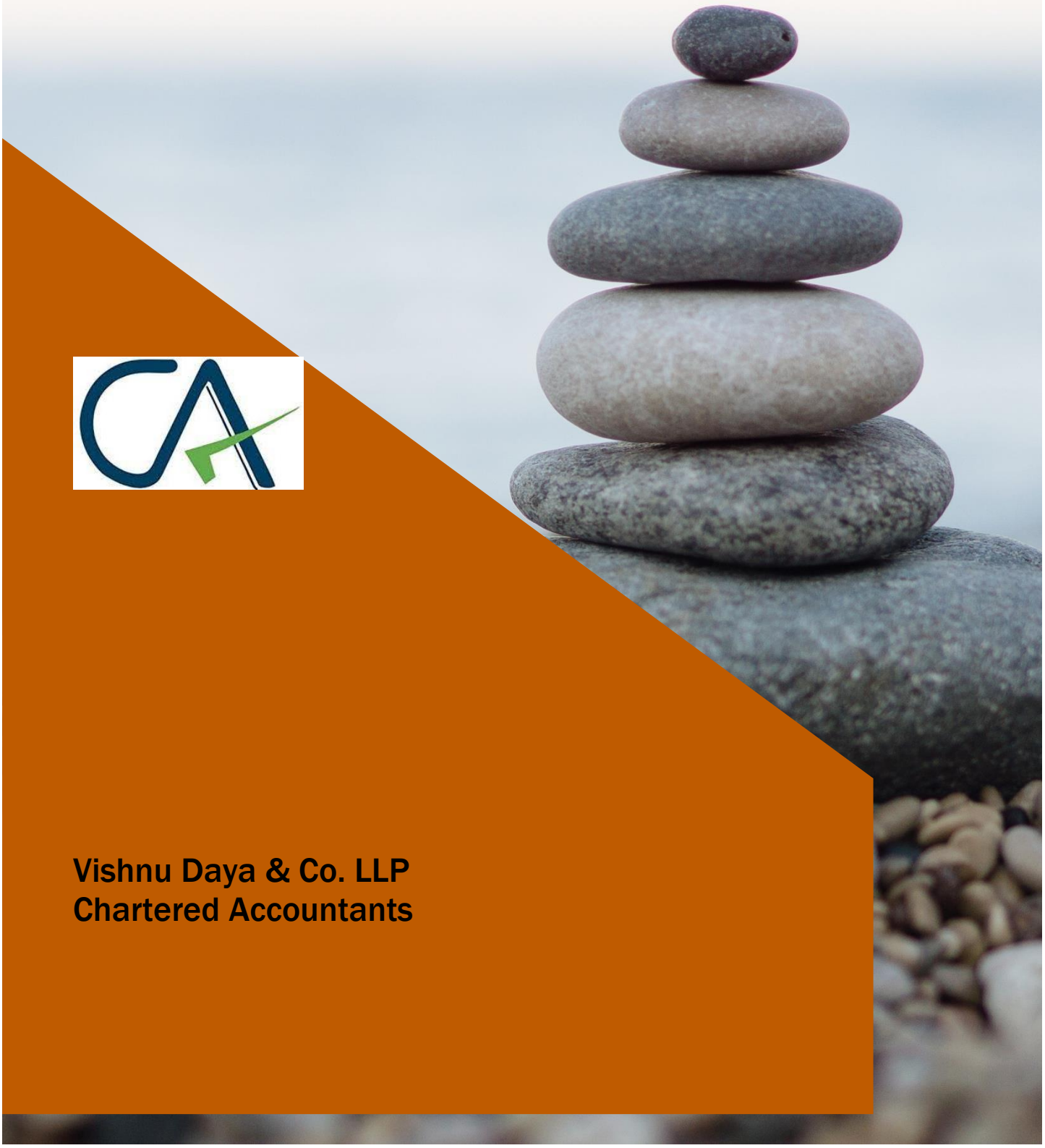
Newsletter August 2021



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Direct Tax – Circulars

Circulars issued by CBDT in the month of July 2021

1. CBDT issues guidelines on partnership firm taxation u/s 45(4), 9B.

Circular No. 14 / 2021, dated 2nd July 2021.

CBDT issues Circular No. 14 / 2021 prescribing guidelines u/s 9B and 45(4) aimed at removing difficulties in the implementation of these provisions inserted by Finance Act, 2021 w.e.f. Apr 1, 2021.

As per the guidelines, the attribution of amount taxed u/s 45(4) is to be made to capital assets forming part of block of assets, clarifies that Rule 8AB (Notification no. 76 dated Jul 02,2021) applies to capital assets forming part of the block. Further clarifies that in case the capital asset remaining with the specified entity is forming part of block of assets, amount attributed to such capital assets u/r 8AB shall be reduced from the sale consideration received or accruing as a result of subsequent transfer of such asset by the specified entity. The net value of consideration shall be reduced from the WDV of such block u/s 43(6)(c) or for purpose of computation of capital gains u/s 50.

Circular highlights that there is no actual cost element to the assessee in case of revaluation and thus, depreciation will not be admissible on revaluation component, also state that depreciation will not be admissible in case of self-generated assets, since actual cost in these cases is Nil.

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

Direct Tax - Notifications

Notifications issued by CBDT in the month of July 2021

1. **CBDT notifies Rules on capital gains for Firms u/s 45(4).**

   Notification no. 76 /2021, dated 2nd July 2021.

   CBDT notifies Income Tax Amendment (18th Amendment) Rules, 2021. Inserts sub-rule (5) to Rule 8AA and Rule 8AB in the Income-tax Rules, 1962.

   Rule 8AA(5) provides the conditions in which the amount chargeable to tax in the hands of specified entity u/s 45(4) shall be deemed to be a transfer from short term capital asset or from a long term capital asset. Rule 8AB provides, for the purpose of section 48(iii), the method of attribution of taxable amount to the capital assets remaining with the specified entity where the money and fair market value of capital assets received by the specified person are in in excess of his capital account balance. Provides that no attribution is required when amount u/s 45(4) does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill or relates only to the capital asset received by the specified person.

   Clarifies that revaluation of assets would not entitle specified entity for depreciation on the increased value of assets and that the amount u/s 45(4) shall relate to the revaluation of capital asset if it is based on a registered valuer's report. Prescribes Form 5C to be furnished electronically on or before due date of filing of return by the specified entity with the details of amount attributed to capital asset remaining with it. Procedure for filing of Form 5C shall be prescribed by Pr. DGIT (Systems) or DGIT (Systems)

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

2. **CBDT extends time for processing refunds in non-scrutiny cases for AY 2017-18 upto September 30.**

   CBDT order F. No. 225/98/2020/ITA-II, dated 5th July 2021.

   CBDT passes order u/s 119 to address taxpayer's grievance regarding refund claim for AY 2017-18 where the returns were not picked up for scrutiny and time limit of processing of return u/s 143(1) expired leading to pendency in generation of refunds. Extends time to process returns for AY 2017-18 upto Sep 30, 2021. Exceptions are: (i) returns selected for scrutiny, (ii) unprocessed returns with demand payable or likely to arise, (iii) non-processing of return attributable to Assessee.

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

3. **CBDT notifies Rule 8AC for STCG, WDV computation u/s 50 involving goodwill depreciation.**

   Notification no. 77/2021, dated 7th July 2021.

   CBDT notifies Income Tax (19th Amendment) Rules, 2021 inserting Rule 8AC for computation of short term capital gains (STCG) and written down value (WDV) u/s 50 where depreciation on goodwill has been obtained. Provides that this Rule would be applicable for determining the WDV of the block of the asset and STCG for AY 2021-22 under proviso to section 50.

   Clarifies that in cases where goodwill of the business or profession was the only or one of the assets in the block of 'intangible' asset for which depreciation was obtained by the Assessee for the AY 2020-21, the WDV of such block for AY 2021-22 shall be determined as per section 43(6)(c)(ii). Where the reduction

u/s 43(6)(c)(ii)(B) for AY 2021-22 exceeds the aggregate of: (i) WDV of the block for AY 2021-22 [exclusive of reduction u/s 43(6)(c)(ii)(B)] and (ii) the actual cost of asset falling in the block of intangible asset (other than goodwill) acquired during PY 2020-21, such excess shall be deemed to be STCG.

Where the goodwill being the only asset in the block, on which depreciation was claimed for AY 2020-21, ceases to exist on account of no asset acquired for AY 2021-22, there will not be any capital gains or loss calculated without any prejudice to section 55(3).

Updates that the capital gain/ loss on transfer of Goodwill for AY 2021-22 or subsequent AYs, shall be determined in accordance with the provisions of sections 48, 49 and 55(2)(a).

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

4. CBDT further extends date of filing Forms 15CA/15CB to Aug 15.

Press Release dated 20th July 2021.

CBDT, due to difficulties reported in electronic filing of Forms 15CA/15CB on the portal, extends the date of filing Forms 15CA/15CB to Aug 15, 2021. Taxpayers can now submit the said Forms in manual format to the authorized dealers, advises authorized dealers to accept the Forms till Aug 15, 2021 for the purpose of foreign remittances. States that a facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

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

5. CBDT amends IT Rules on return of income pursuant to amendment u/s 148.

Notification no. 82/2021, dated 27th July 2021.
CBDT notifies Income-tax (20th Amendment) Rules, 2021 that deals with "*Return of income*". Relevant portion of sub-rule (1) after amendment shall read as "*The return of income required to be furnished under sub-section (1) or sub- section (3) or sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) or sub-section (4E) or sub-section (4F) of section 139 or clause (i) of sub-section (1) of section 142* ***or section 148*** *or section 153A relating to the assessment year commencing on the 1st day of April, 2021 shall...* "; Also amends Rule 12(5) which shall now read as "*Where a return of income relates to the assessment year commencing on the 1st day of April,* ***2020*** *or any earlier assessment year, it shall be furnished in the appropriate form as applicable in that assessment year*"

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

6. CBDT notifies omission of numerous Rules, Forms; Pr.DGIT/DGIT(Systems) to specify forms, procedure for e-filing.

Notification no. 83/2021, dated 29th July 2021.

CBDT inserts Rules 130 and 131 in the IT Rules. Rule 130 omits numerous rules and forms prescribed in Appendix II of the IT Rules and provides notwithstanding the omission: (i) any proceeding pending before any income-tax authority, Appellate Tribunal or any court in appeal, reference or revision, shall continue and be disposed of as if rules and forms have not been omitted, and (ii) any agreement entered into, approval given, recognition granted, or order issued under the omitted rules and forms shall be deemed to continue in force as no omission has taken place. Rule 131 provides that Pr. DGIT / DGIT with CBDT's approval may specify any of the forms, orders prescribed in Appendix II to be furnished electronically under digital signature where the return of income is required to be furnished under digital signature and through electronic verification code.

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Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of July 2021

1. **HC: Overturns SB ruling in Nandi Steels; Allows set-off of brought-forward business-loss against capital gain.**

   Nandi Steels Limited [TS-483-HC-2021 (KAR)]

   Karnataka HC overturns ITAT Special Bench ruling that decided against set off of brought forward business loss against capital gains.

   Assessee-Company (Nandi Steels Ltd.) for AY 2003-04 set off brought forward business loss against capital gains arising from sale of land along with building and borewell which was disallowed by the Special Bench. On Assessee's appeal against Special Bench ruling, HC observes that Sec. 72(1) employs the expression "under the head Profits and gains of business or profession" whereas clause (i) of Sec. 72(1) does not use the words "under the head", thus, the "*legislature has consciously left it open that any income from business though classified under any other head can still be entitled to the benefit of set off*";

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

2. **ITAT: 2021 amendments on due date for depositing ESI, PF apply prospectively.**

   Crescent Roadways Private Limited [TS-510-ITAT-2021(HYD)]

   ITAT Hyderabad allows Assessee's appeal, deletes disallowance on account of alleged delay in deposit of employees' contribution towards Provident Fund, ESI.

   For the AY 2015-16, assessee company had remitted employees contribution towards PF, ESI before the due date of filing return u/s 139(1) but after the due date prescribed in the corresponding PF, ESI statutes. Revenue disallowed the amounts on the grounds that they had been remitted after the due date prescribed in the corresponding statute. ITAT holds that the legislative amendments incorporated in sections 36(1)(va) and 43B by Finance Act 2021, are prospective in application i.e., w.e.f. Apr 1, 2021. Thus, holds that disallowance of employees' contributions towards PF, ESI as not sustainable.

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

3. **ITAT: Charges for converting loan from floating to fixed-rate, akin to interest, allowable expenditure.**

   Owens-Corning (India) Pvt. Ltd [TS-517-ITAT-2021(Mum)]

   Mumbai ITAT allows Assessee's appeal, allows deduction of swap charges on conversion of loan from floating rate to fixed rate of interest.

   Assessee-Company availed a loan from a US-based Bank, at floating rate of interest and for AY 2003-04 sought to convert the loan to a fixed interest loan. Assessee was asked to pay certain swap charges for the conversion which Assessee characterized as interest, and claimed them as a deduction u/s 37(1). Revenue contended that on account of such conversion, Assessee would derive a benefit of enduring nature, and disallowed the claim of swap charges.

   ITAT, based on calculation of swap charges, finds it to be in the nature of interest. Observes that interest was allowed by the AO when the loan carried floating rate and holds that the

character of transaction does not change by swapping from floating to fixed rate.

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

4. **ITAT: Denies set-off accumulated losses on amalgamation for non-fulfilment of 75% shareholding u/s 2(1B)(iii) on appointed date.**

Roca Bathroom Products Pvt. Ltd [TS-508-ITAT-2021(CHNY)]

Chennai ITAT dismisses Assessee's appeal, holds Assessee not entitled to carry forward and set off of loss of the transferor company.

Assessee-Company absorbed Espiern Plastics Limited (EPL) and claimed set off of accumulated losses of EPL to the extent of Rs.7.04 Cr. for AY 2014-15. Assessee held 26% shares of EPL as on Apr 1, 2013, balance 74% were bought on Feb 14, 2014 and moved a petition for amalgamation, On Apr 28, 2014, Madras HC sanctioned the scheme of amalgamation with the appointed date of April 1, 2013.

On Assessee's claim of set off of accumulated losses of EPL, Revenue held that requirements of section 2(1B) were not fully satisfied on the court appointed date and therefore the Assessee was not entitled to claim carry forward and set off of loss u/s 72A which was upheld by CIT(A).

ITAT notes Assessee's submission that the shareholders of amalgamating company would be vested with the right/interest arising from the scheme of amalgamation only upon scheme becoming effective and pleaded effective date has to regarded for compliance of conditions specified u/s 2(1B)(iii).

ITAT observes "*It is settled law that once amalgamation is approved, the amalgamating company ceasing to exist, it can't be regarded as a person u/s. 2(31) of the Act against whom assessment proceedings can be initiated or an order of assessment passed. Therefore, appointed date, 01.04.2013, is crucial in this case*".

ITAT finds that it was not in dispute that Assessee was holding only 26% of equity shares in EPL as on Mar 31, 2003. ITAT holds, "*since the assessee company did not have 3/4th of the shares of the transferor company as on 31.03.2013, the appointed date being 01.04.2013, the assessee is not entitled to the claim of carry forward and the set off of loss of the transferor company as on 31.03.2013*".

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

5. **HC: Revenue expenditure deferrable only when specified. Allows one-time lease rent on crystallization.**

Coforge Limited (Formerly Known As NIIT Technologies Ltd) [TS-527-HC-2021(DEL)]

Delhi HC allows Assessee's appeal, holds expenditure to be spread over a time span only when so provided in law.

Assessee-Company, Coforge Limited (formerly, NIIT Tecnologies Ltd) during AY 2007-2008 executed a lease deed with Greater Noida Industrial Development Authority (GNIDA) for 90 years. The Assessee, under the lease deed had an option either to pay annual rent of Rs.7.08 lacs during the tenure of the lease, or pay a commuted and discounted one-time lease rent of Rs.77.98 lacs, which was 11 times the annual lease rent. Assessee opted to pay the commuted lease rent claimed it as business expenditure.

AO disallowed the lease rent on the basis that it resulted in enduring benefit and thus was classifiable as capital expenditure. CIT(A) deleted the disallowance and held that the expenditure was incurred wholly and exclusively for business purpose. ITAT accepted classification of the commuted lease rent as revenue expenditure but directed it to be spread over the tenure of the lease, i.e., 90 years by applying the matching principle of accounting.

HC accepted Assessee's argument that there is no concept of deferred revenue expenditure under the Act and observes that an expenditure can be spread over a time span only if it is so provided in the Act. Refers to SC ruling in Taparia Tools Ltd wherein it was held, "*It has been explained in various judgments that there is no concept of deferred revenue expenditure in the Act except under specified sections, i.e. where amortization is specifically provided, such as Section 35-D of the Act*".

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6. ITAT: Upholds revision over veracity of donations, inadequacy of FCRA Form-FC6.

Alimaan Charitable Trust [TS-505-ITAT-2021(Mum)]

Mumbai ITAT dismisses Assessee's appeal, upholds CIT's revisionary order for AY 2015-16.

Assessee-Charitable Trust filed its return of income disclosing "nil" income, was assessed u/s 143(3) whereby the AO accepted the returned income. CIT observed that Assessee's case was picked up for scrutiny u/s 143(3) on account of: (i) receipt of donations and (ii) incurring huge expenditure on charity, CIT noting that the assessment had been concluded in a perfunctory and routine manner, passed a revision order u/s 263, directing the AO to conduct a fresh assessment. Assessee challenged the CIT's exercise of revisionary jurisdiction.

ITAT observes that during the year, Assessee received foreign donations aggregating to Rs.11.97 Cr., notes that despite repeated call for information relating to donors in assessment as well as revisionary proceedings, the Assessee has failed to furnish complete details. ITAT further notes that Form FC 6 under Foreign Contribution (Regulation) Act, 2010 (FCRA) as submitted by the Assessee in respect of foreign donations contains inadequate particulars restricted only to the country from where donation is received. Notes CIT's observation that the Form FC 6 is for RBI verification, and more powers are vested with the AO to verify the genuineness and veracity of foreign donations. ITAT finds no infirmity with the CIT's order, upholds the same, and directs the AO to carry out fresh assessment.

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7. ITAT: Alteration of book profit for MAT beyond AO's powers. Follows Apollo Tyres.

Tikaula Sugar Mills Ltd [TS-531-ITAT-2021(DEL)]

Delhi ITAT holds that the book profit as per accounts maintained in terms of Part II and III of Schedule VI of Companies Act, 1956, certified by the accountant is binding on the AO and re-computation u/s 115JB is not allowable.

Assessee declared book profit after providing for liability for administrative charges by imposed by Excise department forming part of rates & taxes, part of which related to previous AYs 2007-08 and 2008-09, for AY 2012-13. Assessee stated that due to stay order imposed by the Allahabad HC on recovery of administrative charges by the Excise department, no provision was created in earlier years until receipt of SC's order directing to deposit the entire amount due to the State while continuing to maintain the account every year. Revenue rejected Assessee's treatment of reducing the amount of book profit with the amount of provision created even for prior period. ITAT observes that the accounts of the Assessee are audited, complying with the accounting standards in terms of Sec. 211(3C), of the Co. Act giving a true and fair view book profit. Accepts Assessee's submission that prior period expenses/liabilities are to be adjusted in computing the net profit u/s 115JB.

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8. **ITAT: Denies TDS credit, corresponding income not offered to tax. Allows Revenue's appeal.**

Sasken Network Engineering Limited [TS-539-ITAT-2021(Bang)]

Bangalore ITAT allows Revenue's appeal, disallows Assessee's claim for TDS credit.

Assessee-Company filed its return of income for AY 2007-08 declaring income of Rs. 3.05 Cr. and claimed TDS credit of Rs. 1.21 Cr., Assessee's case was selected for scrutiny and during the course of assessment proceedings, Assessee filed certificates depicting TDS of Rs. 1.13 Cr., which were received after the due date of filing of return. Tax of Rs.1.13 Cr. was deducted by Nokia on placing of purchase orders with the Assessee for which income had not accrued to the Assessee and, thus was not offered to tax in the return of income.

ITAT observes that Rs. 20.32 Cr. being income corresponding to TDS was not accounted for by the Assessee due to differences in accounting policies of the Assessee and the deductor. ITAT notes that after amendment of section 199 by the Finance Act, 2008, "*credit is to be given as per the provisions made in the Rules. In terms of section 199, Rule 37BA provides that credit for tax deducted at source and paid to the Central Government shall be given for the Assessment Year for which such income is assessable. In case the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportionate in which the income is assessable to tax.*" ITAT remarks that CIT(A) allowed relief to the Assessee on the basis that refund to the deductor was not possible whereas CBDT Circular No. 2/2011 allows deductor to claim refund of excess TDS from the AO.

ITAT finds the rulings relied upon by the Assessee to be factually distinguishable and disallows TDS credit to the Assessee.

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

9. **ITAT: Fee u/s 234E not imposable for delay prior to the year 2015 amendment in Sec.200A(1)(c).**

Raj Veer Singh [TS-545-ITAT-2021(DEL)]

Delhi ITAT allows Assessee's appeal, holds that the order passed by CIT(A) confirming late fee levied u/s 234E to be legally unsustainable.

Assessee-Individual, a civil contractor, filed his TDS statements for the quarter ending Mar 31, 2015 on Oct 30, 2015. AO raised a demand u/s 234E for delay in filing the TDS statements. On appeal, CIT(A) confirmed the demand.

ITAT observes the relevant provisions and the amendment to section 200A(1) by Finance Act, 2015 by insertion of clause (c) and notes that prior to it, there was no enabling provision for making adjustments on account of levy of late fee u/s 234E.

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10. **ITAT: Holds product development expenditure entirely capital, eligible for claiming depreciation.**

Sogefi Engine Systems India Private Limited [TS-569-ITAT-2021(Bang)]

Bangalore ITAT holds entire R&D expense to be capitalised as an intangible asset eligible for depreciation as against Assessee's claim of treating 70% of expenditure as capital and remaining 30% as revenue.

Assessee Company, manufacturer of different types of filers primarily for automotive industry, had incurred certain R&D expenditure and followed an accounting practice of capitalizing 70% of the expenses and claiming 30% as revenue expenses.

The expenses were incurred against technical services and assistance provided by its Sogefi

SAS, France (Assessee's AE holding) as cost of the personnel and other costs linked to product development projects which were in the nature of FTS and were subjected to TDS u/s 195.

ITAT observes that the expenses "*was incurred for securing enduring benefit which is for a longer period not pertaining to a single year when it was incurred for ... the benefit of R&D is not for running business, but for securing advantage in the capital field and it was not established by the assessee that it was incurred out of circulating capital*". ITAT thus, holds the expenditure to be capital in nature and eligible for depreciation.

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11. **ITAT: Rejects DEPB incentives as adjustment for ALP-computation, cites overriding-effect on Chapter-X application**

Nava Bharat Ventures Ltd [TS-314-ITAT-2021(HYD)-TP]

Hyderabad ITAT accepts Revenue's plea, rejects inclusion of DEPB as adjustment for "ALP" computation for AY 2013-14, states that it tends to have an overriding effect on application of Chapter-X as per stricter interpretation rule.

CIT(A) had considered assessee's plea that its DEPB benefits derived from sale of Silico Manganese Ferro Chrome deserved to be considered as adjustment under Rule 10B(1)(a)(ii) and thereby directed AO to consider the same. Finding no merit in assessee's plea, ITAT clarifies that it deals with Chapter-X under the 'special provision relating to avoidance of act' introduced as an anti-avoidance measure by the legislature.

Cites legal maxim 'Generalia Speialibus Non-Derogant' [meaning that a general provision does not apply at the cost of the special one or the former of them must make way for the latter]. Opines that assessee's arguments go against ALP definition u/s.92F(ii) which states that ALP means '*a price which is applied or proposed to be applied in a transaction between persons other than associate enterprises, in uncontrolled conditions' only*. Accordingly, ITAT rejects assessee's plea seeking inclusion of DEPB as an adjustment for "ALP" computation and thereby rules in Revenue's favour.

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

12. **ITAT: Describes the essence behind application of various qualitative & quantitative filters like export sales less than 75% revenue, RPT more than 25% and persistently loss making company for determining ALP**.

Citicorp Services India Ltd [TS-299-ITAT-2021(Mum)-TP]

Mumbai ITAT rules on application of filters for determination of ALP for assessee (engaged in support service and shared support services to various affiliates) for AY 2010-11.

ITAT with respect to export sales less than 75% revenue filter, notes that assessee is a captive service provider and that assessee's ITES segment is mainly catering to export market. Accordingly, ITAT holds that "*there is absolutely no harm in learned TPO applying the filter by rejecting the companies having export sales less than 75% of its total sales*".

So far as RPT is filter is concerned, ITAT negates the contention of the assessee that RPT filter more than 25% would be advantageous in price negotiated between related parties for the purpose of determination of ALP and accordingly, renders the application RPT more than 25% as a valid filter.

Lastly with respect to application of persistently loss making company filter, notes that AY 2010-11 is assessee's first year of operation and that assessee is bound to incur

losses and therefore, assessee indeed is justified in comparing the companies which had incurred losses during the year under consideration. Accordingly, ITAT holds loss-making company per se cannot be eliminated for the purpose of comparability and that this filter applied by TPO would not be a valid filter for the purpose of comparability of benchmarking analysis vis-à-vis assessee and the CIT(A) has rightly rejected this filter applied by the TPO.

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13. **ITAT: Holds corporate guarantee as international-transaction. Determines commission at 0.9%.**

GOCL Corporation Limited [TS-280-ITAT-2021(HYD)-TP]

Hyderabad ITAT adjudicates on TP-adjustment made in respect of corporate guarantee for AYs 2012-13 and 2013-14.

Assessee submitted that a corporate guarantee is a shareholder's activity which has been wrongly treated as an international transaction u/s. 92B read with Explanation inserted by the Finance Act, 2012 w.e.f 01-04-2002. Assessee further pleaded that such a corporate guarantee furnished in AY 2012-13 could not fall u/s. 92B since the foregoing Explanation came to be inserted vide Finance Act, 2012 as against FY involved herein i.e. 2011-12.

ITAT rejects the said plea by referring to Madras HC ruling in Redington India Pvt Ltd which settled the law that a corporate guarantee indeed forms an international transaction and covered by the Explanation to Sec. 92B with retrospective effect as well. Separately, for both AYs, ITAT directs corporate guarantee commission to be adopted at 0.9%.

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

14. **ITAT: Grants deduction towards foreign exchange loss. Deletes TP-addition made w.r.t marketing service fees.**

Sabre Travel Technologies Pvt Ltd [TS-298-ITAT-2021(Mum)-TP]

Mumbai ITAT rules on comparables selection, TP-adjustment made on account of marketing service fees and deduction towards foreign exchange loss in respect of assessee's marketing support services for AY 2013-14.

Accepts assessee's plea and excludes 4 companies citing functional dissimilarity, unavailability of segmental details etc, follows coordinate bench ruling in assessee's own case for AY 2012-13.

ITAT deletes TP-addition of Rs.2 crores made on account of marketing service fees, follows coordinate bench ruling in assessee's own case for AY 2012-13 wherein similar addition made by TPO purely on presumptions was deleted.

Lastly, ITAT directs AO to grant deduction towards foreign exchange loss amounting to Rs.19.49 crores, relies on coordinate bench ruling for AY 2012-13 wherein it was noted that foreign exchange loss arose during regular course of business.

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15. **ITAT: Finds TP-adjustment on royalty-payments devoid of evidence. Follows earlier order.**

Expeditors International (India) Pvt Ltd [TS-269-ITAT-2021(DEL)-TP]

Delhi ITAT adjudicates on TP-adjustment on royalty payments for assessee (providing logistic services) for AY 2006-07, 2007-08, 2008-09. TPO made an addition by determining the ALP of Royalty at Nil by holding that royalty payment was for incidental benefit and not for intra group

services and since no intra group services were found to exist and the arrangements were not subjected to ALP, thereby made TP-adjustments of Rs.18.11 crores, Rs.21.33 crores and Rs.20.38 crores for AYs 2006-07, 2007-08, 2008-09 respectively.

ITAT states that TPO/DRP erred in treating ALP at Nil by ignoring the entire evidence brought on record by the assessee without analysing or bringing on record evidence to prove that no material benefit had been received by the assessee or that assessee's business could be managed and operated by exclusion of various technical operating and strategic services extended by the AE. Accordingly, ITAT rules in assessee's favour and against Revenue.

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

Due Date	Form	Period	Comments
07.08.2021	Challan No. ITNS-281	July 2021	Due date for deposit of Tax deducted/collected for the month of July, 2021.
14.08.2021	TDS Certificate	June 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in the month of June, 2021
15.08.2021	TDS Certificate	June 2021	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2021
15.08.2021	ECR	July 2021	PF Payment for July 2021
15.08.2021	ESI Challan	July 2021	ESIC Payment for July 2021
30.08.2021	TDS challan - cum - statement	July 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under 194-IA / 194-IB / 194M for the month of July, 2021
31.08.2021			Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 without additional charge.
31.08.2021			Filing objections to Dispute Resolution Panel /Assessing Officer u/s 144C
31.08.2021	Form 10A / 10AB		Filing application u/s 10(23C), 12AB, 35(1)(ii)/(iia)/(iii) and 80G in Form No. 10A/ Form No.10AB

MCA Updates

1. **Spending CSR funds for COVID-19, for non-employees, 'eligible CSR activity.**

   MCA clarifies that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management. MCA states that companies may undertake the aforesaid activity subject fulfilment of CSR Policy Rules, 2014 and the MCA circulars related to CSR issued from time to time.

2. **Amendments pertaining to change of company's name to be effective from September 1.**

   Central Government appoints September 1, 2021 as the date on which the provisions of Sec. 4 of the said Companies (Amendment) Act, 2020 shall come into force. Section 4 of the Amendment Act envisages amendments to Sec. 16 of the Companies Act, 2013, inter alia provides that Central Govt. may direct a company to change its name and the company shall change its name or new name, within a period of 3 months (earlier, 6 months) from the issue of such direction, after adopting an ordinary resolution for the purpose.

   Further lays down that if a company is in default in complying with any direction given u/s 16(1), the Central Govt. shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter.

3. **MCA issues norms for allotting new name to company on non-compliance with RD's direction.**

   MCA inserts a new Rule under Companies (Incorporation) Rules, 2014, to *inter alia* provide that in case a company fails to change its name in accordance with direction issued by Regional Director u/s 16(1) of the Companies Act within 3 months, the letters "ORDNC" (Order of Regional Director Not Complied), the year of passing of direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company.

   MCA Specifies that the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C. However, stipulates that the aforesaid provision won't apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of 3 months from the date of issue of direction, unless the said e-form is subsequently rejected. Further lays down that a company whose name has been changed as above, shall at once make necessary compliance with the provisions of Sec. 12 of the Act and the statement, "Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)" shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved.

   Also notifies the format of Form No.INC-11C, i.e. Certificate of Incorporation pursuant to change of name due to Order of Regional Director not being complied with.

FEMA Updates

1. New Definition of Micro, Small and Medium Enterprises - Addition of Retail and Wholesale Trade.

In this connection, Ministry of Micro, Small and Medium Enterprises vide Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021, has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them:

45	Wholesale and retail trade and repair of motor vehicles and motorcycles
46	Wholesale trade except of motor vehicles and motorcycles
47	Retail trade except of motor vehicles and motorcycles

The Enterprises having Udyog Aadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

Read / download the Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021.

2. Liberalized Remittance Scheme for Resident Individuals – Reporting:

AD bank were required to upload the data in respect of number of applications received and total amount remitted under LRS on Online Return Filing Scheme (ORFS).

It has now been decided to collect this information in XBRL system instead of the ORFS. AD Bank shall upload the requisite information on XBRL system on or before 5th of succeeding month from Jul 01, 2021 onwards.

Liberalised Remittance Scheme of India

3. Review of Foreign Direct Investment (FDI) policy on petroleum & natural gas sector

The Government of India has reviewed the extant FDI policy on Petroleum & Natural Gas sector and has made the following amendment in the Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy):

A new Para 5.2.4.3 is inserted under Para 5.2.4 of the FDI Policy. Accordingly, Para 5.2.4 of FDI Policy is amended to be read as under:

5.2.4 Petroleum & Natural Gas

Sector/Activity	*% of Equity/FDI Cap*	*Entry Route*
5.2.4.1 Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	*100%*	Automatic
5.2.4.2 Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic

Notwithstanding anything contained at Para 5.2.4.2 above, foreign investment up to 100% under the automatic route is allowed in case an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government

The above decision will take effect from the date of FEMA notification. (DPIIT File No.: 15(5)/2020-FDI Policy, dated 29.07.2021.)

Indirect Tax Updates

GST Notifications & Circulars

1. CBIC has waived off the amount of penalty payable by any registered person under section 125 of the CGST Act, 2017 for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020 **(i.e., Dynamic Quick Response (QR) code)** between the period from the 1st day of December, 2020 to the 30th day of September, 2021.

Click here to read/download Notification No. 28/2021– Central Tax dated 30th June, 2021.

Click here to read/download Notification No.14/2020 – Central Tax, dated the 21st March.

2. Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021

The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."

GST Council, while providing various relaxations in the compliances for taxpayers, also recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply.

Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter.

On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorized as follows:

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers: -**These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities: -** The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by

those extensions of time granted by the statutes or notifications, if any.

(c) <u>Appeals by tax-payers / tax authorities against any quasi- judicial order: -</u> Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

Click here to read/download Circular No. 157/13/2021-GST Dated 20th July, 2021.

3. Amendments in sections 35(5) and 44 of the CGST Act, 2017 have come into force from 1st August, 2021

- Section 110 seeks to omit section 35(5) of CGST Act, 2017 thereby doing away with the requirement of getting accounts audited by a CA or CMA and submission of copy of audited annual accounts, the reconciliation statement under section 44(2) and such other documents as may have been prescribed.

- Section 111 seeks to substitute section 44 of CGST Act, 2017 implying that now the taxpayers, other than an ISD, a person paying tax under section 51 or section 52, CTP and NRTP can furnish an annual return which may include a **self-certified reconciliation statement.**

  - Additionally, the Commissioner may on the recommendations of Council exempt any class of registered persons from filing annual return under this section.
  - Furthermore, the due date for filing annual return which was earlier prescribed as December 31 of every year in section 44 has now been amended in a manner that the same will be specified in the prescribed manner under rules.

Click here to read / download the Notification No. 29/2021 – Central Tax dated 30th July, 2021.

4. Taxpayers having AATO upto Rs. 2 crores exempt from the requirement of furnishing annual return for FY 2020-21

The first proviso to amended section 44 of the CGST Act, 2017 empowers the Commissioner to exempt, on the recommendations of the Council, any class of registered persons from filing annual return.

Accordingly, the Commissioner, on the recommendations of the Council, has exempted the registered person whose aggregate turnover in the financial year 2020-21 is upto two crore rupees, from filing annual return for the said financial year.

Click here to read / download the Notification No. 31/2021 – Central Tax dated 30th July, 2021.

5. Amendments in CGST Rules, 2017

Pursuant to the amendments made in section 35(5) and 44 of the CGST Act, 2017 getting notified from 1st August, 2021, consequential amendments have been made in rule 80 of the CGST Rules, 2017 and Forms GSTR-9 and GSTR-9C.

With effect from 1st August, 2021, rule 80 has been substituted to provide that-

- Every registered person, other than an input service distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return for every financial year as specified under section 44 electronically in Form GSTR-9 **on or before 31st December following the end of such financial year** through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

- A person paying tax under section 10 shall furnish the annual return in Form GSTR-9A.

- Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in Form GSTR - 9B.

- Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year **exceeds five crore rupees**, shall also furnish a **self-certified reconciliation statement** as specified under section 44 in Form GSTR-9C along with the annual return referred to in sub-rule (1), **on or before 31st December following the end of such financial year**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

  The detailed notification providing the amendments in Forms GSTR-9 & GSTR-9C can be accessed at ***Notification No. 30/2021 – Central Tax dated 30th July, 2021***

GST Case Law

6. M/s. F1 Auto Components P Ltd Vs the State Tax officer, Chennai before HC of Madras (W.P. No.6631 of 2021 and WMP No.7188 of 2021) dated 09/07/2021:

The challenge is to order dated 27.01.2021 levying interest under Section 50 of the Central Goods and Services Tax Act, 2017 (in short 'Act') relating to both interest on cash remittances as well as remittances by way of adjustment of electronic credit register.

As far as the second limb of the levy is concerned, it is covered by a decision in the case of *Maansarovar Motors Private Limited V. The Assistant Commissioner, Poonamallee Division, Chennai* (W.P.Nos.28437 of 2019 etc. batch order dated 29.09.2020). Both learned counsel concur on the position that in the light of the aforesaid decision, the levy to this extent is to be set aside and it is hence accordingly set aside.

As far as levy of interest on cash remittance is concerned, learned counsel for the petitioner only relies on the provisions of Section 42 of the Act which provides for a notice to be issued by the Assessing Authority in the case of mismatch of particulars at the end of the assessee, vis-a-vis, particulars/details furnished in the returns of the selling/purchasing dealer.

In this case, the provisions of Section 42 are not relevant, insofar as the impugned order itself records that the assessee has, on receipt of intimation of the wrongful claim of input tax credit (ITC), accepted the error in claim and has reversed ITC, both attributable to CGST and SGST through voluntary payment of tax in Form GST DRC-03.

The provisions of Section 42 can only be invoked in a situation where the mismatch is on account of the error in the database of the revenue or a mistake that has been occasioned at the end of the revenue. In a case where the claim of ITC by an assessee is erroneous, as in this case, then the question of Section 42 does

not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

As far as the levy of interest on belated cash remittance is concerned, it is compensatory and mandatory and the levy is upheld to this extent. The impugned order is modified to the extent as indicated above and this writ petition stands disposed.

Click here to read/download the case law.

Customs Circulars

7. Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs

The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.

Accordingly, as recommended by the GST Council, it is clarified that notification Nos. 45/2017-Customs and 46/2017-Customs, both dated the 30th of June, 2017 were issued to implement the decision of the GST Council taken earlier, that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43rd Meeting, a clarificatory amendment has been made in the said notifications, vide notification Nos. 36/2021-Customs and 37/2021- Customs, both dated 19th July, 2021, without prejudice to the leviability of IGST, as above, on such imports as it stood before the amendment.

Click here to read/download Circular No. 16/2021-Customs dated 19th July, 2021.

Foreign Trade Policy

8. The Director General of foreign trade policy has made the following amendments in hand book of procedures 2015-20:

(i) Validity period for import and Revalidation of Authorization:
For Advance Authorizations issued on or after IS.08.2020 and not covered under Para 4.41 (b) above, only one revalidation for twelve months from expiry date shall be allowed. No further revalidation would be allowed for such authorizations. The provision for revalidation as under Para 4.41 (c) shall also not be applicable for such Advance Authorizations. Applications for any such revalidation may be submitted online to the concerned Regional Authority on or after 0l.08.2021.

(ii) Existing Paras 4.51 and Para 4.57 are replaced with the new Paras as mentioned below:

4.51 Maintenance of Proper Accounts: Every Advance Authorization holder shall maintain a true and proper account of consumption and utilization of duty free imported 1 domestically procured goods against each authorization as prescribed in Appendix 4H or 41, as applicable. These records are required to be filed online at the beginning of each licensing year for all those authorizations, which have been redeemed in previous licensing year. The same may be submitted on the DGFT Website under Dashboard----Repository->- - CA/CE Repository.

4.57 Maintenance of proper accounts of import and its utilization: Original DFIA holder shall maintain a true and proper account of consumption and utilization of duty free imported/domestically procured goods against each authorization as prescribed III Appendix 4H. These records are required to be filed online to Regional Authority concerned

along with request for bond waiver / transferability.

Click here to read/download Public Notice No. 16/2015-2020 New Delhi, Dated 22nd July, 2021

9. Acceptance, Processing and issuance of claims under MEIS, SEIS, ROSL, ROSCTL in the DGFT IT Modules

DGFT has Informed the Members of Trade and industry that issuance of benefits/scrips under MEIS, SEIS, ROSL and ROSCTL Schemes would be on hold for a temporary period due to changes in the allocation procedure. During this period, no fresh applications would be allowed to be submitted at the online IT module of DGFT for these schemes and all submitted applications pending for issuance of scrips would also be on hold.

Click here to read/download Trade Notice No.08/2021-22 dated 08th July, 2021.

10. The Foreign Trade Policy (2015-2020), was extended till 30 September 2021. In order to prepare a new five-year Foreign Trade Policy, suggestions/inputs are invited from various stakeholders. To collate, analyze and for ease of processing the suggestions/inputs received, a Google Form has been created on the following link:

https://bit.ly/3khHEI2

The above link shall be valid up to 31.7.2021.

Click here to read/download Trade Notice No. 09/2021-22 dated 16th July, 2021.

11. The Government has extended the due date for availing the benefits under Karasamadhana Scheme, 2021 till **31/08/2021.**

Click here to read/download Government order No. FD 49 CSL 2021, dated 29-03-2021.

IDT Legal Rulings

1. Origin Learning Solutions Pvt Ltd Vs CST

ST - Appellants are engaged in providing Information Technology Services and are also exporting the same - Refund claim u/r 5 of Cenvat Credit Rules, 2004 for the period July 2013 to September 2013 was allowed by the original authority but in Revenue appeal, the Commissioner (Appeals) set aside the order and held that the refund sanction is erroneous - Appeal to CESTAT - Appellant submits that the refund was claimed of the credit availed of the service tax paid on input services; that they had discharged the said service tax on input services under reverse charge mechanism but although the availment of credit was properly accounted, they omitted to mention the same in their ST-3 returns; that on this ground the department had filed appeal and the refund was denied.

Held: The department does not have a case that the appellants are not eligible for the credit - However, the credit is being denied merely for the reason that the same was not reflected in the ST-3 returns - The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per rule 5 of Cenvat Credit Rules, 2004 - The appellants have properly accounted in their books of account and not mentioning the credit availed in ST-3 returns is only a procedural lapse, which can be condoned - Appellants are eligible for refund as claimed - Impugned order is set aside and appeal is allowed with consequential relief: CESTAT. [para 5, 6]

- Appeal allowed: Chennai CESTAT

2. 2021-TIOL-414-CESTAT-DEL

Glossy Colour And Paints Vs CCT

ST - Interest on refund - The issue is no longer res integra and in the case of J.K. Cement , the Tribunal following the ruling of Supreme Court in case of Sandvik Asia Pvt. Ltd. 2006-TIOL-07-SC-IT as well as of the Allahabad

High Court in case of Hello Mineral Water (P) Ltd. 2004-TIOL-57-HC-ALL-CX held that interest is payable from the date of deposit till the date of grant of refund - Further, Division Bench of Tribunal in Parle Agro Ltd. 2017-TIOL-1406-CESTAT-ALL has held that interest is payable @ 12%, following the ruling of Supreme Court in the case of Sandvik Asia Ltd. - Accordingly, impugned order is set aside - The appellant is entitled for interest @ 12% p.a. from the date of deposit till the date of refund: CESTAT

- Appeal allowed: Delhi CESTAT

3. 2021-TIOL-413-CESTAT-KOL

Petro Carbon And Chemicals Pvt Ltd Vs CCGST & CX

CX - The issue arises for consideration is, whether the appellant is entitled to Cenvat credit of Service Tax paid by it on the freight component in relation to transport of goods from non-taxable territory to India when as per the lower authorities the said service was exempted from levy of Service Tax during the period when such import of goods took place - The tax was paid and accordingly the appellant had availed Cenvat credit of the same - The issue is no longer res integra in view of judgment of Madras High court in case of Tamilnadu Petroproducts Ltd. 2015-TIOL-2600-HC-MAD-CX - By respectfully following the same, it is held that the appellant cannot be asked to reverse the Cenvat credit availed on tax paid under Reverse Charge basis when the payment is not disputed - Thus, demand on said ground is set aside - Additionally, Revenue has not been able to prove beyond reasonable doubt, the presence of fraud, collusion, wilful misstatement or suppression of facts on the part of appellant - Therefore, imposition of penalty under section 11AC of Central Excise Act, 1944 is unwarranted: CESTAT

- Appeal allowed: Kolkata CESTAT

4. 2021-TIOL-412-CESTAT-MAD

Sattva Cfs And Logistics Pvt Ltd Vs CC

Cus - Penalty - The DRI had issued a SCN on the allegations of seizure of Red Sanders on seven noticees while the proposal against appellant was as to the levy of penalty under Section 114 of Customs Act, 1962 - The penalty levied is invalid, since the Notice issued by DRI is held to be invalid, by Supreme Court in the case of M/s. Canon India Private Limited 2021-TIOL-123-SC-CUS-LB - The Board had thereafter issued an Instruction No. 04/2021-Customs stating that the said instruction is issued specifically in respect of SCN against Shri Anil Aggarwal and 11 others and, in any case, the Instruction cannot override the decision of a three Judge Bench of Apex Court, which is binding as the law of the land - Clearly therefore, there was no jurisdiction with the DRI to issue SCN in question - Accordingly, the impugned order is set aside: CESTAT

- Appeal allowed: Chennai CESTAT

5. 2021-TIOL-1534-HC-KERALA-GST

UoI Vs Merchem India Pvt Ltd

GST - TRAN-1 - Revenue is aggrieved by the direction of the Single Judge to the IT Redressal Committee of the GST Council to consider petitioner's request for the transition of un-availed input tax credit in accordance with law.

Held:

+ It is significant to note that the statute does not provide for any provision for lapsing of unutilized input tax credit for non-filing of TRAN-1. The input tax credit is required by law to be credited to the electronic credit ledger of an assessee. Failure to credit the input tax credit is an infraction of section 140(1) and to Rule 117(3) of the GST Rules. Input tax credit is an asset in the hands of the dealer. A registered dealer had a statutory right under the VAT regime to get refund. Unutilized input tax credit of the erstwhile

regime can be denied from being credited to the electronic credit ledger only under the contingencies mentioned in the proviso to section 140(1). On all other situations, this statutory right cannot be defeated by any procedural rules under the GST regime. [para 8]

+ It is axiomatic that computer literacy has not reached its pinnacle in our country. Technical glitches at the transition stage of GST should not affect above said statutory right of dealers. Attempt must always be made not to deprive a dealer from a bonafide claim, through technicalities. In such instances, the department should have, while assisting the assessees, acted with alacrity and promptness rather than deny bonafide claims. [para 9]

+ The issue raised in this writ appeal being technical in nature, it is only in the interest of all that such technical issues do not stand in the way of rendering justice. The impugned judgment does not reflect any error of law warranting an interference by this Court in appeal. In fact, the impugned judgment of the Single Judge being an innocuous one, Bench is constrained to observe that the respondents ought not to have pursued the same in appeal, wasting judicial time and energy. [para 10]

- Appeal dismissed: Kerala High Court

6. 2021-TIOL-1542-HC-KAR-VAT

Mangalore Refinery And Petrochemicals Ltd Vs State of Karnataka

VAT - Question is whether the expression 'or' used in Section 12(2) of the Karnataka Value Added Tax Act, 2003 is not conjunctive but is disjunctive.

Held: It is well settled rule of statutory interpretation in relation to the taxing statute that the subject is not to be taxed unless the words of the taxing statute unambiguously impose tax on him - The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible - It is equally well settled legal proposition that the word 'or' is normally disjunctive and the word 'and' is normally conjunctive - It is well settled rule of statutory interpretation that where the provision is clear unambiguous, the word 'or' cannot be read as 'and' and the expression 'or' is disjunctive. (Ind-Swift Laboratories = 2011-TIOL-21-SC-CX relied upon) - Section 12(2) provides that deduction of input tax shall be allowed only after commencement of commercial production or sale of taxable goods or sale of any goods in course of export out of territory of India or registered dealer - Thus, the deduction of input tax has to be allowed on fulfilment of one of the conditions namely (1) after commencement of commercial production, (2) sale of taxable goods and (3) sale of any goods in the course of export out of the territory of India by the registered dealer - In the instant case, the petitioner was effecting sale of taxable goods on payment of VAT / CST as applicable and was effecting sale of goods in the course of export out of the territory of India - Therefore, the petitioner had satisfied the conditions laid down in Section 12(2) of the Act namely sale of taxable goods / sale of goods in the course of export out of the territory of India and was eligible to avail of the credit under Section 12(2) of the Act - The finding recorded by the Joint Commissioner of Commercial Taxes as well as by the Tribunal that the petitioner, after expansion of Phase III, was eligible to claim input tax credit only after commencing of production or sale of goods from the expansion Unit III of the petitioner, cannot be sustained in the eye of law as the expression 'or' used in Section 12(2) of the Act is not conjunctive but is disjunctive - Since the petitioner had fulfilled the conditions prescribed in Section 12(2) of the Act, therefore, the petitioner was eligible to avail of the benefit of input tax credit - There is no element of any mens rea that the petitioner had the intention to evade tax - The petitioner had paid taxes according to the information furnished in the return and, therefore, it should not have been penalized subsequently after the assessment proceedings are finalized and the amount of tax is determined - Impugned order dated 24.05.2017 passed by the Tribunal and order dated 27.09.2013

passed by the Joint Commissioner of Commercial Taxes cannot be sustained in the eye of law and the same are accordingly quashed - The appellant is held entitled to refund of interest paid under protest - Petition is allowed: High Court [para 7, 9, 10, 12]

Penalty - It is well settled in law that penalty cannot be imposed merely because it is lawful to do so [Hindustan Steel P. Ltd. = 2002-TIOL-148-SC-CT-LB relied upon] - Since the petitioner was entitled to benefit of input tax credit, therefore, the question of levy of penalty and interest does not apply - It is also pertinent to mention that the petitioner has deposited the amount of interest and penalty under protest and, therefore, they are entitled to refund of the aforesaid amount: High Court [para 10]

- Petition allowed: Karnataka High Court

7. 2021-TIOL-1539-HC-RAJ-GST

Mahesh Vegoils Pvt Ltd Vs UoI

GST - No tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India - Notfn 8/2017-Integrated Tax (Rate) and the Entry 10 of the Notfn 10/2017-Integrated Tax (Rate) are declared as ultra vires the IGST Act, 2017 and unconstitutional as they lack legislative competency: HC

- Petition disposed of: Rajasthan High Court

8. 2021-TIOL-174-AAR-GST

Cigma Medical Coding Pvt Ltd

GST - Applicant is engaged in providing training for students in medical coding. The medical coding examination is conducted and certified by American Academy of Professional Coders [AAPC] having its headquarters in Salt Lake City, Utah, United States of America [USA] - Applicant seeks a ruling as to (1) Whether the payment made to American Academy of Professional Coders (AAPC) as examination fee for students on behalf of some of the students of the applicant institute as a pure agent is service under GST and is there any tax liability for the same, when the applicant is collecting the actual examination fee and remitting that amount to AAPC as such without taking any service charges either from students or from AAPC & (2) Whether the payment made to AAPC as examination fee on behalf of outside students as pure agent is service under GST and is there any tax liability for the same, when the applicant is collecting the actual examination fee and remitting that amount to AAPC as such without taking any service charges either from students or from AAPC.

Held:

+ The applicant has to satisfy the conditions stipulated in Rule 33 of the CGST Rules 2017 to exclude the amount collected as examination fees from the taxable value of services provided by the applicant. In the first situation, the applicant collects exam fee from the students who are enrolled for training with them and makes payment to AAPC on the basis of authorisation from the student. The examination fees is paid by the applicant to AAPC for the examination and certification services provided by the AAPC to the students in addition to the training and fee payment facilitation service provided to the students by the applicant. Therefore, all the conditions mentioned in the said Rule 33 for exclusion of the amount collected as examination fee from taxable value of services provided by the applicant is satisfied.
+ In the second situation, the students are not enrolled with the applicant for training but have approached the applicant for facilitating payment of fees to AAPC for procuring the examination and certification services provided by AAPC. The applicant collects the actual amount of examination fee and remits that amount to AAPC on behalf of the student without collecting any service charges either from the student or from AAPC. In this situation the applicant collects the examination fee from the students and remits it to AAPC and no service charge is collected for the fee payment facilitation service either from the student or AAPC. In order to come within the scope and meaning of supply as defined in Section 7 of the CGST Act the

activity / transaction shall be for a consideration in the course or furtherance of business. Though the fee payment facilitation services are provided by the applicant in the course or furtherance of their business as the same is being made without consideration it falls outside the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017. Therefore, the applicant is not liable to pay GST on the fee payment facilitation services provided to outside students without consideration.

+ Question raised is whether the applicant can follow the essence of the ruling of the Karnataka Authority for Advance Ruling in M/s. Arivu Educational Consultants Private Ltd.- 2019-TIOL-379-AAR-GST - As the question is not in respect of any of the matters on which advance ruling can be sought u/s 97(2) of the Act, 2017, this authority is not having jurisdiction to give ruling on the question.

- Application disposed of: AAR

9. 2021-TIOL-173-AAR-GST

Emerald Court Cooperative Housing Society Ltd

GST - Applicant CHS is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged - They seek opinion on the chargeability of GST on such transaction since there could be no sale by the Co-operative Housing Societies to its own permanent members, for doctrine of mutuality would come into play.

Held: Vide clause 99, an amendment was proposed in the CGST Act, 2017, whereby, in section 7, in sub-section (1), after clause (a), clause (aa) was inserted and deemed to have been inserted with effect from the 1st day of July 2017 - Amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of cooperative societies like the applicant has been settled - Amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/services as a separate entity - Applicant has to pay GST on the said amounts received against maintenance charges, from its members if the monthly subscription or contribution charged from the members is more then Rs.7,500/- per month: AAR

- Application disposed of: AAR

10.2021-TIOL-162-AAR-GST

CC Fabs

GST - Applicant has sought a ruling on the question as to Whether the activity of tanker body building on job work basis, on the chassis supplied by the customer, is supply of goods or supply of service; its classification and the applicable rate of GST.

Held: In the instant case the applicant is building body of tankers on the chassis supplied by the customer as per specifications of the customer - The applicant is collecting the charges for the activity which includes the cost of inputs / material used by the applicant and the labour charges for fabrication of the body - Thus it is evident that the applicant is fabricating body on the chassis belonging to the customer - The ownership of the chassis remains with the customer and at no stage of the process of fabrication of the body, the title in the chassis is transferred to the applicant - Therefore, the applicant is fabricating the body on the chassis belonging to another person and hence the activity is squarely covered under Para 3 of Schedule II of the CGST Act, 2017 as a treatment or process which is applied to another person's goods and accordingly is a supply of services - Activity of the applicant is appropriately classifiable under Service Accounting Code 998881; is liable to GST at the rate of 18% as per entry at Sl. No. 26 (iv) - 9988 of Notification No. 11/2017 Central Tax (Rate) : AAR

- Application disposed of: AAR

11. 2021-TIOL-1509-HC-MAD-GST

F1 Auto Components Pvt Ltd Vs STO

GST - Challenge is to order dated 27.01.2021 levying interest under Section 50 of the Central Goods and Services Tax Act, 2017 relating to both interest on cash remittances as well as remittances by way of adjustment of electronic credit register.

Held: As far as the second limb of the levy is concerned, it is covered by a decision in the case of Maansarovar Motors Private Limited = 2020-TIOL-1846-HC-MAD-GST and in the light of the aforesaid decision, the levy to this extent is to be set aside and it is hence accordingly set aside - Provisions of Section 42 can only be invoked in a situation where the mismatch is on account of the error in the database of the revenue or a mistake that has been occasioned at the end of the revenue - In a case where the claim of ITC by an assessee is erroneous, as in this case, then the question of Section 42 does not arise at all, since it is not the case of mismatch but one of wrongful claim of ITC - As far as the levy of interest on belated cash remittance is concerned, it is compensatory and mandatory and the levy is upheld to this extent - Writ Petition stands disposed: High Court [para 4, 7, 8]

- Petition disposed of: Madras High Court

12. 2021-TIOL-397-CESTAT-DEL

Raipur Power And Steel Ltd Vs CCE, CGST & C

CX - The appellant have availed cenvat credit of service tax on banking and finance service - SCN was issued to the appellant as it appeared to Revenue that the credit of Rs. 25,14,532/- attributable for Pelletizing Plant is not allowable in terms of Rule 3 read with Rule 2(l) read with Rule 9(6) of Cenvat Credit Rules, 2004 - The setting-up of Pelletizing machine/plant is undisputedly for modernisation of existing manufacturing facility for better efficiency and better quality of finished products, which amounts to modernisation - Further, modernisation is allowable and any service used by appellant/manufacturer for modernisation of their manufacturing facility is allowable input service - The input credit of Rs. 25,14,532/- is allowable credit under Rule 2(l) read with Rule 3 read with Rule 9 of Cenvat Credit Rules, 2004 - The impugned order is held to be erroneous and mis-conceived and accordingly same is set aside: CESTAT

- Appeal allowed: Delhi CESTAT

13. 2021-TIOL-395-CESTAT-MAD

CC Vs Angel Starch And Food Pvt Ltd

Cus - The issue arises is, whether the order passed by Commissioner (Appeals) allowing amendment of shipping bill is legal and proper - It is seen that if EGM/shipping bill filed is incorrect or incomplete, a request can be made for amendment of the same - Such request can be allowed on satisfaction by proper officer that the request made is genuine - The appellant has requested for amendment to include MEIS benefit - The department does not have a case that the appellant is not eligible for MEIS benefit claimed by them - The appeal has been filed by department stating flimsy grounds that the department would not be able to retrieve the shipping bill so as to check and verify the amendment made - When the law provides for amendment of shipping bill, the department cannot raise such contentions to deny the legal right of an exporter - The Commissioner (Appeals) has correctly discussed the facts and the law applicable to the present case to allow the appeal filed by the appellant - So also, in the Final Order 2017-TIOL-3127-CESTAT-MAD of the Tribunal, similar issue was considered which has been relied by Commissioner (Appeals) to grant the amendment of shipping bill - The order passed by Commissioner (Appeals) requires no interference: CESTAT

- Appeal dismissed: Chennai CESTAT

14. 2021-TIOL-393-CESTAT-DEL

Duggar Fibre Pvt Ltd Vs CCE & C & CGST

CX - Refund - Limitation - The impugned order has been passed on presumption that

the O-I-A was served on appellant, on the basis of evidence of despatch and the contention of Department that such despatch was not returned back by the Post Office - During the relevant time as per the provisions of Section 37C(1)(a), any order passed under the Act was to be served through registered post or speed post to the person for whom it was entitled or his authorised agent with acknowledgement due or proof of delivery - In absence of proof of delivery, order dated 28.05.2012 cannot be deemed as served on appellant, as has been held by High Court in the case of R.P. Casting Pvt. Limited 2016-TIOL-1173-HC-RAJ-CX , Regent Overseas Pvt. Limited 2017-TIOL-600-HC-AHM-CX and also by Supreme court in Saral Wearcraft 2015-TIOL-154-SC-CX - In absence of such proof of delivery, it is held that the presumption is not sustainable and accordingly the application of the appellant for refund cannot be held time-barred - It is also held that the SCN dated 24.01.2018 issued by Revenue have merged with impugned O-I-A dated 10.04.2018 - Adjudicating Authority is directed to grant interest @ 12% per annum from the date of deposit till the date of refund

- Such interest should be granted within a period of two months: CESTAT

- Appeal allowed: Delhi CESTAT

15. 2021-TIOL-391-CESTAT-MAD

Aurobindo Pharma Ltd Vs CC

Cus - The appellant filed refund application seeking refund of CVD and SAD paid by them under Section 27 of Customs Act, 1962 - The Supreme Court in the case of M/s. Paros Electronics (P) Ltd. has inter alia held that if the application is under Section 27 of the Act then the authority, being a creation of the statute, must act within the ambit of that provision and if the application is delayed he has no alternative but to reject it as barred by limitation - Said judgement has been followed by Tribunal in M/s. India Medtronic Pvt. Ltd. 2019-TIOL-236-CESTAT-AHM - No reason found to interfere in the impugned order rejecting refund: CESTAT

- Appeals dismissed: Chennai CESTAT

16. 2021-TIOL-1505-HC-MAD-GST

Greenwood Owners Association Vs UoI

GST - Applicant had sought a ruling from the Advance Ruling Authority as to whether they are liable to pay GST only on the amount in excess of Rs.7500/- collected as monthly maintenance charges from the members of the Association (RWAs) or on the entire amount in the context of Sl. no. 77(c) of 12/2017-CTR - AAR held that in the event the charges or share of contribution goes above Rs.7500/- per month, such service will not fit the description appearing in Sl. no. 77(c) of 12/2017-CTR and hence such service will not be exempt; that there is no option to the taxpayer to pick and choose from the description of services mentioned in column (3) of notification to make any service partly applicable to the notification and partly chargeable; that any service either falls within the scope of description in column (3) or it does not; that in the instant case since the share of contribution by members is above Rs.7500/- per month, the exemption is not available and GST at appropriate rates are to be charged on the full amount of reimbursement of charges or share of contribution - Aggrieved, a Writ Petition was filed before the Madras High Court - Bench noted that the term "upto" employed in the notification is heavily relied upon by the petitioner to contend that only the exceeded amount is liable for the tax and not the whole amount collected; that the CBIC e-flyer explaining that GST would be applicable only on the amount in excess of Rs.5000/- (as the exemption then stood till 24.01.2018) is relied upon - Noting that the issue raised needs detailed consideration of the High Court, the Respondents were directed to file counter and the matter was posted, and until further orders, the petitioner was permitted to pay GST only towards the exceeded amount over and above the sum of Rs.7500/- - Petitioners in WP nos. 5518 and 1555 of 2020 and 30004 of 2019 challenge Circular no. 109/28/2019-GST dated 22.07.2019 wherein it was clarified that in case the maintenance charges exceeded Rs.7500/- per month per member, the GST is payable on the entire amount and is not limited to the excess amount only - Matter heard.

Held:

+ There is no ambiguity in the language of the exemption provision in this case and, therefore, the judgment of the Supreme Court in the case of Dilip Kumar [2018-TIOL-302-SC-CUS-CB] would not be applicable to the facts and circumstances of the case. [para 16]

+ The intention of the notification appears clear, that is, to grant exemption in regard to the receipts from services that answer to the description set out therein. The description of the services is also clear, that is, services to the members of an unincorporated body or a non-profit entity by way of reimbursement of charges or share of contribution up to an amount of Rs.7500/- per month per member for the sourcing of goods or services from a third person for the common use of its members. No ambiguity presents itself on a plain reading of the Entry and the intention is clear, so as to remove from the purview of taxation contribution upto an amount of Rs.7500/-. [para 17]

+ In a case where legislature intended that the exemption shall apply only to cases where the amount charged does not exceed a specified pecuniary limit, it states as such, as can be seen from the language deployed in the proviso to clause 56 in notification 25 of 2012-ST where it is stated "the exemption shall apply only where the gross amount charged for such service does not exceed Rs.5000/- in a financial year'. [para 19]

+ In notification 12/2017-CTR , Entry 78, here too, the categorization of 'artist' is on the basis of the earning of the artist, one who charges less than Rs.1.50 lakhs and one who charges more. The intention is clear, to exempt only such consideration, which is below Rs.1.50 lakhs. If the consideration exceeds Rs.1.50 lakhs by even a rupee, the artist would stand elevated to the next slab, losing the benefit of exemption. [para 21]

+ It is relevant to note that entries 77 and 78 are from the same Notification thus the choice of words employed is a conscious one intended to have different applications. [para 22]

+ The plain words employed in Entry 77 being, 'upto' an amount of Rs.7500/-can thus only be interpreted to state that any contribution in excess of the same would be liable to tax. [para 23]

+ The term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs.7500/- would be exempt for the purposes of GST. [para 24]

+ The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST department even as early as in 2017 has taken the correct view. [para 25]

+ The conclusion of the AAR as well as the Circular [109/28/2019-GST dated 22.07.2019] to the effect that any contribution above Rs.7500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry in question and both stand quashed. [para 26]

+ It is only contribution to RWA in excess of Rs.7500/- that would be taxable under GST Act. [para 26]

- Petitions allowed: Madras High Court

17. 2021-TIOL-390-CESTAT-BANG

Ashique Chemicals And Cosmetics Vs CCT & CE

CX - Issue arises is, whether the appellant is eligible to avail CENVAT credit on household plastic buckets (15 litre capacity) and plastic containers (different sizes) which were given to customers/dealers purchasing specified number of soaps (sales promotion) - It was clearly brought on record by appellant that the expenses towards purchase of the buckets are charged against the sales value of the company and therefore under the financial accounting angle, the value of the buckets are buried into the business income alone - The appellant have not collected any consideration separately for bucket and hence

the cost of the buckets was not charged on the customers separately - This issue has been settled by Tribunal in favour of appellant in the case of Manik Machinery Manufacturers Pvt. Ltd. 2016-TIOL-1497-CESTAT-MUM - Further in the case of Cadbury India Ltd. 2017-TIOL-1607-CESTAT-MUM, the Tribunal has reiterated the decision of of Manik Machinery Manufacturers Pvt. Ltd. and has held that the appellant is entitled to cenvat credit on free goods given along with other goods - Hence, by following the ratio of said decisions, the impugned order is not sustainable in law: CESTAT

- Appeal allowed: Bangalore CESTAT

18. 2021-TIOL-382-CESTAT-DEL

Sa Impex Vs CCGST

ST - The refund claim filed by assessee was rejected on the ground that the same has been filed after expiry of prescribed limit of one year from the date of eligibility for filing of claim - When the provisions require that only one claim has to be filed for each quarter, definitely, an assessee has to file one claim only at the end of the quarter - The limitation cannot be counted from the day of LEO or the last LEO in a quarter, as the assessee cannot file more than one refund claim for each quarter - Thus, on harmonious reading of the provisions and also the earlier Notfn 5/06-CE (NT) read with notfn 41/2007-ST and 41/2012-ST, it is held that the limitation has to be counted from the first day after the end of the quarter, and accordingly, the refund claim filed on 27.12.2016 is within limitation as the limitation has to be counted from 1.1.2016 for the quarter ending 1.12.2015 - Accordingly, the Adjudicating Authority is directed to disburse the refund within a period of 45 days with interest as per Rules: CESTAT

- Appeal allowed: Delhi CESTAT

19. 2021-TIOL-155-AAR-GST

Airbus Group India Pvt Ltd

GST - Applicant has sought a ruling as to whether the activities proposed to be carried out in India by them would constitute a supply of "Other professional, technical and business services" falling under HSN code 9983 or as "Intermediary service" classifiable under HSN code 9961/9962 or any other classification of services as specified under the Tariff entries of rate notification issued under Goods and Services Tax law? Whether the services rendered by the Applicant would not be liable to GST, owing to the reason that such services may qualify as 'export of services' in terms of clause 6 of Section 2 of the Integrated Goods and Services Tax Act 2017 (hereinafter IGST Act, 2017') and consequently, be construed as 'Zero rated supply' in terms of Section 16 of the said Act?

Held: Applicant plays an important part in identifying the vendors, making them understand the product requirement, advising and guiding them not merely on technical aspect of the product but also the ethical aspect in relation to such activities, without which, Airbus Invest SAS, France will not be able to procure the goods from the vendors - Thus the instant activity is nothing but facilitating the supplies to them from India - The applicant's submission that the approval authority for such vendors lies with Airbus Invest SAS, France does not make a difference to the role of facilitation undertaken by the applicant - In fact, AAR notes that this work of facilitation is understood by them as technical advisory, guidance and business support assistance concerning quality control standards, performance and safety standards of the suppliers - By doing all this, they are merely facilitating the supplies to their holding company as all these activities are directed at the vendors - AAR also notes that it is not necessary that a commission payment is always involved in an intermediary scenario - Cost plus mark-up can also be one of the ways for payment - The criterion of the nature of the payment is not part of the definition of Intermediary - Therefore, Authority concludes that the activities performed by the applicant are fulfilling the parameters mentioned in the definition of 'Intermediary' as per Section 2 (13) of IGST Act, 2017 - Since the applicant is covered under Intermediary

Services classifiable under SAC 998599, the place of supply is India in terms of Section 13(8) of the IGST Act 2017 - Services rendered by the applicant do not qualify as 'export of services' in terms of s.2(6) of the IGST Act, 2017 and consequently are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of Notification No. 11/2017-Central Tax (R) dated 28.06.2017: AAR

- Application disposed of: AAR

20. 2021-TIOL-1454-HC-MAD-CUS

Mahalakshmi Traders Vs ACC

Cus - The SCN has been challenged primarily on the ground that the same has been issued on 14.05.2009 and is pending till date with finalization of proceedings as contemplate under Section 28 of Customs Act, 1962 - Section 28(9)(a) calls for a determination of duty of interest under the SCN within a period of six months from the date of notice - This date has long passed - Section 28(9)(b) imposes a time limit of one year and revenue argues that the aforesaid time limit was not operative at the time when SCN was issued - Section 28(9)(a) however, grants time of only six months for determination of the duty and interest where it is possible for the revenue to do so - The counter filed by revenue does not reveal any circumstances, which would justify the elapse of time from 2009 till date, of more than twelve years to keep the proceedings pending - The normal defence offered is that the issue has been transferred to the call book - The explanation offered, to the effect that there was a change in incumbent officer is hardly acceptable - The impugned SCN is quashed: HC

- Writ petition allowed: Madras High Court

21. 2021-TIOL-1453-HC-AHM-CUS

Ultratech Nathdwara Cement Ltd Vs CC

Cus - The erstwhile M/s. Binani Cement Limited (hereinafter referred to as "the Corporate Debtor") came to be acquired by the Ultra Tech by way of an approved resolution plan dated 25th May, 2018 (hereafter referred to as "the Final Resolution Plan") submitted by it in the insolvency proceedings that were initiated against the Corporate Debtor before the National Company Law Tribunal Bench at Kolkata (hereinafter referred to as "the Adjudicating Authority") under the provisions of the insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"). Pursuant to the aforesaid acquisition, the Ultra Tech took over the management of the Corporate Debtor with effect from 20th November, 2018 and the name of the Corporate Debtor was changed to the Ultra Tech Nathdwara Cement Limited, i.e , the applicant herein with effect from 13th December, 2018 - Tax Appeal No. 754 of 2007 arises from the order passed by the CESTAT dated 16th November, 2016 whereby the CESTAT remitted the matter to the Commissioner (Appeals) - The respondent Commissioner of Customs (Preventive) thought fit to prefer the tax appeal before this Court and the same came to be admitted on the following substantial question of law; "Whether in the facts and circumstances of the present case the Tribunal was justified in directing the Commissioner (Appeals) to ignore the orders of finalization of bills of entry of the Superintendent despite no appeal having been filed by assessee?" - It is the case of the applicant that a resolution plan, once approved, is binding on all the creditors and stakeholders including the Central Government by virtue of Section 31(1) of the Code - The respondent herein (original appellant) would be an operational creditor within the meaning of Section 5(20) read with Section 5(21) of the Code and its entitlement would stand restricted to the treatment accorded under the approved resolution plan.

Held : Short point for consideration is whether the Tax Appeal No. 754 of 2007 would survive in light of the sanctioning of the Final Resolution Plan dated 25.05.2018 - Bench is of the view that once a resolution plan is approved, all the claimants in respect of a corporate debtor are dealt with under such plan as held by the Supreme Court in the case of Committee of Creditors of Essar Steel India Ltd. vs. Satisk Kumar Gupta & Ors . = 2019-TIOLCORP-18-SC-IBC-LB - Judgment of the

Jharkhand High Court in the case of Electrosteel Steels Limited = 2020-TIOL-915-HC-JHARKHAND-CT is of no avail to the Department - Supreme Court dismissed the Civil Appeals Nos. 630-634 respectively and thereby the challenge to the approved plan failed - Bench is of the view that it is not open to the Department to, once again, raise the issue by taking shelter of Electro Steel (Supra)

- For all the foregoing reasons, the civil application succeeds and is hereby allowed, and consequently the Tax Appeal No. 754 of 2007 is disposed of accordingly: High Court [para 8, 11, 13, 14]

- Petition allowed: Gujarat High Court

22. 2021-TIOL-378-CESTAT-BANG

Aravind Traders Vs CC

Cus - The appeal is directed against impugned order whereby the refund claim of appellant was rejected on the ground that they failed to fulfill the Condition of Notification No. 102/2007-Cus. - The appellant has imported Sappan Billets (Caesalpinea sappan) and has cut them into small pieces for the purpose of marketing locally but the said cutting into smaller pieces does not change the identity of goods and further no new product has come into existence - The identical issue has been considered by in the case of Agarwalla Timbers Pvt. Ltd. wherein it has been held that mere cutting of large pieces into small pieces for the purpose of trade will not amount to manufacture and refund of additional duty under Notification No. 102/2007-Cus. cannot be denied - The Gujarat High Court in the case of Variety Lumbers Pvt. Ltd. has also considered the identical issue - The impugned order holding that the appellant has violated the Condition D of Notification No. 102/2007-Cus. is not sustainable and therefore same is set aside: CESTAT

- Appeal allowed: Bangalore CESTAT

23. 2021-TIOL-19-AAAR-GST

Wipro Enterprises Pvt Ltd

GST - AAR had held that the alcohol-based hand sanitisers are to sanitise the hands and disinfect them & hence cannot be covered under Medicaments; that the hand sanitisers are correctly classifiable under Heading 3808 under the Customs Tariff Act and are liable to tax at the rate of 18% GST - Appeal to the Appellate authority.

Held: Delay of 12 days in filing appeal is condoned - U se of an alcohol-based hand sanitizer neither controls the diseases caused by the viruses/bacteria nor does it develop preventive characteristics inside the human body to fight the disease caused by the viruses/bacteria - It is merely a product recommended for use in hand hygiene practices, therefore, AAAR holds that the alcohol-based hand sanitizer cannot be considered as a 'medicament' classifiable under Chapter Heading 3004 - Insofar as issuance of licence under the Drugs and Cosmetics Act, 1940 is concerned for manufacture and sale of 'alcohol-based hand sanitiser', it is observed that regulation under the Drugs Act does not ipso facto mean that the product automatically becomes medicine - term 'drug' is defined in s.3(b) of the Act, 1940 and includes not only medicines but also any substance which is used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals; that while all medicines are drugs, all drugs are not medicines - Hand sanitiser manufactured by the appellant contains the drug ethyl alcohol in a concentration of 95% v/v, which is within the standard prescribed by the Indian Pharmacopoeia, however, the presence of a drug by itself will not make the impugned product a medicament - Applying the test of common parlance [coupled with the questionnaire survey conducted and published in the International Journal of Current Research and Review on the 'Knowledge and awareness on the role of hand sanitiser in prevention of COVID-19' which showed that almost 79% of people were aware that hand sanitiser is used for maintaining good hand hygiene and to

prevent the spread of the disease during the pandemic] and the fact that the impugned product does not have any therapeutic or prophylactic properties, the alcohol-based hand sanitiser cannot be classified as a medicament under CH 3004 as claimed - AAAR agrees with the ruling given by the AAR that Alcohol-based hand sanitiser is used to disinfect externally and hence would fall within the meaning and ambit of 'Disinfectant' classifiable under heading 3808.94 - However, AAAR disagrees with the lower authority's observation that Hand Sanitiser is an alternative to soap - Rate of tax is 18% in terms of Sl. no. 87 of Schedule III of 11/2017-CTR but w.e.f 14 June 2021 to 30 September 2021, the rate of tax has been reduced to 5% GST vide notification 5/2021-CTR dt. 14.06.2021: AAAR

- Appeal dismissed: AAAR

24. 2021-TIOL-372-CESTAT-MAD

Wabco India Ltd Vs CGST & CE

ST - Refund - Limitation - The Notification No. 12/2013-S.T. states that the refund has to be filed within period of one year - In terms of section 26(1)(e) of SEZ Act, an assessee is eligible for exemption on taxes and duties - Such exemption can be availed ab initio, while procuring the input services or after the services are procured on payment of service tax by availing refund as per the Notification No. 12/2013-S.T. - The assessee has opted for applying for refund as per the notification - The department has rejected the refund claim stating that it is barred by limitation - The question as to whether the time-limit prescribed in the notification would prevail over sections 51 and 26(1)(e) of the SEZ Act was considered in the case of M/s. GMR Aerospace Engineering Ltd. - The Tribunal in the case of M/s. ATC Tyres Pvt. Ltd. 2021-TIOL-190-CESTAT-MAD had considered the very same issue of limitation mentioned in the Notification No. 12/2013-S.T. - It was held that section 51 of SEZ Act has an overriding effect and therefore, the conditions mentioned in the notification cannot be applied so as to deny the refund when substantial conditions prescribed in the SEZ Act have been fulfilled - The rejection of refund on the ground of limitation cannot sustain: CESTAT

- Appeals allowed: Chennai CESTAT

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