit/AMT credit, then Form ITR-U requires taxpayer to specify the tax years wherein such carried forward loss, UAD or MAT credit/AMT credit, are affected because of such updated return. Furthermore, taxpayer is required to mention whether any revised return or updated return has been filed for such affected year. These details appear to provide consequential effect to subsequent tax year(s).

Part B – ATI - computation of total updated income and tax payable:

The taxpayer is required to furnish the following information under Part B:

i. **Total updated income:**
   Information about the amount of additional income, total income as per last valid return and aggregate total income as per modified ITR is to be given.

ii. **Computation of aggregate tax liability:**
   Form ITR-U provides a formulary mechanism to compute the "Aggregate liability on additional income" so declared in the updated return. It can be described as under:

Aggregate liability on additional income = X + Y – (A + B), where:

Variable (component)	Particulars	Component to be taken from
X	Amount payable, if any, as per Part B-TTI of modified ITR [Generally, this may represent tax, interest levy and late fee, if any, on additional income reported. In case if any outstanding self-assessment tax liability exists as per last valid return, the same may be included in 'X'.]	Modified ITR
Y A	Total refund (including interest, if any) issued as per last valid return; or refund claimed as per last valid return, if any	Last valid Return
A	Amount payable on the basis of last valid return, if applicable [Generally, this amount may be nil unless some tax which is payable in the last valid return remained outstanding.]	Last valid return
B	Regular assessment tax, if any	Actual regular assessment tax paid

Note: Guidance on workings of each of the above components, expected in modified ITR basis the instructions on Form ITR-U, is to be issued by the CBDT.

iii. Computation of additional income-tax liability:

In addition to 'aggregate liability on additional income' as calculated above, an 'additional income-tax liability' at the rate of 25% or 50% thereof will be calculated on the amount of "aggregate liability on additional income" less the fee for default in furnishing tax return, if any, included in component 'X'. The 'net amount payable' on updated return will be aggregate of both such liabilities.

iv. There may be a scenario where due to additional income being offered, refund due as per last valid return may be reduced. Such reduced refund amount is to be reported under a separate line item, namely, "Amount refundable, if any, as per Part B-TTI of modified ITR". There is no clarity on the significance of this line item and one may have to evaluate the same once the Instructions to Form ITR-U are issued by the CBDT.

v. Details of tax payments:

- Details of advance tax, self-assessment and regular assessment tax or relief w.r.t. salary arrears etc., the credit for which has not been claimed in the earlier return are to be reported in a separate table. The form stipulates that such unrelated credit will not be reckoned in the updated return. This is consistent with the scheme which does not permit credit of such tax payments unless it relates to the additional income being reported in the updated return.

- Usual details of payment of tax as per updated return to be provided in a separate table which includes BSR code, date of payment, amount in INR.

2. CBDT issues instructions to tax authority for implementing Supreme Court directions and to conduct reassessment proceedings for cases where notices were issued between April and June 2021

- Finance Act (FA) 2021 had brought reformative changes for conducting reassessment proceedings under the Income-tax Law (ITL)3 (new regime of reassessment) by substituting the old regime. The new regime of reassessment was effective from 1 April 2021.

  - **Old regime of reassessment:** Tax authority could reopen the past assessments if there is reason to believe that income has escaped assessment. Though there was no requirement in the statute to supply reasons recorded to the taxpayer, the SC in the case of GKN Driveshafts v. ITO provided certain guidelines (e.g., to supply reasons to taxpayer if sought so, objections to be raised by taxpayer, if any, disposal of objections by speaking order, etc.) for conduct of reassessment proceedings under the old regime of reassessment. Such reopen was permissible within 5 years or 7 years or 17 years from the end of the tax year, as the case may be. These provisions were applicable till 31 March 2021.

  - **New regime of reassessment:** Amongst other changes, the new regime of reassessment provides a separate mechanism to be followed by tax authority 3 Income Tax Act, 1961, read with Income Tax Rules, 1962 4 [2003] 259 ITR 19 before issuing the notice for reopening assessments and is materially different than the procedure laid down under the old regime of reassessment applicable till 31 March 2021. Under the new regime of reassessment, tax authority is required to (a) conduct pre-notice inquiry on the basis of information in tax authority's possession which suggest that income has escaped assessment (b) provide an opportunity to taxpayer to support why reassessment should not be done and (c) pass an order if tax authority proceeds for issuing notice for reassessment. Additionally, there is obligation on tax authority to obtain approval from higher authorities at multiple stages under the new regime of reassessment. The new regime of reassessment provides for curtailed time limit of four years from the end of the tax year in normal circumstances and extended time limit of 11 years from the end of the tax year if certain additional conditions are fulfilled.

In relation to Relaxation Act:

- With a view to relieve the various compliance burdens on taxpayers and the tax authority, who were going through an unprecedented health and economic crisis due to the onset of the COVID-19 pandemic, the parliament had promulgated an ordinance in March 2020, which was succeeded by the Relaxation Act in September 2020 (with retrospective effect from March 2020) to relax various compliances under various laws, including the ITL, both for taxpayers and the tax authority.

- Pursuant to the powers conferred by the Relaxation Act, the Central Government has extended the period for issuance of reassessment notice till 30 June 2021 in respect of tax years which were getting

time barred as on 31 March 2020 or 31 March 2021 as per the old regime.

- The controversy prevalent was that whether tax authority can issue reassessment notice as per the procedure prescribed under the old regime of reassessment between April to June 2021 (i.e., post the effective date of the new regime of reassessment) in view of various extensions granted pursuant to Relaxation Act.

Jurisprudence on the controversy:

- The validity of notices issued between April and June 2021 under the erstwhile reassessment regime pursuant to the time extended under the Relaxation Act, despite the introduction of the new regime, was questioned before various HCs. All HCs (i.e., Allahabad HC, Rajasthan HC, Karnataka HC, Madras HC, Delhi HC, Bombay HC and Calcutta HC) except for Chhattisgarh HC ruled in favor of the taxpayers and quashed the reassessment notices issued from April to June 2021 for past tax year/s which were issued following the old procedure of reassessment that was already substituted vide FA 2021 w.e.f. 1 April 2021.

- The ruling of the Allahabad HC (supra) was challenged before the SC to decide on the issue.

- SC ruling in the case of Ashish Agarwal (supra):

- The SC at the outset upheld the view of various HCs that any notice issued on or after 1 April 2021 post enactment of the new regime had to be issued only under the new regime and same could not have been issued in the old regime. However, considering that such view may impact the public exchequer, the SC invoked extraordinary power under Article 142 of the COI in order to render "complete justice" and upheld the validity of notices issued under the old regime by deeming the impugned reassessment notices as show-cause notices under the new regime of reassessment for conducting pre-notice inquiry. The SC has also provided following directions to conduct the reassessment proceedings:

  - The respective impugned notices issued under the old regime of reassessment shall be deemed to have been issued under the new regime of reassessment and treated to be show-cause notices for pre-notice inquiry in terms of the new regime of reassessment.

  - Tax authority, within 30 days from the date of the ruling , shall provide to taxpayers the information and material relied upon by the tax authority so that the taxpayers can reply to the 6 Ashok Kumar Agarwal & Others v. UOI & Others; Refer EY Tax Alert, "Allahabad HC quashes reassessment notices issued from April to June 2021 following provisions of old regime of reassessment" dated 4 October 2021 7 Bpip Infra Pvt. Ltd. v. ITO & Others; Refer EY Tax Alert, "Rajasthan HC follows Allahabad HC's decision to quash reassessment notices issued from April to June 2021 following the provisions of old regime of reassessment" dated 6 December 2021 8 Mohammed Mustafa v. ITO & Others (W.P. No 22348/2021) 9 Vellore Institute of Technology v. CBDT (W.P. No. 15019/2021) 10 Refer EY Tax Alert, "Delhi HC quashes

reassessment notices issued between April to June 2021 following old regime of reassessment" dated 17 December 2021 notices within 2 weeks after the same.

- The requirement of conducting any enquiry with the prior approval of the specified authority under the new regime of reassessment may be dispensed with as a one-time measure vis-à-vis those notices which have been issued under the old regime of reassessment from 1 April 2021 till date, including those quashed by various HCs.

    - Tax authority shall, thereafter, pass an order under the new regime of reassessment after following the due procedure laid therein in respect of each taxpayer.

    - All the defenses which may be available to taxpayer under the new regime of reassessment and in law and whatever rights are available to the tax authority under the FA 2021 are kept open and/or shall continue to be available.

- Post the SC's ruling, concerns have been raised by stakeholders (including tax authority through Income Tax Gazetted Officers' Association) on the scope of the SC ruling and/or implementation of the SC's directions. These issues were represented by the Income Tax Gazetted Officers' Association to CBDT.

- Taking cognizance of these issues, the CBDT has released instructions explaining therein its understanding of the SC ruling and the way forward for implementation of SC's directions.

- **CBDT's instructions:** CBDT noted that the implementation of the SC ruling is required to be done in a uniform manner. Accordingly, exercising its power under the ITL to issue instructions and directions to subordinate authorities, the CBDT has mentioned the following key points to be taken into consideration while implementing the SC ruling:

- Scope of the SC ruling: SC ruling will apply to all the reassessment notices issued between April to June 2021 following the old regime of reassessment whether or not such notices were challenged before any court of law.

- Operation of time limits prescribed under new regime of reassessment to identify cases where fresh notice can be issued:

    - The SC has upheld views of various HCs that the benefit of new regime shall be made available even in respect of reassessment proceedings for earlier tax years. The SC ruling, read together with extensions provided under Relaxation Act, will permit issuance of fresh notices to travel back in time to their original date and new regime limitation period to apply at that point in time.

- **In relation to reassessment notices pertaining to tax year 2012-13 to 2014-15**

    - Fresh notices as per new regime of reassessment can be issued for these cases with the approval of the specified authority, only if the case falls under the extended time limit of 11 years from the end of the tax year as per new regime of reassessment.

- Accordingly, cases involving escaped income less than INR 5million (small taxpayers) for these tax years are excluded from reassessment proceedings. The CBDT will issue separate instruction providing for the procedures for disposing of these cases.

► **In relation to reassessment notices pertaining to tax year 2015-16 and 2016-17**

- Fresh notice as per new regime of reassessment can be issued in these cases with the approval of the specified authority considering the 4-year time limit from the end of the tax year under the new regime to be read together with extension granted under Relaxation Act.

  - CBDT's basis can be explained by way of an illustration as under: Reassessment notice for tax year 2015-16 applying the new regime of reassessment could have been issued within four years from the end of tax year limitation period, i.e., till 31 March 2020. However, due to operation of Relaxation Act, the said date stands extended to 30 June 2021.

  - Therefore, fresh notice issued under new regime as per the SC direction, substituting old notice then issued, is considered as issued within limitation period of four years from the end of the tax year under new regime of reassessment.

► **Procedure required to be followed by jurisdictional tax authority to comply with the SC directions in light with aforesaid instructions:**

  - Reassessment notices issued between April to June 2021 are deemed to be show-cause notices for pre-notice inquiry under the new regime of reassessment as per the SC ruling. Therefore, all requirements of new regime of reassessment prior to show-cause notice shall be deemed to have been complied with.

  - Tax authority shall exclude cases for tax year 2012-13 to 2014-15 if the income escaping assessment therein is less than INR 5million.

  - Tax authority shall provide to the taxpayers the information and material relied upon in relation to reassessment notices within 30 days of the SC ruling, i.e., by 2 June 2022.

  - The taxpayer will be granted two weeks' time to reply to show-cause notice as to why reassessment notice should not be issued. The period of two weeks shall be counted from the date of last communication of information and material by the tax authority to the taxpayer.

  - Taxpayer may be granted additional time to reply if so, requested as permitted under the new regime.

- Tax authority, on the basis of material available on record including reply of

the taxpayer, is required to pass an order under the new regime of reassessment with the prior approval of the specified authority as to whether or not it is a fit case to issue a notice under the new regime of reassessment.

- Tax authority is to pass the order within one month from the end of the month in which the reply is received by the tax authority from the taxpayer and where no reply is furnished by the taxpayer, within one month from the end of the month in which time or extended time allowed to furnish a reply expires.

    - If it is a fit case to issue a notice under the new regime of reassessment, the tax authority shall serve on the taxpayer a notice under the new regime of reassessment after obtaining the approval of the specified authority under the new regime of reassessment. A copy of the order passed under the new regime of reassessment shall also be served along with the notice.

    - If it is not a fit case to issue a notice under the new regime of reassessment, the order passed to that effect shall be served on the taxpayer.

Part B- Case Laws

Goods and Service Tax

1. **Union of India vs M/s Mohit Minerals Pvt. Ltd. [Supreme Court landmark judgement reported in SLP(C) No. 013958 - / 2020]**

   Subject Matter: Landmark Ruling wherein the Hon'ble Supreme Court upheld the Hon'ble Gujarat High Court judgement and quashed levy of IGST on ocean freight under reverse charge

Background and Facts of the case

- M/s Mohit Minerals (the "taxpayer") imported non-coking coal from Indonesia, South Africa and U.S.A. on Cost, Insurance and Freight (CIF) basis which is then supplied to domestic industries. It discharged custom duties on value of imported coal which is inclusive of freight amount.

- In the case of a CIF contract, the freight invoice is issued by the foreign shipping line to the foreign exporter, without the involvement of the importer.

- Entry No. 9 of Notification No. 8/2017-IT(Rate), inter- alia, provides that IGST at the rate of 5% is leviable on service provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to customs stations in India by a person to another, both located in a non-taxable territory. The value of such taxable service shall be deemed to be 10% of CIF value, if it is not available with the person liable to pay tax.

- Moreover, as per Entry No. 10 of Notification No.10/2017- IT(Rate) (RCM notification), where supplier and recipient of above-mentioned service are in non-taxable territory, tax has to be paid by importer as defined under Customs Act.

- Hence, the taxpayer had prayed before the division bench of Gujarat High Court (HC) for quashing the impugned notifications.

- However, the HC observed that importer has neither availed transportation service nor he is liable to pay consideration. Thus, it cannot be required to pay tax on some supposed theory stating that he is directly or indirectly recipient of service. Hence, the division bench of HC held that the impugned notifications are ultra vires the IGST Act as they lack legislative competency.

- Aggrieved by above, the Revenue preferred an appeal against the HC order before the Hon'ble Supreme Court (SC).

Discussions and findings of the case

- The Revenue contended that the charge created by Section 5(1) of IGST Act can extend to an ocean freight transaction to be taxed in the hands of the importer. This creation of a charge is in compliance with the essential components of taxation identified by the SC in case of Mathuram Agrawal and Gobind Saran Ganga Saran.

- It also contends that Section 5(3) of IGST Act and Section 9(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) permit the Government, on the recommendation of the GST Council, to specify the categories of goods or services, the tax for which shall be paid on reverse charge basis by the recipient of such goods or services.

- Presently, neither the provisions nor the rules have identified the taxable persons for reverse charge. Hence, the impugned notifications are a legitimate exercise of delegated legislation. RCM notification identifies an importer as a recipient for the purposes of reverse charge. The power to issue such notification can be traced back to Section 5(3) and 5(4) of IGST Act

- The Revenue further argued that Import of service in this case is an inter-state supply in terms of Section 7(4) read with Section 13(1) and 13(9) of IGST Act. Although the contracting parties are outside India, the critical limb of the transaction happens in the taxable territory, namely, India. Hence, the transaction can also fall under Section 7(5)(c) read with Section 13(1) and 13(9) of IGST Act.

- Basis above, the Revenue held that Import of goods on CIF basis and ocean freight are two independent transactions, entitled to suffer independent levies.

- Further, the Revenue pronounced that Indian importer can be termed as the recipient of service because:

  - Section 2(93)(c) of CGST Act envisages a recipient of an intangible service as one who does not pay consideration. In CIF transactions, the Indian importer does not pay for ocean freight and yet receives the benefit of transportation.

  - Section 2 of the CGST Act is prefaced with “In this Act, unless the context otherwise requires” which warrants a broad interpretation of statutory definitions therein.

  - Section 5(3) of IGST Act clearly enables the identification of service recipients, and not just categories of goods or services.

- Alternatively, it was also contended that the impugned notifications would be saved by Section 5(4) of IGST Act which permits the Union Government, on the recommendations of the GST Council, to specify a class of registered persons who shall in respect of specified categories of goods or services received from an unregistered supplier, pay the tax on reverse charge basis as the recipient. If this section is deemed applicable, then the importers would be liable for tax w.e.f. 1 February 2019, though exempted for the period from 13 October 2017 till 31 January 2019.

- In light of the above, the Revenue held that since the foreign shipping line and foreign exporter are located in a non-taxable territory, the Indian importer has to be taxed on a reverse charge basis since the service is consumed in India. The purpose is to make the Indian shipping lines as competitive as foreign shipping lines.

- In its defense, the taxpayer has contended that Under Section 5(3) and 5(4) of IGST Act, the Government cannot specify the person liable to pay tax on a reverse charge basis. Further, it contended that the clauses (a), (b) and (c) of Section 2(93) are mutually exclusive and cannot apply simultaneously. In case the supply of goods or services is for consideration, clause (a) applies, and the recipient is the person who is liable to pay the consideration.

- Further, the CGST Act does not envisage a taxable supply without consideration, other than those specified in Schedule I.

- Moreover, the taxpayer pointed out that the unamended section 5(4) was a

standalone section, operating on its own, and did not require anything to be specified by way of a notification. Thus, RCM notification cannot be sustained under Section 5(4). The reliance placed by the Government on the amended Section 5(4) to justify RCM notification is erroneous.

- Section 5(1) is the charging section which levies IGST. Since there is no separate levy under Section 5(1) on ocean freight, the question of reverse charge does not arise.

- Further, the taxpayer argued that IGST Act has no extra-territorial application as the Act extends to the whole of India. Under Section 2(109) of CGST Act, taxable territory means the territory to which the Act applies. Further, in case of GVK Industries, Court observed that Parliament may exercise its powers with respect to an extra-territorial aspect when it has a nexus with India. It does not however empower delegated legislation to exercise such power. Thus, the activity brought within the tax net by the impugned notifications is contrary to the IGST Act.

- Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 includes cost of transportation and insurance in the value of goods, which forms the basis of the levy of IGST under the proviso to Section 5 of IGST Act. The impugned levy of IGST on ocean freight would amount to double taxation on the same transaction.

- Taking the above into account, the Hon'ble Apex Court held that The use of the phrase 'recommendations to the Union or States' indicates that the GST Council is a recommendatory body aiding the Government in enacting legislation on GST. It also observed that the phrase 'recommendation' must be interpreted in contradistinction to 'direction' or 'mandate'.

- It further held that rule 31 of CGST Rules,2017 specifically provides for a residual power to determine valuation in specific cases, using reasonable means that are consistent with the principles of Section 15 of the CGST Act. Thus, the impugned notification no. 8/2017 cannot be struck down for excessive delegation when it prescribes 10 percent of the CIF value as the mechanism for imposing tax on reverse charge basis.

- Furthermore, it also held that since the RCM notification identifies the importer as the recipient liable to pay tax on a reverse charge basis under Section 5(3) of the IGST Act, the argument of the failure to identify a specific person who is liable to pay tax does not stand. Thus, the impugned notifications cannot be invalidated for an alleged failure to identify a taxable person.

- Further, the Court observed the provisions envisaged under sections 13(9), 2(31) and 7(4) of the IGST Act, 2017 and observed that in the case of goods imported on CIF basis, the fact that consideration is paid by the foreign exporter would not stand in the way of it being considered as a "supply of service" under Section 7(4) of IGST Act which is made for a consideration, thereby constituting "supply of service" in the course of inter-state trade or commerce that can be subject to IGST.

- The Apex court also observed the legislation laid down under section 2(98), Section 2(93) (c) of the CGST Act,2017, Section 5(3), Section 13(9) of IGST Act 2017 and held that Although the consideration for shipping is payable by the foreign supplier to the foreign

shipping line in, the price is consequently factored into the price of the shipment. The ultimate benefactor of the shipping service is also the importer in India who will finally receive the goods in India. Thus, the meaning of the term "recipient" in the IGST Act will have to be understood within the context laid down in the taxing statute (IGST and CGST Act) and not by a strict application of commercial principles.

- The Court also held that on the first leg of the transaction, between the foreign exporter and the Indian importer, the latter is liable to pay IGST on the transaction value of goods under Section 5(1) of the IGST Act read with Section 3(7) and 3(8) of the Customs Tariff Act. Although this transaction involves the provision of services such as insurance and freight, it falls under the ambit of 'composite supply'.

- Further, it also observed that to levy the IGST on the supply of the service component of the transaction would contradict the principle enshrined in Section 8 and be in violation of the scheme of the GST legislation.

Ruling

- In light of the above observations, the Hon'ble Apex Court held that:

  - The recommendations of the GST Council are not binding on the Union and States.

  - On a conjoint reading of Sections 2(11) and 13(9) of IGST Act, read with Section 2(93) of CGST Act, the import of goods by a CIF contract constitutes an "inter- state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service.

  - IGST Act and CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient by RCM notification is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge.

  - Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation.

  - The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

- Accordingly, the Revenue appeals are dismissed.

2. M/s NORTHERN OPERATING SYSTEMS PVT LTD. vs C.C.,C.E. & S.T. – BANGALORE (ADJUDICATION) ETC

Subject Matter: Ruling wherein the Hon'ble Supreme Court held that the secondment of employees from a Foreign company to Indian company is manpower supply service and hence, is a taxable service.

Background and Facts of the case

- M/s Northern Operating Systems Pvt Ltd (the "taxpayer") entered into agreements with its group companies located in the U.S.A., U.K., Ireland, Singapore, etc. to provide general back office and operational support to such group companies.

- The relevant terms of the agreement are as follows:
  - When required taxpayer requests the group companies for managerial and technical personnel to assist in its business, the employees are selected by the group company and they would be transferred to the taxpayer.

  - The employees shall act in accordance with the instructions and directions of taxpayer. The employees would devote their entire time and work to the employer seconded to.

  - The seconded employees would continue to be on the payroll of the group company (foreign entity) for the purpose of continuation of social security/ retirement benefits, but for all practical purposes, taxpayer shall be the employer during the term of transfer or secondment.
  - Taxpayer issues an employment letter to the seconded personnel stipulating all the terms of the employment.

  - The employees so seconded would receive their salary, bonus, social benefits, out of pocket expenses and other expenses from the group company.

  - The group company shall raise a debit note on taxpayer to recover the expenses of salary, bonus etc. and the taxpayer shall reimburse the group company for all these expenses. There shall be no mark-up on such reimbursement.

- Revenue issued show cause notices (SCNs) covering the period October 2006 to September 2014 alleging that the taxpayer had failed to discharge service tax under the category of "manpower recruitment or supply agency service" with regard to certain employees who were seconded by the foreign group companies.

- CESTAT relied on previous Tribunal rulings in the case of **Honeywell Technology Solutions Pvt Ltd**, **Volkswagen India Pvt Ltd** and **Computer Sciences Corporation India Pvt Ltd.** It held that those seconded to the taxpayer were working in the capacity of employees and receipt of salaries by group companies was only for disbursement purposes. The employee-employer relationship existed, and the activity could not be termed as "manpower recruitment and supply agency."

- Aggrieved by the CESTAT order, Revenue preferred an appeal before the Supreme Court (SC).

Discussions and findings of the case

- The Revenue's contention in the said case was as follows:
  - The real reason or purpose for the secondment by the overseas companies was to ensure that their expertise was utilized for the performance of tasks by the taxpayer in terms of the service agreement and the master services agreement. Such secondment used their skill sets and expertise to ensure the quality required by the overseas company.
  - Upon the cessation of the assignment, the employees reverted to their original position in the overseas companies to work there or deployed elsewhere in terms of the global policy.
  - Taxpayer was not enabled to impose sanctions, such as cut in salary, etc. In case it was dissatisfied, it could only ask for return of the employee to his original position with the foreign employer.
  - Thus, it is clear that the contract between the parties was essential for the supply of services by the overseas company to the taxpayer.
- In its defense, the taxpayer held the following contentions:
  - Circular F. No. B1/6/2005-TRU dated 27 July 2005 clarified the scope of "Manpower Recruitment or Supply Agency" service to include staff who are not contractually employed by the recipient but come under his direction. This view is further strengthened by Master Circular No. 96/7/2007-ST dated 23 August 2007.

    Post July 2012, the services provided by an employee to the employer in the course of employment are kept beyond the ambit of the definition of "service". Thus, the position of law both prior to as well as post July 2012 is same. Employee-employer relationship is outside the scope of the said service.
- The seconded personnel are contractually hired as the taxpayer's employees and they are required to report to the designated offices and are accountable for their performance to the taxpayer. The process of dispersal of the salaries and allowances is solely for the sake of convenience and continual of the social security benefits in the expats home county.
- In case of **Nissin Brake India (P) Ltd**, Hon'ble Supreme Court while considering similar set of facts dismissed the revenue's appeal, which had challenged the CESTAT's ruling that expenses reimbursed by the Indian companies to the foreign group companies in relation to seconded employees cannot be subject to service tax under Manpower Recruitment or Supply Agency Service.
- The demand of the service tax is being computed on the salaries

and allowances paid to the employees. The salaries cannot be said to be consideration paid to group companies for provision of service and thus, such demand is untenable.

- Even if the said demand of service tax is paid, the entire amount is available as input credit and is refunded to the taxpayer in cash by virtue of Rule 5 of the CENVAT Credit Rules, 2004 read with Rule 6A of the Service Tax Rules, 1994.

- Any cost or expense reimbursed does not represent the gross value of taxable service and cannot be a consideration for charging service tax. Reliance is placed on the SC ruling in case of **Intercontinental Consultants and Technocrats Pvt Ltd** in this regard.

- Taking the above points into consideration, the Hon'ble Apex Court observed that the crux of the issue is taxability of the cross charge, which is primarily based on who should be reckoned as an employer of the secondee.

- If the Indian company is treated as an employer, the payment would in effect be reimbursement and not chargeable to tax. However, in the event the overseas entity is treated as the employer, the arrangement would be treated as service and be taxed.

- There is not one single determinative factor, which the courts give primacy to, while deciding whether an arrangement is a contract "of" service or a contract "for" service.

- The Hon'ble Apex court observed that the seconded employee, for the duration of his or her secondment, is under the control of the taxpayer, and works under its direction. Yet, the fact remains that they are on the pay rolls of their overseas employer and it is doubtful that without the entitled social security benefits in the country of origin they would agree to the secondment.

- On the other hand, it also observed that secondment is a part of the global policy of the overseas employer loaning their services, on temporary basis. On the cessation of the secondment period, they have to be repatriated in accordance with a global policy.

- Further, the letter of understanding between the taxpayer and the seconded employee nowhere states that the latter would be treated as the former's employees after the seconded period (which is usually 12-18 months). The salary package, with allowances, etc., are all expressed in foreign currency.

- Further, the allowances include a separate hardship allowance of 20% of the basic salary for working in India. In addition, the monthly housing allowance and an annual utility allowance is also assured. These are substantial amounts and resorts to a standardized policy of the overseas employer.

- The Court also observed that the overall effect of the agreements clearly points to the fact that the overseas company has a pool of highly skilled employees, who are entitled to a certain salary structure as well as social security benefits. These employees, having regard to their expertise and specialization, are seconded (deputed) to the taxpayer for use of their skills.

- Their terms of employment, even during the secondment, are in accord with the policy of the overseas company, who is their employer.

- For similar reasons, the orders of the CESTAT, affirmed by SC, in Volkswagen and Computer Sciences Corporation, are unreasoned and of no precedential value.

Ruling

- In light of the above, SC held that the taxpayer was the service recipient of the overseas company, which can be said to have provided manpower supply service or a taxable service.

  Consequently, the impugned common order of the CESTAT was set aside. The commissioner's orders in original were accordingly restored, except to the extent they seek to recover amounts for the extended period of limitation.

Direct Tax

1. SC validates reassessment notices issued between April and June 2021 following old procedure

Background

In relation to provisions for reassessment under Income Tax Laws (ITL):

- Prior to the amendment made vide Finance Act (FA), 2021 i.e., under the old regime of reassessment, the tax authority could reopen past assessments if there was reason to believe that income had escaped assessment. Though there is no requirement in the statutes to supply reasons recorded to the taxpayer, the SC, in the case of GKN Driveshafts v. ITO, provided certain guidelines (e.g., to supply reasons to the taxpayer, if sought, objections to be raised by the taxpayer, if any, disposal of objections by speaking order etc.) for conducting reassessment proceedings under the old regime of reassessment. Admittedly, these provisions were applicable till 31 March 2021.

- FA 2021 has brought reformative changes and introduced new provisions for conducting reassessment proceedings under the ITL (new regime of reassessment) by substituting the old regime. The new regime of reassessment is made effective from 1 April 2021.

- Amongst other changes, the new regime of reassessment provides a separate mechanism to be followed by the tax authority before issuing the notice for reopening assessments and is materially different than the procedure laid down under the old regime of reassessment applicable till 31 March 2021. Under the new regime of reassessment, the tax authority is required to: (a.) Conduct pre-notice inquiry on the basis of information in the tax authority's possession, which suggests that income has escaped assessment. (b.) Provide an opportunity to the taxpayer to support why assessment should not be reopened. (c.) Pass an order if the tax authority proceeds to issue notice for reassessment. Additionally, there is obligation on the tax authority to obtain approval from higher authorities at multiple stages under the new regime of reassessment.

In relation to Relaxation Act

- With a view to relieve the various compliance burdens on taxpayers and the tax authority, who were going through an unprecedented health and economic crisis due to the onset of the COVID-19 pandemic, the parliament had promulgated an ordinance4 in March 2020, which was succeeded by the Relaxation Act in September 2020 (w.e.f. March 2020) to relax various compliances under various laws, including the ITL, both for taxpayers and the tax authority.

- Pursuant to the powers granted by the Relaxation Act, the central government has extended the period for issuance of reassessment notice till 30 June 2021 in respect of tax years which were getting time barred as on 31 March 2020 or 31 March 2021 as per the old regime.

Existing jurisprudence

- The validity of notices issued between April and June 2021 under the erstwhile reassessment regime pursuant to the time extended under the Relaxation Act, despite the introduction of the new regime, was questioned before various HCs

- Initially, a single-judge bench of the Chhattisgarh HC had upheld the validity of the reassessment notices from 1 April

2021 to 30 June 2021 following the old reassessment regime. However, subsequently, various HCs (i.e., Allahabad HC, Rajasthan HC, Karnataka HC, Madras HC, Delhi HC, Bombay HC and Calcutta HC) ruled in favor of the taxpayers and quashed the reassessment notices issued from April to June 2021 for past tax year/s, which followed the old procedure of reassessment that was already substituted vide FA 2021 w.e.f. 1 April 2021. The HCs unanimously held that the old provisions of reassessment were substituted and repealed vide FA 2021 w.e.f. 1 April 2021 and, in the absence of any saving provisions, the same cannot be resurrected by the tax authority under the guise of the Relaxation Act and various notifications issued thereunder. One of the roles of the Relaxation Act (enacted due to the onset of the COVID-19 pandemic) was held to be limited to extend the time limit for initiation of proceedings as per the law applicable as on the date of initiation of proceedings.

- The decision of the Allahabad HC (supra) was challenged before the SC to decide on the issue.

SC's Ruling

The SC upheld the validity of reassessment notices issued between April and June 2021 following the old procedure of law. While holding so, the SC noticed that more than 90,000 reassessment notices were issued in a similar manner and considered its far-reaching impact on the public exchequer. The SC decided on the issue as under:

- **The SC observed the following legal principles in relation to applicability of the new regime of reassessment:**

- The SC held that the new reassessment regime, being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the taxpayer and the same being in public interest, the respective HCs have rightly held that the benefit of the new provisions shall be made available even in respect of the proceedings relating to past tax years, provided the reassessment notice has been issued on or after 1 April 2021.

- The SC noted that while reassessment notices ought to have been issued under the new reassessment regime since they were issued on or after 1 April 2021, notices issued under the old regime were under a bona fide mistake of the tax authority that the amendment may not yet have been enforced in view of the subsequent extension of timelines vide various notifications.

- According to the SC, the tax authority cannot be made remediless, and the object and purpose of reassessment proceedings cannot be frustrated.

- Basis the above, the SC held that the tax authority ought to have been permitted to proceed further with the reassessment proceedings as per the new reassessment regime, subject to compliance of all the procedural requirements and the defences which may be available to the taxpayer as per the new reassessment regime.

SC provides following directions to modify orders of various HCs in relation to impugned reassessment notices:

- The respective impugned notices issued under the old reassessment procedure

shall be deemed to have been issued under the new reassessment procedure and treated to be show cause notices for pre-notice inquiry in terms of the new reassessment procedure.

- The tax authority, within 30 days from the date of the decision, shall provide to taxpayers the information and material relied upon by the tax authority so that the taxpayers can reply to the notices within two weeks of the same.

- The requirement of conducting any enquiry with the prior approval of the specified authority under the new reassessment regime may be dispensed with as a one-time measure vis-à-vis those notices which have been issued under the old reassessment regime from 1 April 2021 till date, including those quashed by various HCs.

- The tax authority shall thereafter pass an order under the new reassessment procedure after following the due procedure laid therein in respect of each taxpayer.

- All the defenses which may be available to the taxpayer under the new reassessment procedure and in law and whatever rights are available to the tax authority under the FA 2021 are kept open and/or shall continue to be available.

- The present order shall substitute / modify respective judgments and orders passed by the respective HCs quashing similar notices issued under the old reassessment regime, irrespective of whether they were challenged before the SC.

Other observations of the SC

- The SC noted that there was a broad consensus of the counsels of the tax authority and the taxpayers on aforesaid directions, which will strike a balance between the rights of the taxpayer and the tax authority.

- Furthermore, the SC invoked extraordinary power under Article 142 of the Constitution of India and directed that its present order shall govern, not only the impugned judgments and orders passed by the Allahabad HC at Allahabad (which was the subject matter of the present appeal), but would also extend to all similar judgements and orders passed by or pending before HCs across India.

Our offices

Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Golf View Corporate
Tower – B
Sector 42, Sector Road
Gurgaon – 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad
Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: + 91 657 663 1000

Kochi
9th Floor "ABAD Nucleus"
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camaca Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

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EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532