

Info Capsule

Wednesday
December 29, 2021

President : CS Nagendra D. Rao

Vice President : CS Devendra V. Deshpande

❖ Indirect Tax

Goods and Services Tax

- **GSTN invites interested and qualified Companies to become E-Invoice Registration Partner (December 28, 2021)**

The Goods and Service Tax Networks (GSTN) has invited interested and qualified companies to become E-Invoice Registration Partner (IRP), the registrations for which are open till January 15, 2022. The basic eligibility criteria is that any company/LLP in IT/ITES/BFSI domain, registered in India for at least 3 years and any Start-up or SME/MSME in IT/ITES/BFSI domain (start-up and SME/MSME as defined by Government of India guidelines), registered in India for at least 3 years. The advantages of having e-invoices are well known and is a step in the direction of transformative digitalization leading to integration of business relevant processes with the tax compliance of the business process flow in India, bringing in overall ease of doing business.

For details:

<https://www.taxscan.in/gstn-invites-interested-and-qualified-companies-to-become-e-invoice-registration-partner/146347/>



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(Under the jurisdiction of Ministry of Corporate Affairs)



❖ Banking and Insurance

- **RBI extends restrictions on PMC Bank for 3 months till March 2022 (December 28, 2021)**

The restrictions on Punjab and Maharashtra Cooperative (PMC) Bank has been extended for another three months till the end of March next year. Reserve Bank of India (RBI) has extended the restrictions as further action on the draft scheme for the takeover of the crisis-hit bank by the Delhi-based Unity Small Finance Bank (USFB) is in process.

For details:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-extends-restrictions-on-pmc-bank-for-3-months-till-march-2022/articleshow/88551115.cms>

- **RBI reports 4,071 bank fraud cases worth Rs. 36,342 crore during H1 FY2022 (December 28, 2021)**

During the first half of the financial year 2021-22, the reported number of fraud cases in various banking operations increased to 4,071 as against 3,499 in the year-ago period, the RBI's Report on Trend and Progress of Banking in India 2020-21 showed. However, the amount involved in frauds in various banking operations based on the date of reporting declined to Rs. 36,342 crore during April-September 2021 from Rs. 64,261 crore in the corresponding period of the previous financial year.

For details:

<https://www.financialexpress.com/industry/banking-finance/rbi-reports-4071-bank-fraud-cases-worth-rs-36342-crore-during-h1-fy2022/2392317/>

❖ Consumer Protection

Consumer Protection (Direct Selling) Rules, 2021 (December 28, 2021)

Ministry of Consumer Affairs, Food and Public Distribution published the Consumer Protection (Direct Selling) Rules, 2021 on December 28, 2021.

The rules *inter-alia* provides for Mandatory maintenance of records, Obligations of direct selling entity, Duties of direct selling entity and direct seller, Prohibition of Pyramid Scheme and money circulation scheme etc.

According to rule 5(g) of the said rules, the obligation of direct selling entity include that every direct selling entity shall get all information provided by it on its website duly certified by a Company Secretary.

For details:

<https://egazette.nic.in/WriteReadData/2021/232214.pdf>

❖ Terminology for today

Bearish Engulfing Pattern

A bearish engulfing pattern is a technical chart pattern that signals lower prices to come. The pattern consists of an up (white or green) candlestick followed by a large down (black or red) candlestick that eclipses or "engulfs" the smaller up candle. The pattern can be important because it shows sellers have overtaken the buyers and are pushing the price more aggressively down (down candle) than the buyers were able to push it up (up candle).

❖ Market Watch

Stock Market Indices as on 29.12.2021		Foreign Exchange Rates as on 28.12.2021 (https://www.geojit.com/currency-futures/rbi-reference-rate.aspx)			
S & P BSE Sensex	57806.49 (-90.99)	INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY
Nifty 50	17213.60 (-19.65)	74.91	84.79	100.50	0.65

❖ **Pronouncement**

December 13, 2021

N. Raghavender vs. State of Andhra Pradesh

Supreme Court

Bank Doesn't Hold Customer's Deposit in Trust; Banker-Depositor Relationship that of Creditor-Debtor

Brief Fact of the Case:

C. Vinay Kumar, Accused No.3 was the Treasurer of the Nishita Educational Academy (for short, "the Academy") and is the brother-in-law of Appellant (Accused no. 1). Accused No. 3 opened Current Account No. 282 in his capacity as an authorized signatory of the Academy. The account was opened with an initial deposit of Rs. 5,00,000/-. The prosecution case is that the Appellant and Accused No. 2 abused their respective position in the Bank and conspired with Accused no. 3 by allowing withdrawal of amounts up to Rs. 10,00,000/- from the account of the Academy, notwithstanding the fact that the account did not have the requisite funds for such withdrawal. The Appellant- N. Raghavender worked as a Branch Manager in Sri Rama Grameena Bank, Nizamabad Branch from May, 1990 to September, 1995. A. Sandhya Rani, Accused No. 2 worked as a Clerkcum- Cashier in the same Bank from 1991-1996 and she also attended day-to-day transactions in current and savings accounts relating to preparation of credit and debit vouchers.

The alleged *modus operandi* of the accused persons was that the Appellant, in his capacity as a Branch Manager, issued loose-leaf cheques on 23.04.1994 and thereafter, for a sum of Rs. 2,50,000/-, and despite withdrawal of the said amount, the debit was deliberately not entered into the ledger book. After that, another such transaction took place on 30.06.1994 for a sum of Rs. 4,00,000/-, and once again, the debit was not entered into the ledger sheet of the Bank. This was followed by the Appellant issuing another cheque on 30.07.1994, of a closed account for withdrawal of Rs. 3,50,000/-. The endorsement on the third cheque issued by the Appellant showed the payment in favour of Accused No.3; however, the signature on the cheque did not tally with that of Accused No.3. The Appellant was further accused of prematurely closing two FDRs on 24.02.1995 and 25.02.1995, which were for a sum of Rs. 10,00,000/- and 4,00,000/- respectively, and stood in the name of one B. Satyajit Reddy. As per the vouchers issued by the Bank, a total of Rs. 14,00,000/- were credited to account No. 282 but only Rs. 4,00,000/- were shown in the ledger. The remaining Rs.10,00,000/- were allegedly adjusted towards the secret withdrawal from account No. 282 during the year 1994. It is the prosecution's case that the Appellant, Accused No.2 and Accused No.3, worked in tandem to engineer these transactions, which resulted in a wrongful loss to the Bank and its Depositors.

CBI registered case No. RC7(A)/96-CBI/Hyderabad under Sections 409, 477(A), and 120B IPC, and Section 13(2) read with 13(1)(c) & (d) of the PC Act. Investigation was held; charge-sheet was filed and the learned Special Judge, CBI, framed the charges against the Appellant and his co-accused.

Judgement

The Hon'ble Supreme Court inter alia observed that misappropriation with this dishonest intention is one of the most important ingredients of proof of 'criminal breach of trust'. The offence under Section 409 IPC can be committed in varied manners, and as we are concerned with its applicability in the case of a bank officer, it is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasion for it. Since the present case involves a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a super added obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands. The money that a customer deposits in a bank is not held by the latter on trust for him. It becomes a part of the banker's funds who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the Bank is one of a creditor and a debtor. The Bank is liable to pay money back to the customers when called upon, but until it's called upon to pay it, the Bank is entitled to utilize the money in any manner for earning profit.

Further, Supreme Court held that the prosecution has failed to prove the charges under Sections 409, 420 and 477A IPC against the Appellant beyond reasonable doubt. As a necessary corollary thereto, his conviction under Section 13(2) read with Section 13(1)(d) of the PC Act can also not be sustained. However, the benefit of doubt being extended to him on account of a thin margin between 'strong suspicion' and 'conclusive proof', shall not entitle him to initiate a second round of *lis* to seek his reinstatement or to claim other service benefits from the Bank. The Hon'ble court held that the Appellant is deemed to be guilty of gross departmental misconduct, for which the punishment of dismissal from service has been adequately awarded. It requires no repetition that standard of proof to establish a misconduct in a domestic enquiry i.e. even preponderance of evidence, is drastically different to those of proving a 'criminal charge' beyond any reasonable doubt. The Appeal is accordingly disposed of in the above terms. Bail bonds, if any, furnished by the Appellant stand discharged.

For details:

https://www.livelaw.in/pdf_upload/bank-judgement-406752765-406754.pdf

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082116

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