



Newsletter

**Sharp View**

**June 2023**

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# JUNE 2023

June marks the onset of the monsoon in India. Also, India celebrates the World Environment Day on 5 June every year. World Environment Day is an occasion which brings millions of people across the nation together for awareness and action for the environment. For 2023, the Ministry of Environment, Forest and Climate Change, envisions celebrating this day with Mission 'LiFE.' The concept of LiFE, i.e., Lifestyle for Environment is introduced by our Honourable Prime Minister, at the World Leaders' Summit in Glasgow at the 2021 UNFCCC COP26. There, he gave a clarion call to rekindle a global pursuit to adopt sustainable lifestyles and practices. In the run-up to the celebrations, mass mobilisation on LiFE across the country were organised.

"This word is LiFE, which means 'LiFEStyle For Environment'. Today, there is a need for all of us to come together and take LiFEStyle For Environment forward as a campaign. This can become a mass movement towards an environmentally conscious lifestyle."

- Prime Minister Shri Narendra Modi at COP26

## India's climate-friendly approaches

- Leadership in individual-led programmes such as Swachh Bharat Mission, GOBARdhan Scheme and 'Give It Up' Campaign.
- Launch of the 'Catch the Rain' campaign with people's participation.
- Revamping of various laws and regulations such as battery waste management, plastic waste management, e-waste management, etc.
- Encouraging the use of biodegradable utensils and ban on single-use plastic.
- Programme 'Save Nature from'



## Quotes from Atharva Ved

*"We aspire to live long, our children too would live long and be free from sickness and consumption. We all are reared up in the lap of the Mother Earth. May we have a long life (provided) we are watchful and alert and sacrifice our all for Her."*

A pair of hands is shown from the bottom right, cupping a small, vibrant green seedling with three leaves and a small amount of dark brown soil. The background is a soft, out-of-focus green, suggesting an outdoor setting. The overall image conveys a sense of care, growth, and nurturing.

# CONSULTING

## **Industrial and labour laws audit**

Industrial and labour laws audit evaluates whether an organisation has adhered to the labour and employment laws applicable to its industry. The primary purpose of the audit is to identify non-compliances and rectify them to mitigate legal and financial risks. Ms. Priya Tolani (Vadodara office) discusses the importance of industrial and labour laws audit and its benefits to an organisation.

# Consulting

## Industrial and labour laws audit

An industrial and labour laws audit is an assessment or examination of an organisation's compliance with industrial and labour laws and regulations. The audit evaluates whether the organisation has implemented and complied with various labour and employment laws, regulations, and industry standards applicable to its operations, including workplace health and safety, compensation, working hours, benefits, discrimination, harassment, and termination policies.

The audit is typically conducted by a team of experts, including legal professionals and labour law specialists, who review the organisation's policies, procedures, and practices related to employment and labour. In addition, the audit identifies areas where the organisation needs to improve its practices to ensure compliance.

The primary purpose of an industrial and labour laws audit is to identify non-compliances and rectify the areas of non-compliance to mitigate legal and financial risks. By conducting an audit, organisations can ensure that they are meeting their legal obligations and providing a safe and healthy work environment to their employees.

### Importance of labour laws compliance

Compliance with labour laws is essential for organisations to maintain a positive reputation, build a good relationship with their employees, and avoid legal and financial risks. The importance of labour law compliance can be summarised as below.

- **Legal compliance:** Organisations must avoid legal penalties, fines, or lawsuits that could result from non-compliance with labour/employment laws. Failure to comply with labour laws can lead to significant financial losses and damage to the organisation's reputation.
- **Employee relations:** It is crucial for maintaining positive relationships with employees. Employees have a right to work in a safe and healthy environment and receive fair wages, benefits, and working conditions. Complying with labour laws can help build trust and confidence between the organisation and its employees, leading to better morale and employee retention.
- **Brand reputation:** Non-compliance with labour laws can result in the impairment of an organisation's brand reputation, leading to negative publicity, decreased customer loyalty, and a loss of business opportunities. In contrast, a commitment to labour law compliance can enhance an organisation's brand reputation, leading to increased customer loyalty and improved stakeholder confidence.
- **Competitive advantage:** Organisations that comply with labour laws can gain a competitive advantage by attracting top talent, fostering a positive workplace culture, and differentiating themselves from competitors.
- **Ethical responsibility:** It is the ethical responsibility of organisations to ensure that they are treating their employees fairly and providing a safe and healthy work environment. Organisations that prioritise labour law compliance demonstrate a commitment to ethical business practices and social responsibility.

# Consulting

## Industrial and labour laws audit

### Benefits of labour audit

A labour audit can provide several benefits to an organisation. Some of the key benefits of a labour audit are:

- **Ensuring legal compliance:** Labour audit ensures up-to-date compliance with all the applicable labour/employment laws. This can reduce the risk of legal penalties, fines, or lawsuits resulting from non-compliance with labour laws and regulations.
- **Identifying areas of improvement:** It can identify areas where an organisation can improve its employment practices and policies, such as in the areas of workplace safety, employee benefits, or diversity and inclusion. This can help organisations enhance their overall workplace culture and reputation.
- **Mitigating financial risks** i.e. adjudication costs, legal penalties, and compensations for non-compliance.
- **Enhancing employee relations:** Compliant organisations foster a positive workplace culture and improve employee morale and retention.
- **Supporting due diligence:** E.g. a labour due diligence audit can be useful in the context of mergers, acquisitions, or other business transactions where the employees are absorbed in the merger/acquisition process.

### Key legislations under the ambit of labour audit

Sr. No	Legislation	Related checks
1.	Payment of Wages Act, 1936	<ul style="list-style-type: none"><li>• Total number of employees in the establishment who are governed by the act.</li><li>• Whether wages are paid in accordance with the act.</li><li>• Wage period considered</li></ul>
2.	Payment of Bonus Act, 1965	<ul style="list-style-type: none"><li>• Whether eligible people are paid a bonus?</li><li>• Timely payment of bonus</li></ul>
3.	Provident Funds and Miscellaneous Provisions Act, 1952	<ul style="list-style-type: none"><li>• Timely deposit of employer and employee's dues.</li></ul>
4.	Payment of Gratuity Act, 1972	<ul style="list-style-type: none"><li>• Whether or not the liability for gratuity has been provided for in the accounts?</li><li>• Whether the company has formed any trust that would take care of the liability arising out of gratuity?</li><li>• Number of claims during the year for the payment of gratuity and the time taken for settlement.</li></ul>
5.	Industrial Disputes Act, 1947	<ul style="list-style-type: none"><li>• Whether the industry has resorted to any unfair labour practices?</li><li>• Whether the dispute resulted in the closure of any factory or is there an incident of strike/lockout and if so, the period thereof.</li></ul>

Sr. No	Legislation	Related checks
6.	Trade Unions Act, 1926	<ul style="list-style-type: none"><li>• Number of registered trade unions in operation in the factory</li></ul>
7.	Minimum Wages Act, 1948	<ul style="list-style-type: none"><li>• Whether wages are paid in accordance with the act?</li></ul>
8.	Employees' Compensation Act, 1923	<ul style="list-style-type: none"><li>• Time taken for payment for compensation. Disputes on settlement of compensation are to be reported.</li><li>• Fatal accidents are to be reported.</li><li>• Insurance cover for meeting the liability.</li></ul>
9.	Factories Act, 1948	<ul style="list-style-type: none"><li>• Factory license</li><li>• Whether working hours are in accordance with the provisions of the Act?</li><li>• Maintenance of proper records of attendance and leaves.</li><li>• Compliance with provisions relating to the employment of women, young children etc.</li></ul>
10.	Contract Labour (Regulation and Abolition) Act, 1970	<ul style="list-style-type: none"><li>• Whether the establishment is covered under the provisions of Contract Labour (Regulation and Abolition) Act, 1970?</li><li>• Whether the establishment has obtained the certificate of registration before the employment of any contract labour?</li><li>• Whether all the contractors engaged by the establishment to supply workmen do possess valid licence?</li></ul>

### Conclusion

A labour audit is a useful tool for achieving compliance with labour laws. It aids in identifying violations of various labour laws that apply to an organisation and in taking corrective action. The objective of a labour audit is to protect the interests of all the stakeholders. This prevents the organisation and its management from facing legal action and results in improved governance and the creation of value.





# GRC

## **Emerging trends in risk management: navigating the future with resilience and agility**

Risk management plays a crucial role in the survival and success of any organisation. Mr. Arnob Choudhuri (Pune office) throws light on the key trends, which can be used as strategies to manage risks and stay ahead of business uncertainties. He also discusses some case studies of how businesses in key industries have effectively used these strategies in managing their sector-specific risk profiles.

### Introduction

Risk management plays a crucial role in the success of organisations, especially in the dynamic and interconnected business landscape of India. As businesses face increasing complexity and uncertainty, staying ahead of emerging trends in risk management becomes imperative. In this comprehensive article, we will delve into three key trends that are shaping the risk management landscape: enterprise resilience, agile risk assessment methodologies, and predictive analytics. Through an exploration of multiple case studies and industry examples, we will demonstrate how organisations in India are adapting to these trends, effectively managing risks, and seizing opportunities.



### 1. Enterprise resilience

In today's rapidly changing and disruptive environment, traditional risk management approaches often fall short. Enterprise resilience, as an emerging trend, emphasises the development of organisational capacity to withstand shocks and uncertainties while fostering adaptability. It involves a holistic understanding of risks across the organisation, integration of risk management into strategic decision-making, and the cultivation of a resilient culture at all levels.



### Case study 1: Manufacturing industry - navigating uncertainty with resilience

The manufacturing industry in India faces numerous risks, ranging from supply chain disruptions to regulatory changes. In response, several organisations have embraced enterprise resilience as a strategic approach to risk management. For example, a leading automotive manufacturer established a dedicated enterprise risk management function that integrates risk assessment, mitigation, and monitoring across its global operations. By leveraging advanced risk intelligence tools and implementing comprehensive risk response strategies, the company has effectively navigated uncertain market conditions, minimised operational disruptions, and strengthened its long-term competitiveness.

### Case study 2: IT services sector - building resilience through business continuity planning

The IT services sector in India, known for its global reach and dependence on technology, is no stranger to risks such as cyber threats, natural disasters, and data breaches. To address these challenges, a prominent IT services company adopted an enterprise resilience framework that includes robust business continuity planning. By conducting comprehensive risk assessments, implementing redundant infrastructure, and establishing alternative service delivery centers, the company has enhanced its ability to deliver uninterrupted services to clients, even in the face of unexpected disruptions.

## 2. Agile risk assessment methodologies

In a rapidly evolving risk landscape, traditional risk assessments often struggle to keep up with emerging threats. Agile risk assessment methodologies offer a flexible and iterative approach to risk identification, analysis, and response, allowing organisations to adapt their risk management strategies swiftly in line with changing business conditions.

### Case study 1: Retail sector - embracing agile risk management

The retail sector in India operates within a highly dynamic and competitive environment. Organisations in this sector have recognised the need for agile risk management practices to remain resilient and responsive to evolving risks. For instance, a leading fashion retailer has implemented an agile risk assessment methodology that involves cross-functional teams, frequent risk reviews, and real-time risk monitoring. By closely tracking market trends, consumer behavior, and competitor activities, the retailer can proactively identify and address emerging risks such as shifting consumer preferences, supply chain disruptions, and cybersecurity threats.

### Case study 2: Pharmaceutical industry - agile risk management in research and development

Pharmaceutical companies in India invest heavily in research and development (R&D) to bring innovative drugs to market. However, R&D activities are inherently risky and subject to uncertainties. To mitigate these risks, a prominent pharmaceutical firm has adopted an agile risk assessment approach that enables iterative evaluation and decision-making throughout the drug development lifecycle. By conducting regular risk assessments, embracing adaptive trial designs, and utilising real-world data, the company has accelerated its R&D process, minimised costly failures, and maximised the potential for successful drug launches.

### 3. Predictive analytics

Advancements in technology and the abundance of data have revolutionised risk management through predictive analytics. By leveraging data-driven insights and advanced analytical techniques, organisations can identify patterns, trends, and potential future risks. This enables proactive decision-making, risk mitigation, and improved overall risk-reward profiles.

#### Case study 1: Banking sector - harnessing predictive analytics for risk management

The banking sector in India has recognised the power of predictive analytics in enhancing risk management practices. By analysing vast amounts of customer data, market trends, and economic indicators, banks can proactively identify credit risks, detect potential fraud, and forecast market volatility. For instance, a leading public sector bank has deployed advanced machine learning models to identify early warning signals of potential defaulters, enabling them to take preventive measures, reduce non-performing assets, and maintain a healthy loan portfolio.

#### Case Study 2: Insurance industry - predictive analytics for risk assessment and pricing

Insurance companies in India heavily rely on risk assessment to determine premiums and manage underwriting risks effectively. By leveraging predictive analytics, a major insurance provider has significantly enhanced its risk assessment and pricing strategies. Through the analysis of historical claims data, demographic information, and external risk factors, the company can accurately predict the probability of future claims, adjust pricing accordingly, and optimise risk exposure. This data-driven approach has not only improved underwriting profitability but also enhanced customer satisfaction through more personalised coverage options.

### Conclusion

In an era of increasing complexity and uncertainty, organisations in India must embrace emerging trends in risk management to navigate the future successfully. The trends of enterprise resilience, agile risk assessment methodologies, and predictive analytics offer powerful tools for proactive risk management, turning potential threats into opportunities. The case studies presented across various industries demonstrate how businesses are leveraging these trends to enhance their risk management practices and achieve sustainable growth. As the business landscape continues to evolve, embracing these emerging trends will be essential for businesses to stay resilient, agile, and competitive in managing risks effectively, ensuring long-term success in the dynamic Indian market.





# TAXATION

## **SC ruling on the pre-import condition to claim IGST exemption on imports**

The honourable Supreme Court of India upheld the requirement of 'pre-import condition' to claim the IGST and GST compensation cess on imports made under 'the advance authorisation scheme'. Mr. Shouvik Roy (Mumbai office) unfolds the apex court ruling and summarises some practical aspects arising out of the judgement.

Case name: UOI vs Cosmo Films Ltd. & Others

### Synopsis

The honourable Supreme Court of India ('SC') upheld the requirement of 'pre-import condition' to claim IGST and GST compensation cess on imports made under 'advance authorisation scheme.'

### Facts

- Notification No 18/2015-Cus., dated 1 April 2015 regulates the import of inputs against 'advance authorisation' for physical exports. This notification granted complete exemption from payment of BCD (Basic Customs Duty), CVD (Additional Duty of Customs) and SAD (Special Additional Duty of Customs), apart from granting exemption to other customs duties such as ADD (anti-dumping duty), etc.
- On the introduction of GST, the said notification was amended to initially limit the exemption to the payment of BCD alone (& not IGST). During this initial period (as there was no corresponding notification exempting the additional duties/IGST leviable under the Customs Tariff Act,) exporters had to first pay IGST and compensation cess and then seek input tax credit as applicable under the GST Rules. Then, vide notification no. 79/2017-Cus dated 13 October 2017, exemption from payment IGST, as well as compensation cess, was extended, but subject to fulfilment of 'pre-import condition' and 'physical exports.'
- Vide notification No 33 (RE-2015-2020), dated 13 October 2017, Para 4.14 of the Foreign Trade Policy 2015-20 was also amended similarly.
- An investigation by DRI /revenue departments was initiated against various manufacturer-exporters who had availed exemption of IGST and Compensation cess, The main allegation /ground of the DRI was that the pre-import condition was not satisfied. As per the revenue, pre-import condition means that goods had to be imported physically first and then the final product manufactured using such imported goods should be physically exported. That is, only after the import of the goods commenced, were they required to be used for manufacture of export goods, which were ultimately exported (physically). As per the DRI officers, the 'pre-import condition' stood satisfied only when it was established that the goods imported against a particular 'advance authorisation' were used in relation to the manufacture of finished goods exported for the fulfilment of export obligation of that particular authorisation.
- On the other hand, the exporters wanted to continue the former business practices of importing inputs, after applying for advance authorisation, to fulfil their overseas export contractual obligations., even before proving actual utilisation of the inputs into the exported goods.
- The exporters/assessee challenged the said pre-import condition before the honourable Gujarat High Court ('HC'), who held that 'pre-import condition', as contemplated in notification No 79/2017-Cus. for availing IGST exemption under 'advance authorisation scheme', is ultra vires on the ground that the same does not meet the test of reasonableness and is also not in consonance with the scheme of advance authorisation scheme.



# Taxation

## SC ruling on the pre-import condition to claim IGST exemption on imports

- However, the said view of the honourable Gujarat HC has now been overturned by apex court.

### Findings and observations of SC and the verdict

The civil appeals were filed by the revenue before the apex court against the order of the Gujarat HC. The key question before apex court was whether pre-import condition is a valid requirement to claim exemption from IGST and compensation cess for imports made under advance authorisation scheme.

The honourable SC set aside the Gujarat HC judgement with respect to the fulfilment of the pre-import condition as contemplated in notification No 79/2017-Cus., dated 13 October 2017.

- Apex court observed that the concept of 'pre-import condition' was not 'alien' to the Foreign Trade Policy 2015-20 (FTP). The court observed that paragraph 4.13 (i) of the FTP itself empowered the Directorate General of Foreign Trade ('DGFT') to impose 'pre-import conditions' on articles other than those specified in Appendix-4J of the handbook of procedures issued by it. The SC Bench remarked that the Gujarat HC had failed to consider the same and had erroneously proceeded on the assumption that only the goods specified in the said Appendix were subject to the 'pre-import condition'.
- The Bench noted that the introduction of the 'pre-import condition' may have resulted in hardship to the exporters, since they could no longer continue with their former business practices of importing inputs, after applying for advance authorisation, to fulfil their overseas export contractual obligations. Under the new scheme, the exporters were required to first pay the IGST and compensation cess, and then claim refunds, after satisfying that the inputs had been utilised fully (wastage excluded) for producing the final export goods. But the Bench further observed and ruled that mere inconvenience caused to exporters by paying IGST and claiming a refund thereafter could not be a ground to hold the 'pre-import' condition as arbitrary.
- SC held that the exclusion of benefit for imports made in anticipation of advance authorisation, and requiring payment of duties, under sections 3 (7) and (9) of Customs Tariff Act, 1975, with the 'pre-import condition', cannot be characterised as arbitrary or unreasonable.
- SC opined that respondent-assessee's argument that there is no rationale for different treatment of BCD and IGST under advance authorisation holds no merit.
- While dismissing the respondent-assessee's argument, the apex court held that BCD is a customs levy at the point of import. On the other hand, IGST is levied at multiple points (including at the stage of import) and input tax credit gets into the stream, till the point of end user. As a result, there is a justification for a separate treatment of two levies. Therefore, the notification cannot be faulted with for arbitrariness or under classification.

# Taxation

## SC ruling on the pre-import condition to claim IGST exemption on imports

- On the issue of retrospective or prospective application of notification No 01/2019-Cus., dated 10 January 2019 (vide which pre-import condition was removed on 10 January 2019 as a condition for granting IGST exemption on import of goods), the apex court, relying upon 'Kanak Exports' held that central government has no power to issue retrospective notification / regulations.
- The apex court has directed the revenue to permit the manufacturer-exporters who were enjoying interim orders, till the impugned judgments were delivered, to claim refund or input tax credit. IT also directed the revenue to issue suitable circular in this regard.

### Comments

- It still remains unanswered as to what constitutes 'pre-import condition', in absence of a definition to the said phrase either in the FTP or in the customs notification. The decision is silent on this aspect.
- Although the pre-import condition was omitted w.e.f., 10 January 2019, this judgement will still impact the IGST exemption claimed on imports during the earlier period from 13 October 2017 to 9 January 2019.
- It is also to be seen whether, if a circular is issued by the Board, it would be only for those assesseees who were parties to the judgement of SC, or for all assesseees.
- We strongly hope that the Government will step in and resolve the dispute and open questions, within a reasonable time to the benefit of both the parties (taxpayer and revenue).





## Ahmedabad

A1/01, Safal Profitaire,  
Corporate Road, Prahalad Nagar,  
Ahmedabad 380015.  
Phone: (91) (079) 2970 2082.

## Bengaluru

103 & 203, Midford House, 1, Midford  
Gardens, Off M.G. Road, Bengaluru 560 001.  
Phone: (91) (80) 2555 0987.

## Chennai

Parsn Manere, A Wing Third Floor,  
602, Anna Salai, Chennai 600 006.  
Phone: (91) (44) 2827 4368, 2822 9534.

## Coimbatore

09, Verivada Street, Red Fields,  
Puliakulam, Coimbatore – 641 045.  
Phone: (91) (422) 356 6556.

## Goa

Shop no: SF9, GHB Commercial-cum-  
residential complex, Journalist Colony Road,  
Alto Betim, Porvorim Berdez, Goa - 403251.  
Phone: (91) 9820284854.

## Mumbai - 1

Ravindra Annexe, 194, Churchgate  
Reclamation, Dinshaw Vachha Road,  
Mumbai 400 020.  
Phone: (91) (22) 2286 9900-48 / 2204 7722.

## Mumbai - 2

87, Nariman Bhavan, 227 Nariman Point,  
Mumbai 400 021.  
Phone: (91) (22) 6153 7500 / 2202 2224 / 8857.

## New Delhi

205-207, Ansal Tower 38, Nehru Place,  
New Delhi 110 019.  
Phone: (91) (11) 4103 2506, 4103 3506.

## Pune

802, Lloyds Chambers, Dr. Ambedkar Road  
Opp. Ambedkar Bhavan, Pune 411 011.  
Phone: (91) (20) 2605 0802.

## Vadodara

Aurum Complex, 8th Floor, West Wing,  
Behind HP Vasna Petrol Pump,  
Makrand Desai Road, Vadodara - 390007.  
Phone: (91) 97268 95000 / 97278 95000.

Learn more at: [www.sharpandtannan.com](http://www.sharpandtannan.com)

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