

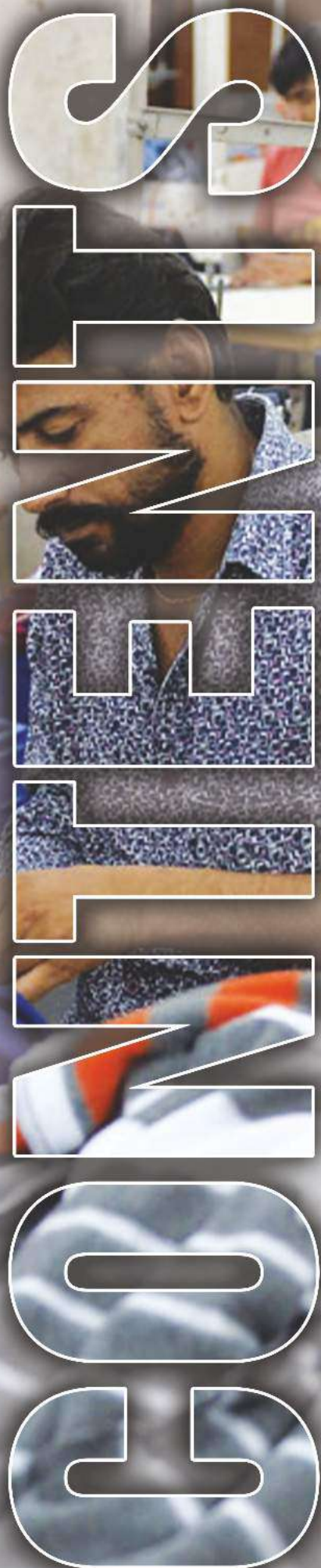


MCCI MSME CONNEXIONS

E Bulletin- By the MCCI Council on MSME



**Monthly Issue
Volume III
September 2022**



MSME NEWS

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MESSAGE



From the Desk of
Shri Rishabh C. Kothari
President, MCCI

Dear friends,

We are happy to bring to you the 3rd edition of MCCI MSME Connexions.

The pressure of increased inflation and decline in the Index of industrial production (IIP) are the two major challenges facing the economy. The declining figures for both consumer and non-consumer durables reveal that domestic demand did not seem to have lent support to the manufacturing. Index of Consumer Sentiments (ICS) both in the city and in the rural India is down in the first week of September.

Further, MSMEs are also faced with their own challenges and delayed payments is one of them. In fact, this has always been a burning issue for MSMEs. Although mandated by law to receive payments within 45 days from the date of raising their Invoice, many units have not been able to recover their dues in time resulting in working capital shortage and a cash flow issue for the sector. The State MSE Facilitation Centres, including the Centre in West Bengal, have been providing excellent support system to address the issue. However, the number of dispute cases is still quite high.

It is encouraging to note that the Union Government is focusing on this area and finding out ways to address the problem. Recently, the Union Finance Minister has emphatically advised the big corporate houses to clear dues of the MSMEs within stipulated time. MSMEs need equal support from both the government and large firms. There are pending payments from central and state Governments and central and state-owned entities too, which should also need to be addressed.

In the month of August, while the whole nation celebrated "Har Ghar Tiranga" on the Independence Day, we feel that we should come up with a clear roadmap for the MSME sector as India takes on the Journey from 75 to 100.

MCCI has been contributing through a series of initiatives for the MSME sector viz. MCCI MSME Help Desk, MCCI GST Help Desk and MCCI IPR Facilitation Centre etc. The Chamber is also instituting MCCI EXIM Facilitation Centre and MCCI Financial Clinic shortly, for the benefit of MSMEs.

I invite all the members to participate and take benefit of all these initiatives of the Chamber. I look forward to your active participation in all these value-added services of MCCI.

Please feel free to share your suggestions and views from time to time.

Wish you a Happy Durga Puja and a Happy reading!

MESSAGE



From the Desk of
Shri Sanjib Kumar Kothari
Chairman, Council on MSME,
MCCI

Dear friends,

MCCI is committed to make a difference in the MSME fraternity. The Chamber, which has a huge MSME membership base, has taken up quite a few initiatives towards promotion and handholding of MSME units.

The Chamber has been fortunate to receive all out support from the Central & State Governments, banks, regulatory bodies and other concerned authorities.

You may kindly remember that in the month of June, Shri Narendra Modi, the Hon'ble Prime Minister of India announced a Scheme for 'Raising and Accelerating MSME Performance', which has an outlay of around Rs 6,000 crore. The scheme aims to scale up the implementation capacity and coverage of Medium Small and Micro Enterprises (MSME) in the states, with impact enhancement of existing MSME schemes.

The scheme assumes all the more importance in the celebration of 75th Year of Indian Independence, as the MSME sector plays a pivotal role in nation building.

We seek support, co-operation and guidance of all to accomplish our mission.

EDITORIAL



Shri Vivek Jalan
Member –
MCCI MSME Council

Dear friends,

To Sustain longevity, Mankind has to Evolve! Tax Laws certainly should and that too fast!

The GST and Income Tax Laws are evolving and getting more and more interlinked. TDS u/s 194R read with Section 28(iv) of The Income Tax Act is still not even 3 months old and we have had 2nd Circular on it. The Ministry is also quite ready to bring out more circulars for clarifying the provision and removing hardships in its applicability.

However, every Circular also complicates few matters and so does this Circular 18 of 2022 issued by CBDT. Incase of loan settlement between private parties, it treats it as a benefit and liable to TDS u/s 194R. This is a big hardship and will certainly impact Industry. Further Bonus/Right Issues incase of a Private Company have been regarded as a benefit. Furthermore, the question “whether a Post Sale Discount” is a benefit/perquisite has not been answered. There would further be huge implications of Section 194R under GST. Whether all these benefits/perquisites provided, would be considered as a ‘supply’ in the hands of the recipient is the million dollar doubt which the CBIC must clarify.

So let the law evolve and make taxpayers live longer without litigation is the anecdote!

October 2022 would be an important month for GST Taxpayers who would be required to take ITC of FY 2021-22 as 20th October would still be the last date. Make no mistake that the date of 30th November is still not notified. Further TRAN Credit missed out can be claimed in October – November 2022.

We cover all of these and much more in this Edition. We hope that this newsletter adds value to your businesses!

SESSION WITH PRINCIPAL SECRETARY, MSME & TEXTILES, GOVT. OF WEST BENGAL



[From R to L] : **Shri Rishabh C Kothari**, President, MCCI (extreme right) delivering his Welcome Address; **Shri Rajesh Pandey**, IAS, Principal Secretary, Department of MSME & Textiles, Govt. of West Bengal [Chief Guest] and **Shri Lalit Beriwal**, Senior Vice President, MCCI.



Release of the August Issue of MCCI MSME Connexions by Shri Rajesh Pandey, IAS, Principal Secretary, Department of MSME & Textiles, Govt. of West Bengal.

GST NEWS

1. High Court imposes cost on the State Government to be paid to the taxpayer for cancellation of registration by untrained officers

The Allahabad High Court has noted lack of training in a recent order relating to cancellation of GST registration issued by the SGST Authorities. The case relates to cancellation of registration on the allegation that no business activity was carried on in the specified premises, but such charge was absent in the show cause notice. The SCN was vague and did not refer to any spot inspection either and merely said satisfactory explanation was not received from the taxpayer.

The High Court imposed costs of Rs. 50,000 on the State Government to be paid to the taxpayer for harassment.

2. Non-application of mind by officer while imposing 100% penalty

According to section 73(9) penalty can be imposed only to the extent of 10% of the tax amount. In several instances show cause notice issued under normal period of limitation under Section 73 of CGST Act, 100% penalty has been imposed on the taxpayer. The High Court has held that the infirmity shows non-application of mind by the Deputy Commissioner. Assuming the officer had passed an order, not uploading the same in the GST portal or not serving the same otherwise on the taxpayer indicates dereliction of duty. Unless some kind of threat of departmental action is perceived, the system will go unchecked adding to the mistrust and consequent non-compliance by even genuine taxpayers.

3. Power to search vehicle used for inspecting godown - HC directs inquiry against officers

The blunder committed by the GST officers is that two Assistant Commissioners imposed penalty on the same transaction and passed two orders against which appeals were also dismissed. The orders were passed under Section 129(3) of UPGST Act which deals with issuance of notice and passing of order in respect of goods and / or vehicle detained / seized. The goods in this case were found in the godown for which powers under Section 67 on inspection and search should have been exercised and Section 129 is not invocable. The High Court noted that such illegality is

apparent on the face of the record and the officers closed their eyes and description as to vehicle number was given by them deliberately. The orders were set aside and the department was directed to refund the amount paid along with interest.

4. Interest on delayed refund - Supreme Court order on time extension is not applicable

High Courts are not only courts of equity and justice but also the Constitutional Courts to interpret law authoritatively. Section 56 of CGST Act mandates payment of interest if refund has been ordered but not granted within 60 days of receipt of application. Due to Covid, Supreme Court extended time-limits for various compliances and action to be taken by officers. This has been relied on by the department to argue that interest on delayed refund is not payable as the time for grant of refund stood extended by such directions of the Apex Court. The Delhi High Court did not agree. It held that such order (and another order of High Court cited by department) did not deal with grant of interest withheld beyond the period prescribed under CGST Act and therefore, they would not be applicable. It said that statutory interest provided in Section 56 is a compensation for use of money and the department could not have retained the money (refund) beyond 60 days.

5. Penalty cannot be imposed for expiry of E-way bill if evasion is not alleged/proved

Expiry of validity of e-way bill by few hours is sufficient ground for imposing penalty according to the department even if tax invoice and other documents including e-way bill are in order. It is now getting fairly settled in GST law that penalty is not imposable on expiry of E-way Bill by few hours if the department is not able to prove there was fraudulent intent to evade.

6. Government not obliged to specify correct HSN code and GST rate in tender

Indian Railways is part of Ministry of Railways under Government of India and it is one of the largest purchasers of goods and services. As the procurement is through tender system, right from the day of implementation of GST, suppliers either based on bona fide belief or to somehow get the tender, started quoting mostly 5% GST rate for the goods. Some in the

industry believed that either 28% or 18% rate would be applicable and such persons were naturally out of the race when the price offered could not match those adopting 5% GST.

The Apex Court held that the State i.e. Indian Railways as purchaser cannot be said to be under public duty to indicate HSN code and applicable GST rate in the tender floated by it because, as per GST law, it is the supplier who is liable to pay GST and file GST returns. It held that GST is an indirect tax and therefore, it is the responsibility of the supplier to quote the correct HSN code and corresponding GST rate. It said that Railways is not legally obliged to find out and specify correct HSN code and GST rate for goods to be purchased by it.

7. High Court reduces quantum of pre-deposit during writ proceedings

While admitting writ petition in tax matters, sometimes, High Courts direct payment of pre-deposit of certain amount or furnishing security to safeguard the interest of revenue. In an interim order, Single Judge Bench of High Court had directed deposit of 10% of demand amount. The taxpayers argued before Division Bench that as per Section 107 of CGST Act, for filing appeal before first appellate authority, pre-deposit required to be made is 10% of tax amount only and not on the entire demand amount. The Division Bench saw merit and modified the earlier order by directing 10% of tax amount as pre-deposit.

8. Tuition centre is not a formal school and hence income is taxable under GST.

According to Advance Ruling Authority, tuition centre doesn't fall under the head "educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent" since the same is not a formal school and can be classified as commercial training or coaching centre. Hence, exemption under Notification No. 12/2017-Central Tax (Rate) cannot be claimed on the same.

9. HSN classification of Go-Kart and tax on the same.

In a recent case the department has classified Go-karts as motor vehicle under heading 8703 and GST of 28% would be payable on them. The department then pushed the taxpayer to rush to AAR. The applicant was of the view that the same is classifiable under heading 9508 which specifically covers such rides used in amusement parks. The AAR has noted that

the goods are not road-worthy, cannot be registered with Road Transport Authority (RTO) and are not designed for transport of persons but only meant for entertainment / amusement purpose for use in a fixed / restricted course. Holding that they are not classifiable under heading 8703, it has held that heading 9508 covers such go-karts and 18% GST is liable to be paid on the same.

10. CBIC issues instructions arrest under GST

CBIC has issued two sets of instructions. According to Instruction No. 2 dated 17-8-2022 even if all the conditions precedent for arrest as per Section 132 of CGST Act are present, it does not mean arrest should be made. Arrest should not be made where there is a difference in interpretation of law. Officers should be fully familiar with provisions of Code of Criminal Procedure (Cr. P. C.). Release of the person on bail if bond is furnished in case of bailable offences, filing of complaint in prosecution case within 60 days of arrest, etc., are also part of these instructions.

11. CBIC issues instructions for Summons under GST

Instruction No. 3 dated 17-8-2022 deals with summons. Officers have been advised to explore issuing letter to request for documents instead of resorting to summons. Summons should indicate in what capacity the person is called - as accused, as co-accused or as witness. It reiterates senior officials and officials of PSUs should not be generally summoned at the first instance and only if there is evidence as their involvement in decision-making, they may be summoned.

12. High Court quashes orders on rejection of refund without granting time to file reply during peak period of Covid

During the peak period of Covid, the department rejected various request by taxpayers by issuing orders where the department rejected extension of time limit for furnishing of reply against refund applications. The High Court rejected the order of the department and said that the authorities were under obligation to grant extension of time during such period and the orders passed are not sustainable.

13. Whether 12% or 18% GST would be leviable on installation of lift in single residential unit

According to Notification no 11/2017 of Central Tax (Rate) Composite supply of works contract

supplied by way of construction of original works pertaining to a single residential unit attracts 12% GST. But according to The Authority for Advance Ruling (AAR) this transaction is covered under the entry relating to installation service of lifts, escalators, etc. It ruled that the transaction would be covered under this entry and therefore, GST of 18% would be applicable whether it is intended for single residential unit or multi-storied complex or industrial or commercial buildings.

This ruling is patently erroneous and the same is liable to be set aside if appealed.

14. ITC is available on lease premium of immovable property

According to section 17(5)(d) of CGST Act, ITC on construction of immovable property is restricted.

According to AAR, since there is no construction involved in leasing of immovable property for business purpose, tax paid on such rent can be claimed back as ITC.

15. "One Last Opportunity" to file TRAN 1/2/3

The CBIC vide Circular no. 180/12/2022-GST dated 09.09.2022 issued guideline to comply with the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018.

- A. GSTN to open GST Portal from 1st Oct' 22 to 30th Nov'22 for filing forms.
- B. TRAN 1, TRAN 2 and TRAN 3 could be filed.
- C. Revision of TRAN 1 already filed is also can be made.
- D. Within 90 days from the date of filing of TRAN return, the officers have to verify the TRAN Credit and allow/object to the Credit claimed. In case the officer object, then the same can be appealed against on merits. All other documents like purchase-invoices, returns, Sales invoices, CTD, etc. to be verified by the officer.
- E. Incase TRAN Credit is allowed by officer, then it will be reflected in ITC Ledger.
- F. Annexure -A need to be filed with TRAN 1/2.
- G. No claim for Form F/C/H issued after 27th

Dec. 2022.

- H. Hard Copy of TRAN 1/2/3 along with Annexure A to be submitted in 7 Days form the date application filed online.
- I. Only "One Last Opportunity" to file TRAN 1/2/3 - No scope for errors after clicking "SUBMIT" button.

16. New Functionalities made available for Taxpayers on GST Portal (August 2022)

GSTR 3B: Electronic Commerce Operators (ECOs) are required to pay tax on supply of certain services notified by the government, such as, Passenger Transport, Accommodation, Housekeeping & Restaurant Services, made through them. A new Table 3.1.1 has been added in Form GSTR-3B from July2022' onwards to report such supplies.

GSTR 9: Government has made it mandatory to report HSN at minimum of 4 digit for taxpayers having turnover up to Rs 5 Crore and 6 digits for taxpayers having turnover more than Rs. 5 Crore. Accordingly, a validation has been implemented on the Portal for taxpayers with AATO up to Rs 5 Crore and for taxpayers with AATO of Rs 5 Crore or more, to declare HSN at 4 digit or 6 digits respectively, in Table 17 of Form GSTR9, for FY 202122.

GSTR 1: AATO based validation was implemented on the Portal to ensure that taxpayers with AATO of up to Rs 5 Crore had to report minimum 2 digit HSN and with more than Rs 5 Crore had to report minimum 4 digit HSN in Table 12 of GSTR1. Now, the minimum length of HSN to be entered in Table 12 of Form GSTR1, for Taxpayers having AATO greater than Rs 5 Crore has been raised from 4 to 6 digits, for both online and offline mode, on the portal.

Refund: The taxpayers are required to upload the details of invoices in Statement 3 while filing for Refund in Form RFD-01 under Category "Refund of unutilized ITC on account of Exports (Without payment of Tax)". As per Para 47 of Circular No. 125/44/2019- GST, dated 18.11.2019, if the export value declared on the shipping bill is different than the value declared in the tax invoice, the lower of the two values would be considered for processing of refund of unutilized input tax credit on account of export of goods made without payment of tax. Therefore, a column "FOB value" has been added in Statement 3 format for the taxpayers to declare the value while filing for refund.

INCOME TAX NEWS

1. Statement by a data entry operator is not a 'reason to believe' for re-opening

Every Tax Case is unique and in case it is suitably differentiated; it can be successfully argued. Earlier it was discussed that The Hon'ble Apex Court in the decision in the case of **PRINCIPAL DIRECTOR OF INCOME TAX (INVESTIGATION) & ORS. Vs LALJIBHAI**

KANJIBHAI MANDALIA [2022-VIL-15-SC-DT] laid down that for a search operation the authority must have information in its possession on the basis of which a reasonable belief can be founded. The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action, as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof.

However, an admission made by a data entry operator was held to not be a ground on which an AO can jump to the conclusion that since the assessee had transacted with a Company making bogus bills, the assessee is also a beneficiary of bogus bills. Furthermore, the said data entry operator did not name the company. Without any other material, the conclusion drawn by the AO, on receipt of the aforesaid information does not muster the requirement of law to validly form the reason to believe escapement of income. The same was held in the case of **PRINCIPAL COMMISSIONER OF INCOME TAX Vs M/s COAL SALE CO. LTD. [2022-VIL-185-CALDT]**.

Herein, it seems that the reasons for the formation of the belief was tested with a judicial knife.

2. Trusts, NGOs, NPOs, Schools/Colleges, Hospitals, etc to start maintaining extensive books of Accounts

Previously, there was no specific provision under the Act providing for the books of accounts to be maintained by trusts or institutions. However, they were required to get Audited. The Finance Act 2022 sought to rectify the anomaly by amending Section 12A(1)(b) to state that to be eligible for exemption u/s 11 or 12 of the Act, the books of

account and other documents should be kept and maintained in such form and manner and at such place, as may be prescribed. On the same lines Sec 10(23C) – 10th proviso had been amended to align any university, educational institution, hospital or other medical institution with Sec 12A organisations.

The CBDT has accordingly notified Income-tax (24th Amendment) Rules, 2022 to amend the Income-tax Rules, 1962. A new Rule namely Rule 17AA Books of account and other documents to be kept and maintained has been introduced which is applicable for every fund or institution or trust or any university or other educational institution or any hospital or other medical institutions.

The institutions have to maintain records of all the projects and institutions run by the person, details of income of the person during the previous year, records related to application of income earned during the previous year and application of accumulated income, money invested or deposited, record of voluntary contribution made with a specific direction that they shall form part of the corpus, record of contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G which is being treated as corpus, record of loans and borrowings, record of properties held by the assessee, record of specified persons, as referred to in sub-section (3) of section 13 of the Act.

Relaxation is provided from keeping and maintaining the books of accounts and other documents at a place other than the registered office in a case where the management has passed a resolution for keeping the prescribed books of accounts and other documents at any other place in India and shall intimate full address of such other place to the jurisdictional Assessing Officer within 7 days thereof. Such books of accounts and other documents shall be maintained for a period of ten years from the end of the relevant assessment year.

Where the assessment in relation to any assessment year has been reopened under

section 147 of the Act within the period specified in section 149 of the Act, the books

of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has become final.

3. There cannot be two different yardsticks for the same set of sale transaction made by five co-owners

An addition u/s 50C of the Act and levy of interest u/s. 234A/B/C/D of the Act in the case of one co-owner to the exclusion of other co-owners cannot be done. Differential treatment cannot be met out to another co-owner while making the assessment of the same property or while valuing the same property. It is trite that if during the same assessment year the same quantity of wealth in possession of one co-sharer is subjected to a lower rate of taxation, it would be improper to burden a similarly situated co-sharer with a higher rate of tax. Different treatments cannot be given on the same set of facts in respect of different co-owners of a common property which are subjected to capital gains. This would be against Article 14 of The Constitution. The same was held in the case of SHRI BABUBHAI Vs THE INCOME TAX OFFICER [2022-VIL-1014-ITAT-AHM]

4. Bilateral Netting of Qualified Financial Contracts - Amendments to Prudential Guidelines

Banks and financial institutions enter a multitude of simultaneous financial transactions with each other and their customers. The payables/ receivables arising from them should logically be allowed to be netted. However, ambiguous prior legislations and regulatory interpretations mean that these obligations would not be netted. These invariably inflate capital requirements under the assumption that, in case of a default, the payables would be paid, while the receivables would be paid basis seniority. In this regard, circular DOR.CAP.51/21.06.201/2020-21 dated March 30, 2021 and circular DOR.CAP.REC.No.97/21.06.201/2021-22 dated March 31, 2022 on the captioned subject had been earlier issued. Bilateral netting is a significant reform that helps banks in obtaining benefits of regulatory capital reduction and

sets a mechanism for close-out netting that improves financial stability.

Now, the RBI has clarified w.r.t. Regulated Entities (REs) w.r.t. Exemption or capping in computing capital requirements for counterparty credit risk that the exemption for foreign exchange (except gold) contracts which have an original maturity of 14 calendar days or less shall be applicable to entities calculating the counterparty credit risk under Original Exposure Method without taking the benefit of bilateral netting. Accordingly, the exemption would be applicable only to Regional Rural Banks, Local Area Banks and Co-operative Banks, where the bank has not adopted the bilateral netting framework. For other entities, the exemption shall stand withdrawn. W.r.t. 'sold options', provided the entire premium / fee or any other form of income is received / realised – they can be excluded only when such 'sold options' are outside the netting and margin agreements; For Credit Default Swaps where the bank is the protection seller and that are outside netting and margin agreements - the exposure may be capped to the amount of premium unpaid. Banks have the option to remove such credit derivatives from their legal netting sets in order to apply the cap.

This circular is applicable to all Commercial Banks, Co-operative Banks, Standalone Primary Dealers, Systemically Important Non-Deposit taking Non-Banking Financial Companies (NBFC-ND-SIs), Deposit taking Non-Banking Financial Companies (NBFC-Ds) and Housing Finance Companies (HFCs)

5. If a particular relief is legitimately due to an assessee, the authorities cannot circumscribe it by creating such circumstances leading to its denial

No technicality can be allowed to operate as a speed breaker in the course of dispensation of justice. Hence assessees have to be given opportunity to file information and documents so that a fair decision can be taken. The AO has to consider all the information and documents before deciding whether the return of income is valid or invalid. The assessee cannot be made remediless with no option to claim benefits/exemptions. The decision in this matter in the case of MAHILA SEVA MANDAL Vs ITO [2022-VIL-998-ITAT-PNE] would apply

to not only this case but all such similar cases.

6. Interest on refund mandatory even when it is on “interest deposit”

Even though an amount is deposited towards ‘interest’ due to the Revenue, there has to be an award of interest on the refund as any interest is only deposited due to an underlying demand raised by the Revenue. Grant of such interest It would not amount to ‘interest on interest’. This was held in the case of PCIT-7 VERSUS PUNJAB & SIND BANK (DELHI HC). The judgment of the Supreme Court in the case of Gujarat Fluoro Chemicals arose on issue as regards payment of interest in the event of the failure of Revenue to refund the interest payable within the statutory period. The Supreme Court held that it is the interest provided under the statute which may be claimed by an assessee from the Revenue and no other interest on statutory interest is payable.

7. Site Eviction charges would fulfill the test laid down u/s 37(1)

Real Estate is a business prone to litigation and encroachment of property is not uncommon. If it is argued that since an assessee bought and already encroached property and thus the site eviction charges would not be allowed, many real estate players would have to build in additional tax cost to already high cost of construction. In a relief, in such a matter it was held by The ITAT Chennai that If an assessee is into the business of real estate development, Site Eviction expenditure would fulfil the test laid down u/s 37(1) and it could very well be said that the expenditure was incurred for business purposes of the assessee. However certain pre-conditions need to be satisfied like payments were made through banking channel and acknowledgment / receipts from evictees were produced. Also the assessee should be able to produce the evictees who would confirm having received the eviction charges. Merely because the evictees did not have PAN or not assessed to tax, the same would not jeopardize the claim of the assessee. The same was held by M/S. ORCHID FOUNDATIONS PVT. LTD. VERSUS ITO CORPORATE WARD, CHENNAI.

8. Relatives as defined under the Senior Citizens Act is not to be treated atpar with ‘relative’ under the Income Tax Act

Casus omissus are ‘cases of omission’. They are

situation or circumstance not provided for by legislation; a gap or omission in the law. Courts do not stray into usurping the legislative function so that casus omissus is not created or supplied, so that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. A statutory definition in one context cannot be in another Act especially when the two Acts define the same term differently. The same was held in the case of MISS INDIRA UPPAL VERSUS UNION OF INDIA & ANR.

9. No Personal hearing, no draft assessment along with show cause notice as required under section 144B(1) and section 144B(7): Faceless Assessment Order is invalid

Yet another case of denial of Natural Justice in the matter of Faceless Assessments. Section 144B(1)(xii) provides that on receipt of show cause notice, assessee may furnish his response to the National Faceless Assessment Centre and as per clause (xiv), assessment unit shall make a revised draft assessment order after considering the response of the assessee and send it to the National Faceless Assessment Centre. As per the provisions of section 144B(7) in case of variation prejudicial to the assessee as proposed in the draft assessment order, the assessee is entitled to request for personal hearing and upon such request, the personal hearing may be provided by the authority, if the case of the assessee is covered by circumstances provided therein in exercise of powers under sub-clause (h) of clause (xii) of section 144B(7) of the Act, 1961.

If the procedure laid down as per the provisions of section 144B of the Act, 1961 for Faceless assessment, is not followed, it would tantamount to denial of natural justice. The same was held in the case of HIRABEN PRAGIBHAI TALA VERSUS ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX/INCOME TAX OFFICER [GUJ HC]

Hopefully after the issuance of the SOP on faceless Assessments by the NFaC, these matters would reduce. We have discussed the SOP in the 18th Edition of Direct Tax Vista.

10. Investigation Units in both Income Tax and GST, Issue Instructions with mandate to field officers for ‘strict compliance’

Over last one year we have witnessed a

substantial increase in summons and arrests under GST and Orders under Income Tax in

gross violation of the Principles of Natural Justice. The taxpayers are running to High Courts and in most cases also getting relief from these actions. Hence, many a times these arbitrary actions are not getting the desired results for the Department on the one hand and also leading to taxpayers' disgruntlement with the Boards on the other

hand. To somewhat check this trend, we have witnessed two Instructions by The GST-Investigation Unit on SOPs on Summons, Arrest and Bail. These came with Caveats that non-compliance with these instructions would be viewed 'seriously'. Now, on 22nd August 2022 - Instruction F No 299/10/2022-Dir(Inv III)/647 has been issued by The Investigation Wing of the CBDT re-emphasizing that before initiating proceedings under Section 148/147 of the Act, any information available on data-base/portal of Department shall be verified before drawing any adverse inference against the taxpayers.

Also, it is mandated that the information made available/data uploaded by the reporting entities may also be checked first for any error including an error of a human nature technical nature, etc. Most importantly, an opportunity of being heard be given to the taxpayer before initiating proceedings under Section 148/147 of the Act.

Twice in the Instruction it has been emphasized that Supervisory authorities are to ensure that all extant Instructions/Guidelines/Circulars/SOPs in this regard are duly followed by Officers. This makes the intent of the CBDT clear in as far as strict compliance with this Instruction too. It is clear that CBDT does not wish paper demands and unfruitful litigation.

11. Corporate Guarantee extended to an AE is an "International Transaction"

Now there is no ambiguity in the fact that corporate guarantee extended by the assessee to its AE is an international transaction and therefore the same has to be

benchmarked at the arm length price. Under Explanation to Sec 92B, the expression "international transaction" has included borrowing, lending or guarantee... arising

during the course of business; Further the provision of guarantee always involves risk and there is a service provided to the Associate enterprise in increasing its creditworthiness in obtaining loans in the market, be it from Financial institutions or from others.

The Hon'ble Madras High Court in the case of PCIT vs. Redington (India) Ltd. Has held that corporate guarantee is covered under the limb of international transaction

and having bearing on profit and loss account.

Now the question is to determine the benchmarking for working out the ALP of the

impugned international transaction. In this regard, the Hon'ble Bombay High Court in case of CIT vs. Everest Kento Cylinders Ltd held that while determining the ALP the rate charged by the bank or financial institution cannot be taken as comparable. The Tribunal in several cases has considered 0.50% (of corporate guarantee given) as ALP rate of Corporate Guarantee commission. Hence any rate around this could be taken as the best Arm's Length Rate. This was also the view taken by The Hon'ble ITAT in D.C.IT Vs M/s ADANI ENTERPRISES LTD [2022-VIL-1039-ITAT-AHM].

12. A decision on a debatable point of law is not a mistake apparent from the

record and not subject to rectification u/s 154 Sec 154 can only be invoked incase of a Mistake apparent from record. It has been deliberated in detail in various judgements in the past and incase there is non-confirmation

to these an Order can be challenged ONLY on these grounds.

A mistake apparent from the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A mistake becomes a mistake apparent from the record when it is a glaring, obvious or self-evident mistake. The plain meaning of the word 'apparent is that it must be something which appears to be so ex facie that it is incapable of argument or debate.

While resorting to the provisions of sec. 154, the Assessing Officer cannot redetermine the issue of the FMV of a property. decision of a

debatable point of law or fact cannot be corrected u/s 154 of the IT Act and the FMV of a property is highly debateable. Therefore, on such issue, any decision is not free from subjective consideration. It is not the case of the simple overlooking a provision of law or

clerical or calculation mistake in computation of income; but it is a point to be decided by application of fact, law and mind as well. Incase The Assessing Officer does so, he will have travelled beyond his jurisdiction while passing the order u/s 154. The same was held while deciding the matter in the case of SMT. MONICA CHATTOPADHYA Vs ACIT [2022-VIL-1041-ITAT-MUM]

13. Companies Be Alert! In addition to Income Tax & GST – Now ROC to Physically verify premises also

The power of the Registrar for Physical verification of the registered office under Section 12(9) of the Companies Act, 2013 is now equipped with a Rule 25B of Companies (Incorporation) Rules, 2014. The Ministry of Corporate Affairs (MCA) vide its Notification dated 18th August 2022, has amended Companies (Incorporation) Rules, 2014 by notifying Companies (Incorporation) Third Amendment Rules, 2022 and after Rule 25A, a new Rule 25B – Physical Verification of the registered office of the Company is inserted to facilitate the physical verification of the Registered office of the Company by the Registrar. So, all the stakeholders – Be Alert if you are not maintaining the registered office as per the requirement of the Law, in recent times the ROC has adjudicated various

penalties for not maintaining the registered office as per Section 12 of the Companies Act, 2013 and in that move, the power was given to the Registrar for physical verification of the registered office by inserting Sub-section 9 in Section 12 way of Companies (Amendment) Act, 2019 and now to make it fully functional, Rule 25B notified to equip the registrar to physically verify the registered office of the company and to initiate the proceedings of Suo-moto Striking off, if the company is found in default of the provision of Section 12(9) of the Act.

Even if you are not doing any business or commercial activity, the registered office of the

Company shall be maintained which is capable of receiving and acknowledging all the communications and notices as may be addressed to it.

14. CBDT amends rule 128 and relaxes conditions for filing of form no. 67 for claiming Foreign Tax Credit vide Notification No. 100/2022-Income Tax

The CBDT amended Rule 128 of the Income-tax Rules, 1962, providing a major relief to taxpayers in the matter of claiming Foreign Tax Credit (FTC). The Statement in Form No. 67 can now be furnished on or before the end of the relevant Asstt Year. The pre-amended Rule required the FTC claim to be filed by the due date of furnishing the Income Tax Return. The amendment operates retrospectively so that this benefit is available to all FTC claims filed during the current Financial Year.

15. RBI clarifies that it is not against privatization of public sector banks

The RBI clarified that it is not against privatization of public sector banks, after reports stated that it is of the view that rapid privatization does more harm than good. It batted for a more gradual withdrawal of state control. Going forward we can thus see a gradual approach to PSBs privatisation.

16. Marketing and Corporate Branding Expenditure – Allowable u/s 37

Allowability of Branding/Marketing and Sales Promotion Expenses has sometimes been disputed by The Revenue Authorities as one time Capital Expenditure and disallowed on the said account. These expenses are substantial in today's businesses wherein the 'rate' charged for the same product may vary mainly due to the reason of branding the product. The Hon'ble Bombay High Court in the case of CIT Vs. Asian Paints had dealt with this issue in detail wherein expenditure of corporate brand building was under dispute i.e. whether the expenditure is on capital account or Revenue. The Hon'ble Court answered the question in favour of the assessee. Hence, the expenditure claimed by assessee in the case of L&T SEAWOODS LTD Vs ITO [2022-VIL-1031-ITAT-MUM] on marketing and sales including professional payment for market assessment study, professional charges for market research, retainer ship fees,

expenditure towards Experience Zone Signage, project modal, etc. was considered as expenditure incurred towards market research and market feasibility study and held to be allowable under section 37 of the Act. Expenditure on

Experience Zone Signage was held to be of Revenue Account as the expenditure was incurred to make the presence of the project visible to the general public/ potential purchasers. As regards the Cost of modal of project, it was held that the model was created only for the purpose of making prospective investors aware about the project which was under completion and was held to be an expenditure for marketing the project.

17. Non-residents having no PE in India exempted from section 206C(1G)TCS
Section 206C(1G) provides for the collection of tax at source (TCS) from remittance under Liberalized Remittance Scheme (LRS) and the sale of an overseas tour package. As per this provision, tax is required to be collected by:

- a) An authorized dealer who receives an amount for remittance out of India under the Liberalised Remittance Scheme of the Reserve Bank of India; and
- b) Seller of an overseas tour program package, who receives any amount from a person who purchases such package. However, tax shall be collected by the authorized dealer on the amount or aggregate of the amount over Rs. 7 lakh if the remittance is made for any purpose other than the purchase of an overseas tour programme package. If the

remittance is made for an overseas tour programme package, the threshold limit of Rs. 7 lakh shall not apply and tax shall be collected on the total remittance amount. Vide Notification No. 20/2022, dated 30-03-2022 it had been notified that provisions of section 206C(1G) shall not apply to an individual who is not a resident as per section 6 of the Income-tax Act and who is visiting India. In the suppression of the above notification, the Central Government has notified that the provisions of section 206C(1G) shall not apply to a person (being a buyer) who is a non-resident and who does not have a permanent establishment in India.

Though the Govt. has withdrawn Notification No. 20/2022, it has been clarified that transactions entered into from 30-03-2022 to 16-08-2022, wherein tax was not collected at source relying upon such notification shall be treated as legally complied with the provisions of section 206C(1G).

18. New IT Rule 40G/ Form 29D for Refund u/s 239A of Incorrect TDS u/s 195

New Section 239A had been inserted by the Finance Act 2022, which provided for refund of TDS u/s 195 on any income (other than interest income) by a taxpayer, if no TDS was required to be deducted. Accordingly, CBDT has notified new IT Rule 40G which prescribes the procedure to get such refund, along with format of new IT Form 26D meant for the purpose, vide Notification 98/2022 dt. 17/08/2022. Rule 40G provides that a TDS refund claim in Form 26D has to be made within 30 days from the date of payment of TDS

CUSTOMS & DGFT NEWS

1. Customs notified the passenger name record information regulations

The Ministry of Finance (Department of Revenue) (Central Board of indirect Taxes and Customs) vide Notification no 67/2022 – Customs (N.T.) dated 08.08.2022 made some regulations regarding the passenger name record information in the airway transportation system.

2.AMENDMENT IN EXPORT POLICY CONDITION OF ITEMS UNDER HS CODE 1101 (WHEAT FLOUR/ATTA), MAIDA, SAMOLINARAVA / SIRGI), WHOLE MEAL ATTA AND RESULTANT ATTA)

Ministry of Commerce and Industry has made the following amendments in the export policy of items under HS code 1101 of ITC (HS), Schedule - II, 2018 as under:

S.No.	ITC HS Codes	Description	Existing Export Policy	Revised Export Policy
64	1101	Wheat Flour Atta), Maida, Samolina Rava / Sirgi), Wholemeal atta and resultant atta	Free. However, export of wheat flour (atta) is subject to recommendation of Inter-Ministerial Committee (IMC) on export of wheat.	Free. However, export of all items is subject to recommendation of Inter-Ministerial Committee (IMC) constituted for allowing export of wheat. Export of all the shipments approved by IMC shall be allowed subject to issuance of Quality Certificate by Export Inspection Council (EIC) or its EIAs at Delhi, Mumbai, Chennai and Kolkata.

Effect of this Public Notification:

Export Policy of items [Wheat Flour (Atta), Maida, Samolina (Rava / Sirgi), Wholemeal atta and resultant atta] under HS Code 1101 remains 'Free', but export shall be subject to recommendation of Inter-Ministerial Committee (IMC) constituted for allowing export of wheat.

3.Fixation of tariff value of Edible Oils, Brass scrap, Areca Nut, Gold and Silver

The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide notification no 68/2022 -CUSTOMS (N.T.) dated 12.08.2022 has amended the tariff value of Edible Oils, Brass scrap, Areca Nut, Gold and Silver .

4.Rate of exchange of one unit of foreign currency equivalent to Indian rupees

The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide Notification No. 70/2022 -Customs (N.T.) dated 18.08.2022 hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 19th August, 2022 as follows :-

SCHEDULE-I

S.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.45	54.10
2.	Bahraini Dinar	217.95	204.85
3.	Canadian Dollar	62.70	60.60
4.	Chinese Yuan	11.90	11.55
5.	Danish Kroner	11.10	10.70
6.	EURO	82.55	79.55
7.	Hong Kong Dollar	10.35	10.00
8.	Kuwaiti Dinar	267.75	251.60
9.	New Zealand Dollar	51.35	49.05
10.	Norwegian Kroner	8.35	8.05
11.	Pound Sterling	97.65	94.35
12.	Qatari Riyal	22.55	20.95
13.	Saudi Arabian Riyal	21.90	20.55
14.	Singapore Dollar	58.60	56.65
15.	South African Rand	4.95	4.65
16.	Swedish Kroner	7.80	7.55
17.	Swiss Franc	85.35	82.15
18.	Turkish Lira	4.55	4.30
19.	UAE Dirham	22.35	21.00
20.	US Dollar	80.50	78.80

SCHEDULE-I

S.No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	60.05	58.10
2.	Korean Won	6.25	5.8

5.AMENDMENT in minimum registration time period of Non-Ferrous Metal import Monitoring System (NFMIMS)

Ministry of Commerce and Industry vide Notification no. 26/2015-2020 dated 10.08.2022 hereby amends the minimum registration time period of Non-Ferrous Metal import Monitoring System (NFMIMS)

Existing Policy Condition	Revised Policy Condition
The Non-ferrous metal Import Monitoring System (NFMIMS) shall require importers to submit advance information in an online system for import of items in the Annexure-I (for copper) and Annexure-II (for aluminum) and obtain an automatic Registration Number by paying a registration fee of Rs. 500/-. The importer can apply for registration not earlier than 60th day and not later than 5th day before the expected date of arrival of import consignment. The automatic number thus granted shall remain valid for a period of 75 days.	The Non-ferrous metal Import Monitoring System (NFMIMS) shall require importers to submit advance information in an online system for import of items in the Annexure-I (for copper) and Annexure-II (for aluminum) and obtain an automatic Registration Number by paying a registration fee of Rs. 500/-. The importer shall apply for registration before the arrival of import consignment. Registration can be applied not earlier than 60th day before the expected date of arrival. The automatic number thus granted shall remain valid for a period of 75 days.

Effect of the Notification: The requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS has been abolished/made zero.

6. AMENDMENT IN POLICY CONDITION OF SL.NO. 55 & 57, CHAPTER 10 SCHEDULE-2, ITC(HS) EXPORT POLICY, 2018 for export of rice (Basmati and Non-Basmati).

Ministry of Commerce and Industry vide Notification no. 27/2015-2020 dated 17.08.2022 amended the policy condition at Sl. No. 55 and 57, Schedule 2 of ITC (HS) Export Policy, 2018 for export of rice (Basmati and Non-Basmati). The conditions in the policy shall be amended/added to the existing entries of Chapter 10 at Sl. No. 55 and 57.

Effect of notification: The Notification is amended to the extent that export of Rice (Basmati and Non-Basmati) to EU member states and other European Countries namely United kingdom, Iceland, Liechtenstein, Norway and Switzerland only will require Certificate of Inspection from EIA/EIC. Export to remaining European countries (except United Kingdom, Iceland, Liechtenstein, Norway and Switzerland) will require Certificate of Inspection by Export Inspection Council / Export Inspection Agency for export from 1st January, 2023.

RBI NEWS

1. OWNERSHIP OF CASH MONEY WHICH WAS SEIZED FROM THE RESIDENCE OF THE HUSBAND BELONGED TO THE PETITIONERS: CALCUTTA HIGH COURT

Writ Court in exercise of its Constitutional writ jurisdiction under Article 226 of the Constitution should not investigate the ownership of such disputed amount of cash money seized from the possession of one of the noticees at Kolkata in course of search and seizure in question while petitioners are claiming the same as their own money.

2. OFFENCE UNDER FERA-NON-REALISATION OF PAYMENT TOWARDS EXPORTED GOODS - "REASONABLE STEPS" TO BE TAKEN FOR SECURING THE SALE PROCEEDS OF EXPORTS OR NOT? - DELHI HIGH COURT

The Hon'ble High Court held that concerned buyer in France became bankrupt and therefore, some of the export proceeds against the said consignments could not be realized. Any person effecting an export of goods is also responsible, rather duty bound, to also effect the securing of proceeds from such export/sale. The only exception, as per the language of the provision, is permission from the RBI, which if obtained may lead to granting of the leverage of not securing the proceeds within the stipulated and prescribed period.

Further, sub-section 3 makes a presumption against the person who has not been able to secure the proceeds from exports that he/she has not taken all reasonable steps so as to recover the amount to be realized from the proceeds of sale. The purpose behind these provisions becomes clearer when seen from the standpoint of the legislature and its intention and purpose of bringing into the Act into existence.

3. NOTIFICATION REGARDING OVERSEAS INVESTMENT RULES AND REGULATIONS

The Government of India in consultation with the Reserve Bank undertook a comprehensive exercise to simplify these regulations. Foreign Exchange Management (Overseas Investment) Regulations, 2022 vide No. FEMA 400/2022-RB and Foreign Exchange Management (Overseas Investment) Rules, 2022 vide Notification No. G.S.R. 646(E) were also put in the public domain for consultations.

In view of the evolving needs of businesses in India, in an increasingly integrated global market, there is need of Indian corporates to be part of global value chain. The revised regulatory framework for overseas investment provides for simplification of the existing framework for overseas investment and has been aligned with the current business and economic dynamics.



MEMBERS OF COUNCIL ON MSME

Chairman : **Shri Sanjib Kumar Kothari**

Co-Chairmen : **Shri Akhil Sonthalia**
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Members:

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Shri Suresh Kumar Agarwal	Shri Sunil Kumar Bhoruka
Shri Sanjay Goenka	Shri Smarajit Mitra
Shri Anirudh Jhunjhunwala	Shri Arkopaul Maiti

Shri Nirmal Saraf

Special Invitees :

Shri U Swaroop, IAS, Director of MSME, Govt of West Bengal	Shri Debabrata Mitra, IEDS, Joint Director& Head, MSME – DI, GoI
Shri Biswanath Bhattacharya President, FOSMI	Shri Biplob Roy Chowdhury Chairman, WBSIDC
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Ex-officio Members:

Shri Rishabh Kothari, President, MCCI
Shri Lalit Beriwal, Senior Vice President, MCCI
Shri Namit Bajoria, Vice President, MCCI

GLIMPSES OF MSME EVENTS

1st Help Desk of MCCI IPR Facilitation Centre held on 26 August 2022 at MCCI premises



Shri Sanjib Kumar Kothari, Chairman, Council on MSME, MCCI [4th from right] chairing the Session jointly with **Shri Smarajit Mitra**, Chairman, Council on Start Up & Skill Development, MCCI [2nd from right].

The Mentor Panel [From R to L] : **Shri Kironjit Majumder**, Senior Associate, Trademarks & Litigation, S Majumdar & Co.; **Shri Chandan Mukherjee**, Joint Senior Attorney, L. S. Davar & Co.; **Dr. Dhanpat Ram Agarwal**, Founder Director, ITAG Business Solutions Ltd.; **Shri Sanjib Kothari**, Chairman, Council on MSME, MCCI; **Shri Arnab Bhattacharyya**, Examiner of Patents & Designs & NIPAM Officer, The Patent Office, Kolkata, DPIIT, Ministry of Commerce & Industry, Government of India; **Shri Smarajit Mitra**, Chairman, Council on Start Up & Skill Development, MCCI and **Dr. Saugat Mukherjee**, DG, MCCI.



MCCI IPR Facilitation Help Desk in Progress

MCCI MSME Help Desk in collaboration with Directorate of MSME, Govt of West Bengal : 26th Help Desk held on 31 August 2022 at MCCI premises



The Mentor Panel [From R to L] : **Shri Vivek Jalan**, Member, Council on MSME, MCCI; **Shri Sanjib Kumar Kothari**, Chairman, Council on MSME, MCCI; **Shri Rajkumar Middya**, Joint Director (P & S), MSME, Government of West Bengal [Chief Mentor]; **Shri Biswaroop Chakraborty**, Suvidha Consultants [Technical Partner] at the 26th MCCI MSME Help Desk.



MCCI MSME Help Desk in Progress

ABOUT MCCI

The Merchants' Chamber of Commerce and Industry is a 120-year-old non-government, not-for-profit, industry-led and industry-managed organization, with 700 direct members and 15,000 indirect members covering a wide cross-section of small, medium & large industries, trades and services. 10 Associations of Industry & Trade are also affiliated to MCCI.

The MCCI started its function in the name of "Vaishya Mitra Sabha", which was renamed as the "Merchants' Committee" in 1904 when membership was opened to all. It plunged itself into the Swadeshi Movement launched by Mahatma Gandhi in 1921. In 1952, the name was changed into "Merchants' Chamber of Commerce", which was ultimately changed to "Merchants' Chamber of Commerce & Industry" in 2016, to re-affirm and reflect its focus on trade, commerce & industry.

Today, the MCCI addresses various aspects of industry, trade and services and guides members in addressing their issues & challenges through several learning and best practice forums. We also help members to explore international business opportunities through its international connect initiatives.

MCCI works as a bridge between businesses and policy makers to create an economic environment conducive to industry while benefitting all the

stakeholders in the economy. The Executive Committee, which has 30

Standing Committees reporting to it, is the principal facilitating structure of the Chamber.

MCCI has been working on the development of an indigenous vibrant industrial base in the country, especially in Eastern India. We are one of the leading Chambers of Eastern India relentlessly working for the betterment of MSMEs through several initiatives. MSME Helpdesk, IP facilitation, connecting with Banking and Financial institutions, technology for MSMEs, besides taking up members' issues at the appropriate level. Several business meets are organized for the benefit of the members.

In this era of "the new normal", the MCCI has evolved to reinvent itself to address the emerging challenges and opportunities.

For the year 2022, MCCI is prepared to provide opportunities for growth and development to its members through 4E's : Explore, Educate, Empower and Enable to help the members achieve the 5th E : Excellence in all spheres.

MCCI is presently focussing on the specific theme of "Bouncing Back" - working closely with the State and Central Government on policy matters and building bridges through international connect initiatives.

REACH US



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