Newsletter

Sharp View

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SHARP & TANNAN

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OCTOBER 2023

The month of October brings warm and sunny days to the country. Various festivals are celebrated in October at national and regional levels. Harvesting of kharif crops starts during this period.

Jowar, bajara, ragi and minor millets such as kangani, cheena, kodo, chaulai are some of the Indian millets. India is a traditional millet-cultivating and consuming country and produces 80% of the millets production of Asia and 20% globally. Considering the nutritional and ecological importance of millets, the United Nations (on a proposal made by Indian Government) has declared the year 2023 as the 'International Year of Millets.'

Certain interesting facts about millets:

- Millets are tolerant to drought and other extreme weather conditions and do not require heavy rainfall to cultivate.
- They have a higher nutrient content compared to major cereal crops.
- Millet crops easily withstand climate change.
- Millets are gluten-free and have a low glycemic index.
- They are a good source of fodder for livestock.
- Millet crops have a higher carbon-dioxide absorbing capacity.

CONSULTING

Sustainability audits: Paving path to responsible business practices and profitable future

Sustainability audits evaluate the organizational performance against its sustainable development goals. Sustainability audits can help organizations identify opportunities to reduce costs, enhance their reputation, and attract socially conscious investors and customers. Ms. Priya Tolani (Vadodara office) explains what sustainability audits are, their significance and how sustainability audits benefit the organisations.

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What is sustainability audit?

A sustainability audit is a comprehensive assessment and evaluation of an organization's activities, operations, and practices to determine their environmental, social, and economic impact. The primary goal of a sustainability audit is to identify areas where an organization can improve its sustainability performance and reduce its negative impact on the environment and society while also enhancing its long-term economic viability.

Such audits can be conducted by internal teams or external third-party auditors, depending on the organization's needs and objectives. The results of a sustainability audit can help organizations identify opportunities to reduce costs, enhance their reputation, attract socially conscious investors and customers, and contribute to a more sustainable and responsible future.

Why are sustainable audits important?

Sustainability audits are important for several reasons, such as:

Measuring progress: They provide organizations with a structured and objective way to measure their sustainability performance. This is crucial because it allows them to track progress over time and understand whether they are achieving their sustainability goals and targets.

Identifying opportunities for improvement: Audits help identify areas where an organization can improve its sustainability performance. By examining current practices and performance metrics, organizations can pinpoint inefficiencies, reduce waste, and implement sustainable practices that lead to cost savings and resource conservation.

Compliance and risk management: They help organizations ensure compliance with environmental, social, and governance (ESG) regulations and standards. This is especially important as regulations related to sustainability and corporate responsibility continue to evolve and become more stringent. Audits can also help identify potential legal and reputational risks associated with non-compliance.

Enhancing reputation: Demonstrating a commitment to sustainability through audits and transparent reporting can enhance an organization's reputation. Consumers, investors, and other stakeholders are increasingly interested in supporting businesses that prioritize sustainability and social responsibility. A positive reputation can lead to increased customer loyalty, investor confidence, and brand value.

Attracting investment: Sustainable business practices can attract socially responsible investors who prioritize companies with strong ESG performance. By undergoing sustainability audits and reporting their findings, organizations can make themselves more appealing to this growing segment of the investment community.

Competitive advantage: They can give organizations a competitive advantage by helping them differentiate themselves in the market. Companies that adopt sustainable practices can appeal to environmentally and socially conscious consumers, potentially increasing market share.

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Long-term viability: They help organizations assess their long-term economic viability. By considering environmental and social impacts alongside financial performance, organizations can make informed decisions that contribute to their resilience and sustainability in the face of evolving market conditions and global challenges.

Innovation and adaptation: They encourage organizations to innovate and adapt to changing circumstances. They may identify emerging sustainability trends and opportunities for new products, services, or business models that can keep the organization competitive in a rapidly evolving business landscape.

Transparency and accountability: Audits and sustainability reporting promote transparency and accountability. They provide a clear and verifiable record of an organization's sustainability efforts, which can build trust with stakeholders and hold the organization accountable for its commitments.

What does a sustainability audit consist of?

Here are the key elements typically included in a sustainability audit:

- **Scope and objectives:** Define the scope and objectives of the audit, specifying what aspects of sustainability will be assessed and the goals of the audit (e.g., compliance with regulations, reduction of environmental impact, social responsibility).
- **Data collection:** Gather relevant data and information on the organization's operations, including energy consumption, water use, waste generation, emissions, employee practices, community engagement, and financial performance.
- **Stakeholder engagement:** Engage with various stakeholders, including employees, customers, suppliers, investors, and community members, to gather feedback and insights on the organization's sustainability efforts.
- **Environmental impact assessment:** Evaluate the organization's environmental impact, which may include assessing energy efficiency, greenhouse gas emissions, water management, waste reduction, and resource conservation.
- **Social impact assessment:** Assess the organization's social impact, including labour practices, diversity and inclusion, employee well-being, community engagement, and contributions to social causes.
- **Economic impact assessment:** Analyze the organization's economic sustainability, considering financial performance, responsible investment practices, support for local economies, and long-term financial planning.
- **Compliance and governance:** Review the organization's compliance with relevant sustainability regulations, standards, and reporting requirements.Assess the effectiveness of the organization's governance structure and sustainability policies.
- **Reporting and documentation:** Examine the organization's sustainability reporting practices, ensuring that they are accurate, transparent, and compliant with industry standards and regulations.
- **Benchmarking:** Compare the organization's sustainability performance to industry benchmarks or best practices to identify areas for improvement and potential areas of excellence.

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- **Recommendations for improvement:** Based on the audit findings, provide recommendations for improving sustainability performance. These recommendations should include specific action plans, targets, and timelines.
- **Monitoring and measurement:** Establish a system for ongoing monitoring and measurement of sustainability performance, including key performance indicators (KPIs) to track progress toward sustainability goals.
- **Reporting and communication:** Create a clear and transparent report summarizing the audit findings, recommendations, and action plans. Communicate the results to stakeholders through sustainability reports or other channels.
- **Follow-up audits:** Conduct follow-up audits at regular intervals to assess progress, ensure the implementation of recommended actions, and track the organization's ongoing sustainability performance.
- **Continuous improvement:** Encourage a culture of continuous improvement in sustainability practices, where the organization continually assesses and enhances its sustainability performance.

It is important to note that sustainability audits can be conducted by internal teams, external third-party auditors, or a combination of both, depending on the organization's needs and resources. The process should be tailored to the organization's specific goals and circumstances to ensure meaningful and effective sustainability improvements.

What is a sustainability audit report?

A sustainability audit report is a formal document that summarizes the findings, assessments, and recommendations resulting from a sustainability audit. It provides a detailed account of the organization's sustainability performance across various environmental, social, and economic dimensions. The report is a critical component of the audit process as it communicates the organization's current status, identifies areas for improvement, and outlines a roadmap for enhancing sustainability efforts.

A well-structured sustainability audit report serves as a valuable tool for communication and accountability. It enables organizations to engage with stakeholders, demonstrate commitment to sustainability, and guide their efforts toward improved environmental, social, and economic performance. Additionally, it can be used for external communication with investors, customers, regulators, and the broader public to showcase the organization's sustainability achievements and commitment to responsible business practices.

Consulting

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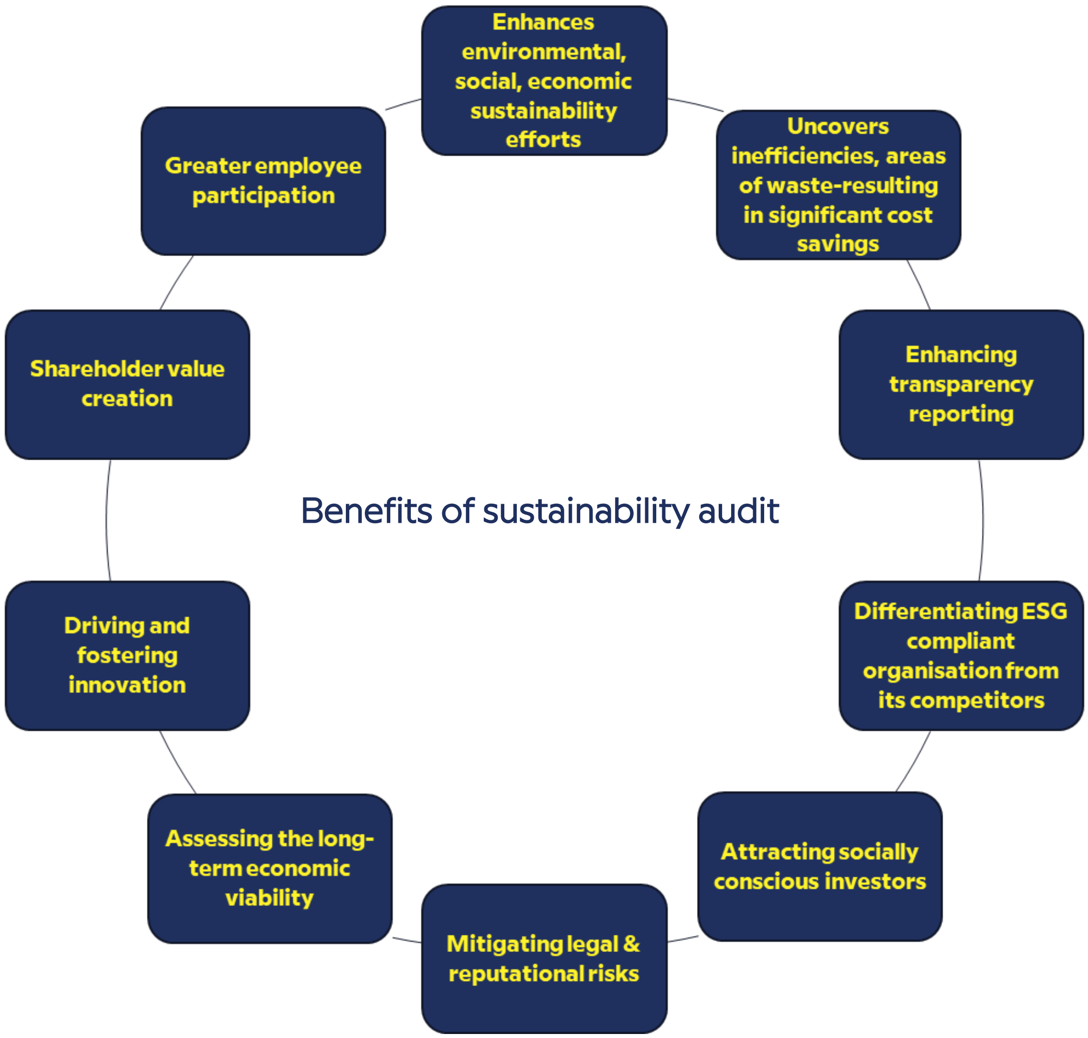
How do companies benefit from sustainability audits?



Conclusion

In conclusion, the role of sustainability audits in today's business landscape cannot be overstated. As organizations navigate an increasingly complex and interconnected world, the need to balance economic growth with environmental and social responsibility has never been more critical. Sustainability audits serve as powerful tools, guiding companies towards a more sustainable and resilient future.

Through rigorous assessment, these audits highlight areas for improvement, helping businesses optimize resource utilization, reduce waste, and enhance efficiency. The benefits extend beyond the bottom line, fostering trust and goodwill among stakeholders, from consumers to investors.

Moreover, sustainability audits empower companies to adapt, innovate, and remain competitive in a rapidly

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evolving marketplace. By identifying emerging trends and opportunities, organizations can position themselves at the forefront of sustainability-driven innovation, thereby securing a lasting competitive advantage.

In the face of global challenges such as climate change, social inequality, and resource scarcity, sustainability audits offer a definite path towards responsible and resilient business practices. They enable companies to not only meet regulatory requirements but also to lead by example, setting the standard for ethical and sustainable business conduct.

As we collectively strive for a more sustainable future, sustainability audits stand as indispensable tools in the pursuit of a world where economic prosperity harmoniously coexists with environmental stewardship and social equity. Embracing sustainability audits is not merely a choice; it is a commitment to a better tomorrow, where businesses thrive, and our planet thrives alongside them.

GRC

Safeguarding integrity: Anti-corruption and fraud prevention in India's business landscape

As Indian businesses evolve, there is a need to continuously combat fraudulent practices and corruption. Though various anti-corruption, anti-bribery and similar regulations are introduced to keep a check on such practices, having ethical practices and conducting transparent business as a 'way of doing business' is the key. Mr. Arnob Choudhuri (Pune office) explains the concept with the help of real-life case studies.

Safeguarding integrity: Anti-corruption and fraud prevention in India's business landscape

Introduction

In today's dynamic and competitive business environment, maintaining ethical standards and safeguarding against corruption and fraud are paramount. India's business ecosystem, marked by rapid growth and increasing global integration, necessitates robust anti-corruption and fraud prevention measures. This article explores the critical importance of effective anti-corruption and fraud prevention strategies, emphasizing the need for strong internal controls, comprehensive risk assessments, and a corporate culture rooted in ethics and integrity.

The landscape of corruption and fraud

India, like many emerging economies, faces the dual challenge of combating corruption and fraud while fostering economic growth. Corruption can manifest in various forms, from bribery and embezzlement to nepotism and favouritism. Fraud, on the other hand, encompasses a wide range of deceptive practices, including financial misstatements, asset misappropriation, and cybercrime. Both corruption and fraud not only erode trust but also have far-reaching economic and social consequences.

The imperative of anti-corruption measures

1. **Strong internal controls:** Effective internal controls are the bedrock of any anti-corruption and fraud prevention strategy. Indian businesses must implement robust control mechanisms that encompass financial reporting, transaction approval, and access to sensitive data. Regular audits and reviews help ensure that controls remain effective and adaptable to evolving threats.

2. **Risk assessments:** Conducting thorough risk assessments is essential to identify vulnerabilities and potential points of exploitation. Businesses should assess their operations, supply chains, and third-party relationships for corruption and fraud risks. This proactive approach allows for the development of tailored risk mitigation strategies.

3. **Whistleblower mechanisms:** Encouraging employees to report unethical behavior is a crucial component of anti-corruption efforts. Whistleblower mechanisms should be established to protect those who come forward. Anonymity and legal safeguards are essential to ensure employees feel safe reporting misconduct.

4. **Compliance programs:** Implementing robust compliance programs, aligned with Indian regulations and international standards, is essential. Regular training and awareness programs should be conducted to educate employees on ethical conduct, anti-corruption laws, and the consequences of non-compliance.

Fostering a culture of ethics and integrity

1. **Leadership commitment:** Leadership sets the tone for an organization's culture. Top executives must demonstrate unwavering commitment to ethics and integrity. This commitment should be reflected in both words and actions, reinforcing the importance of ethical conduct throughout the organization.

2. **Transparency and accountability:** Transparency in decision-making processes and accountability for actions are fundamental principles of an ethical culture. Indian businesses should establish clear reporting structures and mechanisms for holding individuals accountable for unethical behavior.

3. Ethical sourcing and procurement: Ensuring ethical sourcing and procurement practices helps prevent corruption within the supply chain. Due diligence on suppliers and vendors, coupled with ethical procurement policies, can mitigate the risk of fraud and bribery.

Case Studies

Case Study 1: A Leading IT Firm - Whistleblower success

A prominent Indian IT firm recognized the critical role that employees play in detecting and preventing fraud. To encourage reporting of unethical behavior, the company implemented a comprehensive whistleblower program. This program allowed employees to report misconduct confidentially, protecting them from retaliation.

In one instance, an employee discovered irregularities in the financial records that hinted at embezzlement. Fearful of potential repercussions, the employee used the whistleblower mechanism to report the issue. The company took swift action, launching an internal investigation and involving external auditors to ensure impartiality. The investigation confirmed the embezzlement scheme, leading to the identification and dismissal of the responsible parties. By taking immediate action, the IT firm not only stopped the fraud but also enhanced its reputation for ethical conduct. This case exemplifies the importance of creating a safe and confidential channel for employees to report wrongdoing.

Case Study 2: A Manufacturing conglomerate - Transparency and accountability

A major Indian manufacturing conglomerate realized that transparency in procurement processes was critical to reducing corruption risks. The company embarked on a journey to overhaul its procurement division, making the decision-making process more transparent and accountable.

The company introduced clear guidelines for supplier selection, bidding processes, and procurement decisions. It also established a dedicated oversight committee responsible for reviewing and approving high-value procurement contracts. This committee comprised individuals from various departments to ensure checks and balances.

By implementing these changes, the conglomerate not only reduced corruption risks but also improved relationships with its suppliers. Suppliers appreciated the fair and transparent procurement process, which led to better collaboration and mutual trust. This case illustrates how transparency and accountability can significantly reduce corruption risks while fostering healthy supplier relationships.

Case Study 3: A financial services provider - Ethical culture pays off

A leading financial services provider in India recognized that ethical conduct was not only a regulatory requirement but also a business imperative. The company invested in creating a culture of ethics and integrity, starting with its leadership team.

Top executives actively demonstrated their commitment to ethical behavior, setting an example for the entire organization. Ethical conduct was not just a policy; it was a way of doing business. The company introduced comprehensive ethics training programs, ensuring that all employees understood the importance of integrity in their daily work.

This commitment to ethics paid off in several ways. The company attracted ethical investors who saw it as a trustworthy financial partner. Customers, too, were drawn to the company's commitment to ethical conduct, resulting in increased business and positive word-of-mouth referrals. Ultimately, the financial services provider experienced sustainable growth and enhanced brand reputation as a result of its dedication to ethical business practices.

The road ahead

As India's business landscape continues to evolve, the fight against corruption and fraud remains an ongoing challenge. Looking ahead, several key trends and areas of focus emerge:

1. **Regulatory changes:** Indian authorities are likely to continue refining and strengthening anti-corruption and anti-fraud regulations to align with international standards. Organizations should stay vigilant and adapt their compliance programs accordingly.

2. **Technology and data analytics:** Advancements in technology, including artificial intelligence and data analytics, offer new tools for detecting and preventing fraud. Businesses should leverage these tools to proactively identify irregularities and mitigate risks.

3. **Global collaboration:** In an increasingly interconnected world, collaboration with international organizations and governments is vital to combat cross-border corruption and fraud schemes. India's participation in global anti-corruption initiatives will become more critical.

4. **Ethical supply chains:** The importance of ethical supply chains will grow as consumers and investors demand greater transparency. Indian businesses should extend their anti-corruption and anti-fraud efforts to their suppliers and partners.

Conclusion

Effective anti-corruption and fraud prevention measures are essential for India's business landscape. By implementing strong internal controls, conducting comprehensive risk assessments, and fostering a culture of ethics and integrity, Indian organizations can safeguard their reputation, protect their assets, and contribute to a more transparent and trustworthy business environment. The detailed case studies presented here underscore the importance of proactive measures in preventing corruption and fraud. As India continues to evolve as a global economic powerhouse, a commitment to ethical business practices will be a key differentiator in achieving sustainable growth and earning the trust of stakeholders at home and abroad.

TAXATION

Eligibility of buyer for ITC in the event of default by the seller - contradictory judgements

Denial of input tax credit benefit to the recipient/buyer due to subsequent non-payment of tax by the supplier/seller, is one of the critical GST issues being faced by the industry. Mr. Shouvik Roy (Mumbai office) unfolds the two contradictory judgements delivered by Calcutta High Court and Patna High Court on the issue of input tax credit.

Eligibility of buyer for ITC in the event of default by the seller - contradictory judgements

Denial of Input Tax Credit ('ITC') benefit to the recipient/buyer due to subsequent non-payment of tax by the supplier/seller, is one of the critical GST issues being faced by the industry. Two contradictory High Court ('HC') judgments were passed in the month of August 2023, on the same subject/issue, viz; Eligibility of a bona fide buyer to claim and avail input tax credit ('ITC') on purchases made against tax invoices, in the event of the seller/vendor of the same purchases, not paying the GST collected from the buyer to the Revenue/Government ('Govt.'). The Calcutta HC, (Suncraft Energy Pvt Ltd vs ACST Ballygunge delivered on 02/08/2023) held that a bona fide buyer cannot be deprived of such ITC, (except in certain exceptional circumstances) merely because the seller defaulted to pay the tax to the Govt. But in the same month, the Patna HC (Aastha Enterprises vs ACST Bhojpur dt 18/8/2023) delivered a somewhat contrary decision, holding that the buyer cannot claim ITC, where the seller did not pay the tax collected to the Govt.

Both the decisions are summarised below.

Analysis of Calcutta HC Judgment in the case of Suncraft Energies Pvt Ltd vs ACST Ballygunge

Facts of the case

- A show cause notice followed by a demand order was served upon M/s Suncraft Energy Private Limited ('the Appellant') directing to reverse the ITC availed during the FY 2017-18 on tax invoices not reflected in Form GSTR-2A.
- Aggrieved by the said order, the Appellant filed an appeal before the High Court contending that the action of the Department towards seeking recovery of ITC, without even conducting any enquiry on the supplier, is arbitrary and bad in law

Findings and ratio decidendi of HC's order

- In order to avail ITC, the conditions under Section 16(2) of the Central Goods and Services Tax Act, 2017 ('CGST ACT') are required to be fulfilled. In the instant case, the fact that the appellant is in possession of a valid tax invoice and has received the services , was not disputed by the GST department. The payment of tax to the supplier has also been substantiated through the tax invoice and bank statement.
- HC noted that a press release dated 4 May 2018, issued by CBIC clarifies that the recourse of recovering ITC from the recipient shall be taken in exceptional situations e.g
  a. missing supplier,
  b. closure of business by supplier or
  c. supplier not having adequate assets etc.
  Thereby the said CBIC press release implied that recovery, at first, should be initiated from the seller.
- HC also noted , a further press release dated 18 October 2018, issued by CBIC clarifies that Form GSTR-2A is just a facility to view the ITC and does not impact the availment of ITC by the recipient on a self-assessment basis. The said view was also endorsed by the apex court in the case of Union of India (UOI) vs. Bharti Airtel Ltd. And Ors.
- HC also placed reliance on the decision of the Delhi High Court in the case of Arise India Limited and Ors. vs. Commissioner of Trade and Taxes, Delhi and Ors 3., wherein the authorities were precluded from invoking section 9(2)(g) of the erstwhile Delhi Value Added Tax Act, 2004 to deny the input VAT credit to a bona-fide buyer. This judgment was later upheld by the apex Court.

Eligibility of buyer for ITC in the event of default by the seller - contradictory judgements

Decision

Basis the above, the HC allowed the appeal and set aside the impugned demand order, with a direction to the Department to first proceed against the supplier, and only in the exceptional circumstances (as per CBIC press release) proceedings against the appellant buyer (recipient of ITC) can be initiated and his ITC disallowed /reversed.

Analysis of Patna HC Judgment in the case of Aastha Energies Pvt Ltd vs ACIT Bhojpur

Facts of the case

- Aastha Enterprises ('the buyer /ITC claimant and petitioner') filed a writ petition before the HC to seek a decision on whether ITC can be denied to the purchasing dealer (here, the petitioner) when the selling dealer has not paid tax to the Government, despite collecting it from the purchaser.
- It was also argued by the buyer/petitioner that the authorities are obliged first to initiate proceedings against the selling dealer who has defaulted on payment of tax collected, for which the statute has provided necessary powers of recovery.
- The reversal of ITC and recovery of the same from the buyer, when the seller has already collected the tax from the buyer for paying to the Govt, has the character of double taxation and it should be the department who proceeds against the selling dealer to recover the collected amount of tax; which if not paid after collection, entails penalties under the GST laws.

Findings and ratio decidendi of HC's order

- The Patna HC held that Section 16(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides eligibility to claim ITC and conditions towards such claim are provided in Section 16(2). These conditions are to be fulfilled cumulatively and not in isolation. If any condition is not fulfilled, then the purchaser shall not be eligible to claim the ITC.
- The Patna HC, while relying upon the decision of the Supreme Court in the case of ALD. Automotive Pvt. Ltd. v. The Commercial Tax Officer & Ors, held that the ITC is a benefit or concession and not a vested right. The benefit will be available only if all the conditions for claiming the benefit are complied with.
- Even though the purchaser has produced evidence in the form of invoices, account details showing payment made to the supplier and documents evidencing transportation of goods, HC observed that they (Buyers) are still required to fulfil the condition provided in Section 16(2)(c) of the CGSTAct, which states that credit can be availed by the purchaser only if tax has actually been paid to the government
- The HC further held that the decision of Madras High Court in the case of D.Y. Beathel Enterprises v. the State Tax Officer, Tirunelveli (relied upon by the appellant buyer) which held that the buyer cannot be denied ITC as no recovery has been initiated against the selling dealer, cannot be relied upon, as the said decision failed to consider the provisions of Section 16(2)(c) of the CGST Act.
- Rejecting the double taxation argument of the petitioner, the High Court stated that taxation is mandatory extraction for public welfare, and it's only when the collected tax reaches the government this extraction is complete, and in this case, the tax was never deposited with the government.

Taxation

Eligibility of buyer for ITC in the event of default by the seller - contradictory judgements

Decision

Based on the above, the Patna HC dismissed the writ petition of the petitioner buyer and held that the denial of ITC to the appellant buyer was justified and legal, as the seller had not paid the tax to the Govt. (as required by section 16(2)(C)) even though the buyer had complied with all other requirements and conditions.

Our comments

Constitutional validity of Section 16(2)(c) has already been challenged before the various High Courts. While an outcome of such challenge is awaited, there are a plethora of rulings under the erstwhile VAT regime wherein it has been categorically held that tax credit cannot be denied to a bona-fide buyer for non-compliance by the supplier. Against this backdrop, the Calcutta HC in the case of Suncraft Energy judgment was expected to have a positive impact in curbing the arbitrary action by the Department towards simply denying ITC to a bona-fide recipient (if the tax invoices do not appear in Form GSTR-2A), without conducting an enquiry and/or acting against the defaulting supplier.

However, the Patna HC judgment in the case of Aastha Enterprises (given just a few days after the Calcutta HC judgment) is contrary to a recent judgment of Calcutta High Court in the matter of Suncraft Energy Pvt. Ltd. v. the Assistant Commissioner, State Tax.

Considering the divergent and conflicting decisions on this very issue by different High Courts, the matter would attain finality only at the Supreme Court. Till that happens, buyers perhaps have no option but to take a conservative approach, and ensure at least the following :

a. Continuously track and monitor the 2A/2B reports for all purchase invoices and payment of tax component thereof.
b. Have a provision in the purchase orders to deduct from the seller's bills, any ITC lost due to non-appearance in 2A/2B (non-appearance prima facie signifies that the tax has not been paid by the seller to the department.)

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