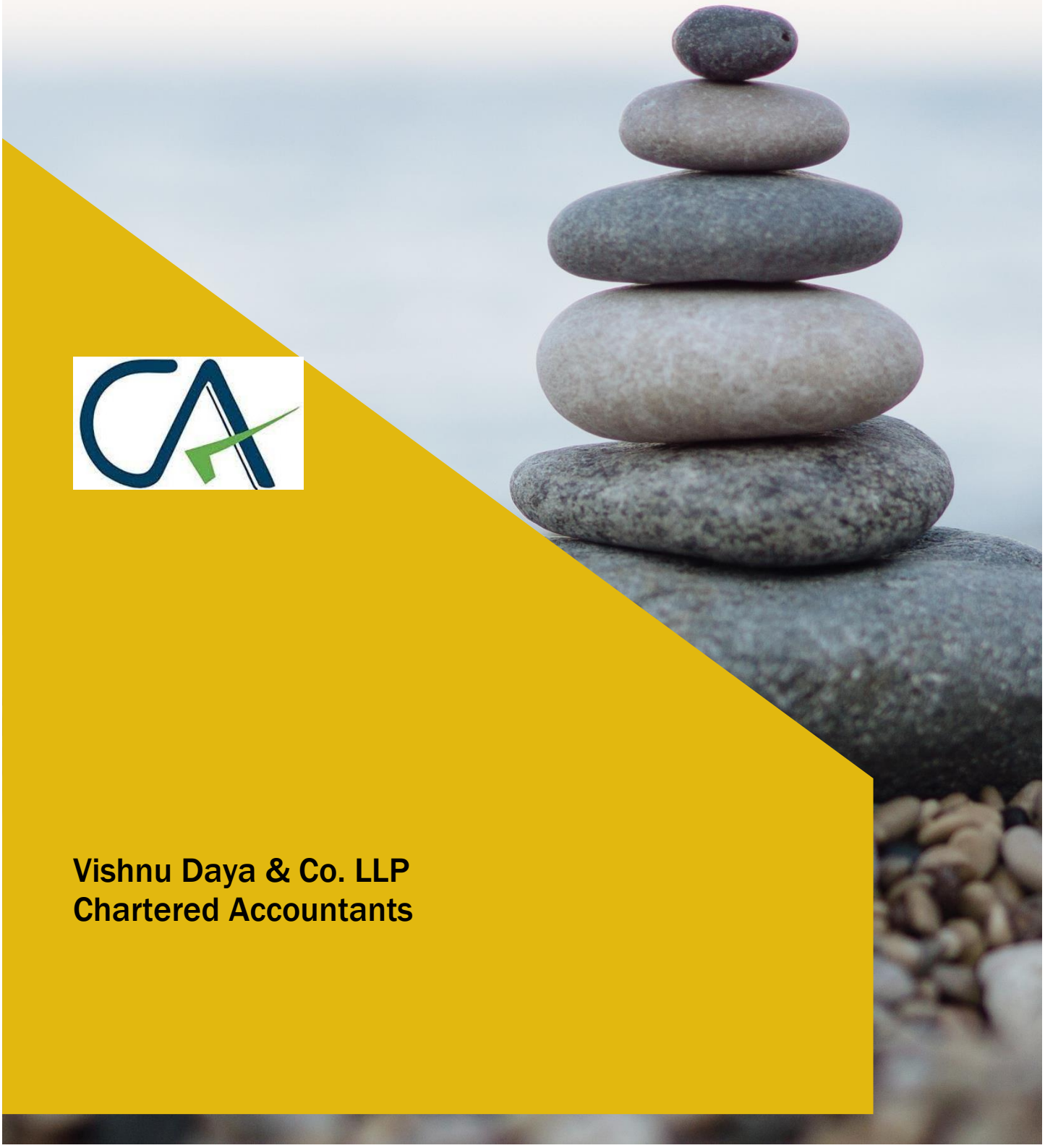
Newsletter June 2021



Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars

Circulars issued by CBDT in the month of May 2021

1. CBDT extends compliance deadlines in wake of pandemic

Circular No. 9/2021, dated 20th May 2021.
Press release dated 20th May 2021

CBDT issues Circular No. 9/2021 to extend various compliance deadlines to provide relief to the taxpayers in the wake of severe pandemic. Extends compliance deadlines for filing of return for AY 2021-22 from **July 31 2021 to Sep 30 2021**, date of furnishing of audit report from **Sep 30 2021 to Oct 31 2021**. Extends date of filing of Accountant's Report u/s 92E and due to date of filing return for AY 2021-22 from **Oct 31 2021 to Nov 30 2021**. Also extends date of filing of return for AY 2021-22 from **Nov 30 2021 to Dec 31 2021** and date of belated filing of return from **Dec 31 2021 to Jan 31 2022**. Extends date of furnishing Statement of Financial Transactions under Rule 114E for FY 2020-21, Statement of Reportable Account under Rule 114G, TDS Statement for last quarter of FY 2020-21, TDS/TCS book adjustment, TDS Statement on Trustees' contribution to superannuation fund for FY 2021-21, Statement of income paid or credited to unit holder in Form 64D for PY 2020-21 to **June 30 2021**. Extends date of issuance of Form 16 to employee and for furnishing Statement of income paid or credited to unit holder in Form 64C for PY 2020-21 to **July 15 2021**.

Clarification 1: It is clarified that the extension of the dates as referred to in points (9), (12) and (13) of the circular shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in 234A (1) (i) to (ii) exceeds one lakh rupees.
Consequently, if the tax payable by the assessees mentioned in points (9), (12) and (13) of the circular exceeds Rs. 1,00,000 after taking the credits of tax deduction at source, advance tax, tax relief, foreign tax credits [as mentioned in section 234A (1) (i) to (ii)] and the return is filed after original due dates as mentioned in section 139(1), interest under section 234A is applicable.

Clarification 2: For the purpose of Clarification 1, in case of a resident individual referred to in section 207(2) of the Act, the tax paid by him under section 140A within the due date (without extension under this Circular) provided in the Act, shall be deemed to be the advance tax.
Consequently, if resident senior citizens and resident individuals having income from business or profession pay tax within 31st July 2021, it will be considered as advance tax. If tax is paid later than 31st July 2021, then 234B and 234C interest is applicable.

Click here to read / download the copy of the circular.

Click here to read / download the copy of the press release.

2. CBDT clarifies on time-limits extension pursuant to SC order

Circular No. 10/2021, dated 25th May 2021.

CBDT issues Circular to clarify on extension of time limits notified by Circular No. 8/2021 dt. April 30, 2021 that includes filing of appeal before CIT(A). Notes that SC's suo motu order dt. April 27, 2021 directed that periods of limitation for all judicial/quasi-judicial proceedings were extended until further orders. Clarifies that where different relaxations are available to the taxpayers, the more beneficial relaxation can be opted for calculating the period of limitation.

Click here to read / download the copy of the circular.

Direct Tax - Notifications

Notifications issued by CBDT in the month of May 2021

1. CBDT notifies thresholds for Significant Economic Presence w.e.f. April 1, 2022

Notification no. 41 /2021, dated 3rd May 2021

CBDT notifies Income-tax (13th Amendment Rules) Rules, 2021 on threshold for Significant Economic Presence. Notifies that the amount of aggregate of payments arising from transactions carried out by a non-resident with any person in India pertaining to any goods, services, property, provision of download of data or software in India during the previous year shall be Rs. 2 Cr. for the purpose of Explanation 2A(a) to Sec. 9(1)(i). Notifies that the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be 3 lakhs for the purpose of Explanation 2A(b) to Sec. 9(1)(i). Rules to come into effect on April 1, 2022.

Click here to read / download the copy of the notification.

2. CBDT notifies non-requirement of PAN for eligible foreign investors

Notification no. 42/2021, dated 4th May 2021.

CBDT notifies Income tax (14th Amendment) Rules, 2021, amends Rule 114AAB to provide that eligible foreign investors would not require PAN. Notifies that provisions of Sec. 139A will not apply to non-resident who is an eligible foreign investor and has made transaction only in a capital asset referred in Sec. 47(viiab), listed on a recognised stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency, subject to specified conditions. Prescribes information to be furnished by the eligible foreign investor to the stock broker through which the transaction is made. Amended Rule to come into force on May 4, 2021.

Notifies that the stock broker should furnish quarterly statement with details and documents received by it as mentioned in sub-rule (2A). Prescribes amended Form No. 49BA for furnishing details on quarterly details by specified fund or stock broker under Rule 114AAB.

Click here to read / download the copy of the notification.

3. CBDT specifies hospitals, COVID care centres u/s 269ST upto May 31

Notification no. 56 /2021, dated 7th May 2021.

Notification no. 59 /2021, dated 10th May 2021. (Corrigendum to notification no. 56)

CBDT exercises powers under proviso (iii) to Sec. 269ST, specifies Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities providing Covid treatment to patients for payment received in cash during 01.04.2021 to 31.05.2021. Requires obtaining of PAN or AADHAAR of patient and payer and the relationship between them.

Click here to read / download the copy of the notification no. 56.

Click here to read / download the copy of the notification no. 59.

4. CBDT notifies Rule 11UAE for FMV calculation in slump sale

Notification no. 68/2021, dated 24th May 2021.

CBDT notifies Income-tax (16th Amendment) Rules, 2021, inserts Rule 11UAE for computation of fair market value of capital assets in slump sale u/s 50B. Specifies that FMV for the purpose of Sec.50B(2)(ii) shall be higher of FMV computed under sub-rule (2) or (3) of Rule 11UAE. Sub-Rule (2) provides for formula based FMV computation based on book value of assets and liabilities of transferor undertaking or division. Sub-Rule (3) provides for computation of FMV based on monetary consideration and market value of non-monetary consideration received as a result of the transfer

Click here to read / download the copy of the Notification no. 1 of 2021.

Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of May 2021

1. **ITAT: Identification of tested-party mandatory despite CUP being Most Appropriate Method (MAM) for Specified Domestic Transaction (SDT) of inter-unit power transfer.**

   Balarampur Chini Mills Ltd [TS-200-ITAT-2021(Kol)-TP]

   Kolkata ITAT holds assessee (engaged in the business of manufacturing and sale of sugar, Molasses, Industrial Alcohol, Ethanol, manufacture and generation and distribution of power in the form of steam and electricity) has rightly identified manufacturing unit as the tested party, CUP as the MAM and the purchase price of electricity in the open market as Arm's Length Price (ALP) for AY 2016-17.

   Transfer Pricing Officier (TPO) while determining the ALP of the SDT between the assessee and its AE, proposed a TP adjustment of 41.65 lacs by considering rate of electricity at Rs. 4.90 per Kwh (as per the Power Purchase Agreement under Electricity Act 2003).

   Being aggrieved by the aforementioned adjustment assessee preferred an appeal before the CIT(A). CIT(A) agreed with the contention of the assessee and granted relief and held that the rate at which electricity was transferred by the Captive Power Plant (CPP) to the manufacturing unit was the rate charged by the SEB of UPPCL to the other manufacturing units. Aggrieved by CIT(A)'s order, the Revenue raised various grounds contended that the fair market value determined by the assesse for transferring from CPP to the manufacturing unit was not correctly done and that the TPO was right in adopting the average rate at which the power was sold by the eligible unit i.e. CPP to an unrelated party as the rate of power specified under the PPA (Power Purchase Agreement).

   Revenue during the course of its argument also submitted that that there is no concept of tested party when CUP is the Most Appropriate Method (MAM) for determining the ALP and that power generating unit should be considered as a tested party and not the manufacturing unit as was done by the assessee. On the contrary, assessee relied on the order of the CIT(A) and further relying on coordinate bench rulings and referring to Electricity Act of U.P. submitted that the assessee company is legally eligible to sell power in the open market under the present statute and distinguished with Revenue's reliance in case of ITC Ltd wherein the assessee did not have such a right to sell power in the open market.

   Assessee along with various other grounds also submitted that the tested party has to be identified even when CUP is selected as MAM (relied on ICAI Guidance note on the issue). ITAT owing to the facts and circumstances of the case marking a lot of observations there in opines that assessee has correctly identified the manufacturing unit as the tested party and CUP as the MAM and the purchase price of electricity in the open market from the State Electricity Board to the manufacturing units in uncontrolled conditions as the ALP. Further taking a consistent view with respect to host of rulings, ITAT upholds the findings of CIT(A) and dismisses the appeal filed by the Revenue.

   Click here to read / download the copy of the ruling.

2. ITAT: Technical assistance to AAI for air traffic flow management not FTS

Airports Authority of India [TS-345-ITAT-2021(DEL)]

Delhi ITAT allows assessee's appeals for AYs 2010-11 and 2011-12, holds that technical assistance received from US-based entity to be outside the purview of FIS under Art. 12(4)(b) of India-US DTAA, finds that 'make available' clause not satisfied and holds the services and holds the payments made on cost basis not liable to TDS.

Airports Authority of India (Assessee, organisation under Ministry of Civil Aviation) entered into a technical assistance agreement with Federal Aviation Administration, USA (FAA) for the development of detailed quantitative requirements, detailed system architecture and specification and draft implementation plan on air traffic flow management (ATFM) whereas an agreement was entered into between the Ministry of Civil Aviation and FAA Administrator agreeing for transactions on reimbursement basis.

Revenue taxed the sum of USD 4,94,100 paid to FAA as FTS on gross basis u/s 115A, held that FAA did not enjoy sovereign immunity from being taxed in India and satisfied the 'make available' clause under Art. 12(4)(b) of the India-US DTAA. CIT(A) held that the entire sum paid to FAA was taxable as FTS under the DTAA and liable to TDS u/s 195.

On the nature of services, ITAT notes the DTAA provisions, various examples provided in the Protocol to India-US DTAA on FIS and observes, "*The concept of "make available" requires that the fruits of the services should remain available to the service recipient in some concrete shape such as technical knowledge, experience , skills, etc.*" and finds that the technical assistance provided by FAA were neither a licensed product nor exclusive patent of FAA, ATFM technology was not made available to the Assessee for the perpetual use, and that it was a case of assistance and technical cooperation between the Assessee and FAA with no commercial interest of FAA. Relies on Delhi HC ruling in *Guy Carpenter* and holds that make available clause is not applicable on the facts of the case based on the "*manner of transacting, agreements, services provided, reimbursement received*".

ITAT, on TDS liability on reimbursement, remarks, "*reimbursement is neither reward nor compensation nor income for income tax purpose*" and on concurrent reading of Sec. 4(2) and 195(1) holds on perusal of agreement that payment on cost to cost basis did not involve any profit element, the reimbursement would not be liable to TDS. Relies on Calcutta HC ruling in *Dunlop Rubber Company* where it was held that reimbursement of actual expenditure cannot be taxed and on Delhi HC ruling on *Industrial Engineering Projects* where it was held that reimbursement cannot be regarded as revenue receipt.

Click here to read / download the copy of the ruling.

3. AAR: Reimbursement of obligatory payments for expatriates, not taxable as FTS

CTBT Pvt. Ltd [TS-755-AAR-2020]

AAR Mumbai Bench holds that social security, insurance, relocation expenses which are by nature obligatory payments are not taxable as FTS.

Applicant, a wholly-owned subsidiary of PMK (Swiss Company, part of K Group), incorporated in India, entered into an MoU with a state government for manufacturing tyres in India and entered into an inter-company agreement with KRP (subsidiary of M/s PMK), under which KRP would disburse social security contribution, insurance and relocation expenses payable by Applicant to expatriate personnel in their home country which would be reimbursed by the Applicant.

Applicant deducted tax at source u/s 192 on the entire amount paid inclusive of reimbursement to KRP as well as u/s 195 on administration fee charged by KRP for managing disbursements. Applicant moved

an application over taxability of payments made to KRP under the statute and India-Switzerland DTAA and contended that payments were in nature of reimbursements of salary/benefits to expatriate personnel and no income accrued on such arrangement.

Applicant submitted that: (i) in view of CBDT Circular No.720 dated July 30, 1995, submitted that no tax withholding was applicable on reimbursement since salary payments already suffered withholding tax u/s 192, (ii) payments would not tantamount to FTS under Article 12(4) of India-Swiss DTAA, nor would they be treated as business profits under Article 7 in the absence of a PE in India, and (iii) payments had already suffered tax in India in the hands of expatriate personnel and thus, taxation of reimbursement of costs will result in double taxation.

From a perusal of the agreement and appointment letters, AAR observes that there existed an "employer-employee" relationship between expatriate personnel and the Applicant exercised control, issues directions and expatriate personnel are required to provide time and labour in turn. Further notes that the Applicant has right to terminate employment. Holds that KRP was performing a supportive function as it doesn't exercise operational/functional control over the Applicant's employees nor does it make perquisites to the personnel but merely pays statutory payments on behalf of them in their home countries.

Remarks, "*It is common knowledge that in large multi-national companies the talent pool of personnel is deployed to various countries and these personnel's move from one location to another. They are liable to for certain statutory contributions such as social security contribution in their home countries*". AAR factually distinguishes Delhi HC ruling in *Centrica Offshore* and ITAT Bangalore ruling in *Flughafen Zurich, AG* (relied upon by the Revenue) as in the present case no payments were made outside India except for minimal obligatory payments mandatorily paid to respective accounts.

Holds that entire salary is not paid outside India and claimed as reimbursement and observes, "*provision of services or provision of personnel could be camouflaged as secondment agreements but in the current case it does not seem that any useful purpose is served by cloaking only a very small fraction of obligated payments as reimbursements*". States that in any case, the entire salary including the reimbursed component has been offered for tax in India by the seconded employees, thus there is no revenue loss.

Click here to read / download the copy of the ruling.

4. ITAT: Rejects SBI PLR to benchmark interest on overseas AE-receivables. Deletes ALP-adjustment

ValueMomentum Software Services Private Limited [TS-213-ITAT-2021(HYD)-TP]

Hyderabad ITAT deletes ALP adjustment in respect of interest on receivables provided to overseas AEs for AY 2013-14. Assuming but not accepting, ITAT finds that the lower authorities have rightly found assessee's interest receivables as beyond the period involving un-comparable transactions. In this context, ITAT states that the impugned adjustment is not liable to be sustained for the sole reason that the same has been made not as per LIBOR rate applicable in case of international transactions but after taking SBI's prime lending rate (PLR) @14.45% in the TPO order and upheld to the extent between 6.5% to 8% as applicable in case of domestic term deposits.

Regarding Revenue's contention that TPO as well as the DRP have rightly treated the foregoing benchmark as per the short term deposit rate in the SBI, ITAT finds no merit in the same on the premise that such a short term deposit cannot be taken at par with an international transaction u/s.92B since the latter involves foreign currency and overseas market conditions.

ITAT also states that the lower authorities have not adopted any comparable in the very segment as well so as to come to the conclusion that assessee's receivables in case of overseas AEs involved more than the market practice of reasonable time period.

Accordingly, ITAT deletes the ALP adjustment of Rs.1.20 crores.

Click here to read / download the copy of the ruling.

5. ITAT: Directs Revenue to apply beneficial treaty rate over DDT rate.

Indian Oil Petronas Pvt. Ltd [TS-324-ITAT-2021(Kol)]

Kolkata ITAT holds that beneficial DTAA rate shall be applicable over DDT rate specified u/s 115-O.

Assessee company raised additional ground regarding dividend paid to Petroliam Nasional Berhad (tax resident of Malaysia) and contended that the tax payable by assessee u/s 115-O should be at the rate prescribed under India-Malaysia DTAA.

Refers to Sec.2(37A) defining 'rates in force' as the rates specified in the Act or rates specified in DTAA whichever is beneficial. States that dividend income should be chargeable to tax in the hands of the shareholders' u/s 4, however only administrative convenience, the incidence of tax is shifted to the company paying dividend income. States that once the dividend constitutes income in the hands of the shareholders, the same should be chargeable to tax as per the provisions of Sec. 4, holds that income-tax including additional income tax at the rates specified in the Act or DTAA whichever is more beneficial to assessee.

Analyses SC rulings in Tata Tea and Godrej & Boyce Manufacturing Co. and holds that the rulings "*do not convey contrary or contradictory principles*" on chargeability of dividend to tax in the hands of shareholders' u/s 4 and not the payer company. Holds that even for grossing up u/s 195A the more favourable rate of tax need be considered. For applicability of DTAA rates, lays down four conditions: i) dividend should be paid to the non-resident shareholder, ii) dividend constitutes income in the hands of the non-resident shareholder, iii) the non-resident shareholder is the beneficial owner of the dividend, and iv) the non-resident shareholder should not have a PE in India.

Relies on Delhi ITAT ruling in Giesecke & Devrient where it was held that DTAA rate on dividend tax would prevail over DDT rate and Kolkata ITAT ruling in Reckitt Benkiser where the case was remanded back without adjudication based on additional ground raised for applicability of DTAA rate over DDT rate, remits the matter for fresh adjudication for examination of relevant article of the DTAA.

Click here to read / download the copy of the ruling.

6. ITAT: Allows treaty benefits on shipping income to Co. 'incorporated, controlled, managed' in UAE. Rejects LoB invocation.

Interworld Shipping Agency LLC [TS-321-ITAT-2021(Mum)]

Mumbai ITAT holds assessee-company's (tax resident of UAE) freight income is taxable in UAE and not in India under Art. 8(1) of India-UAE DTAA, rejects Revenue's allegation that assessee is a colourable device for tax avoidance.

During AY 2016-17, Assessee (rendering services like ship chartering, freight forwarding, sea cargo services, shipping line agents) earned freight income taxable u/s 44B, however, assessee claimed relief u/s 90, which was denied by Revenue. ITAT rejects Revenue's contention that since 80% of profits were to go to a Greek National, the assessee could not be said to be 'controlled and managed' from UAE under Art. 4(1) of the DTAA (which defines the term 'Resident').

Observes that the assessee had 14 expatriate employees who were issued work permits by the UAE Government to work for the assessee, also observes that the said Greek national was in UAE for 300 days during the relevant AY. Opines "*As for this gentleman being a non-UAE national, nothing really turns on his being a national of a country other than UAE, because UAE is a major financial center in which not only a large number of foreigners work but also*

from where a large number of foreigners conduct their business. When a person lives in a country for 300 days, it would be reasonable to assume that he would be running a business from that country".

Further explains that the requirement of being 183 days in UAE for residential status is only for individuals and not for the directors of the company that claims residential status and for the companies, the only test for being 'resident of UAE' is that it should be incorporated in UAE and be wholly managed and controlled in the UAE. Holds, "Under these circumstances, there seems to be no basis, except for surmises and conjectures, to suggest that the company is not "wholly managed or controlled from the UAE".

On invocation of Limitaiton of Benefit clause under Art. 29 of the DTAA, rejects Revenue's allegation that the assessee was created solely for availing treaty benefits, holds, "*When an entity is established in 2000, and the relevance of the Indo-UAE tax treaty comes into play only in 2015, it cannot be said that the "main purpose of creation of such an entity was to obtain the benefits" of the Indo-UAE tax treaty. Unless the purpose of creating the entity in question is to avail the Indo UAE tax treaty benefits, the LOB clause in article 29 cannot come into play.*"

Click here to read / download the copy of the ruling.

7. ITAT: No TDS u/s 195 on brokerage and commission paid to overseas agents rendering services outside India

Broach Textile Mills Ltd [TS-379-ITAT-2021(SUR)]

Surat ITAT deletes disallowance u/s 40(a)(i) for non-deduction of tax on brokerage and commission paid by assessee-company to overseas agents during AY 2005-06.

Revenue disallowed brokerage & commission u/s 40(a)(i), paid to non-resident agents for services rendered outside India in respect of the exports to Egypt, Russia, Republic of Yemen, and Syria. Observes that assessee paid brokerage and commission to the agents who rendered services outside India, also observes that Revenue did not bring any material on record contending that the income of the recipient is taxable in India.

Relies on Delhi HC ruling in *EON Technology (P)* Ltd where it was held that when a non-resident agents operate outsides the country no part of his business arise in India, and payment is remitted directly abroad, and merely because an entry in the books of accounts was made, it does not mean that the non-resident had received any payment in India.

Remarks that SC ruling in *GE India Technology Centre (P) Ltd* wherein it was held that the amount paid by the appellant to the foreign software supplier was not royalty and the same did not give rise to 'any income' taxable in India, is squarely applicable on the facts. Accordingly holds that assessee was not liable to deduct TDS.

Click here to read / download the copy of the ruling.

8. ITAT: TP provision inapplicable for divestment of shares, deletes TP-adjustment.

Value Labs LLP [TS-217-ITAT-2021(HYD)-TP]

Hyderabad ITAT deletes TP adjustment pertaining to disinvestment of shares held by assessee for AY 2015-16.

Assessee had challenged the TP adjustment with respect to divestment of shares held in Value Labs India, Value Labs, Sweden, VLIT Services BV, Netherlands and Value Labs UK Ltd, to Value Labs Global Solutions Pte. Ltd., Singapore. The assessee had transferred all these aforementioned shares of 1,00,000, 50,000 and 65,000 shares at face value of 1 Euro, 1 Sweden Croner and 1 Britain Pound each, respectively.

Revenue treated the said share divestment transaction as an international transaction u/s. 92B and made necessary reference to the TPO u/s. 92CA. Subsequently, the TPO

passed an order proposing a TP-adjustment of Rs. 1.06 crore. ITAT opines that, the instant issue as to whether such a transaction form part of assessee's capital account and its exigibility to Chapter X of the Act is no more res integra. Further, ITAT relies on Bombay HC decision in case of PMP Auto Components Pvt. Ltd and Vodafone India Services Limited wherein in owing to CBDT Circular No.2/2015 dt. 29.01.2015, it was held that such a capital account transaction does not give rise to income in the revenue count so as to be treated as an international transaction u/s. 92B.

HC had further held that there is no further distinction regarding insourced and outsourced transactions in the instant segment so far as provisions of the Act to this effect are concerned. Adopting the reasoning pronounced in the aforementioned HC decisions, ITAT directs deletion of impugned TP-adjustment of Rs. 1.06 crore.

Click here to read / download the copy of the ruling.

9. ITAT: Loans received from companies with common substantial shareholder, taxable u/s 2(22)(e)

Ryder Trans International Pvt. Ltd [TS-387-ITAT-2021(Ind)]

Indore ITAT confirms addition of deemed dividend on loans received from three companies with a shareholder having substantial interest in lender companies as well as Assessee-Company.

Assessee, engaged in the business of manufacture of conveyor belts and rubber products, was subjected to reassessment proceedings AY 2012-13 for escapement of deemed dividend u/s 2(22)(e) amounting to Rs. 2.2 Cr. on receipt of loan from three companies wherein Mr. Punyapal Surana enjoyed substantial interest (shareholding more than 20%) and held 25.35% shares in the assessee.

ITAT analyses assessee's case under the provisions of Sec. 2(22)(e) which also provides for taxing the loan as deemed dividend when received from a concern in which a shareholder with voting rights of more than 10% is a member or a partner with a substantial interest.

Relies on SC ruling in *National Travel Services* where SC explained the scheme of 2(22)(e) and highlights that Expl. (3)(a) to Sec. 2(22)(e) provides that 'concern' means HUF, firm, AOP, BoI, or a company and the 'person' shall be deemed to have substantial interest in the concern other than company if he is, at any time during the previous year beneficially entitled to not less than 20% of the income of such concern and in case the 'concern' is a company the 'person' is deemed to have substantial interest if holding not less than 10% of the voting power in the company. Holds that in the instant case, there are common shareholders amongst all the four companies having substantial interest and voting power of more than 10%.

Click here to read / download the copy of the ruling.

10. ITAT: Non-Compete fees paid for 'profitability & growth', allowable expenditure

Unilever India Export Limited [TS-365-ITAT-2021(Mum)]

Mumbai ITAT holds that payment of non-compete fees to Lakme Ltd. and Lakme Exports Ltd. by Hindustan Unilever Limited and its subsidiary companies (including the assessee), is revenue in nature for AY 1996-97. Assessee-company entered into Strategic Alliance with Lakme Ltd. and Lakme Exports Ltd. by making a total payment of Rs. 10.95 crores, wherein the recipient companies agreed not to directly engage in the marketing/ selling/distribution of the products manufactured by them in the retail market for a period of 10 years, rather sell such products through a Joint Venture

company where both Lakme and Hindustan Lever had equal stake.

Observes that under such an agreement, Lakme neither gave up its basic right to manufacture/produce the said products for subsequent sale/marketing nor its source of income nor the assessee acquired any capital assets or a right. ITAT acknowledges assessee's submission that the agreement was entered only with the objective to ensure that excessive competition does not erode its profitability and business growth.

ITAT relies on SC ruling in *Empire Jute Company Ltd.* where it was held *"If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future"*. Opines that such strategic alliance entered into by the assessee enabled it to control the marketing activities in a beneficial manner, thus holds that the expenses incurred are in the nature of revenue, allowable u/s 37(1).

Click here to read / download the copy of the ruling.

11. ITAT: Rentals from letting out factory building, taxable as house property income

Vectra Advanced Engineering Private Limited [TS-330-ITAT-2021(Bang)]

Bangalore ITAT holds rental income earned by assessee-company from letting out building is taxable under the head Income from house property.

Revenue held that the rentals was chargeable to tax as IFOS and accordingly denied deduction u/s 24(a) since (i) assessee was not the owner of the land on which such building was constructed (taken on lease for 99 years) and (ii) assessee had let out certain plant and machinery / equipment along with the property and the rent was inseparable.

Peruses the lease agreements between assessee and various sub-lessees, observes that the rental income, both from property as well as equipment let out by the assessee, are separately identifiable in the lease agreements. Further observes that almost 85% of the total rent receipts is on account of leasing factory premises and leasing of equipment is only of minor items such as Cranes, Air-compressor, power generator etc.

Refers to provisions of Sec.56(2)(iii) which provides that letting out of property is separable from letting out of other assets, as in the instant case, then the rent for house property is taxable u/s 22 and rent for other assets is taxable as business income/other sources.

Relies on jurisdictional HC ruling in D.R.Puttanna Sons Private Limited and SC ruling in Shambhu Investment Private Limited wherein it was held that where the primary object was to let out the portion of the property with additional rights of use of furniture and fixture and other common facilities, income derived from said property was income to be assessed u/s 22.

Click here to read / download the copy of the ruling.

12. ITAT: Holds shares issued at premium forming part of shareholders' funds, capital. Not taxable as revenue receipt

Covestro India Private Limited [TS-394-ITAT-2021(Mum)]

Mumbai ITAT upholds CIT(A)'s order deleting the additions u/s 56(1) treating share premium received by assessee, as IFOS for AY 2011-12.

The assessee is engaged in the business of manufacturing and treading of polycarbonate sheets. Assessee, issued shares at a premium of Rs.115.36 during the subject AY, although being its first year of incorporation to which

the Revenue objected on the grounds that assessee did not furnish the business plan and projections to justify the issuance of shares at such premium during first year of business without adequate consideration and utilized the premium for purposes other than that those specified u/s 78 of the Companies Act, 1956.

Accordingly, Revenue treated the said receipt as income from other sources u/s 56(1). ITAT highlights that in order to bring a particular receipt to be taxable within the ambit of Section 56(1), the receipt should be in the nature of income as defined in Section 2(24). Remarks, "*share premium received by the company admittedly forms part of share capital and shareholders funds of the assessee company. When receipt of share capital partakes the character of a capital receipt, the receipt of share premium also partakes the character of capital receipt only*".

Relies on the co-ordinate bench ruling in *Credit Suisse Business Analysis* and *Green Infra* where under identical situation similar view was taken by analyzing the provisions of Sec. 56(1) emphasizing on the fact that to tax any amount under this section, it must have some character of "income". Further, it was pointed out that SC's ratio that share premium realized from the issue of shares is of capital in nature and forms part of the share capital of the company.

ITAT rejects Revenue's observation of equating the premium receipt as 'gift' making it taxable u/s 56(1) and clarifies that gift can only be received by individuals or HUFs. Rejects Revenue's observation that assessee acquired certain intangible assets at the time of acquisition of business and those intangible assets were impaired in the same year proving *mala fide* intention of the assessee for allotment of shares at a premium, holds that assessee though acquired certain intangible assets while acquiring business, the assessee did not claim it as deduction.

Click here to read / download the copy of the ruling

13. AAR: Taxability of share buy-back covered by Sec. 46A, not eligible for exclusion u/s 47(iv)

PQR Gmbh [TS-861-AAR-2019]

AAR holds that capital gains in the hands of the Applicant on buy-back of shares by its Indian subsidiary is taxable u/s 46A and not covered by exclusion u/s 47(iv).
Applicant (German Co.) along with PQR International Gmbh holds 100% shares in PQR India, which PQR India is proposing to buyback u/s 77A of Companies Act, 1956. The question before AAR was whether share-transfer would be tax-exempt in the hands of the Applicant u/s 47(iv).

AAR highlights that buy-back of shares would be taxable, under special provision Sec. 46A, in the hands of shareholders and that buy-back transactions were not contemplated under Sec. 47(iv) since: (a) if exemption u/s 47(iv) is read into Sec. 46A , the objective of garnering tax from such a transaction would not be achieved since there is no deemed dividend tax on such transaction u/s 2(22), (b) provisions of Sec. 47A(1) r.w.s. 49 and Sec. 155(7B), form a scheme to tax the transaction on withdrawal of exemption provided u/s 47(iv), and (c) shares are destroyed after the buy-back resulting in no capital asset remaining with the transferee company, requiring no further capital gains tax since the capital asset ceases to exist, and making Secs. 47A, 49 and 155(7B) redundant.

Relies on SC ruling in *Sharat Babu Digumarti v. Govt. of NCT of Delhi* to hold that special provision prevail over prior general provisions and AAR ruling in *RST* where it was held that Sec. 46A is not subjected to Sec. 47 which at best only overrides Sec. 45. On taxability of profits u/s 115JB, AAR clarifies that Expl. 4 makes it inapplicable to a foreign company if applicant does not have a

permanent residence in India, highlights that PQR India was held to be applicant's PE and holds, "*capital gains is taxable u/s 46A in the hands of applicant under the normal provisions …the final liability would be lesser of two amounts i.e. one under normal provision and other u/s 115JB*". Further holds that PQR India is liable to withhold taxes u/s 195 on the consideration payable for the buy-back of shares.

Click here to read / download the copy of the ruling.

14. ITAT: Income from transfer of redeveloped property, taxable as business income. Rejects Sec.43CB invocation pre-2017

Trident Estate Private Ltd [TS-358-ITAT-2021(Mum)]

Mumbai ITAT holds that acquisition of property along with transfer of development rights and selling it for earning profit after redevelopment is in the nature of business, income therefrom taxable under head Profits and Gains of Business or Profession for AY 2014-15.

Revenue rejected Assessee's contention that sole transaction of acquiring property for redevelopment is capital asset and taxable under head Capital Gains and computed business income applying the percentage completion method prescribed u/s 43CB. Observes that assessee had received only Rs. 6.75 Cr as against total consideration of Rs.25 Cr, also observes that the project was not complete and redevelopment was still in progress.

Cites SC ruling in Hyundai Heavy Industries to explicate that both percentage of completion method (POCM) and completed contract method both are recognised method of accounting for computation of gains from construction contract. States that Sec.43CB prescribing POCM was applicable only w.e.f. April 1, 2017. Accordingly holds that thrusting of percentage completion method upon by the Revenue is not sustainable.

Click here to read / download the copy of the ruling.

Direct Tax/ PF / ESI Compliance due dates during the month of June 2021

Due Date	Form	Period	Comments
07.06.2021	Challan No. ITNS-281	May 2021	Payment of TDS/TCS deducted /collected in May 2021.
14.06.2021	TDS Certificate	April 2021	Due date for issue of TDS Certificate for tax deducted under Section 194IA / 194IB / 194M in the month of April, 2021
15.06.2021	E-Challan cum Return (ECR) (PF)	May 2021	E-payment of Provident Fund
15.06.2021	ESI Challan	May 2021	ESI payment
15.06.2021	Challan No. ITNS-280	First Quarter of FY 2021-22	First instalment of advance tax for the assessment year 2022-23
20.06.2021	PT Payment	FY 2021-22	Professional tax payment for the financial year 2021-22.
30.06.2021			Pan and Aadhar linking
30.06.2021			Payment of Tax under Vivad se Viswas Scheme
30.06.2021	Form 61A	FY 2020-21	Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2020-21
30.06.2021	Form 61B	FY 2020-21	Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2020 by reporting financial institutions
30.06.2021	Form 24Q (TDS Return for Salary)	January to March 2021	Statement for TDS from salaries
30.06.2021	Form 26Q (Filing of TDS statement)	January to March 2021	Quarterly statement of TDS deposited for the quarter ending March 31, 2021
30.06.2021	TDS Challan-cum-statement	May 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194IA / 194IB / 194M in the month of May, 2021

MCA Updates

1. **MCA issues clarification on offsetting excess CSR spent for FY 2019-20**

MCA clarifies that where a company has contributed any amount to 'PM CARES Fund' on March 31, 2020, which is over and above the minimum amount as prescribed u/s 135(5) for FY 2020-21, then the same shall not be viewed as a violation, subject to certain conditions.

MCA Apprises that keeping in view the spread of Covid-19 in India, MCA had made an appeal to MDs/CEOs of top 1000 companies in terms of market capitalization, to contribute generously to the PM CARES Fund. The appeal mentioned that such contribution may inter alia include the unspent CSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, which can later be offset against the CSR obligation arising in subsequent FYs.

Pursuance of the said appeal, certain companies claimed to have contributed to the Fund over and above their prescribed CSR amount for FY 2019-20, and several representations have been received in the Ministry for setting off the excess CSR amount spent by the companies in FY 2019-20 by way of contribution to 'PM CARES Fund' against the mandatory CSR obligation for FY 2020-21.

The conditions for offsetting are –

- (i) the amount offset as such shall have factored the unspent CSR amount for previous FYs, if any,
- (ii) the CFO shall certify that the contribution to the Fund was indeed made on March 31, 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company and
- (iii) the details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of Sec. 134(3)(o) of the Companies Act.

2. **MCA apprises about publication of provisional database of companies under NFRA's ambit**

MCA apprises that NFRA is in the process of creating a verified and accurate database of companies and auditors that come under the regulatory ambit of NFRA, to discharge its mandate to oversee compliance with Accounting and Auditing Standards by Companies that can be described as Public Interest Entities.

It informs that establishment of this data base involves critical steps like identification and verification of the primary data source, and reconciliation of data (such as Company Identification Number which is dynamic) from different sources, and that NFRA has been engaging with the Corporate Data Management division of MCA and 3 recognised stock exchanges in India, to achieve the same.

Further states that provisional data base of companies and their auditors as of March 31, 2019 has been compiled by NFRA which includes approx. 6,500 companies, comprising listed and unlisted companies as well as Insurance and Banking Companies. Accordingly, apprises that the aforesaid provisional data has been published on NFRA website (https://www.nfra.gov.in/nfra_domain), with a view to achieve the objectives for which NFRA has been established, and to promote transparency in its working, and the

same will be updated/revised going forward based on the collection of further data and information. Lastly, mentions that similar exercise for compilation of the data base as of March 31, 2020 will be undertaken shortly.

3. MCA launches Phase 1 of MCA21 V3.0; Phase 2 to be implemented October onwards MCA Permits 180 days' gap between Board Meetings for 1st two Quarters

MCA launches the first phase of MCA21 Version 3.0 (V3.0) comprising of revamped website, new email services for MCA Officers and two new modules, namely, e-Book and e-Consultation.

The e-consultation module will facilitate –

(i) virtual public consultation of proposed amendments and new legislations to be introduced by MCA from time to time,

(ii) leveraging Artificial intelligence for compiling, grouping and categorizing comments/inputs received from stakeholders and create analytical reports for quick policy decision making, and

(iii) new email service for officers of MCA will provide them with advanced features and capabilities for organised and managed communication with internal as well as external stakeholders.

MCA Apprises that V3.0 will be implemented in 2 phases, where the second and final phase will be launched from October, 2021 onwards, and that the entire project is proposed to be launched within this Financial Year and will be data analytics and machine learning driven. Assures that, "*V3.0 in its entirety will not only improve the existing services and modules, but will also create new functionalities like e-adjudication, compliance management system, advanced helpdesk, feedback services, user dashboards, self-reporting tools and revamped master data services.*

FEMA Updates

A. External Commercial Borrowings

A.P. (DIR Series) Circular No. 01 dated April 07, 2021

Parking of ECB proceeds domestically:

Presently ECB borrowers are allowed to park ECB proceeds meant for rupee expenditure in term deposits with AD Category I Bank in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

To provide relief to ECB borrowers affected by the COVID- 19 pandemic, as a one time measure, with effect from April 07, 2021, unutilised ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively, for an additional period up to March 01, 2022

B. Investment limits for Foreign Portfolio Investors (FPI) in Government Securities

The Reserve bank of India, Government of India **vide Circular No. 05/2021-22/44-RBI dated 31.05.2021** has specified the Investment limits for Foreign Portfolio Investors (FPI) in Government Securities: Medium Term Framework (MTF) for the FY 2021-22. The limits of investments are mentioned hereunder:

The limits for FPI investment in Government securities (G-secs) and State Development Loans (SDLs) shall remain unchanged at 6% and 2% respectively, of outstanding stocks of securities for FY 2021-22.

As hitherto, all investments by eligible investors in the 'specified securities' shall be reckoned under the Fully Accessible Route (FAR) in terms of A.P. (DIR Series) **Circular No. 25 dated March 30, 2020**.

The allocation of incremental changes in the G-sec limit (in absolute terms) over the two sub-categories – 'General' and 'Long-term' – shall be retained at 50:50 for FY 2021-22.

The entire increase in limits for SDLs (in absolute terms) has been added to the 'General' sub-category of SDLs.

C. Resolution Framework 2.0 – Resolution of Covid-19 related stress of Micro, Small and Medium Enterprises (MSMEs)

In view of the uncertainties created by the resurgence of the Covid-19 pandemic in India in the recent weeks, it has been decided to extend the above facility for restructuring existing loans without a downgrade in the asset classification subject to the following conditions:

(i) The borrower should be classified as a micro, small or medium enterprise as on March 31, 2021 in terms of the Gazette Notification S.O. 2119 (E) dated June 26, 2020.
(ii) The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on March 31, 2021.
(iii) The aggregate exposure, including non-fund based facilities, of all lending institutions to the borrower does not exceed ₹25 crore as on March 31, 2021.
(iv) The borrower's account was a 'standard asset' as on March 31, 2021.
(v) The borrower's account was not restructured in terms of the circulars DOR. No.BP.BC/4/ 21.04.048/2020-21 dated August 6, 2020; DOR.No.BP.BC.34/21.04.048/2019-20 dated February 11, 2020; or DBR.No.BP.BC.18 /21.04.048/2018-19 dated January 1, 2019 (collectively referred to as MSME restructuring circulars).

(vi) The restructuring of the borrower account is invoked by September 30, 2021. For this purpose, the restructuring shall be treated as invoked when the lending institution and the borrower agree to proceed with the efforts towards finalising a restructuring plan to be implemented in respect of such borrower. The decisions on applications received by the lending institutions from their customers for invoking restructuring under this facility shall be communicated in writing to the applicant by the lending institutions within 30 days of receipt of such applications. The decision to invoke the restructuring under this facility shall be taken by each lending institution having exposure to a borrower independent of invocation decisions taken by other lending institutions, if any, having exposure to the same borrower.

(vii) The restructuring of the borrower account is implemented within 90 days from the date of invocation.

(viii) If the borrower is not registered in the Udyam Registration portal, such registration shall be required to be completed before the date of implementation of the restructuring plan for the plan to be treated as implemented.

(ix) Upon implementation of the restructuring plan, the lending institutions shall keep provision of 10 percent of the residual debt of the borrower.

(x) It is reiterated that lending institutions shall put in place a Board approved policy on restructuring of MSME advances under these instructions at the earliest, and in any case not later than a month from the date of this circular.

(xi) All other instructions specified in the circular DOR.No.BP.BC/4/21.04.048/ 2020-21 dated August 6, 2020 shall remain applicable.

In respect of restructuring, asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between April 1, 2021 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan.

In respect of accounts of borrowers which were restructured in terms of the MSME restructuring circulars, lending institutions are permitted, as a one-time measure, to review the working capital sanctioned limits and / or drawing power based on a reassessment of the working capital cycle, reduction of margins, etc. without the same being treated as restructuring. The decision with regard to above shall be taken by lending institutions by September 30, 2021. The reassessed sanctioned limit / drawing power shall be subject to review by the lending institution at least on a half yearly basis and the renewal / reassessment at least on an annual basis. The annual renewal/reassessment shall be expected to suitably modulate the limits as per the then-prevailing business conditions.

The above measures shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from Covid-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from Covid-19.

Indirect Tax Updates

GST Notifications

- **EVC option to verify the returns of GSTR-3B and GSTR-1/IFF made between 27th April 2021 and 31st May 2021.**

  The Government, on the recommendations of GST council, has given an option of verifying the returns furnished in FORM GSTR-3B and in FORM GSTR-1 or using invoice furnishing facility (IFF) During the period from the 27th day of April, 2021 to the 31st day of May, 2021, **through electronic verification code (EVC).**

  Click here to download/ read Notification No.07/2021 – Central Tax dated 27th April 2021

- **Extension of Due date for filing Form GSTR-4 for the FY 2020-21**

  The Government has extended the time limit to furnish the return in Form GSTR-4 for the financial year ending 31st March, 2021 up to **31st day of May, 2021.**

  Click here to download/ read Notification No.10/2021 – Central Tax dated 01st May, 2021.

- **Waiver of interest on delayed filing of GSTR-3B and CMP-08 returns for the months of March and April 2021 or the quarter ending March 2021.**

  CBIC has given some relaxation for applicable Interest on delayed filing of Returns specified u/s 39. Applicable rate of Interest is as follows:

S. No	Class of Registered Persons	Tax Period	Rate of Interest
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year. (Monthly Returns)	March, 2021 April, 2021	9 per cent for the first 15 days from the due date and 18 percent thereafter
2	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return u/s 39(1) or Proviso to section 39(1). (Monthly Returns or Quarterly Return, Monthly Payment)	March, 2021 April, 2021	Nil for the first15 days from the due date, 9 percent for the next 15 days, and 18 per cent Thereafter
3	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39 (Composition scheme CMP-08)	Quarter ending March, 2021	Nil for the first15 days from the due date, 9 percent for the next 15 days, and 18 per cent Thereafter

Click here to download/ read Notification No.08/2021 – Central Tax dated 01st May, 2021.

- **Waiver of Late fee payable for delayed filing of GSTR-3B Returns**

S.No	Class of Registered Persons	Tax Period	Period for which late fee waived
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year. (Monthly Returns)	March, 2021 April, 2021	15 days from the due date of furnishing return
2	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return u/s 39(1)	March, 2021 April, 2021	30 from the due date of furnishing return
3	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return under proviso to 39(1) (Quarterly return)	January to March, 2021	30 from the due date of furnishing return

Click here to download/ read Notification No.09/2021 – Central Tax dated 01st May,2021.

- **Extension of Due date for furnishing a declaration in Form ITC-04**

The time limit for furnishing the declaration in Form GST ITC-04, in respect of goods dispatched to a job worker, during the period from 1st January, 2021 to 31st March, 2021 has been extended to **31st day of May, 2021.**

Click here to download/ read Notification No.11/2021 – Central Tax dated 01st May, 2021.

- **Extension of Due date for filing Form GSTR-1 and IFF for the period April 2021**

The Time limit for furnishing the details of outward supplies in FORM GSTR-1 and Invoice furnishing facility (IFF) for the tax period April, 2021 has been extended till the 26th day of the month succeeding the said tax Period and 28th day of May,2021 respectively.

Click here to download/ read Notification No.12/2021 – Central tax dated 01st May, 2021.

- **Notification related to cumulative adjustment of ITC under subrule (4) of rule 36**

  In sub-rule (4) of rule 36, after the first proviso, another proviso has been inserted which states that the condition u/r 36(4) shall apply cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months.

  Click here to download/ read Notification No.13/2021 – Central Tax dated 01st May, 2021.

- **Notification seeking the extension of deadline for certain compliances under GST which fall between the period of 15th April 2021 and 31st May 2021.**

  where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to the 31st day of May, 2021, including for the purposes of –

  - completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called or

  - filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called.

However, such extension of time shall not be applicable for the compliances of the following provisions of the said Act, namely:

a. Chapter IV - Time and place of supply)
b. Subsection (3) of Section 10 - Composition levy
c. Sections 25 - Procedure for registration
d. Section 27 - Special provisions relating to CTP & NRTP
e. Section 31 - Tax Invoice
f. Section 37 - Furnishing details of outward supplies
g. Section 47 - Levy of late fee
h. Section 50 - Interest on delayed payment of tax
i. Section 69 - Power to arrest
j. Section 90 - Liability of partners of firm to pay tax
k. Section 122 - Penalty for certain offences
l. Section 129 - Detention, seizure and release of goods and conveyance in transit
m. Section 39, except sub-section (3), (4) and (5) related to TDS
n. deductors, ISD and NRTPs;
o. Section 68 related to inspection of goods in movement, in so far as e-way bill is concerned
p. Rules made under the provisions specified above.

Also, the time limit for completion of any action by any authority or by any person as per Rule 9 of the CGST Rules related to verification and approval of registration application, falling during the period from 1st May, 2021 to 31st May, 2021 shall be extended to 15th June, 2021.

Further, where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of subsection (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 31st day of May, 2021, whichever is later.

Click here to download/ read Notification No.14/2021 – Central tax dated 01st May 2021.

- **Central Goods and Services Tax (Fourth Amendment) Rules, 2021**

CBIC has Issued Central Goods and Services Tax (Fourth Amendment) Rules, 2021. A brief summary of it is as under:

1. in rule 23, in sub-rule (1), after the words "date of the service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be," shall be inserted.

   Such amendment is done to bring the rules in line with the amendment made in Section 30 of the CGST Act which allows the time period for filing revocation application to be extended.

2. Proviso has been added to Sub-rule (3) of Rule 90 which provides that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.";

3. Form GST RFD -01W introduced vide sub-rule 5 of Rule 90, being refund withdrawal form. The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**.

4. On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made.

   Click here to download/ read Notification no.15/2021- Central Tax Dated 18th May, 2021.

Foreign Trade Policy

- **Trade Notice related to Issuance as well as for Amendment or Revalidation of Export Authorization for Restricted Items**

  - As part of IT Revamp of its exporter/importer related services, DGFT has introduced a new online module for filing of electronic, paperless applications for export authorizations **with effect from 17.05.2021.** All applicants seeking export authorization for restricted items may apply online by navigating to the DGFT website (https://www.dgft.gov.in) -> Services -> Export Management Systems -> License for Restricted Exports.

  - Accordingly, applications for issuance as well as for amendment/re-validation of export authorization will need to be submitted online as per the above link and export authorizations for restricted items (Non-SCOMET) will continue to be issued from DGFT HQ, Udyog Bhawan, New Delhi through new module with effect from 17.05.2021. It may further be noted that all pending applications will be migrated to this new system and will be processed at DGFT(HQ)

  - For any help and guidance on this new process, the Help manual & FAQs may be accessed on DGFT Website -> Learn -> Application Help & FAQs. For any further assistance any of the following channels may be assessed –

    I. Raise a service request ticket through the DGFT Helpdesk service under Services -> 'Trade Helpdesk Service'
    II. Call the DGFT Toll-free-Helpline number
    III. Send an email to the Helpdesk on dgftedi@gov.in

Click here to read / download Trade Notice No. 03/2021-22 dated 10th May,2021.

- **Trade Notice for extension of validity of Registration cum Membership Certificate (RCMC) beyond 31st March, 2021.**

In view of the current situation due to the COVID-19 pandemic, it has been decided that regional authorities (RAs) of DGFT will not insist on valid RCMC (in cases where the same has expired on or before 31st March, 2021) from the applicants for any incentive/authorizations till 30th September, 2021.

Click here to read / download Trade Notice No. 4 /2021-22 dated 10th May, 2021.

Customs

- **Circular related to restoring the facility of acceptance of an undertaking in lieu of bond required in certain cases of customs clearance**

  Due to resurgence of Covid-19 pandemic, the board has decided to restore the facility of acceptance of an undertaking in lieu of bond by customs formations from 8th May, 2021 till 30-06-2021. Importers/Exporters availing this facility shall ensure that the undertaking furnished in lieu of bond is duly replaced with a proper bond by 15-07-2021. The terms and conditions underlined in circular no.17/2020-Cus., dated 03-04-2020 as amended by circular no. 21/2020-Cus., dated 21-04-2020 remain the same.

  Click here to read / download Circular No.09/2021-Customs dated 08th May,2021.

- **Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021**

  1. The major changes brought in vide the said Amendment Rules, 2021, are highlighted as below:

     - **Job work:**

     a. The facility of carrying out job work under the ambit of IGCR has been introduced

     b. The scope of the job work facility has been extended to an importer who is a manufacturer but without complete manufacturing facility. Also, 100% out-sourcing for manufacture of goods on job-work basis has been permitted for importers who do not have any manufacturing facility at all. However, sensitive sectors such as gold, articles of jewellery and other precious metals or stones have been excluded from the facility of job work.

     - **Import and clearance of capital goods:**

       An option has been given to the importers to import capital goods for a specified purpose at a concessional rate of duty and after having put such capital goods to use for the said purpose, clear the same after payment of the differential duty and interest, at a depreciated value, with permission from the jurisdictional Customs Officer.

     - **Bringing more end-use based exemptions under the ambit of IGCR Rules, 2017:**

       At present, there are certain end-use based exemptions in Notification No. 50/2017-Customs, dated 30.06.2017 which are being administered without the need to follow the procedure set out under the said IGCR Rules, 2017. With an intention to bring forth uniformity in the procedures for end-use based exemptions, the condition of compliance of the said IGCR Rules, 2017 is being provided for certain entries and these have already been notified by amending the said Notification.

  2. For the sake of clarity, the procedure set out in the IGCR Rules, 2017 has also been summarized in this circular

  3. Any importer or the job worker who contravenes the provisions of these rules shall be liable to a penalty as prescribed in the said rules (refer rule 8A). It is clarified that, this is in addition to any other action taken under the Customs Act, 1962 for recovery of duties.

4. The Directorate General of Systems, CBIC, is in the process of automating and facilitating online submission of compliances prescribed in the rules through the ICEGATE portal, thereby obviating the need for furnishing paper-based documents to the Customs Officer. Meanwhile, in order to facilitate the trade, it is proposed to route all the intimations and other communications specified in the said IGCR Rules, 2017, as amended, vide e-mail to the Customs Officers concerned. The list of officers overseeing IGCR rules, 2017 along with their e-mail has been made available on https:// www.cbic.gov.in/htdocs-cbec/ home_links/enquiry-points-home.

Click here to read / download Circular No.10/2021-Customs dated 17th May 2021

- **Special Refund and Drawback Disposal Drive from 15.05.2021 to 31.05.2021**

The Board has decided that there is a need to focus on timely disposal of all pending refund/duty drawback claims in order to provide immediate relief to the business entities, especially MSMEs, in these difficult times. Accordingly, it is hereby instructed that there shall be a "Special Refund and Drawback Disposal Drive" with the objective of priority processing and disposal of all pending refund and drawback claims. This Special Drive shall be in place from 15th May 2021 to 31st May 2021. It is expected that during this period all refund and drawback claims that are pending as on 14th May, 2021 shall be disposed.

Click here to read / download Instruction No. 10/2021-Customs dated 13th May, 2021.

Press Tool- Punches (Quality Control) Order, 2020

1. It shall come into force with effect from 10.05.2021

2. **Compulsory use of Standard Mark -** Goods or articles specified in the column (1) of the Table shall conform to the corresponding Indian Standard specified in column (2) of the said Table and shall bear the Standard Mark under a license from the Bureau as per Scheme-I of Schedule-II of Bureau of Indian Standards (Conformity Assessment) Regulations, 2018:
Provided that nothing in this Order shall apply to goods or articles meant for export.

3. **Certification and Enforcement Authority -** The Bureau of Indian Standards shall be the certifying and enforcing authority for the goods or articles specified in the column (1) of the said Table

Goods or articles (1)	Indian Standard (2)	Title of Indian Standard (3)
Press Tool-Punches	IS 4296 (Part 1): 2016	Tools for Pressing Part 1 Round Punches with 60 Degrees Conical Head and Straight Shank
	IS 4296 (Part 2): 2015	Tools for Pressing Part 2 Punches with Cylindrical Head and Straight or Reduced Shank
	IS 4296 (Part 3): 2015	Tools for Pressing Part 3 Round Punches with 60 Degrees Conical Head and Reduced Shank

Note: For the purposes of this Table, the latest version of Indian Standards including the amendments issued thereof, as may be notified by the Bureau of Indian Standards from time to time, shall apply from the date of such notification

Indirect Tax Rulings

1. 2021-TIOL-1055-HC-RAJ-GST

India Cements Ltd Vs UoI

GST - The petitioner had submitted the Form GST TRAN-1 under Section 140 of Central Goods and Services Tax Act, 2017 in order to carry forward the eligible credit on capital goods on 13.12.2017 - They made a mistake in feeding the wrong details of unavailed CENVAT Credit of Rs.7,89,420.76 - The Courts in precedent laws have dealt with two types of defaults; firstly, the registered persons loaded TRAN-1 by 27.12.2017, but there is a mistake and they want to revise the already loaded TRAN-1; whereas, secondly, the registered persons, who could not file TRAN-1 by 27.12.2017 and have no evidence of attempt to load TRAN-1 - The petitioner took all necessary steps of abiding by law by filling the Form GST TRAN-1 before 27.12.2017.

The issue is no more res integra as the delay and all other aspects have been dealt with by the Courts one after another, and the propositions of permission to make the necessary amendments in light of the new regime of GST have been affirmed upto the Supreme Court - Thus, Court finds no reason not to go with the settled view taken by Division Bench of Punjab & Haryana High Court in Adfert Technologies Pvt. Ltd. 2019-TIOL-2519-HC-P&H-GST as well as affirmation thereof by Supreme Court. Accordingly, court grants liberty to the petitioner to make an application before GST Council to issue requisite certificate of recommendation alongwith requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioner's assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioner to get the benefit of CENVAT credit: HC

- Writ petition allowed: RAJSTHAN HIGH COURT

2. 2021-TIOL-241-CESTAT-BANG

Ace Creative Learning Pvt Ltd Vs CCT

ST - The appellant is providing Commercial Training and Coaching Services and they have also invested in the mutual funds and have earned profit which they have shown as under the head "other income" - The Department has wrongly considered the investment in mutual fund as trading in mutual funds and has issued a notice on the presumption that the appellant is providing exempted services which is trading in mutual funds and has not maintained separate records for common input services availed in providing the output services and exempted activity i.e. trading and hence are liable to pay 6%/7% of the amount of exempted services - The 'trading' has not been defined under Service Tax but in the context of securities, 'trading' means an activity where a person is engaged in selling the goods and occupy for the purpose of making profit but certainly trading is different from redemption of mutual fund units, in the present case appellant cannot transfer the mutual fund units to third party and give only by redemption to the mutual fund because the appellant is not permitted to trade mutual fund unit in the absence of a license from the SEBI - The appellant cannot be termed as "service provider" because he only makes an investment in the mutual fund and earn profit from it which is shown in the Books of Accounts under the head "other income" - Hence, the question of invoking Rule 6 does not arise and the Department has wrongly invoked the provisions of Rule 6(3) demanding reversal of credit on the exempted services - Substantial demand is time-barred as during the audit, the Department entertained the view that the appellant is engaged in providing the exempted services and consequently issued the SCN - Extended period cannot be invoked where the Revenue's case is based on Balance Sheet and income return and other records of the appellant - The impugned order is not sustainable in law and the same is set aside: CESTAT

- Appeal allowed: BANGALORE CESTAT

3. **2021-TIOL-17-AAAR-GST**

Page Industries Limited

GST - Applicant is engaged in manufacture, distribution and marketing of Knitted and Woven Garments under the brand name of "Jockey", Swim-wears and Swimming Equipment's under the brand name of "SPEEDO" - The applicant also gets the said garments manufactured from their job workers - Applicant had sought advance ruling on the following - " Whether in the facts and circumstances of the case, the promotional products / Materials and Marketing Items used by the Applicant in promoting their brand and marketing their products can be considered as "inputs" and GST paid on the same can be availed as input tax credit in terms of section 16 of the CGST Act, 2017?" - AAR had inter alia held that the ITC of GST paid on the procurement of the "distributable" products which are distributed to the distributors, franchisees is allowed as the said distribution amounts to "supply" to the related parties which is exigible to GST; that the said distribution to the retailers for their use cannot be claimed as gifts to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17 (5) of the GST Acts; that GST paid on the procurement of "non-distributable" products qualify as "capital goods" and not as "inputs" and the applicant is eligible to claim input tax credit on their procurement, but in case they are disposed by writing off or destruction or lost, then the same needs to be reversed under Section 16 of the CGST Act, 2017 read with Rule 43 of the CGST Rules, 2017 - Aggrieved, appeal is filed before the AAAR - Appellant contends that the items such as display boards, posters, etc. sent to the franchisees and distributors have not been capitalised in their books of accounts but have been treated as revenue expenditure, hence the ruling treating such items as capital goods and not inputs is not correct; that the items such as carry bags, pens, calendars, etc which are distributed to their franchisees and distributors for giving to the customers, cannot be considered as gifts but to be treated as a form of promotional/advertising activity which is eligible for input tax credit; that the franchisees and distributors are independent entities and are not related persons as wrongly held by the lower Authority; that the franchisees and distributors have only representational rights and have the obligation to promote and market the brands of the Appellant in the specified territory but they are not related in any other way to the business of the Appellant.

Held:

++ With regard to the promotional items such as gondola racks, wall shelves and panels, POP items such as mannequins and half busts, storage units, hangers, signages, posters, display stands, etc, AAAR finds from the copies of the agreements furnished by the Appellant that there is a contractual obligation on the part of the Appellant to provide their EBO/franchisees and distributors promotional materials. The purpose of providing the EBO/franchisees and distributors with these promotional items is to enhance the sales of their products. Thus, AAAR has no hesitation in concluding that these promotional items (referred to by the lower Authority as 'non-distributable goods') are indeed used in the course or furtherance of the Appellant's business.

++ The Appellant has also urged before us that these promotional items are not capitalised in their books of accounts but are always treated as revenue expenditure and hence they cannot be considered as 'capital goods'. This is in tune with the normal accounting practices. We therefore, disagree with the finding of the lower Authority and hold that the promotional items purchased by the Appellant and provided to the EBOs/franchisees, distributors and retailers are not capital goods but 'inputs' which are used in the course or furtherance of business.

++ As regards the eligibility of input tax credit on these promotional items, the same is governed by the provisions of Chapter V (Sections 16 to 19) of the CGST Act. Section 17 restricts the entitlement of input tax credit when the goods and services or both are used for non-business purposes or exempt/non-taxable supplies.

++ As per Section 7 of the CGST Act, a transaction is termed as a supply only when it is made for a consideration. However, the transactions

specified in Schedule I of the CGST Act can be treated as a "supply"even if they are made without any consideration. One such transaction mentioned in clause (b) of Schedule I is a supply of goods or services or both made between related parties or distinct persons. In this case, we find that the franchisees and distributors are independent entities and are not related to the Appellant in any of the ways mentioned in the Explanation to Section 15 of the CGST Act. Therefore, the provision of promotional materials free of charge by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under the ambit of Schedule I of the said Act.

++ The activity of providing the promotional items can be termed as an 'non-taxable supply' as defined in Section 2(78) of the CGST Act.

++ Section 17(2) provides that input tax credit shall be allowed only when the goods and services or both are used for business purposes or for making a taxable supply (including zero-rated supply). When the goods or services or both are used towards making an exempt supply, then input tax credit is not allowed. As per Section 2(47) of the CGST Act, the term 'exempt supply' also includes non-taxable supply. In view of the above provisions, we hold that the GST paid on the procurement of promotional items supplied to the EBOs/franchisees and distributors free of charge will not be eligible for input tax credit since the said supply is a non-taxable supply.

++ The GST law has not specifically defined the term "gift". Hence one must turn to the definition provided under Section 2(xii) of the Gift Tax Act which defines gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. Thus, it can be said that in this case, these give away promotional items which are distributed at the sole discretion of the Appellant without any contractual obligation or consideration, acquires the character of gifts. The goods procured on payment of GST which are disposed of by way of gifts are barred from being eligible for input tax credit in terms of Section 17(5)(h), even if they are used in the course or furtherance of business. Therefore, we hold that input tax credit is not eligible on the promotional items distributed as give away items on the grounds that the same is blocked by virtue of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act.

++ Members of the Maharashtra Appellate Authority differed in their decision [dated 22nd October 2019 given by the Maharashtra Appellate Authority for Advance Ruling in the case of Sanofi India Ltd] on the points in appeal and hence, in terms of Section 101(3) of the CGST Act, it was deemed that no advance ruling can be issued in respect of the question under appeal.

Conclusion:

+ Ruling No. KAR ADRG 54/2020 dated 15/12/2020 = 2020-TIOL-300-AAR-GST passed by the Advance Ruling Authority is set aside.

brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017."

- Appeal disposed of : AAAR

4. 2021-TIOL-223-CESTAT-HYD-LB

Dharti Dredging And Infrastructure Ltd Vs CCT

ST - Appellant availed Cenvat credit of service tax paid on insurance premium paid in respect of "workmen compensation insurance policy", which was denied by the lower authorities - When this matter was heard by the Single Member (Judicial), he found that contrary views had been expressed on the same issue by two benches of the same strength (both single member benches) [namely, Hydus Technologies India Pvt Ltd. 2017-TIOL-1189-CESTAT-HYD which allowed the credit & Ganesan Builders Ltd. 2017-TIOL-3152-CESTAT-MAD which denied the same , hence, the matter has been referred to a larger Bench for a decision.

Held:

++ Decision of the CESTAT-Madras (supra) in Ganesan Builders has been overruled by the High Court of Madras [2018-TIOL-2303-HC-MAD-ST] specifically dealing with "workmen compensation insurance policy". The Hon'ble High Court of Madras has held that the Workmen Compensation Act, 1923 is a beneficial legislation and the policy taken by the assessee in that case does not name the employees but categorised the employees based on their vocation/skill. The insured in that case is the assessee and the intention of the policy is to protect the employees who work at the site and not to drive them to various forums for availing compensation in the event of an injury or death. The service in that case was not primarily for personal use or consumption of employee and the insured is the assessee and not the employees. [para 21]

++ Present case is identical to the case of Ganesan Builders decided by the Hon'ble High Court of Madras inasmuch the policy in question pertains to workmen compensation scheme. The insured, as can be seen from the insurance policies is the assessee/appellant and not the individual employees. In other words, the benefit of the policy, if any, goes to the assessee and not to the individual employees. It is not like health insurance taken for the benefit of employees. We find from the Workmen Compensation Act, 1923 that Section 3 places the liability for compensation upon the employer. Section 4 determines the amount of compensation to be paid. If the assessee had not taken this insurance policy the employees would still be eligible for full compensation as per sections 3 and 4 of the Workmen Compensation Act, 1923. What is sought to be covered by these insurance policies in the present case is the liability of the assessee against any potential claim under sections 3 and 4 of the Act. [para 23]

++ In the present case, the workmen are not the beneficiaries of the policy but it is the assessee. Therefore, the benefit of the insurance in the present case flows directly to the assessee themselves and not to individual employees. Therefore, the present policy is not excluded by clause (C) of Rule 2(l) as has been held by the Hon'ble High Court of Madras in the case of Ganesan Builders. [para 26]

Conclusion: [para 30]

++ View expressed by the Tribunal Hydus Technologies India lays down the correct position in law. The view expressed by the Tribunal in Ganesan Builders has been over ruled by the Madras High Court in Ganesan Builders Ltd. = 2018-TIOL-2303-HC-MAD-ST.

- Reference answered: HYDERABAD CESTAT

5. 2021-TIOL-221-CESTAT-DEL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. III

Excise Appeal No. 51633 of 2019 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-052-19-20 Dated: 31.05.2019 Passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Indore]

Date of Hearing: 19.03.2021
Date of Decision: 01.04.2021

M/s SUNDARAM PACKAGING INDIA PVT LTD

Vs

COMMISSIONER OF CUSTOMS, CGST & CENTRAL EXCISE, UJJAIN

Appellant Rep by: None
Respondents Rep by: Shri P Juneja & Shri P Gupta, Authorised Representative

CORAM: Rachna Gupta, Member (J)

CX - The appellant is engaged in manufacture of PP woven fabrics and is also the recipient of few services - The SCN as well as the order of adjudicating authority have stated that provision of Rule 6(3) of CCR, 2004 are attracted and accordingly the appellant has been asked to pay an amount of 6% of value of empty drums and bags cleared from factory - Accordingly, the moot issue to adjudicate is as to whether Rule 6(3) of CCR, 2004 is applicable - The perusal thereof makes it abundantly clear that Rule 6(3) is applicable only to the manufacturers that too those who manufacture two classes of goods i.e. non-exempted and exempted goods - Apparently and admittedly the appellant is manufacturing

only one kind of goods which is PP woven fabric - The empty polythene bags of raw-material and the empty drums of power oil as have been cleared by appellant, irrespective for consideration, are not the goods manufactured by appellant - No doubt there has been an amendment in aforesaid Rule w.e.f. 01.03.2015 by virtue of Notification No. 06/2015 - Irrespective of said amendment, scope of Rule 6 is still with respect to the inputs/inputs services used in or in relation to the manufacture of exempted goods along with manufacture of non-exempted goods - Hence, irrespective, exempted goods include non-excisable goods in view of the amendment in terms of Notification No. 6/2015 unless and until such exempted goods are manufactured that too alongwith the non-exempted goods by appellant, applicability of Rule 6 does not at all arise - No question of applicability of explanation thereof as inserted vide Notification No. 06/2015 also at all arises - There has already been the decision of Apex Court in case of *DSCL Sugar Ltd.* ***2015-TIOL-240-SC-CX*** that the products which do not qualify the definition of manufacture in Section 2(f) of Central Excise Act, 1944, there cannot be any excise duty for such products - In case of *Westcost Industrial Gases Ltd* ***2003-TIOL-03-SC-CX***, it was held that no duty could be demanded on the containers used for packing of inputs on which credit has been taken, when cleared from the factory of the manufacturer availing credit as these containers could not be treated as waste arising out of manufacturing process - Relying upon the said decisions, the said Rule has wrongly been invoked in case of the appellant for demanding the reversal of Cenvat Credit availed by him at the rate of 6% of value of empty packets of raw-material and empty drums of the oils used by the appellant in manufacture of PP woven fabric when cleared for consideration - Commissioner (Appeals) is rather observed to has gone contrary to the allegations holding that these bags and drums are admitted by the appellant to be excisable goods - Hence, these findings are not correct - The order as such is not sustainable in the eyes of law, same is accordingly hereby set aside: CESTAT

Appeal allowed

6. 2021-TIOL-226-CESTAT-MAD

In The Customs, Excise And Service Tax Appellate Tribunal Bench, Chennai

Service Tax Appeal No. 40124 of 2020

[Arising out of Order-in-Appeal No. 209/2018-ST, Dated 13.12.2018 Passed by the Commissioner of CGST & Central Excise (Appeals), Coimbatore Circuit Office @ Salem Commissionerate]

Date of Hearing: 25.03.2021
Date of Decision: 25.03.2021

M/s Dynamic Techno Medicals Pvt Ltd Plot no. E-1, Perundurai Erode – 638502

Vs

Commissioner of CGST And Central Excise, No. 1, Foulks Compound Anaimedu Road, Salem - 636001

Appellant Rep by: Shri K Sankaranarayanan, Advocate
Respondent Rep by: Shri Vikas Jhajharia, AC (AR)

CORAM: Sulekha Beevi C S, Member (J)

ST - The appellant filed refund claim of service tax paid on development charges to SIPCOT - As per section 104 of Finance Act, 1994, service tax on development charges is exempted for the period 1.6.2007 to 21.9.2016 - The refund claim though dated 26.9.2017 was received in the office of refund sanctioning authority on 9.10.2017 - Same was rejected - A refund claim as per section 104 has to be filed within six months from the date when the Bill receives the assent of the President of India - Such assent was received on 31.3.2017 - Thus, the refund claim ought to have been filed on or before 30.9.2017 - However, the refund claim is filed on 9.10.2017 - When the service tax has been collected by SIPCOT, the appellant would require necessary documents from SIPCOT to file the refund claim - It is also to be noted that original authority in the first round of proceedings has rejected the refund claim stating that it is for SIPCOT to make a refund claim - From this, it is clear that there was a confusion as to who has to file the refund claim and therefore this has led to the delay in filing the refund claim - In the case of *Teknomec* ***2019-TIOL-3737-CESTAT-MAD***, this Tribunal held that when claim has been filed within reasonable

time from the date when appellant received intimation from SIPCOT, the refund has to be granted - Following the decision of Tribunal, rejection of refund claim is unsustainable - The impugned order is set aside: CESTAT.

7. 2021-TIOL-232-CESTAT-BANG

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH, BANGALORE

Customs Appeal No. 20325 of 2020

[Arising out of Order-in-Appeal No. 41-2020-21, Dated: 29.7.2020
Passed by Commissioner of Customs, Cochin]

Date of Hearing: 08.04.2021
Date of Decision: 08.04.2021

NITTA GELATIN INDIA LTD
54-1446 SBT AVENUE, PANAMPILLY NAGAR,
COCHIN-682036, KERALA

Vs

COMMISSIONER OF CUSTOMS, COCHIN-CUS
CUSTOM HOUSE WILLINGDON,
ISLAND COCHIN - 682009, KERALA

CORAM: S S Garg, Member (J)

Appellant Rep by: Ms Devika, Adv.
Respondent Rep by: Shri K B Nanaiah, Assistant Commisisoner (AR)

Cus - The appellant filed the Bill of Entry for the clearance of 'Decalcified Fish scale for Collagen' (Fish Protein) - The original authority has confiscated the goods and allowed reexport of the same subject to payment of redemption fine under Section 125 and payment of penalty under Section 112 of Customs Act, 1962 - The Commissioner (Appeals) in the impugned order has specifically allowed the benefit to the appellant under Section 74 of Customs Act, 1962 for reexport of goods as the governing factors under Section 74 for reexport of goods imported have not been violated by appellant - The Tribunal in case of *Kenda Farben India Pvt. Ltd.* ***2019-TIOL-233-CESTAT-ALL***, has held that imposition of redemption fine is not justified when permission was granted to reexport the goods - By following the ratio of said decision, imposition of fine and penalty is not sustainable in law: CESTAT

8. 2021-TIOL-230-CESTAT-DEL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

Service Tax Appeal No. 50136 of 2017 (SM)

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-148-16-17, Dated: 17.10.2016
Passed by the Commissioner (Appeals), Central Excise & Service Tax, Raipur (C.G.)]

Date of Hearing: 08.04.2021
Date of Decision: 08.04.2021

M/s CENTRAL WAREHOUSING CORPORATION
REGIONAL OFFICE - RAIPUR
WAREHOUSING COMPLEX, RAWABHATA
POST OFFICE: BIRGAON, RAIPUR (CG)

Vs

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,
CENTRAL EXCISE BUILDING, TIKRAPARA,
DHAMTARI ROAD, RAIPUR (CG)

CORAM: Anil Choudhary, Member (J)

Appellant Rep by: Shri S C Kamra, Adv.
Respondent Rep by: Ms Tamnna Alam, Authorised Representative

ST - The appellant had provided the storage facility to M/s. FCI consequent upon revision of prices with retrospective effect - They had discharged service tax liability on differential amount so collected and reflected in their ST-3 Returns - Subsequently, FCI under the contract of storage invoked the price escalation clause of contract and consequently a higher price was agreed to be paid to the appellant - Accordingly, the appellant issued supplementary invoices to FCI for recovering differential price from them and paying the differential value to the appellant - These payments of differential amounts were made to the appellant during relevant period - A SCN was issued invoking extended period of limitation demanding interest under Section 75 on the additional amount of service tax, which arose due to revision/price escalation for the

period from the date of original invoice till the date of supplementary invoice - There is no case of fraud, mis-representation or suppression of facts on the part of appellant as they have disclosed the additional taxable turnover arising out of the issue of supplementary invoices and has also paid tax in time and also disclosed such turnover in their books of accounts and returns filed with the Department - Demand for the period July, 2012 to March, 2013 is barred by limitation - The appellant shall be liable to pay balance demand in view of the ruling of Supreme Court in case of *Steel Authority of India Ltd.* ***2019-TIOL-204-SC-CX-LB*** whereby the Apex Court has held that interest is payable under similar facts and circumstances for the period being the date of original invoice to the date of supplementary invoice: CESTAT

9. 2021-TIOL-961-HC-MUM-CX

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 1335 Of 2009

**M/s RUNWAL CONSTRUCTIONS
A PARTNERSHIP FIRM, DULY REGISTERED UNDER THE INDIAN PARTNERSHIP
ACT 1932 HAVING ITS OFFICE AT RUNWAL CHAMBERS
1ST ROAD, CHEMBUR, MUMBAI-400071**

Vs

1) UNION OF INDIA

2) THE OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE MULUND DIVISION, MUMBAI-III COMMISSIONERATE

**3) M/s BLUEMOON ENGINEERS LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF INDIAN COMPANIES ACT 1956 (FORMERLY KNOWN AS HMP ENGINEERING)
LIMITED AND HAVING ITS REGISTERED OFFICE
AT 5A, CHOWRINGHEE LANE 1ST FLOOR FLAT NO. 1A, KOLKATA-700016**

Sunil P Deshmukh & Abhay Ahuja, JJ

Dated: April 22, 2021

Petitioner Rep by: Mr Vikram Nankani, Sr. Adv. a/w Mr Saket Mone and Mr Subit Chakrabarti i/by Vidhii Partners - Adv.

Respondent Rep by: Mr Sham Walve a/w Ram Ochani - Adv.

Case laws cited:

Rana Girders Vs. Union of India & Ors - 2013-TIOL-39-SC-CX... Para 16

Siddhi Sugar & Allied Industries, Latur Vs. State of Maharashtra & Ors - 2019-TIOL-2357-HC-MUM-CX... Para 16

Gharkul Industries Pvt. Ltd., & Another v/s. Superintendent, Central Excise Range - 2009-TIOL-177-HC-MUM-CX... Para 16

State Bank of India through its Chief Manager, Mr. Jagdish Mohan Nakade Vs. State of Maharashtra, (2020) SCC Online Bom 4190... Para 16

CX - Petitioner received a notice dated 29th / 30th January, 2008 from the Assistant Commissioner directing Petitioner to pay an amount of Rs. 1,41,40,767.59 and penalty of Rs. 33,93,609/- to the 2nd Respondent stating that Petitioner had purchased the property with all statutory liabilities - It is submitted that at the time of the purchase, Petitioner was unaware of the Excise duty payable by Respondent No. 3 - Company and is not liable to pay any Excise duty and/or alleged arrears of Respondent No. 3 claimed by Respondent No. 2 from Petitioner - It is with this background, after receiving the notice dated 29th/ 30th January, 2008, Petitioner by letter dated 31.01.2008, immediately informed Respondent No. 2 that the property was acquired at an auction held by the DRT, Kolkata and the same was acquired only with workers liability which had already been paid/ settled; that Petitioner had nothing to do with the payment of any Excise duty or arrears thereof which is the liability of Respondent No. 3 [M/s. HMP Engineering Ltd., (name was subsequently changed to Blue Moon Engineers Ltd.] – Petitioner further submitted that after the purchase, Petitioner has started developing the property; that Petitioner's project on said property consist of 5 buildings, containing 504 flats and with respect to 292 flats, it has entered into agreement/arrangements of sale with several flat purchasers who have availed of bank loans by mortgaging the flats to various banks / financial institutions; that liability to pay excise duty arises from manufacture of excisable products by the manufacturer; that Petitioner is not manufacturer of excisable products, hence,

Petitioner cannot be termed and/or construed as an "Assessee" under the Central Excise Act, 1944; that though Petitioner purchased the property with the liability to pay the workers and "other existing liability", the words "other existing liability" cannot be construed as the liability to pay excise duty also; that the words "other existing liability" can be the liabilities pertaining to the extent of property only viz, i.e. Municipal tax, electricity and water charges, land revenue etc. - Petitioner is aggrieved that despite the property being vested, the Central Excise duty dues admittedly being due from the 3rd Respondent and not from the Petitioner, are sought to be recovered from the Petitioner by resorting to attachment of / putting restraint on dealing with said property (which does not belong to Respondent No. 3, having been purchased in an auction by the Petitioner) purporting to invoke a provision under the Central Excise Act; that the attachment/ restraint is illegal, unlawful, and liable to be removed forthwith; that since despite Petitioner's replies, clarifying the above position, Respondent No. 2 has issued the impugned notices having serious civil consequences and, therefore, the present petition.

Held:

++ Considering the aforesaid findings of this court in the case of *Gharkul Industries Private Limited* (2009-TIOL-177-HC-MUM-CX), Bench is of the view that since in the present case as well, there is only purchase of land by Petitioner in the auction conducted by DRT, Kolkata and not transfer or disposal of business or trade in whole or in part but only a transfer or disposal of mere landed asset, the proviso to section 11 of the Excise Act would not be attracted. [para 31]

++ Secured creditor has priority over crown debts/excise dues. Going forward, this is a case where petitioner has purchased land in an auction conducted pursuant to proceedings under the RDDB Act by the Debt Recovery Tribunal Kolkata of the property belonging to the Respondent No. 3 company.

++ Petitioner is not a successor of the business of the erstwhile owner in business or trade viz: of Respondent No. 3, having acquired the property without any charge independent of business or trade of the previous owner, nor the Petitioner is in custody or possession of the said property as a successor of the previous owner against whom there was a demand of excise duty. This is also not a case where the entire unit, i.e. the entire business itself was purchased by the Petitioner. It is not that Petitioner has purchased or taken over the borrower's business or is its successor in business carrying on the borrower's or 3rd Respondent's manufacturing business but has only purchased the said land.

++ Excise duty liability can be fastened only on that person who had purchased the entire unit as a going concern and not on a person who had purchased land and building or machinery of the erstwhile concern. It is only in such cases that the buyer would be responsible to discharge the liability of Central Excise. Otherwise the purchaser cannot be fastened on the liability relating to the dues of the government unless there is a specific statutory provision to that effect. [para 32]

++ Petitioner is an auction purchaser of the said property and has not acquired the business of the Respondent No. 3- borrower. True also that the said purchase as per the order of Confirmation of Sale is subject to worker's liability and other existing liabilities of the owners of the said property. Admittedly, the worker's dues have been settled.

++ Excise dues are not dues which arise out of land or building. Such liabilities could be in the form of property tax, municipal tax, other types of cess relating to property etc. but cannot mean excise duty dues, which arise out of manufacture. In our view, therefore, the language in the confirmation of the Sale is with reference to the liabilities relating to the said property and not with reference to the business of the Respondent No. 3- borrower; we, therefore, hold that since Petitioner has not purchased the entire unit with business, it is not liable for the dues of the Excise Department. [para 33]

++ In view of the decision of the Supreme Court in the case of *Rana Girders* (*2013-TIOL-39-SC-CX*), Petitioner would not be liable to excise duty dues of Respondent No. 3- borrower, having purchased only the land and not the entire business of the borrower in the public auction. [para 34]

++ Impugned notices dated 29th / 30th January, 2008, 17th October, 2008 and 14th May, 2009 relating to excise duty dues are quashed and set aside and its recovery by the department, if any,

from Petitioner be refunded preferably within a period of four weeks from the date of receipt of this order. [para 37]

10. 2021-TIOL-960-HC-MAD-CUS

IN THE HIGH COURT OF MADRAS

WP No. 3144 of 2016

**M/s SRI SATHYA JEWELLERY
SHOP NO. 8 (BASEMENT),
DHANALAKSHMI
COMPLEX, NO. 130, NSC BOSE ROAD
CHENNAI-600079**

Vs

**PRINCIPAL COMMISSIONER OF CUSTOMS
CHENNAI-VII, NEW CUSTOM HOUSE
MEENAMBAKKAM, CHENNAI-600016**

S M Subramaniam, J

Dated: April 15, 2021

Petitioner Rep by: Mr B Kumar, Sr. Counsel for Mr B Sathish Sundar, Mr S Murugappan
Respondent Rep by: Mr Umesh Rao K, Sr. Standing Counsel, Mr V Sundareswaran, Sr. Panel Counsel, Mr A P Srinivas, Sr. Standing Counsel

Cus - Writ petitions have been filed challenging the Order-in-Original passed by the adjudicatory authorities - admittedly, the writ petitioners responded to the SCNs by submitting their objections/defence and participated in the process of adjudication - The preliminary ground of attack raised is that the show cause notice itself was issued by an incompetent authority, not having jurisdiction under the provisions of the Customs Act, 1962, and therefore, the entire proceedings are liable to be set aside - SC decision in Canon India Private Limited **= *2021-TIOL-123-SC-CUS-LB*** is relied upon - Counsel for Respondents submits that department has filed review petitions in Review Petition (Diary) Nos. 9580, 9584, 9587, 9591 of 2021 before the Supreme Court of India on 07.04.2021; that Writ petitioners cannot rely on the said judgment in view of the fact that the petitioners have not exhausted the statutory appellate remedy provided under Sections 128 and 129 of the Customs Act [Fourceess Diamond Pvt. Ltd. = **2021-TIOL-532-HC-MAD-CUS** relied upon]; that the petitioners are not entitled for any relief.

Held:

++ In order to avoid the Pre-Deposit, which is contemplated under the Statute, the practice of filing writ petitions is prevailing in the High Court and the High Court cannot encourage such practice and the appellate remedy contemplated under the Act is to be exhausted in all circumstances and only under extraordinary circumstances, in order to mitigate injustice, the High Court can intervene and not otherwise. Such power of dispensing with the appeal remedy is to be exercised sparingly and not in a routine manner. [para 7]

++ Court is of the considered opinion that all such grounds raised on merits are to be adjudicated with reference to the documents and evidences to be produced and the scope of the writ petition under Article 226 of the Constitution of India cannot be expanded so as to exercise the powers of the appellate authority in the matter of examination or scrutiny of original documents and evidences produced by the respective parties. The very purpose of the statutory appeal is to scrutinize the orders passed by the original authorities, and therefore, the legislative intention in this regard is to be scrupulously followed in the mater of adjudication of merits with reference to the documents and evidences. [para 11]

++ Appeal provisions are provided with the legislative intention to provide remedy to the aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy. [para 12]

++ The High Court cannot adjudicate the facts and merits with reference to documents and evidences. The High Court, under Article 226 of the Constitution of India, is not expected to usurp the powers of the appellate authorities by adjudicating the merits of the matter on certain documents and evidences.

++ High Court is expected to trust the institutional authorities as well as the hierarchy of institutions contemplated under the Statutes. Institutional respects are of paramount importance for providing complete justice to the parties and the various stages of adjudication are

important for the purpose of correcting omissions, commissions, errors in appreciation of evidence, etc.

++ Powers of the High Court under Article 226 of the Constitution of India cannot be extended nor widened so as to allow to lay hands on the facts and circumstances by conducting the trial, nor certain facts and circumstances with reference to documents and evidences can be assumed or presumed or inference can be drawn, which is not preferable. [para 13]

++ As far as the judgment of the Supreme Court of India in the case of *M/s.Canon India Private Limited* (supra) is concerned, the matter went to the Apex Court by way of regular appeal and the Supreme Court of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority.

++ By citing the said finding, the appellate remedy otherwise provided under the Statute cannot be dispensed with, and in the event of accepting the said contention, in all such cases, every litigant will approach the High Court by way of writ petition bypassing the appellate remedy, which is not desirable and cannot be accepted.

++ Institutional respect is of paramount importance. Even the point of jurisdiction, limitation, error apparent on the face of the record, are on merits and all are to be adjudicated before the appellate authority and the appellate authority, more specifically, the Appellate Tribunal or the Commissioner (Appeals), as the case may be, is empowered to adjudicate all such legal grounds raised by the respective parties and make a finding on merits.

++ Thus, usurping the powers of the appellate authorities by the High Court by invoking its powers under Article 226 of the Constitution of India is certainly unwarranted. The parties must be provided an opportunity to approach the appropriate authorities for redressal of their grievances in the manner known to law. In the event of entertaining all such writ petitions, the High Court will not only be over-burdened, but usurping the powers of the appellate authority is certainly not desirable. [para 15]

++ Jurisdictional error should not result in exoneration of liability. Jurisdictional error, if any committed, is technical, and thus, rectifiable. In such circumstances, the Courts are expected to quash the order passed by an incompetent authority and remand the matter back for fresh adjudication. Contrarily, if an assessee is exonerated from liability, undoubtedly, the purpose and object of the Act is defeated. [para 16]

++ The growing practice in the High Court is to file writ petitions under Article 226 of the Constitution of India without exhausting the statutory remedies provided under the Act.

++ Courts are expected to be cautious, while granting exoneration of liability merely on the ground of jurisdictional errors, if any committed by the authorities competent.

++ Liability and jurisdictional errors are distinct factors, and therefore, Courts are expected to provide an opportunity to the Department to decide the liability on merits and in accordance with law with reference to the provisions of the Act and Rules and guidelines issued by the Department. [para 17]

++ Courts shall not provide an unnecessary opportunity to the assessee to escape from the liability merely on the ground on jurisdictional error, which is rectifiable. [para 18]

++ Court has no hesitation in arriving at a conclusion that the petitioners are bound to exhaust the appellate remedy, either under Section 128 or Section 129 of the Customs Act, respectively.

++ Petitioners are at liberty to approach the appellate authority and file an appeal within a period of 60 days and in the event of filing of appeal(s) by the writ petitioners all such appeals are directed to be entertained without reference to the period of limitation.

11. 2021-TIOL-16-AAAR-GST

IN THE TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

Order-in-Appeal No. AAAR/05/2021 (AR)

A R Appeal No. 10/2020/AAAR

Name and address of the appellant	**M/s CHENNAI METRO RAIL LTD ADMN BUILDING, POONAMALLEE HIGH ROAD, KOYAMBEDU CHENNAI-602107**
GSTIN or User ID	33AADCC2233K1Z0
Advance Ruling Order against which appeal is filed	Order No. 26/ARA/2020 dated 12.05.2020
Date of filing appeal	09.12.2020
Represented by	Dr. Ravindran Pranatharthy, Advocate
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Royapettah Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20123300116665 dated 09.12.2020

Thiru G V Krishna Rao, Member & Thiru M A Siddique, Member

Dated: March 04, 2021

GST - Applicant, Chennai Metro Rail Ltd., had acquired a portion of the property (including the land which is now leased out to the owner) for public purpose from Dr K Prema on payment of adequate compensation - It appears that the arrangement is made since Dr K Prema from whom the property is acquired has no pathway to her residential property - Applicant has sought a ruling on the taxability of the said transaction inasmuch as it is the view of the applicant that the lease amount received from the lessee would not attract GST by virtue of the exemption granted under **12/2017-CTR** - AAR held that this transaction of granting easement rights satisfies the conditions of s.7(1)(a) as 'supply' under the CGST Act - further as per section 7(1A) and para 2(a) of the Schedule II to the Act, activity of easement of land constitutes supply of service; that it is not a lease of the pathway but only Easement rights are granted to the individual by the applicant, therefore, the classification of the service supplied is not covered under SAC 9972 which covers renting or leasing of property; that this service of agreeing to grant easement rights is a service of agreeing to tolerate an act and is classifiable under SAC 999794 under 'Other Miscellaneous Services'/'Agreeing to tolerate an act' and taxable @18% GST in terms of Sr. no. 35 of 11/2017-CTR - Appeal filed against this order.

Held: It is clear that the entire land had been acquired by the appellant [Chennai Metro Rail Ltd.] and the same had been acquired for business purposes only - The appellant after acquisition of the land had granted shared-access to the pathway with no grant of right of occupation and possession and the activity is in the genre of licence extended for a specific period against payment of rentals - In the case of renting or leasing of the property, the owner (appellant in this case) will not have the right to use the land/pathway involved as 'renting/Leasing' involves transfer of the right to enjoy the property to the lessee and the lessor does not

retain right to enjoy the property during the lease period - In the instant case, it is not a lease of the pathway but only rights are granted to the land owner by the appellant for the shared access - It is seen that the grant of access to the pathway is a right given by them to the landowner - This activity of agreeing to grant rights for shared access of the pathway is an "act of agreeing to tolerate an act" and is classifiable under SAC 999794 under "other miscellaneous services/Agreeing to tolerate an act' and is taxable to 9% CGST and 9% SGST as per SI.No.35 of Notification **11/2017 CT(Rate)** dated 28.06.2017 as rightly held by the Lower Authority - Order of AAR is upheld and appeal is rejected: AAAR

12. 2021-TIOL-15-AAAR-GST

IN THE TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

Order-in-Appeal No. AAAR/10/2021 (AR)

A R Appeal No. 07/2020/AAAR

Name and address of the appellant	**M/s ICU MEDICAL INDIA LLP 129-140 PRESTIGE PALLADIUM BAYAN 1ST AND 7TH FLOOR, GREAMS ROAD NUNGAMBAKKAM. CHENNAI-600006**
GSTIN or User ID	33AAGF13243MIZD
Advance Ruling Order against which appeal is filed	Order No. 23/ARA/2020 dated 04.05.2020
Date of filing appeal	16.10.2020
Represented by	Thiru.SiddarthChandrasekhar, Thiru.K.Sivarajan, Thiru.Srihari VK
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Nungambakkam Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.RBIS20103300226417 dated 14.10.2020

Thiru G V Krishna Rao, Member & Thiru M A Siddique, Member

Dated: March 04, 2021

GST - Appellant is engaged in the business of software development for the infusion system manufactured by its ultimate holding company, ICU Medical Inc. - The ultimate holding company has entered into a contract with Wells Fargo Bank through which certain employees of the appellant/applicant are extended with the credit card issued by the said bank - The card is to be used by the employees for the travel requirements on business needs - Ultimate holding company settles the amount payable with the bank and in turn raises invoices on the appellant/applicant and collects the charges used by the employees - Appellant/Applicant had sought a ruling as to whether GST is leviable on the reimbursement of expenses from the subsidiary company to its ultimate holding company located in a foreign territory outside India

and, in case GST is leviable, what is the rate of GST applicable to the said reimbursement of expenses - AAR had held that the Applicant/Appellant does not come into the picture for any transactions with Wells Fargo; that ICU Medical Inc. is making the supply of the credit cards to the appellant/applicant for use of its employees, on its own account and not as an 'intermediary' - Service imported by the appellant/applicant is, therefore, one of extension of credit for furtherance of business and is classifiable under SAC 997113 and chargeable to GST @18% on reverse charge basis - Aggrieved, appellant is before the AAAR.

Held: Reimbursements paid by the appellant to the holding company for the expenses incurred initially by its employees are nothing but part of software development cost and consequently part of the taxable value of services of appellant - Applicable rate of GST on such expenses incurred by the recipient and reimbursed by the appellant is the same rate at which the appellant charges for the software development service supplied by the appellant to the overseas holding company, on the ground that the expenses are part of the taxable value of such services and attract the same rate indicated in the tax invoice for the software development charges issued by the appellant on the overseas holding company - Ruling pronounced by the Advance Ruling Authority is modified to the extent that GST is leviable on the reimbursement amount, being advance payment made by the holding company towards the cost incurred for the provision of Software Services supplied by the appellant, as per the Time of Supply provided under Section 13 of the CGST/TNGST Act 2017 and applicable rate is that applicable to the supply of Software Services made by them: AAAR

13. 2021-TIOL-994-HC-TRIPURA-GST

IN THE HIGH COURT OF TRIPURA

WP (C) No.279/2021

M/s SARVASIDDHI AGROTECH PVT LTD

Vs

THE UNION OF INDIA
THE JOINT COMMISSIONER OF APPEALS
CGST, GST BHAWAN, THE ASSISTANT COMMISSIONER OF
CENTRAL GOODS AND SERVICE TAX

Akil Kureshi, CJ & S G Chattopadhyay, J

Dated: April 20, 2021

Appellant Rep by: Mr T K Deb, Advocate
Respondent Rep by: Mr Biswanath Majumder, CGC

GST - According to the petitioner, the company supplies Non-Basmati un-branded rice - However, the State GST Authorities, on a prior intelligence that the petitioner is dealing in branded rice, carried out a raid at the godown and other premises of the petitioner- company - This resulted into seizure of certain documents and stock of rice lying in the godowns - Eventually, the adjudicating authority i.e. the Assistant Commissioner of GST issued a Demand cum Show Cause Notice dated 11.03.2019 to the petitioner in which it was conveyed that on a prior intelligence that the petitioner was engaged in manufacturing, packaging and supply of branded rice in 25 kilogram bags having product names "Aahar Normal", "Aahar Gold" and "Aahar Premium" without payment of GST, enforcement officers of the department visited the factory premises of the petitioner on 17.07.2018 and found that the petitioner was supplying branded packaged rice in unit containers without payment of GST; that the assessee was liable to pay CGST as well as SGST at prescribed rates on the taxable value of its sales for the period in question [01.07.2017 to 17.07.2018] which was assessed at Rs.1,03,35,028/-- The Assistant Commissioner of GST did not accept the defences of the petitioner and passed the impugned order dated 03.07.2020 confirming the demand and imposing penalty and interest - The appellate authority by its order dated 27.01.2021 dismissed the appeal - Since the Tribunal

where a further appeal could be made is not yet constituted, the present petition has been filed before the High Court - Petitioner submits that they were not supplying branded packaged rice and, therefore, the supply was exempt from GST levies; that the brands Aahar Normal, Aahar Gold and Aahar Premium were not registered brands and, therefore, would not come within the purview of taxable supplies; that the seized quantity of rice was only meant for internal use and not for sale and in any case, no demand of GST can arise unless and until the goods are supplied.

Held: Bench does not find any error in the view of the lower authorities - Firstly, the conclusions of these authorities are based on assessment of materials on record - Secondly, the seizure of sizeable quantity of packaged branded rice was an indication of the petitioner dealing in such product - Thirdly, the tax is not demanded on rice stored and seized but on the quantity of rice already supplied which was assessed from the bill books and invoices seized from the premises of the petitioner-company - Further, the petitioner's defence that the quantity of rice lying in the godowns was merely for internal use was also not backed by any evidence - Close to three thousand bags of rice were found lying in the godown - Therefore, the petitioner's bare contention that it was not meant for supply but only for internal purposes of grading the rice or part of the stock was lying because of quality disputes, was not backed by any evidence and was, therefore, correctly not accepted by the authorities - Lastly, the petitioner's contention that the brand was not a registered brand and, therefore, the petitioner had no liability to pay tax also was rightly not accepted - As per the amendment to Notification 1/2017-CTR by Notification **27/2017-CTR** dated 22.09.2017, for the original expression of "put up in unit container and bearing a registered brand name" what is now substituted is that it should be put in unit container and may be bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available - Thus, from the previous requirement of supply of goods in unit container and bearing a registered brand name, the expanded requirement is of the same, either bearing of registered brand name or bearing a brand name on which actionable claim or enforceable right in a court of law is available - Thus, the requirement of the brand name being registered is no longer necessary - This Notification itself, however, provides that the exemption could be availed where such actionable claim or enforceable right in respect of such brand name has been voluntarily forgone subject to the conditions specified in the Notification - The brand names under which the petitioner was selling the rice may not have been registered, nevertheless it could lead to an actionable claim in a court of law - In order to avoid inviting liability of tax, the petitioner had to forgo such actionable claim which also the authorities found the petitioner had not done - Petition is, therefore, dismissed: High Court [para 9 to 12]

14. 2021-TIOL-257-CESTAT-AHM

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD

Service Tax Appeal No. 445 of 2011-DB

CADILA HEALTHCARE LTD

Vs

CST-SERVICE TAX - AHMEDABAD

1) SERVICE TAX Appeal No. 446 of 2011
CADILA HEALTHCARE LTD

2 SERVICE TAX Appeal No. 447 of 2011
CADILA HEALTHCARE LTD

3 SERVICE TAX Appeal No. 619 of 2011
CADILA HEALTHCARE LTD

4 SERVICE TAX Appeal No. 620 of 2011

CADILA HEALTHCARE LTD

5 SERVICE TAX Appeal No. 360 of 2012
CADILA HEALTHCARE LTD

6 SERVICE TAX Appeal No. 361 of 2012
CADILA HEALTHCARE LTD

7 SERVICE TAX Appeal No. 362 of 2012
CADILA HEALTHCARE LTD

8 SERVICE TAX Appeal No. 363 of 2012
CADILA HEALTHCARE LTD

9 SERVICE TAX Appeal No. 364 of 2012
CADILA HEALTHCARE LTD

10 SERVICE TAX Appeal No. 365 of 2012
CADILA HEALTHCARE LTD

11 SERVICE TAX Appeal No. 366 of 2012
CADILA HEALTHCARE LTD

12 SERVICE TAX Appeal No. 13465 of 2013
CADILA HEALTHCARE LTD

13 SERVICE TAX Appeal No. 13466 of 2013
CADILA HEALTHCARE LTD

14 SERVICE TAX Appeal No. 12947 of 2014
CADILA HEALTHCARE LTD

Date of Hearing: 01.03.2021
Date of Decision: 27.04.2021

Appellant Rep by: Shri Jigar Shah, Advocate
Respondent Rep by: Shri T G Rathod, Additional Commissioner(Authorized Representative)

CORAM: Ramesh Nair, Member (J)
Raju, Member (T)

ST - The genesis of the issue is whether the appellant (Cadila Healthcare Ltd.) is a service provider and the recipient M/s Zydus Healthcare is a service recipient having relationship of partner and partnership firm can be categorised as service provider and service recipient - The appellant has 96% share in profit and two other partners i.e., M/s Cadila Healthcare staff trust and M/s German Remedies have 2% each shares in the profit - All the three partners entered into a partnership deed dated 01/03/2007 and the said partnership deed was amended vide addendum dated 01/07/2007 - As per the amended partnership deed, the appellant is a partner who undertook the activities related to marketing and distribution of the products of the partnership firm to enable the partnership firm to expand market's share and improve overall sales and earnings -Issue to be considered is whether the appellant is liable to pay the Service Tax when the appellant is a partner and the service recipient is a partnership firm - If the appellant is not liable to pay the Service Tax, whether the Service Tax so paid by the appellant along with interest, is refundable, even when the assessment of payment of service tax was not challenged.

Held:

++ From the terms of the partnership deed, the appellant in its capacity as partner of the partnership firm was obliged to carry out certain activities such as distribution of goods manufactured, marketing of the goods manufactured by the partnership firm, functioning as consignee and sales agent of the partnership firm, etc.

++ These activities were not undertaken pursuant to a separate and independent contract for provision of services between the appellant of the partnership firm. Therefore, the activities carried out by the appellant for its partnership firm is part of its duties as a partner. In this arrangement, it cannot be said that the partner is a service provider and partnership firm is service recipient.

++ It is also observed that the remuneration received by the appellant from the partnership firm has been accounted for as "Remuneration received from partnership firm". Any activity can be brought under the Service tax ambit under the Finance Act, but the important aspect is that there should be existence of service provider and the service recipient and the service provider and the service recipient should be two different persons. [para 4]

++ It is clear from the definition of partnership provided in the section 4 of the Partnership Act, 1944, that partners and partnership firm cannot be treated as two distinct persons.

++ First time the term 'Person' in the Finance Act, 1944 was defined with effect from 01/07/012 vide section 65B(37) of the Finance Act, 1994 which included the firm. Therefore, prior to 01/07/2012, that is the period involved in the present case, the definition of 'Person' provided under section 65b(37) was not existing. Therefore, same cannot be made applicable retrospectively.

++ Even as per the definition of General Clauses Act, 'Person' does not include the partnership firm. Therefore, the service is taxable if it is provided to a distinct person. Such person does not include firms when the service is provided by a partner to the said partnership firm.

++ It has been settled that the firm is not a different entity or person in law than its partners. [DulichandLakshminarayan (**2002-TIOL-1258-SC-IT-LB**); Commissioner of Income Tax vs R.M. Chidambaram Pillai (**2002-TIOL-2675-SC-IT**] It is merely an association of individuals and a firm name is only a collective of those individuals who constitute a firm. With this law laid down by the Apex Court, it cannot be said that the appellant being the partner and M/s Zydus Healthcare being a partnership firm have relationship of service provider and service recipient. [para 4.1]

++ In the judgments [Commissioner of Income Tax vs R.M. Chidambaram Pillai **2002-TIOL-2675-SC-IT** & Bhagwant Singh vs Commissioner of Income Tax 1959 PH Air 59], it is categorically held that any amount received by the partner from the partnership firm as per the obligation of the partnership deed would be treated as profit share in the partnership business. Applying the same ratio in the present case also, the appellant received remuneration from its partnership firm towards certain activities performance in terms of the partnership deed is nothing but profit in partnership sharing and the same cannot be treated as consideration towards provision of service under Finance Act, 1994. [para 4.4]

++ It is also observed that the impugned activities of the appellant are undisputedly its obligation as a partner as per partnership deed. There is no separate contract of services between the appellant and the partnership firm. Therefore, the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed. Therefore, such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to Service Tax. [para 4.5]

Refund:

++ Insofar as refund is concerned, in the present case, there is no order of final assessment by the Service Tax authorities. Unlike Customs, there is no express provision to file appeal against the self-assessment of service tax by filing ST-3 return. Therefore, on the ground that appeal against the self-assessment was not filed, the refund claim cannot be rejected. [para 4.7, 5]

++ Adjudicating Authority as well as Commissioner (Appeals) also contended in their orders that the appellant have not satisfied the aspect of unjust enrichment as they have not filed any documents in this regard.

++ In the refund application, appellant have clearly declared that they have not recovered the amount of Service Tax from Zydus Health Care and the burden of Service Tax was not passed on to the Zydus Health Care. It shows that both the authorities have ignored this declaration made by the appellant. Therefore, the contention made by them that the appellant has not satisfied that the incidence of Service Tax, for which refund claim was made, has not been passed on is apparently erroneous. [para 6]

++ Appellants are entitled for the refund - impugned orders are set aside and appeals are allowed with consequential relief. [para 7]

15. 2021-TIOL-18-AAAR-GST

IN THE APPELLATE AUTHORITY ADVANCE RULING TAMILNADU
(Contituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017) ORDER-in-Appeal No. AAAR/08/2021 (AR)

A.R.Appeal No. 11/2020/AAAR

Name and address of the appellant	**M/s SUMEET FACILITIES LTD** **NO.403, JEEVA COLONY, UDUMALAI ROAD** **KONDARASAMPALAYAM** **DHARAPURAM, TIRUPPUR 638657**
GSTIN or User ID	33AACCS3411J1ZP
Advance Ruling Order against which appeal is filed	Order No. 36/ARA/2020 dated 03.11.2020
Date of filing appeal	21.12.2020
Represented by	M/s. Nithyaesh&Vaibhav, Nithyaesh Natraj,Vaibhav R Venkatesh,Anirudh A Sriram,Mayan H Jain, Legal Representatives and Prabhakar Salunke, Ajit Darandale
Jurisdictional Authority-Centre	Salem Commissionerate
Jurisdictional Authority –State	Assistant Commissioner(ST) Dharapuram Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.IDIB 20123300292435 dated 17.12.2020

Thiru G V Krishna Rao, Member & Thiru M A Siddique, Member

Dated: March 05, 2021

GST - The appellant is in appeal against the order in ***2020-TIOL-291-AAR-GST*** on the application for advance ruling filed by appellant - They are engaged in supplying services of Waste Management, Mechanized Road Sweeping, Business Support Staffing and other services relating to Integrated Facility Management to private sector entities as well as public sector entities and Governmental organizations - On 10th March 2020, they have entered into two separate Service Agreements for supply of waste collection, segregation, treatment, transportation and disposal services for the Greater Chennai Corporation - They had sought Advance Ruling as regards to the classification for supply of services in terms of notfn **11/2017- C.T.(Rate)** and whether the said activities carried out by them is exempted from Goods and Services Tax in terms of entry no.3 of Notfn **12/2017-Central Tax (rate)** - The AAR pronounced a ruling that the supply of services by applicant relating to waste collection, segregation, treatment, transportation and disposal services under the Service Agreements entered with both concessionaries are

classified under SAC 9994 in terms of Notfn 11/2017 C.T. and the activity undertaken by applicant under Service Agreements entered with both concessionaries are not exempted from Goods and Services Tax in terms of entry no.3 of Notfn 12/2017- Central Tax (rate) - The submissions made by appellant have already been looked into by AAR and there is nothing new which has been brought to persuade the AAR - The case laws and arguments pertaining to Service Tax law are specific to that law as there were provisions catering specifically to subcontractors whereas in GST the provisions are very restricted - Exemption benefit are not available to sub-contractors ex facie since those entries under 12/2017 specific to subcontractors occur only at two sl. Nos. that too pertaining to works contract - They restrict the exemption to only three sub clauses of sl. No. 3, performed by main contractor and NOT extended to all the activities performed as a part of works contract - This itself proves that the purpose of exemption notification unless specifically provided, cannot be extended to subcontractors automatically on par with service suppliers (main contractors) - Appellant is a totally different entity than from concessionaires in as much as they are all separately incorporated and separately registered with GST and they are distinct persons as per GST Act - So, on the basis of holding equity, they cannot claim to be on par with the concessionaire, who otherwise too are ineligible for the exemption, being the provider of composite supply of goods and services to GCC anyway - No reason found to interfere with the order of Advance Ruling Authority in this matter: ARA

GST updates

1. **Retrospective amendment in section 50 of the CGST Act, 2017 providing for interest on net tax dues notified from 1st June, 2021**

   A proviso was inserted in section 50(1) of the CGST Act, 2017 vide the Finance Act, 2021 to lay down that interest shall be payable on net tax dues (i.e., after adjusting the available ITC) where such tax dues are declared in the returns filed after the due date (except where the returns are filed after the commencement of proceedings under sections 73 or 74 of the CGST Act, 2017). Such proviso has been added with retrospective effect from 1st July, 2017. Now < a href="https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-16-central-tax-english-2021.pdf">Notification No. 16/2021 – Central Tax, dated 1st June, 2021 has been issued to appoint 1st June, 2021 as the date from which such amendment shall come into force..

2. **Extension of due date for filing of GSTR-1**

   Notification No. 83/2020-Central Tax, dated 10th November, 2020 has been amended vide Notification No. 17/2021- Central Tax, dated 1st June, 2021 to extend the time limit for furnishing the details of outward supplies in Form GSTR-1 for the month of May, 2021 to June 26, 2021.

3. **Lowering of interest rates for delayed payment of tax**

   Notification No. 13/2017- Central Tax dated 28th June, 2017 has been further amended vide Notification No. 18/2021-Central Tax dated 1st June,2021 to reduce the rate of interest for delayed payment of CGST (u/s 50 of the CGST Act, 2017) for the **month of May, 2021** as under:

Class of registered persons	Rate of interest
Taxpayers whose aggregate turnover in the preceding FY > Rs. 5 crores	9% for the first 15 days from the due date and 18% thereafter
Taxpayers whose aggregate turnover in the preceding FY ≤ Rs. 5 crores [Both taxpayers filing monthly returns and taxpayers filing quarterly returns under QRMP scheme]	Nil for the first 15 days from the due date, 9% for the next 15 days, and 18% thereafter

   The above amendment shall be deemed to be effective from 18th May, 2021.

   Interest rate for delayed payment of IGST has also been lowered parallelly vide Notification No. 2/2021 – Integrated Tax dated 1st June, 2021.

4. **Waiver of late fees on delayed filing of GSTR-3B**

   Notification No. 76/2018-Central Tax dated 31st December, 2018 has been further amended vide Notification No. 19/2021- Central Tax dated 1st June, 2021 to waive off late fees payable on belated furnishin g of GSTR-3B for the months of March 2021, April 2021, May, 2021 and for the quarter January-March 2021 as under:

Class of registered persons	Applicable tax period	Period for which late fee waived
Taxpayers whose aggregate turnover in the preceding FY > Rs. 5 crores	May, 2021	15 days from the due date of furnishing return
Taxpayers whose aggregate turnover in the preceding FY ≤ Rs. 5 crores and who have opted to file monthly returns	March, 2021	60 days from the due date of furnishing return
	April, 2021	45 days from the due date of furnishing return
	May, 2021	30 days from the due date of furnishing return
Taxpayers whose aggregate turnover in the preceding FY ≤ Rs. 5 crores and who have opted to file quarterly returns	January – March, 2021	60 days from the due date of furnishing return

The above amendment shall be deemed to be effective from 20th May, 2021.

5. **Amnesty Scheme regarding late fee for pending Form GSTR-3Bs**

An amnesty scheme has been introduced vide Notification No. 19/2021 – Central Tax dated 1st June, 2021 by way of capping the late fees for non-furnishing of Form GSTR-3B for the tax periods from July 2017 to April 2021 as under:

Taxpayer	Maximum late fees
Nil liability	Rs 250/- (plus Rs. 250/- for SGST)
Other than nil liability	Rs 500/- (plus Rs. 500/- for SGST)

The reduced rate of the late fee would apply if GSTR-3B returns for these tax periods are furnished between 01.06.2021 to 31.08.2021.

6. **Reduction in late fee in case of delayed filing of Form GSTR-3B**

The CBIC has issued **Notification No. 19/2021 – Central Tax dated 1st June, 2021** to reduce the late fee payable on delay in furnishing of Form GSTR-3B for June, 2021 onwards or quarterly returns from the quarter ending June, 2021 onwards as below:

i. For taxpayers having nil tax liability in GSTR-3B, the late fee shall be capped at Rs 250 (plus Rs. 250 for SGST)
ii. For other taxpayers:

Annual aggregate turnover in previous year	Maximum late fee
Upto Rs. 1.5 Crore	Rs. 1,000 (plus Rs. 1,000 for SGST)
Rs. 1.5 Crore to Rs. 5 Crore	Rs. 2,500 (plus Rs. 2,500 for SGST)

7. **Reduction in late fee in case of delayed filing of Form GSTR-1**

The CBIC vide **Notification No. 20/2021-Central Tax, dated 1st June,2021** has amended *Notification No. 4/2018– Central Tax, dated the 23rd January, 2018*& nbsp;to reduce the late fee payable on delay in furnishing of Form GSTR-1 for the tax period June, 2021 onwards or quarter ending June, 2021 onwards as under:

S. No.	Class of registered persons	Maximum late fee
1.	Registered persons who have nil outward supplies in the tax period	Rs. 250 (plus Rs. 250/- for SGST)
2.	Registered persons having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year, other than those covered under S. No. 1.	Rs. 1,000 (plus Rs. 1000/- for SGST)
3.	Registered persons having an aggregate turnover of more than rupees 1.5 crores and up to rupees 5 crores in the preceding financial year, other than those covered under S. No. 1.	Rs. 2,500 (plus Rs. 2,500/- for SGST)

8. **Reduction in late fee in case of delayed filing of Form GSTR-4 (Annual Return filed by composition taxpayers)**

Notification No. 73/2017-Central Tax dated 29th December, 2017 has further been amended vide **Notification No. 21/2021- Central Tax dated 1st June, 2021** to reduce the late fees for delay in furnishing of Form GSTR-4 for financial year 2021-22 onwards as under:

Composition taxpayer	Maximum late fees
Having nil liability	Rs 250/- (plus Rs. 250/- for SGST)
Other than nil liability	Rs 1,000/- (plus Rs. 1,000/- for SGST)

9. **Reduction in late fees in case of delayed filing of Form GSTR-7**

The CBIC vide Notification No. 22/2021- Central Tax dated 1st June, 2021 has reduced the amount of late fees payable on delay in furnishing the return in Form GSTR-7 (TDS return) for the month of June, 2021 onwards, to Rs 25 (plus Rs 25/- for SGST) subject to maximum of Rs 1000 (plus Rs. 1000/- for SGST).

10. **No e-invoicing for Government department & local authority**

Notification No. 13/2020-Central Tax, dated 1st June, 2020 has been amended vide Notification No. 23/2021- Central Tax, dated 1st June, 2021 to exempt Government department and local authority from the requirement of issuing e-invoice.

11. **Due date of filing Form GSTR 4 extended upto 31st July, 2021**

The due date of filing of Form GSTR 4 for the financial year 2021-21 has been extended up to 31st July, 2021 vide **Notification No. 25/2021 – Central Tax, dated 1st June, 2021**. This amendment shall be deemed to have come into force with effect from the 31st May, 2021.

12. **Extension of due date for furnishing declaration in Form GST ITC-04**

Notification No. 11/2021- Central Tax, dated 1st May, 2021 has been amended vide **Notification No. 26/2021- Central Tax, dated 1st June, 2021** to extend the time period for furnishing the declaration in Form GST ITC-04 (job work movements) for the period January 2021 to March, 2021, up to 30th June, 2021. This amendment shall be deemed to have come into force with effect from the 31st May, 2021.

13. **Extension granted for specified compliances falling due between 15.04.2021 to 29.06.2021 till 30.06.2021**

Notification No. 14/2021- Central Tax, dated 1st May, 2021 has been amended vide **Notification No. 24/2021- Central Tax, dated 1st June, 2021** to extend the time limit for completion or compliance of any action, by any authority or by any person which falls due during the period from the 15th April 2021 to the 29th June 2021, up to 30th June 2021 subject to some exceptions specified in the notification.

However, the time limit for verification of the registration application by the authorities which falls due during the period from the 1st May 2021 to 30th June 2021 shall be extended up to 15th July 2021.< /span>

Also, in cases where a notice has been issued for rejection of refund claim, in full or in part, and the time limit to issue the order falls due from 15th April 2021 to 29th June 2021 the said time limit shall be extended to fifteen days after the receipt of the reply to the notice from the registered person or 30th June 2021, whichever is later.

Detailed notification can be accessed at: **https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-central-tax-english-2021.pdf**

14. **Amendments in CGST Rules, 2017**

The CGST Rules, 2017 have been amended vide **Notification No. 27/2021- Central Tax dated, 1st June 2021** as under:

i. **Amendment in rule 26:** Companies have been permitted to furnish the return under section 39 in Form GSTR-3B and the details of outward supplies under section 37 in Form GSTR-1 or using invoice furnishing facility (IFF), verified through electronic verification code (EVC) instead of DSC during the period 27< /span>th April 2021 to 31st August 2021.
ii. **Amendment in rule 36(4):** The condition of availing 105% of eligible ITC (i.e., ITC reflecting in GSTR-2A) shall apply cumulatively for the period April, May and June, 2021 while taking credit in Form GSTR-3B for the tax period of June, 2021.
iii. **Amendment in rule 59(2):** A registered person under QRMP scheme may furnish details of outward supplies for the month of May, 2021 using IFF from 1st June, 2021 till 28th June, 2021.

15. **Place of supply of B2B supply of maintenance, repair & overhaul services in respect of ships/vessels notified**

The CBIC vide **Notification No. 03/2021-Integrated Tax dated June 02, 2021** has amended *Notification No. 04/2019- Integrated tax dated September 30, 2019* to notify place of supply for the following service under section 13(13) of the IGST Act, 2017:

Description of services or circumstances	Place of Supply
Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service.

This notification shall come into force with effect from 2nd June, 2021.

16. **Time of payment of tax for a builder promoter in case of a joint development agreement (JDA)**

The CBIC vide **Notification No. 03/2021- Central Tax (Rate), dated 2nd June, 2021** has amended *Notification No.06/2019- Central Tax (Rate), dated the 29th March, 2019* to make the following amendment s in the said notification:

i. for the words "in whose case the liability to", the words ", who shall" shall be substituted;
ii. for the words "shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier", the words "in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls" shall be substituted.

This notification shall come into force with effect from 2nd June, 2021.

Parallel amendment has been made for IGST vide **Notification No. 03/2021- Integrated Tax (Rate), dated 2nd June, 2021**

As per GST Council recommendation, the above amendment will allow the developer promotor to pay GST relating to such apartments any time before or at the time of issuance of completion certificate.

About Us:

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients. Each Partner is specialized in different service area. The services are structured differently in accordance with national laws, regulations, customary practice, and other factors. We continuously strive to improve these services to meet the growing expectations of our esteemed customers.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.

For more information, please visit www.vishnudaya.com

In case of any clarification please reach us:

Particulars	Name	Mail ID	Mobile Number
Indirect Taxes	Dayananda K	daya@vishnudaya.com	+91 9845 025 682
Indirect Taxes	Vinayak Hegde	vinayaka@vishnudaya.com	+91 9902 586 492
Direct Taxes	Shankar D	shankar@vishnudaya.com	+91 9880 715 963
Direct Taxes	Anju Eldhose	anju.eldhose@vishnudaya.com	+91 9496 148 918
Direct Taxes	Manjula A	manjula@vishnudaya.com	+91 9740 854 009

Our Offices:

Bangalore	Chennai
GF No. 7 & 3rd Floor, Karuna Complex, No. 337 Sampige Road, Malleshwaram Bangalore – 560 003 Tel +91 80 2331 2779 Fax +91 80 2331 3725	No. 3A, 3rd Floor Amber Crest Apartment (Next to Egmore Ashoka Hotel) Pantheon Road, Egmore Chennai – 600 008 Tel +91 44 2855 4447 Fax +91 44 2855 3521