

# DEVMANTRA TIMES

## NOVEMBER EDITION

ISSUE NO : 33, DATE : 1<sup>ST</sup> November 2023

**Dear Readers,**

We welcome you to the Thirty Third edition of DevMantra Times for the month of November 2023. The Government's vision of promoting growth of global trade, emphasis on exports from India and to support the increasing interest of global trading community in INR is further powered by additional arrangement for invoicing, payment, and settlement of exports / imports in INR. Export of services U/s 2(96) of IGST Act, 2017 can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023. This is a promising welcome change and reinforces India's powerful position in global trade.

Wishing our readers a very Happy Deepawali !! Wishing you a year of prosperity, success, wisdom and wealth. May we all make a small difference to the lives of the needy and give them an opportunity to smile in our own unique way.

### ECONOMIC UPDATES

#### CPSE CAPEX UP 33% BY H1 OF FY24, TOUCHES RS 3.79 LAKH CRORE.

The capital expenditure by 54 large central public sector enterprises (CPSE) and the five departmental arms of the ministries, such as the Railway Board and National Highways Authority of India, rose 33% in the first half of the current fiscal with their spending reaching Rs 3.79 lakh crore by September 30, according to the latest data compiled by the Department of Public Enterprises.

The capital expenditure by CPSEs stood at Rs 2.85 lakh crore in the same period last year and has already crossed 52% of their budget expenditure for the current financial year.portal.



### FINANCE MINISTRY RELEASES RS 10,000 CRORE IN URGENT AID FOR NREGS.

**New Delhi:** The finance ministry has released 10,000 crore in urgent assistance to meet unexpected enhanced expenditure under the rural job guarantee scheme until the first batch of supplementary demands for grants is approved by parliament at its next session, a senior official said.

The unusual move came after 95% of the FY24 budgetary outlay of 60,000 crore for the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) was exhausted well before the commencement of the winter session of parliament, thanks to a rise in work demand, the official told ET.

### Abu Dhabi plans \$50 billion investment in fast-growing India

The United Arab Emirates is exploring investments of up to \$50 billion in India, its second-largest trading partner. The potential pledges, which could be announced in early 2023, aim to strengthen bilateral ties and increase non-oil trade to \$100 billion. Discussions include investments in Indian infrastructure projects and state-owned assets.

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### RECORD OVER 7.85 CRORE I-T RETURNS FILED TILL OCT 31

The income tax department announced that a record-breaking 7.85 crore income tax returns (ITRs) were filed for the fiscal year 2023-24 until October 31, surpassing the previous year's total of 7.78 crore ITRs. The majority of these ITRs have been verified and processed, indicating a significant increase in compliance. The e-filing portal also efficiently managed high traffic during peak filing days, ensuring a smooth experience for taxpayers and professionals.

### GST COLLECTIONS IN OCTOBER JUMP 13% YOY TO RS 1.72 LAKH CR, SECOND HIGHEST-EVER.

GST collections increased 13 per cent to Rs 1.72 lakh crore in October, the second highest-ever, helped by momentum in the economy, efforts of taxmen in checking evasion and festive demand. "GST revenue collection for October 2023 is second highest ever, next only to April 2023, at Rs 1.72 lakh crore; records increase of 13 per cent Y-o-Y," the finance ministry said in a statement. The highest-ever revenue from Goods and Services Tax (GST) was recorded in April 2023 at Rs 1.87 lakh crore, while in September,

it was Rs 1.63 lakh crore. The average gross monthly GST collection in the current fiscal has also shown an 11 per cent growth year-on-year at Rs 1.66 lakh crore.

### OVER 11 BILLION UPI TRANSACTIONS RECORDED IN OCT, PURCHASES CROSS RS 17 LAKH CR.

In October, the National Payments Corporation of India reported a record-breaking 11.41 billion UPI transactions, totaling Rs 17.16 lakh crore, driven by the festive season and increasing consumer adoption of UPI for secure and convenient mobile payments.

### STARTUP UPDATES MAMAEARTH PARENT'S IPO SUBSCRIBED 7.61 TIMES.

Mamaearth parent Honasa Consumer Ltd's initial public offering closed on Thursday, with it getting bids for 7.61 times the shares on offer. The company has reserved 75% of the issue size for QIBs and 15% for high-net-worth individuals. For retail investors, it has reserved 10% of the issue size. The final day push came in from qualified institutional buyers (QIBs), who put in bids for 11.5 times the shares reserved for the category. The retail portion was subscribed 1.35 times.

### ECOMMERCE STARTUP UDAAN TO TRIM COSTS AHEAD OF 2025 IPO.

Lightspeed Venture Partners-backed Udaan is among startups trying to tap the rapid growth of India's economy and consumer market, while meeting investor demands for profitability. Udaan, which at its peak employed thousands, joined fellow Indian startups in slashing jobs last year and tightening internal controls and compliance. It now has about 1,800 staff, and Gupta didn't specify if further job cuts are needed.



### URBAN COMPANY PLANS SAUDI ARABIA ENTRY VIA JOINT VENTURE.

Urban Company, a home services platform, is set to enter Saudi Arabia through a joint venture. The company's CEO, Abhiraj Singh Bhal, mentioned this plan during the ET Sooncorns Summit in New Delhi. Urban Company has been selective about its international expansion, with a presence in the UAE and Singapore, which Bhal

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described as markets that mimic India. The company recently reported a 45% YoY increase in operating revenue, reaching Rs 637 crore for the fiscal year 2023.

### WHY THIS VOLUME OF NEWSLETTER IS IMPORTANT FOR READER?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax and Companies Act, Start-up Update, notification, circulars and case laws which may directly or indirectly impact our readers.

At DevMantra, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.

DevMantra was founded based on the unalterable premise of excellence, acuity, integrity and an unwavering commitment to delivery. These principles continue to form the edifice of our approach as an organization, to our clients, our professionals and our community, and this has served us well in our journey so far. This approach has allowed DevMantra to work with and advise the very best clients, both in India and internationally. We encourage our people to strive for excellence and innovation within a meritocratic working environment

and support their entrepreneurial spirit. It is our consistent endeavour with our people, to ensure that they imbibe the culture of the firm and form part of the weft and weave of the fabric of DevMantra. Our core values remain the guiding principles for everything we do, and we would like to emphasize "Knowledge" as one of the fundamental beliefs which drive the success of our operations. As we keep on reiterating, Knowledge is our number one priority. We don't count time when it comes to gain any new knowledge or to reinstate the earlier one. Our clients trust our expertise and putting countless hours in keeping ourselves up to date on the subject we are advising on, deserve their trust.

### REGARDS & BEST WISHES, EDITORIAL TEAM



### GST REGULATORY UPDATES RECOVERY CAN'T BE MADE DIRECTLY DUE TO DIFFERENCE IN GSTR-1 & GSTR-3B WITHOUT FOLLOWING PROCEDURE UNDER RULE 88C: HC.

**EDITORIAL NOTE :** Where assessee successfully challenged recovery notice issued by revenue authorities, who were found to have not followed procedural safeguards prescribed under rule 88C of the CGST Rules, 2017, therefore revenue authorities were to be directed to issue appropriate notice in accordance with rule 88C of the CGST Act.





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### CLARIFICATION ON WHETHER GST IS APPLICABLE ON REIMBURSEMENT OF ELECTRICITY CHARGES RECEIVED BY REAL ESTATE COMPANIES, MALLS, AIRPORT OPERATORS ETC. FROM THEIR LESSEES/ OCCUPANTS

CBIC has issued a circular to clarify that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be.

Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

### GSTN ISSUES ADVISORY FOR APPLICANTS OF GUJARAT AND PUDUCHERRY FOR BIOMETRIC-BASED AADHAAR AUTHENTICATION.

**Editorial Note :** The GSTN has issued an advisory to inform that functionality of Biometric-based Aadhaar Authentication for GST registration was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023. The said functionality now also provides for the document verification and appointment booking process.



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### **E-INVOICE BULK DOWNLOAD FUNCTIONALITY IS NOW LIVE ON THE GST E-INVOICE PORTAL**

GSTN has issued an advisory to inform that e-Invoice JSON download functionality is now live on the GST e-Invoice Portal. Additionally, this functionality allows to download all e-invoices reported across all six IRPs (Invoice Registration Portals), i.e. complete data. Regarding accessibility, the taxpayers can download e-Invoice JSON files for up to 6 months from the date of IRN generation. It is requested that taxpayers schedule downloads in a staggered manner during off peak hours and refrain from overwhelming the system with large requests during the initial days. This functionality is also accessible via GSP (GST Suvidha Providers) through G2B (Government-to-Business) APIs. A comprehensive manual and FAQ document published on the same.

### **CLARIFICATIONS REGARDING TAXABILITY OF PERSONAL GUARANTEE OFFERED BY DIRECTORS TO THE BANK AGAINST THE CREDIT LIMITS/LOANS BEING SANCTIONED TO THE COMPANY AND REGARDING TAXABILITY OF CORPORATE GUARANTEE PROVIDED FOR RELATED**

### **PERSONS INCLUDING CORPORATE GUARANTEE PROVIDED BY HOLDING COMPANY TO ITS SUBSIDIARY COMPANY**

The Council has recommended to issue a circular clarifying that no GST is to be levied when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf. In case of companies, the taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

### **ADVISORY IN RESPECT OF INTRODUCTION OF COMPLIANCE PERTAINING TO DRC-01C (DIFFERENCE IN INPUT TAX CREDIT (ITC) AVAILABLE IN GSTR-2B & ITC CLAIMED IN THE GSTR-3B)**

GSTN (Goods and Services Tax Network) has issued an advisory regarding intimation issued under Form GST DRC-01C, which deals with discrepancies between ITC available in GSTR-2B and the ITC claimed in GSTR-3B. This compliance functionality has been implemented on the GSTN Portal,

and the system will now compare the ITC available in GSTR-2B with the ITC claimed in GSTR-3B for each return period. Where monthly return is required to be filed, comparison would be done on monthly basis and for QRMP returns, the comparison would be done on quarterly basis. section 43 of the Black Money Act was justified.





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In accordance with Rule 88D of the CGST Rules 2017, if the ITC available in GSTR-2B exceeds a predefined limit in comparison to the ITC claimed in Form GSTR-3B/3BQ for a specific return period, or if the percentage difference between the ITC available as per GSTR-1 exceeds the predefined limits in relation to the ITC claimed in Form GSTR-3B for a return period, an intimation would be sent to the taxpayer. The taxpayer is required to respond to this notification in Part B of Form DRC-01C.

The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03 or provide an explanation for the difference out of the options provided in the form or even choose a combination of both options and file it. It's important to note that if a taxpayer fails to respond to Form GST DRC-01C for the previous tax period, they will not be able to file their Form GSTR-1/IFF for the subsequent tax period.

To further help taxpayers with the process, a detailed manual containing the navigation details is available on the GST portal.

It offers step-by-step instructions and addresses various scenarios related to the functionality

### **ALLAHABAD HC REMANDED MATTER BACK SINCE APPELLATE AUTHORITY FAILED TO CONSIDER DOCUMENTS PROVIDED BY ASSESSE.**

**Editorial Note :** Where assessee received a show cause notice alleging that it had claimed ITC without proper authorization, based on supplies from a non-existent firm, appellate authority failed to consider documents provided by assessee to demonstrate transactions in dispute, thus, order assessing ITC to be paid by assessee along with penalty was to be quashed and matter was remanded back.

### **ALUMINUM FOIL CONTAINERS SHOULD BE CLASSIFIED UNDER HEADING NO. 7615 & TAXABLE AT 12%: HC.**

**Editorial Note :** Where assessee, a partnership firm, faced a classification dispute regarding Aluminum Foil Containers under GST regime, following a Supreme Court judgment in 2023 (Civil Appeal No.7561 of 2009), it was held that product should be classified under Heading No. 7615 with a 12 per cent GST rate, not under Heading No. 7607 with an 18 per cent rate.

### **KERALA HC DIRECTED PROPER OFFICER TO PROVIDE OPPORTUNITY TO SUBMIT EVIDENCE REGARDING ITC CLAIM NOT AVAILABLE IN GSTR-2A.**

**Editorial Note :** Where petitioner's ITC claim was denied on ground that ITC to extent claimed was not reflected in Form GSTR-2A, assessing officer was required to give opportunity to assessee and if on examination of evidence submitted by petitioner, assessing officer got satisfied about bonafide and genuineness of claim, ITC claim was to be given, impugned order was thus to be set aside to extent of ITC claim.



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**REFUND UNDER INVERTED DUTY STRUCTURE TO BE ALLOWED IF RATE OF TAX ON SOME INPUTS ARE HIGHER THAN RATE OF TAX ON OUTPUTS: HC.**

**Editorial Note :** In a case where there is accumulation of unutilised ITC as a direct result of rate of tax on inputs exceeding rate of tax on output supplies, scheme of refund as embodied in section 54(3) of CGST Act, 2017 gets attracted; this statutory scheme of refund of unutilised input tax credit is applicable despite there being multiple inputs and output supplies.

**INCOME TAX REGULATORY UPDATES HC QUASHES SEC. 148 NOTICE ISSUED MERELY BASED ON REASONS TO SUSPECT INSTEAD OF REASONS TO BELIEVE.**

**Editorial Note : INCOME TAX :** Where assessment was sought to be reopened in case of assessee on ground that cash worth Rs. 7 lakhs had been deposited in bank account of assessee and immediately afterwards, amount had been transferred through cheque in bank account of CCPL, raising suspicions of unaccounted money, however, there were no reasons to believe but, only reasons to suspect that income chargeable to tax had escaped assessment.

**NO DISALLOWANCE OF INTEREST ON LOAN IF ASSESSEE HAD AMPLE INTEREST-FREE FUNDS TO GIVE INTEREST-FREE ADVANCES.**

**INTERNATIONAL TAXATION:** Where Commissioner(Appeals) allowed appeal of assessee holding that assessee was not required to deduct TDS at time of making payments to overseas entities for translating its products into foreign languages for sale abroad, however, had made no observation whatsoever regarding applicability of Tax Treaty provisions to aforesaid payments.



**NO SEC. 12AA REGISTRATION TO A BAR ASSOCIATION IF IT ISN'T REGISTERED AS A TRUST/INSTITUTION WITH STATUTORY AUTHORITIES.**

**Editorial Note : INCOME TAX :** Where assessee-Bar Association of Income Tax consultants applied for registration under section 12AA, without fulfilling primary condition of registration under relevant statutory authorities, as required by amended Rule 17A, CIT(E) rightly rejected registration application of assessee.

**HC INSTRUCTS CPC TO PROMPTLY PROCESS REFUND AS DELAY WOULD LEAD TO AN ADDITIONAL INTEREST BURDEN ON EXCHEQUER.**

**Editorial Note : INCOME TAX :** Where revenue claimed that system under control of CPC had some technical issues and therefore, refund amount could not be released to assessee, since interest was payable in law until date of refund which would be a waste and burden on exchequer, revenue was directed either by itself or through CPC to ensure that amount was credited to assessee's account on or before 4-11-2023 with interest up to date of payment in accordance with law.



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**ASSESSMENT ORDER CANNOT BE PASSED IN NAME OF A COMPANY WHICH LOST ITS EXISTENCE AFTER MERGER.**

**Editorial Note : INCOME TAX :**

Where transferor Company got merged with assessee/transferee Company under scheme of amalgamation and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside.

**TAX DEMANDS FOR THE PERIOD PRECEDING THE DATE OF RESOLUTION PLAN CAN ONLY BE PAID AS PER THE TERMS OF THE PLAN**

**Editorial Note : INCOME TAX :**

Dues payable to creditors, including statutory creditors, for periods which precede date when Resolution Plan (RP) is approved, can only be paid as per terms contained in RP, hence, demand recovery notices and consequent orders issued to assessee for period preceding date of RP were unsustainable in law and, hence, could not have been enforced.

**DISALLOWANCES AT 6% OF UNEXPLAINED PURCHASES ARE SUFFICIENT TO MEET POSSIBILITY OF REVENUE LEAKAGE: HC.**

**Editorial Note : INCOME TAX :**

Where assessee was trading in diamonds and Assessing Officer made disallowance at rate of 100 per cent of purchases made by assessee on account of unexplained purchases being accommodation entries, in view of judicial precedent on identical issue disallowance at rate of 6 per cent of disputed purchases would be sufficient to meet possibility of revenue leakage.

**CORPORATE LAW UPDATES**

**CCI IMPOSES RS. 1 CR. PENALTY ON AIRTEL FOR ACQUIRING SHAREHOLDING OF TARGET-CO. WITHOUT GIVING NOTICE TO COMMISSION.**

**Editorial Note :**Where an acquisition transaction of target company was consummated without giving notice of same to CCI as required by section 6(2), since target company was jointly controlled by its parent company and investor company i.e. acquirers, such acquisition was not eligible for benefit under item 2 of Schedule 1 of Combination Regulations, 2011.

**HC DECLINES TO STAY CCI 'S INQUIRY INTO CARTELISATION IN TENDERING BY OCW CEMENT MANUFACTURERS IN TENDERS FLOATED BY ONGC.**

**Editorial Note :**HC declines to stay CCI 's inquiry into cartelisation in tendering by OCW cement manufacturers in tenders floated by ONGC. The Gujarat High Court declined to stay the Competition Commission of India's (CCI) inquiry into cartelization in tendering by OCW cement manufacturers in tenders floated by ONGC on October 30, 2023.





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### Tax Compliance Calendar for October 2023

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
7 <sup>th</sup> Nov	Oct 2023	TDS deposit	Non-Government Deductors
		Equalization Levy deposit	All Deductors
30 <sup>th</sup> Nov		AY 2023-24	Return of income for an assessee who is required to furnish a report under section 92E
11 <sup>th</sup> Nov		GSTR-1 (Outward supply return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
13 <sup>th</sup> Nov		GSTR-6 [Return by input service distributor (ISD)] a)GSTR-5 (Return by Non- resident). b)GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return]	Person registered as ISD a)Non-resident taxable person (NRTP) b)OIDAR services provider
15 <sup>th</sup> Nov		Deposit of PF & ESI contribution	All Deductors
20 <sup>th</sup> Nov		GSTR-3B (Summary return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme

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Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
29th Nov (within 60 days of AGM)	2022-23	ROC Compliance	**Due Date for furnishing Form MGT-7/ 7A
22 <sup>nd</sup> /24 <sup>th</sup> Oct	August 2023	PMT 06 Payment of tax liability	Tax payers (Quarterly Filers under QRMP)
10 <sup>th</sup> Oct	August 2023	GSTR - 8	Return to be filed by the E-commerce operators who are required to collect TCS

**\*\* LAST DATE FOR CONDUCTING AGM IS 30<sup>TH</sup> SEPTEMBER**

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