



Newsletter

Sharp View

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October marks the onset of festivals in India followed by significant increase in consumer demands and spendings. October marks the end of monsoon and a short spell of warm days before winter.

It is interesting to note that the Indian Air Force (IAF) was established on 8 October 1932, and has completed a journey of 9 decades to date.

Here are a few facts about the Indian Air Force (IAF), also known as 'Bharatiya Vayu Sena.'

- Headquartered in New Delhi, IAF has seven commands across India for effective control.
- The President of India holds the rank of Supreme Commander of the IAF.
- Motto: Touch the sky with glory (taken from Bhagwad Geeta.)
- Total aircraft strength in 2022: 1,645, with 632 fighters, 438 helicopters, 250 for transport, 304 trainers, 7 aerial tankers and 14 aircrafts assigned to special missions.
- It is an air arm of the Indian defence and also provides support in relief operations in natural calamities.
- IAF's global rank in 2022: 6th, with a positive outlook assigned to the overall ranking. (as per <https://www.wdmma.org/>)
- IAF and IIT Madras have recently entered an MOU to accelerate IAF's indigenisation efforts (involving technology and sustenance of weapon systems) for achieving 'Atma Nirbhar Bharat.'
- IAF personnel have various Limca book records like parachuting, skydiving, jump on the South Pole, etc. credited to their names.

Happy Reading!!!!



GRC

Competition Amendment Bill, 2022

The Government of India introduced the Competition Amendment Bill, 2022 which will be soon taken up for discussion in the winter session of the Parliament. The Bill proposes certain changes to the existing provisions to align them with the present state of conducting businesses through digital platforms which eliminate the geographical boundaries. Mr. Parth Makwana (Baroda office) discusses the salient features of the Bill.

The Competition Act, 2002, was enacted by the Parliament of India and governs the Indian competition law.

The Monopolies and Restrictive Trade Practices Act, 1969 ('MRTP Act') was repealed and replaced by the Competition Act, 2002.

The Competition Act:

1. Prohibits anti-competitive agreements
2. Prohibits abuse of dominant position by enterprises and
3. Regulates combinations [acquisition, acquiring of control, and mergers & acquisitions (M&A)], which can cause or are likely to cause an appreciable adverse effect on the competition within India.

The Competition Commission of India ('CCI') acts as the competition regulator in India. It aims at establishing a competitive environment in the Indian economy through proactive engagement with all the stakeholders, the government, and international jurisdiction. The objectives of CCI are:

1. To prevent practices that harm the competition
2. To promote and sustain competition in markets
3. To protect the interests of consumers
4. To ensure freedom of trade.

Competition Amendment Bill, 2022: Need of the Hour?

On 6 August 2022, the government of India has introduced Competition Amendment Bill 2022, which proposes certain amendments to the Competition Act, 2002. The proposed bill, which will be discussed during the winter session of the Parliament will include major changes to the Competition Act, 2002, focusing on a wider perspective with respect to anti-competitive practices related to mergers and acquisitions (M&A) of digital businesses. The focus of CCI is with respect to the emergence of the companies in digital sector and their impact on the economy.

Recently, the CCI has summoned online food aggregators like Swiggy and Zomato and cab aggregators Ola and Uber, warning them about monopoly in the market and anti-competitive activities.

Many important deals, like Facebook-WhatsApp, Facebook-Instagram, Microsoft-LinkedIn, have escaped CCI scrutiny due to the existing regulations.

As per a report by India Brand Equity Foundation, the domestic e-commerce market is predicted to expand by 21.5% reaching US\$74.8 billion, thus becoming the third largest e-commerce market in the world. The country's e-commerce market is expected to reach US\$350 billion by 2030, as per the report.

An additional criterion in M&As may require digital businesses to secure approval from the CCI, the anti-trust regulator.



Competition Amendment Bill, 2022: Salient Features

The amendment of Competition Act, 2002 was initiated because of the growth of Indian markets and emergence of various business models and a shift towards digital world. At present, there are two evaluating criteria i.e., (i) asset size and (ii) turnover for clearing M&A deals, but has proved to be a void as new-age businesses have high valuations, but due to their assets and turnover in India they escape the purview of CCI.

Approval Criteria

Amendment to section 5: The scope of the term 'combination' is widened to include mergers and acquisitions where

value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore. Provided that the enterprise which is a party to the transaction has such substantial business operations in India as may be specified by regulations.

In simple words: The bill will introduce a minimum threshold "*transaction value*" of INR 2,000 crore (around \$250 million) for any deal as a criterion for notification to the anti-trust regulator.

Earlier the companies required to notify the CCI if the combination was based on "assets" or "turnover."

Appointment of Director General and qualification of members

The Bill seeks to amend section 16 of the Act which says that CCI shall appoint the Director General with the prior approval of the Central Government.

The Bill also seeks to amend section 9 of the Act which talks about the composition of the selection committee for Chairperson and Members and has also introduced '*knowledge and experience in the field of technology*' as additional criteria for the members of the selection committee.

It also aims to empower CCI by permitting its Director General to seize the documents and records while conducting an investigation.

Anti-competitive agreements

Anti-competitive agreements include any agreement related to production, supply, storage, or control of goods or services, which can cause an appreciable adverse effect on competition in India. Any agreement between enterprises or persons, engaged in identical or similar businesses, will have such adverse effect on competition if it meets certain criteria.

These include: (i) directly or indirectly determining purchase or sale prices, (ii) controlling production, supply, markets, or provision of services, or (iii) directly or indirectly leading to collusive bidding.

The Bill also adds that enterprises or persons not engaged in identical or similar businesses shall be presumed to be part of such agreements if they are actively participating in the furtherance of such agreements.



Settlement and commitment in anti-competitive proceedings

Introduction of settlement and commitment framework to reduce litigations.

Under the Act, the CCI may initiate proceedings against enterprises on grounds of:

- (i) entering into anti-competitive agreements, or
- (ii) abuse of dominant position.

Abuse of dominant position includes: (i) discriminatory conditions in the purchase or sale of goods or services, (ii) restricting production of goods or services, or (iii) indulging in practices leading to the denial of market access.

The Bill permits CCI to close inquiry proceedings if the enterprise offers: (i) settlement (may involve payment), or (ii) commitments (may be structural or behavioral in nature). The manner and implementation of settlement and commitment may be specified by CCI through regulations.

Other changes

The bill provides changes in certain definitions like "enterprise", "relevant product market", "Group", "Control", etc., to provide clarity.

Additionally, the Bill seeks to

- i. substitute section 12 of the Act to restrict the acceptance of employment by chairperson and members of the CCI within a period of 2 years from the date of ceasing the office.
- ii. amend section 19 of the Act to provide that CCI shall not entertain any information or reference beyond the period of 3 years from the date of cause of action. However, CCI may condone the delay if it is satisfied with the reasons given by the parties.
- iii. amend section 21 of the Act in order to broaden the grounds on which the statutory authorities may suo moto make a reference to CCI.
- iv. amend section 21A of the Act to allow the statutory authority to make a reference suo moto to CCI on any issue which involves any provision of the Act or is relating to promoting the objectives of this Act.
- v. amend section 29 of the Act to provide that CCI shall form prima facie opinion within 20 days of receipt of notice under sub-section (2) of section 6 and further to reduce the period of the completion of investigation within 150 days instead of 210 days.
- vi. amend section 31 of the Act to omit the word "certain" and provides that combination shall be deemed to have been approved and no separate order shall be required if CCI does not form a prima facie opinion within 20 days as provided under sub-section (IB) of section 29.
- vii. amend section 35 of the Act to insert sub-section (2) to enable a party to call upon experts from the fields of economics, commerce, international trade, or any other discipline for an expert opinion in relation to a case before CCI.
- viii. change the nature of punishment for certain offences from imposition of fine to penalty. It proposes to amend section 44 of the Act to enhance the penalty from INR 1 crore to INR 5 crore.

Conclusion

The definition of a 'combination' is proposed to include any amalgamation or merger in which the value of a transaction in connection with the acquisition of control, shares, voting rights, merger or acquisition exceeds INR 2,000 crore and the enterprise which is a party to such transaction has substantial business operations in India. Thus the mere presence of assets or turnover in India is not the sole criterion. This will be a landmark step, where many multinational companies operating in digital space like social media, fintech, banks, food delivery and passenger transport aggregators tie up with each other to promote their Indian operations.

The government has been keen to include agreements of non-identical trade/business to be covered under the category of 'anti-competitive' agreements. This will affect the future agreements which the enterprises may plan to enter into, particularly those belonging to different industries.

The bill has also reduced the overall period of the commission to approve a combination from 210 days to 150 days, extendable to 30 days. This indicates increased efficiency of the CCI and the readiness to assess many more proposed combinations in the pipeline.





Taxation

Recent CBIC guidelines on summons, arrest and bail under the GST law

Recently, the Central Board of Indirect Taxes and Customs issued guidelines on the 'summons' and 'arrest and bail' procedures under the GST law. Mr. Shouvik Roy (Mumbai office) summarises these provisions, making the taxpayers aware of their rights and obligations.

Background

In any tax regime, including the goods and service tax (GST) regime, tax evasion as well as detection and investigation to detect and prevent the evasion, are complementary to each other, and the latter is a natural corollary of the former. Evasion ought to be curbed to prevent leakage of revenue and national resources, and this may require severe and harsh action on the part of tax collectors and regulators. At the same time, the constitutional rights of alleged evaders have to be protected and miscarriage of justice due to overzealous revenue officers, should be prevented and minimised.

Detection and prevention of tax evasion is usually initiated with inspection, investigation and search. For this purpose 'summons proceedings' are one of the most important tools in the hands of tax collectors. If the search conducted results in evidence of fraud or evasion, arrest of offenders may follow. An arrest is often followed by the bail application from the offenders.

This article summarises the recent guidelines/instructions issued by CBIC on summons, arrest and bail under the GST law.

Summons

As per section 70(1) of the Central Goods and Services Tax (CGST) Act, 2017, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908.

As per section 70(2) of CGST Act, 2017, securing such documentary and oral evidence under the said legal provision shall be deemed to be "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860. While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., it needs to be ensured that exercise of such power is done judiciously and with due consideration.

From time to time, there have been reports/complaints/trade representations that summons are being issued casually or in an overzealous manner and result in avoidable harassment of taxpayers or persons who are put to enquiry, many times just to collect confirmation and documents in an intimidating manner, or to put the senior management under coercive recovery pressure. To overcome these issues, the Central Board of Indirect Taxes and Customs (CBIC) has issued fresh guidelines on issuance of summons.

New summon guidelines by CBIC

Following are the important points taken from the CBIC instruction no. 3/2022 dated 17 August 2022.

- Where summons are issued by Superintendent, prior written permission of officers not below the rank of Assistant Commissioner or Deputy Commissioner (AC/DC) will be required.
- Reasons to be recorded in writing for the issue of summons.



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- Summons are to be avoided to call for statutory documents already available on the GSTN portal.
- Officer to record on file the appearance or after non-appearance of the summoned person, as the case may be. Repeated summons without ensuring service of earlier summons is to be avoided.
- Senior management/promoters (CMD, MD, CEO, CFO etc.) of the company or public sector undertaking (PSU) should not be summoned unless their involvement is suspected or in the first instance.
- The summoned person should be aware as to whether he is being summoned as an accused, co-accused or witness.
- Summons to usually contain name of the offender. However, the same may be withheld if it is likely to impact the investigation.
- If the person summoned does not cooperate and joins investigation even after repeated summons (generally three), complaint shall be filed under section 172 and 174 of Indian Penal Code (IPC) before the Magistrate.
- It should be ensured that summons are duly served on the concerned person.

Arrest and bail

A person can be arrested for eligible offences punishable under section 132 of the CGST Act, 2017, for offences listed in the same section. Arrests can be made under section 69 of CGST Act, 2017.

CBIC (GST-Investigation Wing) has issued guidelines for arrest and bail in relation to offences punishable under CGST Act, 2017. [Instruction No 2/2022-23 \(Investigation\) dated 17th August 2022.](#)

It may be noted that the Supreme Court in criminal [Appeal No 838 of 2021 \[SLP \(Criminal\) No 5442/2021\] in Siddharth v. The State of Uttar Pradesh & Anr. \(2021\)](#) observed and held that:

- a. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it.
- b. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we (the Court) fail to appreciate why there should be a compulsion on the officer to arrest the accused.

CBIC has taken cognisance of the same judgment and issued the aforesaid instruction dated 17 August 2022, on arrest and bail under CGST Act, 2017. Accordingly, the following guidelines must be adhered to.

- i. Before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and clear. The reasons to believe must be based on credible material.
- ii. Since arrest restricts the personal liberty of an individual and results in his incarceration, the power to arrest must be exercised carefully. The arrest should not be made in a routine and mechanical manner.
- iii. Approval to arrest should be granted only where the intent to evade tax or commit acts leading to avilment or utilisation of wrongful input tax credit or fraudulent refund of tax or failure to pay the amount collected as tax as specified in sub-section (1) of section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.



- iv. The relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.
- v. Arrest should, however, not be resorted to in cases of technical nature.
- vi. Pr. Commissioner/Commissioner shall record on file that after considering the nature of the offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in section 132 and may authorize an officer of central tax to arrest the concerned person(s).
- vii. The arrest memo must be in compliance with the directions of Honorable Supreme Court in the case of *D K Basu vs State of West Bengal reported in 1997 (1) SCC 416 SC*.
- viii. The arrest memo should indicate relevant section(s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off.
- ix. The grounds of arrest must be explained to the arrested person and this fact must be noted in the arrest memo.
- x. The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgement.
- xi. A separate arrest memo has to be made and provided to each individual/arrested person.
- xii. A woman should be arrested only by a woman officer.
- xiii. Medical examination of an arrested person should be conducted by a medical officer in the service of the Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made.
- xiv. If an arrested person is a female, then such an examination shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- xv. It shall be the duty of the person having custody of an arrested person to take reasonable care of the health and safety of the arrested person.
- xvi. Arrest should be made with minimal use of force and publicity and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.
- xvii. In cases, where a person is arrested under section 69(1) of the CGST Act, 2017, for an offence specified under section 132(4) of the CGST Act, 2017, the AC/DC is bound to release a person on bail against a bail bond.
- xviii. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person(s) arrested.
- xix. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, inter-alia, on the amount of tax involved. It has to be ensured that the amount of Bail bond/Surety should not be excessive and should be commensurate with the financial status of the arrested person.
- xx. If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith.
- xxi. In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

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- xxii. It must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty-four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
- xxiii. After the arrest of the accused, efforts should be made to file a prosecution complaint under section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, a prosecution complaint should be filed within a definite time frame.
- xxiv. Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc.
- xxv. Director-General (DGGI) / Pr. Chief Commissioner(s) / Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest.

Conclusion

It would be advisable for taxpayers to understand their rights as well as duties, in the event of being confronted with summons and arrest, against the backdrop of the recent CBIC instructions, which are binding on the field formations of the revenue department.





Consulting

RPA architecture, lifecycle and implementation of an RPA BOT

Robotics process automation (RPA) is an application of technology that aims at automating business processes using business logic and structured inputs with RPA tools. In the last article (September 2022) Mr. Khushal Makani, Mr. Shivam Chaturvedi and Mr. Prajot Chandekar (Baroda office) explained the basics of RPA. In this edition, they bring out to you the RPA architecture, its lifecycle and implementation of an RPA BOT.

Recap

In the last article, we learnt about RPA and some of its use cases. In this article, we will dig deep into the RPA architecture, lifecycle and implementation of an RPA BOT. Before that let us take a quick recap of RPA.

RPA is a tool that automates business processes and works at the user interface (UI) level of an information technology (IT) system. RPA technologies can be set up to gather information, carry out transactions, interact with other digital systems, and even reply to emails. Within an ERP system, tens of thousands of BOTS can be deployed and given individual tasks.

Objective

The objective of this article is to dig deep into RPA, which will cover RPA product architecture, life cycle of a BOT and at last we have a covered case study of how an RPA helped a business without disrupting its current system.

RPA architecture

RPA architecture does not contain a single tool but is a combination of various tools, platforms, and also various infrastructure elements to form a complete RPA tool or a solution.

In RPA architecture, the product's architecture is the crucial component that needs to be understood thoroughly. Below are some of the features of overall RPA architecture for automation.

Usability

Usability is the most important factor in the RPA architecture. BOTs have a higher role in decision making with a limited number of steps. Hence, for configuration concerns it is better to have accessible software that is easy to understand, scalable, easy for deployment and one which makes the RPA design and development process more efficient.

Integration

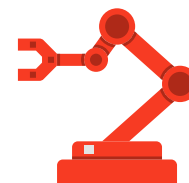
The best RPA tools should be able to integrate with a wide range of other technologies and systems that might be used in an organisation's business processing.

Handling exceptions

Error handling process in RPA should be easy and fully automated. With stable exception handling, the automation process can function smoothly and reliably.

Security

In having hands-on sensitive data of an organisation, security should be at the centre. An RPA uses various tools, depending upon the business processes. 'Security' plays a crucial role in developing an RPA depending upon these tools used. It may be noted that the level of 'security' may differ from organisation to organisation, but it should never be undervalued.



Configuration features

To ensure effective deployment of automation and also to add a lot of support towards building the required internal capabilities, configuration features of a robotic process are important. One has to build the configuration according to the business requirements and the one which suits the business needs.

Life cycle of a BOT

There are six stages in the RPA lifecycle:

RPA LIFE CYCLE



1. Discovery phase

This is the initial phase of RPA life cycle. After getting the overall requirement and planning it is decided whether a business process can be automated and the challenges in the process. Few things that need to be considered are process feasibility, dependency and complexity.

2. Solution design phase

The steps in the automation process are designed, based on the specific business requirements. A process definition document (PDD) is created, which details the entire process. A plan is created to automate particular tasks using the developmental methodology. This phase also includes finding the best solution and RPA tool to achieve the desired solution.

3. Development phase

Taking the PDD into consideration, RPA developers create BOTs for automation with the help of RPA tools. Time duration for this phase may vary from process to process.

4. Testing phase

After developing the BOT it is tested multiple times on testing and development environment to ensure it executes and performs as per the pre-defined process.

5. Deployment

After successful completion of development and testing phase, the BOT is deployed in the production process (as the case may be) where users can run the BOT.

6. Maintenance and change management

Once the BOTs are deployed they are executed manually from the production room under the close watch of SMEs and developers involved. The BOT is monitored continuously for performance and error-free operation. Any fixes that are required in this phase are taken care by the development team to analyse and resolve the issues.

[Case Study: GST Reconciliation through RPA](#)

Problem Statement

A Vadodara (Gujarat) based company, which is in the manufacturing industry having its own customised ERP for accounting purposes is facing few challenges related to the goods and services tax ('GST') reconciliation. The company has already invested a certain amount for purchasing a reconciliation software but the problem still continues.

The reconciliation software requires a predefined format of reports for preparing the reconciliations. However, the automation tool needs to perform the reconciliation based on the available format and no predefined format is required.

Objective

To perform the reconciliation task through the digital workforce also known as RPA.

The solution

We have developed a tool through RPA which can help the user to reconcile the GST returns with the books of accounts. This improved the overall time consumption and improved efficiency in the process.

How the solution works?

The user is required to integrate the automation tool with the ERP and configure the GSTIN portal user ID and password into it. Once the integration is completed the tool will be ready to use.

The tool will automatically extract the data from the ERP and returns from the portal and reconcile the returns with the books.

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Returns that can be reconciled with the help of the tool:

1. GSTR1 vs GSTR3B: It ensures there is no duplication or omission of invoices and helps in arriving at an accurate amount of tax payable on the sales during the specified period.
2. GSTR1 vs Sales Register
3. GSTR3B vs GSTR2B: It helps businesses claim the full input tax credit (ITC) and also reverses any excess ITC claimed.
4. GSTR2B vs Purchase Register: It helps in reconciling the data in the purchase register and GSTR-2B to avoid input tax credit reversal (due to any mismatch in information detailed by the service provider and recipient).

Further, the tool will mail the differences to the respective vendors and also to the respective departments of the company.

Key takeaways

- RPA architecture does not contain a single tool, but is a combination of various tools, platforms, and infrastructure.
- Usability and proper exception handling will help in reliable automation.
- Extreme complexity and complex decision making can be solved through quality planning in the solution design phase.
- RPA life cycle is like any other software development but a much faster development and easy deployment.



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