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THE NEWSLETTER

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UPDATE YOURSELF

Reserve Bank of India Simplifies Foreign Investment Policy

Foreign Investments in India are presently reported in a complicated manner which makes the process cumbersome for all parties involved. To address this problem and to increase ease of doing business in India, the Reserve Bank of India (**"RBI"**) has issued two circulars in June, 2018 that introduce a new online reporting system for foreign investments. According to these, there will be a Single Master Form (**"SMF"**) which will be filed online and will subsume 8 out of the 12 different forms that currently exist for various modes of investment. The form will be released from 30th June 2018, and the first draft of this form has been released on 7th June, 2018 to allow Indian entities to be prepared for the impending compliances. Before this implementation, the RBI will conduct a mandatory data collection for all entities that have foreign investment through an Entity Master Form (**"EMF"**). This initiative is being undertaken to consolidate all information records of foreign investments in Indian Entities in a single platform online. The EMF will be in effect from 28th June, 2018 to 12th July, 2018. At present, it appears that this window will be the only opportunity provided to enter the data required in the EMF. This EMF has been made a pre-requisite and any entity not following these instructions will be declared non-compliant with the Foreign Exchange Management Act, 1999 (**"FEMA"**) and will not be permitted to receive any foreign investment in the future. It is important to clarify that the EMF is a one-time requirement but is separate from the SMF that is to be introduced. Considering that the penalty for non-compliance is very strict, the RBI has also released the format of EMF to allow Entities to prepare for the upcoming compliances. Given the crucial nature of this requirement, it is advisable for all the Indian Entities and other stakeholders to plan in advance for the necessary disclosures.

Companies (Significant Beneficial Owners) Rules, 2018 Notified by MCA

The Ministry of Corporate Affairs ("**MCA**") has *vide* Notification No. F. No. 1/1/2018 CL-V dated June 13, 2018, notified the Companies (Significant Beneficial Owners) Rules, 2018 ("**Rules**"). The Rules aim to promote transparency and accountability in a corporate setup. According to Rule 2(1)(e) of the Rules, Significant Beneficial Owners ("**SBO**") means an individual who acts alone or together with one (1) or more persons or trust, who holds the ultimate beneficial interest of more than 10% but whose name is not entered in the register of members of a company as the holder of shares. Further, Explanation I to Rule 2(1)(e) of the Rules provides for determination of SBO with respect to legal entities like company, partnership and trust. As per Explanation I(i) to Rule 2(1)(e) of the Rules, SBO for a comp-

any shall mean a person who holds 10% share capital of the said company or exercises significant influence or control in the said company through other means. Further, according to Explanation I(ii) to Rule 2(1)(e) of the Rules, SBO with respect to a partnership firm shall mean a person who holds 10% of the capital or has an entitlement of not less than 10% of profits of the partnership. The Rules also prescribe different forms which should be filled by the SBO or the company. Further, as per Rule 8 of the Rules, the said Rules are not applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alterative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under the Securities and Exchange Board of India Act, 1992.

Certificate of Purchase Issued in the Name of Karta is for or on Behalf of the Joint Family

In the case of ***Vithu C. Agaskar vs. Shri. Rama Ganjanan Agaskar and Ors. [First Appeal no. 916 of 1991, decided on 15.06.2018],*** the main question of consideration before the Hon'ble High Court of Bombay ("**HC**") was whether the certificate of purchase of property is conclusive proof of title of the joint family property. In the instant matter, the Appellant contended that after the death of his father Changa Agaskar **("Father"),** the Appellant had purchased the land under Section 32(G) of the Bombay Tenancy & Agricultural land Act (**"Act"**) by obtaining the certificate of purchase and accordingly, became the exclusive owner of the said land. Whereas, the Respondent contended that land was never partitioned and even after the death of the Father, the Appellant and the Respondent continued to cultivate the said land as joint family property. The HC while dealing with the present matter observed that the Appellant had subsequently got his name entered in the survey records by bracketing the name of the Respondent and no notice was given to the Respondent before deleting/bracketing his name. Further, HC observed that since an undivided Hindu Family can be a tenant within the meaning of Section 2(18) of the Act hence, under such circumstances, the certificate of purchase issued in the name of Appellant would be for and on behalf of the joint family. Also, the tenancy rights of the joint tenants cannot be negated solely on the ground that the certificate of purchase was issued in favour of Karta of a joint family or any elderly person of a joint family**.** Thus, HC, after analyzing the present case in the light of the above observation, ruled that the certificate of purchase cannot be the conclusive proof of title, vis-a-vis the joint tenants.

CBIC Issued Clarification Pertaining To "Supply To SEZ Unit Or SEZ Developer"

CBIC *vide* circular No.48/22/2018-GST dated 14.06.2018 (**"Circular"**) has issued clarification on whether services of short-term accommodation, conferencing, banqueting etc. (**"Accommodation Services"**) provided to a Special Economic Zone (**"SEZ"**) developer or a SEZ unit be treated as an inter State supply under Section 7(5)(b) of the Integrated Goods and Services Tax Act, 2017 (**"IGST Act"**) or as an intra-State supply under Section 12(3)(c) of the IGST Act. In respect of the same, CBIC observed that as per Section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods

or services or both in the course of inter-State trade or commerce. Therefore, as per this provision supply of Accommodation Services to a SEZ developer or a SEZ unit is an inter-state supply. On the other hand, as per Section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra-State supply. Therefore, as per this provision supply of Accommodation Services to a SEZ developer or a SEZ unit is an intra-state supply. Consequently, in cases where Accommodation Services are provided to SEZ developer or units, there arises conflict between Section 7(5)(b) and 12(3)(c) of the IGST Act. To solve this conflict, CBIC relied on the settled principle of interpretation of statutes that specific provision prevails over general provision in case of an apparent conflict between two provisions. Accordingly, CBIC clarified that Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both to a SEZ developer or a SEZ unit and Section 12(3)(c) of the IGST Act is a general provision. Hence, Section 7(5)(b) of the IGST Act will prevail over Section 12(3)(c) of the IGST Act. As a result, even if in respect of Accommodation Services provided to a SEZ developer or a SEZ unit, the location of the supplier and the place of supply are in the same State/ Union territory, then also the supply of Accommodation Services to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

MahaRERA Affirms Right to Decide Pre-Act Cases

The Hon'ble Maharashtra Real Estate Regulatory Authority ("***Authority***") in the matter of ***Champatlal and others vs. A Surti Developers Pvt. Ltd. [Complaint No. CC006000000012571, decided on 04.06.2018]***has affirmed its right to decide case prior to Real Estate (Regulation and Development) Act, 2016 ("**Act**"). In the present case, in the month of February 2017, the developer had unilaterally cancelled the agreement for sale in respect of the project UNIVERSAL PARADISE D WING' situated at Santacruz, Mumbai, which were executed and registered with the complainants during the period of 2007-2013. The complainants approached the Authority praying the Authority to declare the said agreements for sale as valid, legal, subsisting and binding on the developer and further, to direct the developer to handover possession of the said apartments and pay them interest for the delay in handing over possession. The counsel for the developer contended that since the agreements were cancelled prior to the Real Estate (Regulation and Development) Act, 2016 coming into force, there was no cause of action subsisting on the date when the said act came into force and therefore, the Authority does not have any jurisdiction to decide the complaints. While rejecting the contentions of the counsel for the developer, the Authority held that though the said cancellations were executed prior to the said act coming into force, since monies paid by the complainants to the developer is still lying with the developer, therefore, the Authority has jurisdiction to adjudicate the complaints. The Authority further directed the developer to execute agreement for sale as per Section 13 of the said Act, if the complainants wished to continue with the said project.

Madras High Court Orders Creation of '*Environment Fund*'

The Hon'ble Madras High Court in the matter of ***D. Govindasamy vs. L. Ganesh Naidu [CRP (NPD) No. 1643 of 2010, decided on 20.06.2018]*** while emphasizing upon the ***right to clean environment*** recognized as a fundamental right under Article 21 of the Constitution of India has directed Tamil Nadu Legal Services Authority, Chennai ("**TNLSA**") to create '***Environment Fund***' and has passed the following guidelines:

1. The Member Secretary, TNLSA shall open a separate account under the head "Environmental Fund" ("**Fund**"), so as to deposit the amounts received from various Courts under this head and to be utilized for the purposes mentioned herein below.
2. The amount received under the head Fund shall be utilized for the purpose of planting, developing and maintaining trees, cleaning and maintaining water bodies.
3. The Taluk Legal Services Committees can identify the places to plant saplings, with the help of the officials of the local bodies and submit a proposal to the concerned District Legal Services Authority, mentioning clearly the variety and number of saplings proposed to be planted, the costs involved therein, including fencing.

4. The District Legal Services Authorities shall submit a consolidated proposal to the Member Secretary, TNLSA, requesting for release of amounts from the Funds towards planting, developing and maintaining trees in the Court / public premises by specifying clearly the type and number of saplings required, cost involved therein etc. The procurement, to the extent possible, shall be from the District Forest /Horticulture Departments.
5. If fruit / vegetable bearing trees are planted, the concern District/ Taluk Legal Services Authority would take steps to market the produce, if any from such plantations and remit such amounts in the account maintained by the Member Secretary, TNLSA under the head Fund.
6. Whenever costs are ordered and received by any of the Courts under the above said Fund, the same shall be remitted to the Account of the Fund, without any delay.
7. The above guidelines would also apply mutatis mutandis to the High Court Legal Services Committee, both at the Principal Seat and at Madurai Bench, who shall coordinate with the respective District Legal Services Authorities i.e. Chennai and Madurai District Legal Services Authorities and the Tamil Nadu State Legal Services Authority.

Commission for Market Survey Service Cannot Be Considered As FTS

In the case of ***Evolv Clothing Co. (P.) Ltd. vs. Assistant Commissioner of Income-tax [[2018] 94 taxmann.com 449 (Madras-HC) dated 14.06.2018]***, the moot question of law before the Hon'ble HC was whether commission paid to agent who rendered marketing services outside India, can be regarded as Fees for Technical Services ("***FTS***") as per Section 9(1)(vii) of the Income tax Act, 1961 ("***Act***") or not. The brief facts of the case are that the Assessee carries on business of export of garments. The Assessee entered into agency agreements with a non-resident agent for procuring orders for it and in return, the Assessee paid commission to the agent. During the FY 2008-09, the Assessee paid a sum of Rs.3,74,09,773/- as commission to the said foreign agent without deducting TDS. The Ld. AO observed that the Commission was paid to the foreign agent for (i) marketing the products, (ii) to procure orders and (iii) systematic market research with regard to needs of the products, etc. Referring to the meaning of 'Fees for Technical Services' as per Explanation 2 of Sec-

tion 9(1)(vii) of the Act, AO arrived at the finding that it could not be said that the payments made by the Assessee was solely for the purpose of procuring orders as it includes payment towards market survey services. As per the AO, commission for market survey is in the nature of FTS. Therefore, income of non-resident agent shall be deemed to be arsing in India u/s 9(1)(vii) of the Act, for which the Assessee ought to have deducted TDS u/s 195 of the Act. On the basis of these findings, the amount of Rs.3,74,09,773/- paid to the non-resident agent was disallowed by the AO. The decision was challenged before CIT(A) and then before ITAT. After the matter travelled to the HC, the Hon'ble HC held that FTS as per Explanation 2 to Section 9(1)(vii) of the Act, means consideration for any managerial, technical or consultancy services. The service of market survey to ascertain demand for the product in the market is incidental to the function of a commission agent for procuring orders and in any case, cannot be considered as managerial, technical or consultancy service provided by the agent and accordingly do not fall within the meaning of "Fees for Technical Services".

Scope of 'Change of Opinion' & 'Limitation Period' u/s 263 of IT Act

In case of ***Indira Industries vs. PCIT [W.A. No. 1092 of 2017 decided on 14.06.2018]***, following grounds were raised by the Appellant, before the Hon'ble Madras High Court:

1. Since, re-assessment done by the revenue was accepted by the Assessee, the same issue cannot be reopened u/s 263 of the Act as it tantamount to 'Change of Opinion'; and
2. Impugned notice issued u/s 263 of the Act, is barred by limitation u/s 263(2) due to the fact that notice ought to have been issued within 2 years from the end of the financial year in which the order sought to be revised was passed.

The brief facts of the case are that, in case of the Appellant, scrutiny assessment was completed on 25.02.2015. Thereafter, assessment was re-opened, wherein expenditure of interest on loan was disallowed. The re-assessment proceedings were accepted by the Appellant. On 16.08.2017, notice u/s 263 of the Act was issued, wherein issues of bad debts written off and others were raised. Being aggrieved, the Appellant filed a writ petition before the Hon'ble HC to challenge the notice u/s 263 of the Act on the above-mentioned grounds. The Hon'ble HC while dealing with the first ground, referred to the case of ***CIT vs. Sat Pal Aggarwal (2007) 293 ITR 90*** wherein the Hon'ble Punjab & Haryana High Court observed that, where during the course of re-assessment proceedings, assessee has agreed for addition made and thereafter, on the very same facts, notice u/s 263 is issued, the said notice tantamount to 'Change of Opinion'. However, in this case, as the subject matter of notice u/s 263 of the Act was different, the Hon'ble HC negated the first ground raised by the Appellant. For second issue, judgment in the case of ***CIT vs. Alagendran Finance Ltd, (2007) 162 Taxman 465*** was referred, wherein the Apex Court observed that period of limitation provided u/s 263(2) of the Act would begin to run from the date of the order of assessment and not from the order of reassessment, when the notice u/s 263 does not deal with the same subject as in assessment and when it deals with other issues which are not subject matter of re-assessment. Thus, the impugned notice u/s 263 being hit by the limitation was set aside.

QUICK TAKEAWAYS

- In the case of ***Moulasab vs. the State of Karnataka [Criminal Revision Petition No. 2051/2011, decided on 11.06.2018]***, the Hon'ble Karnataka High Court observed that it is not necessary that the offending vehicle must have always exceeded its speed limit or over speeded to constitute 'rash and negligent' driving.
- In the case of ***Farhad Ginwalla and Ors. vs. Zenobia R. Poonawala and Ors. [Suit No. 548 of 2018, decided on 1.06.2018]***, the Hon'ble High Court of Bombay has held that installing CCTV cameras outside somebody's flat or residence without their consent in order to monitor their daily movement is an invasion of privacy.
- The MCA *vide* its notification dated 12.06.2018 bearing no. F. No. 17/61/2016-CL-V (Pt.1) has issued the Limited Liability Partnership (Amendment) Rules, 2018 to amend the Limited Liability Partnership Rules, 2009 in respect of filing of forms for being a designated partner in an existing LLP.
- The Hon'ble High Court of Madras in the case of ***Inspector of Police, Srirangam vs. A. Arun [CRL.O.P (MD) No. 9577 of 2013, decided on 05.06.2018]***, has observed that there is nothing uncommon or illegal in naming hotels after caste and communities and it is the fundamental right of the proprietor concerned.
- The Hon'ble High Court of Kerala in the case of ***Mr. X vs. the State of Kerala [Bail Application No. 3320 of 2018, decided on 05.06.2018]***, held that a child in conflict with law can apply for anticipatory bail under Section 438 of the Criminal Procedure Code, 1973 as there is nothing in the Juvenile Justice (Care and Protection of Children) Act, 2015 which bars him/her from doing so.
- The Hon'ble High Court of Madhya Pradesh in the case of ***Balmukund Singh Gautam vs. Smt. Neena Vikram Verma [Election Petition No.23 of 2014, decided on 18.06.2018]*** has observed that mere criticism of a judgment of the high court in public speech will not tantamount to corrupt practice as defined under Section 123 of the Representation of the People Act, 1951.
- The CBDT *vide* its notification dated 19.06.2018 bearing no. F. No. 370142/12/2017-TPL has issued draft regarding amendment in Rule 10CB of the Income-tax Rules, 1962 in respect of computation of interest income pursuant to secondary adjustment made under section 92CE.
- SEBI *vide* its circular no. SEBI/ HO/ MIRSD/ DOP2 /CIR/P/2018/95 dated 06.06.2018 has amended the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999.
- The Ministry of Corporate Affairs *vide* its notification dated 18.06.2018 bearing no. F.No. 17/15 1/2013-CL-V has amended para 32 of AS 11 according to which remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of disposal unless it constitutes return of the investment.
- The Hon'ble High Court of Punjab and Haryana in the case of ***A.R. Madhav Rao and others* vs. *State of Haryana and another* [*CRM M-2068 of 2012 (O&M) and CRM M-33057 of 2011 (O&M)]*** held that charges of abetment to suicide cannot be leveled if a "person of weak mentality" names somebody in his suicide note but a subsequent investigation fails to establish the accused person's guilt.
- The CESTAT, Delhi in the matter of ***M/s. Poddar Pigments Ltd. vs. CCE Jaipur [Appeal No. E/51099/2018-SM, decided on 14.06.2018]***, has held that sending of samples to buyers is a Promotional Activity which cannot be treated as outward transportation for the purpose of Cenvat credit.
- The Hon'ble Hyderabad bench of Income Tax Appellant Tribunal in case of ***B.V. Reddy Transports Pvt. Ltd., vs. Asst. Commissioner of Income Tax*** [ITA No. 13/HYD/2016], held that the provisions of Section 115JB of the Income Tax Act, 1961 is not applicable to a sick company.

KNOWLEDGE CENTRE

FAQs on Insolvency and Bankruptcy Code, 2016 ("IBC")

Q. 1. What is the purpose behind enactment of IBC?
Ans. Pursuant to Preamble of IBC, it has following purposes: (i) to consolidate the laws related to the insolvency and bankruptcy resolution of various persons, (ii) to resolve the matters related to insolvency and bankruptcy in time bound manner, (iii) to equally protect the interest of several stakeholders by way of prioritizing the payment, (iv) to establish a regulatory body i.e., Insolvency and Bankruptcy Board of India to regulate the matter related to insolvency and bankruptcy.

Q. 2. Who are the persons covered under the IBC?
Ans. (i) Indian company, (ii) Indian limited liability partnership, (iii) body corporate, (iv) partnership firm, (v) individual, and (vii) any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such special act.

Q. 3. To whom IBC shall not apply?
Ans. IBC is not applicable on financial service providers, which are engaged in business of providing financial services under a registration granted by a financial sector regulator, such as, financial institutions, insurance companies and banks.

Q. 4. What kind of debts protected under IBC?
Ans. The term 'debt' has been defined under Section 3(11) of IBC, as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

Q. 5. Whether IBC has amended other laws also?
Ans. IBC has amended other laws also which are given under Schedule attached to IBC. Some of these laws are Companies Act, 2013, SARFAESI, 2002, etc.

Q. 6. What is the minimum default amount to initiate insolvency and liquidation of corporate debtor under IBC?
Ans. For the purpose of initiating the insolvency and liquidation against the corporate debtors under IBC, the minimum amount of default is rupees one lakh as per Section 4(1) of IBC.

Q. 7. What is the meaning of corporate debtors under IBC?
Ans. Pursuant to Section 3(8) of IBC, the phrase 'corporate debtor' has been defined as a corporate person who owes debt to any other person. Further, the phrase 'corporate person' is defined u/s 3(7) of IBC, as a company as defined in Section 2(20) of the Companies Act, 2013, a limited liability partnership as defined in Section 2(1)(n) of the LLP Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

Q. 8. Who is the adjudicating authority for corporate persons under IBC?
Ans. National Company Law Tribunal is the adjudicating authority under IBC.

Q. 9. Who can initiate the corporate insolvency proceedings against a corporate debtor?
Ans. Upon commitment of default, as per Section 6 of IBC a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process.

Q. 10. What is the minimum default amount to initiate insolvency and bankruptcy process against an individual or a partnership firm under IBC?
Ans. In accordance to Section 78 of IBC, the minimum amount of default to initiate insolvency and bankruptcy process against an individual or a partnership firm under IBC is rupees one thousand.

EDITORIAL

Job Work under GST Regime

-By *Prateek Sharma, Chartered Accountant*

Job work is a concept wherein certain process or whole process of manufacturing an article is handed over by a person to another person. The person who is carrying out the process on the goods is called 'job worker' and the person who own the goods is called 'principal'. The basic structure of job work is in the nature of service wherein the job worker by using its labour and capital goods carry out certain process on the goods provided by the principal, subject to certain minor consumables used by the job worker. The feasibility in job work is that giving goods for job work is not treated as supply by the principal, subject to the condition that the said goods are received back by the principal or supplied from job worker's premises within the prescribed limit. Thus, generally the liability to pay GST on the inputs in the hands of principal arises when the inputs or goods processed are supplied to the final customer and the job worker is liable to pay GST on the amount charged for the processing done by him, commonly known as job work charges.

The term "job work" is defined in Section 2(68) of the Central Goods and Services Act, 2017 (**'CGST Act'**) as any treatment or process undertaken by a person on goods belonging to another registered person. Therefore, there are two pre-requisites for job work: (i) There should be application of a treatment or process; and (ii) That treatment or process shall be on goods owned by the registered person other than the job worker. Thus, it can be construed that if the treatment or process is carried out on the owned goods of the job worker or any other unregistered person, then it cannot be regarded as a job work. The terms "treatment" and "process" are not defined in the CGST Act or the rules made thereunder. In general parlance, the terms "treatment" and "process" are used alternatively and are referred to as a mode by which someone deals with something or mode of manufacture of any article. Now, we will discuss two recent advance rulings under GST law related to job work. The advance rulings are quiet interesting and are helpful in understanding the concept of job work. The first advance ruling is in the case of **Inox Air Products Private Limited**, applicant, which is engaged in the business of manufacture and supply of industrial gases. As per the agreement with the applicant, M/s. Essar Steel, principal, undertakes to provide the necessary goods such as Electricity, Industrial quality water and atmospheric air to the applicant on a free-of-cost basis, using which the applicant manufactures industrial gases for principal. Also, in order to ensure continuous availability of the gases, the applicant's gas plant is located at a designated land within the steel plant of the principal. In this case, the main contention of the department was that the industrial gases are manufactured by separating the 'Atmospheric air' which is main input and the said main input is not in possession of the principal. Therefore, the 'Atmospheric air' is not a property of principal that can be given to the applicant for manufacturing industrial gases from it. Hence, the activity of the applicant does not meet the definition of 'job work' given in the CGST Act, as it does not involve any treatment or process on goods belonging to another registered person. In this regard, the Advance Ruling Authority analysed the transaction and observed that the owner of the land is also the owner of the vertical column of air above the land. The said observation was derived by the Authority from the Latin maxim *cuius est solum, eius est usque ad coelum et ad inferos* i.e. For whoever owns the soil, it is theirs up to Heaven and down to Hell. This has been also legislatively recognized under the Indian Easements Act, 1882, in Section 7 which clearly states that the ownership of land includes ownership of the air vertically above the land. Thus, the ownership of the land extends to the ownership of the air vertically above it. In this regard, as per the terms of the arrangement between the parties, principal is required to provide land and all other inputs for the processing of gases by the applicant. Accordingly, in view of the aforesaid statutory position and commercial

arrangement, it is clear that the principal is the owner of the atmospheric air above its land and as the principal is providing land to the applicant, it can be construed that principal is also providing the Atmospheric Air. Thus, all the inputs viz. Atmospheric Air, Industrial Water and Electricity belongs to the principal only. Hence, the Authority held that the current transaction can very well be regarded as job work.

The second advance ruling is in the case of **JSW Energy Limited**, applicant. As per the facts of this ruling, the applicant was generating electricity from the coal supplied by JSW Steel Limited, principal. The authority in this ruling held that since the activity undertaken by applicant is squarely covered in the definition of "manufacture" under the CGST Act, it is, not covered by the scope of the definition of "job work" under the CGST Act. In my view, this observation is not correct in light of the definition of the term "job work" which itself provides for "any treatment or process" to be treated as job work. Further, the definition of manufacture in the CGST Act itself refers to *'processing of raw material or inputs'*. Thus, manufacture is itself a result of process. Therefore, since it is specifically written that any process can amount to job work, it cannot be construed that process which results into manufacture is not covered under the ambit of "job work". Also, the definition of the term "job work" does not have any 'excludes' clause which excludes manufacture out of job work. Thus, in my view, if the requirements under the definition of job work are satisfied, then even if the treatment or process amounts to manufacture, it will be treated as "job work". Thus, under GST law, job work may or may not tantamount to manufacture. However, from nowhere it can be construed that under GST law job work cannot result into manufacture. This can also be substantiated by the fact that the judgement of *Manganese Ore India Ltd.* used in the said ruling for understanding the meaning of the phrase "any treatment or process" and taking a narrower interpretation of the said phrase is not correct as the term 'processing' in the said definition was used in a different aspect.

Further, though manufacture can amount to job work, it does not mean that every manufacture will be job work. As per the facts of the said ruling, the real question was that, whether the transaction can be said to be job work wherein coal was given for generation of electricity and in turn the electricity is received as a processed product. Here it has to be appreciated that the principal is giving only coal for generation of electricity whereas the electricity cannot be generated by coal only, it requires water also, as one of the major components. It is evident by the fact that the process of generating electricity includes process on water and the coal is used as consumable for combustion in the boiler to convert water into steam. Thus, electricity is not only a result of process on coal, it is much more than that and coal is only one of the components for generating electricity apart from water. Also, the processed final product i.e. electricity cannot be equated with a product of carrying out process on coal only. Thus, even if manufacture can amount to job work, it cannot be said that manufacture of electricity wherein only coal is provided by the principal will amount to job work. Hence, in my view, it cannot be said that the transaction of generating electricity by carrying out treatment or processing on coal is a job work on coal. However, if the transaction was of receiving the coke (a processed product of coal) by giving coal, then that can be said to be job work on coal.

On the basis of the above discussion, it can be concluded that job work under GST is a much broader concept and there is no restriction that it cannot tantamount to manufacture.

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