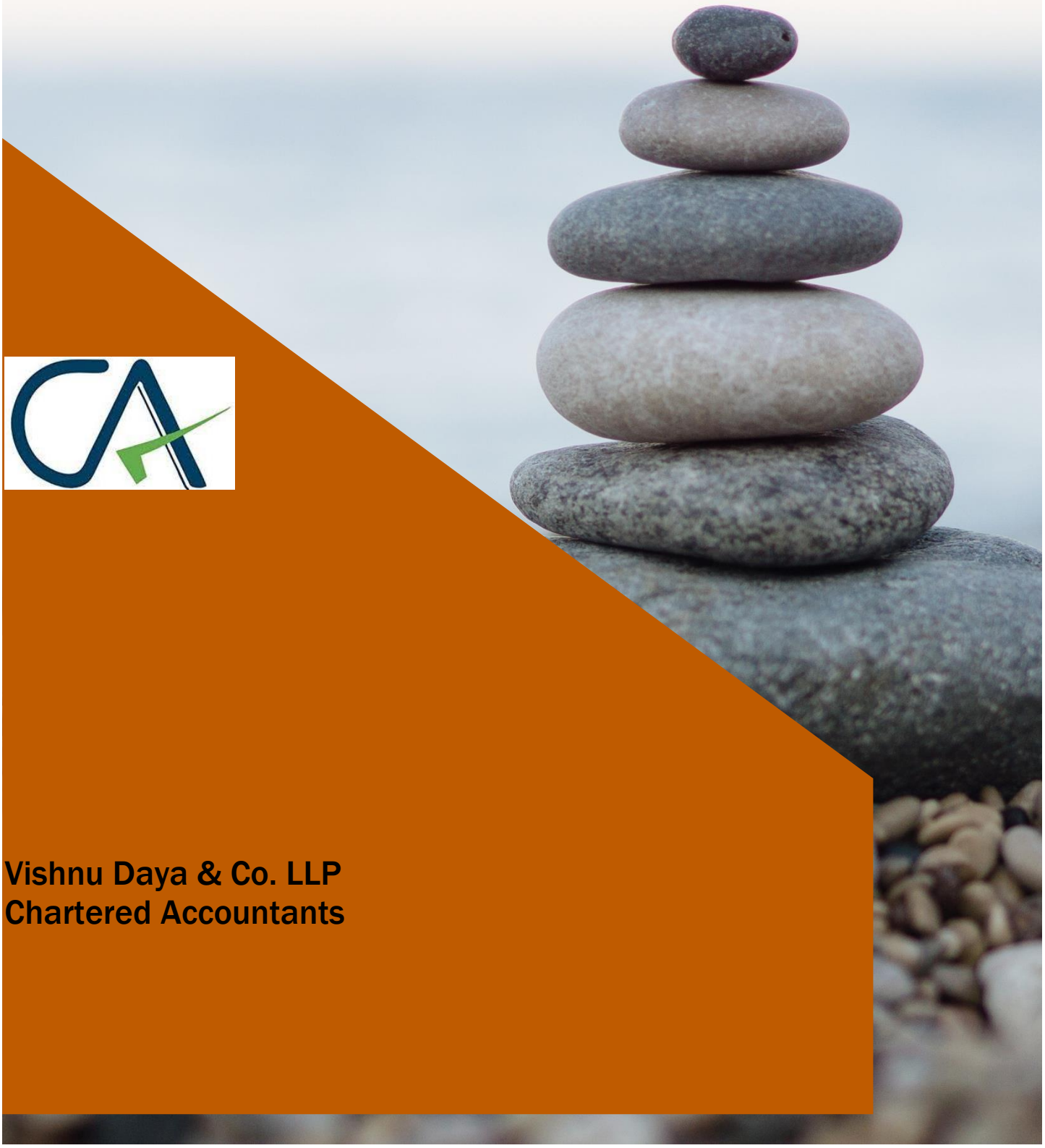
Newsletter December 2021



Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars & Notifications

Circulars issued by CBDT in the month of November 2021

1. **CBDT issues Guidelines on scope of Sections 194-O, 194Q & 206C.**

   Circular No. 20/2021, dated 25th November 2021.

   CBDT clarifies that Section 194-O shall not apply on e-auction activities carried out by e-auctioneers if all the facts listed in (a) to (f) of Para 5.1.2 of the Circular are satisfied and the buyer and seller would still be liable to deduct/collect tax under Sections 194Q and 206C(1H). Also clarifies that in case of purchase of goods which are not covered within the purview of GST, when tax is deducted at the time of credit of amount and the component of VAT / Sales tax / Excise duty / CST is indicated separately in the invoice, the tax is to be deducted u/s 194Q on the amount credited without including such VAT/Excise duty / Sales tax/ CST. For purchase returns, the clarification as provided in Para 4.3.3 of Circular No. 13 of 2021 shall also apply to purchase return relating to non-GST products liable to VAT/excise duty / sales tax/CST etc.

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

Notifications issued by CBDT in the month of November 2021

1. **CBDT notifies e-Settlement Scheme, 2021 for pending settlement applications.**

   Notification No. 129 /2021, dated 1st November 2021.

   CBDT notifies e-Settlement Scheme, 2021. The Scheme is meant to deal with pending applications in respect of which the option u/s 245M has not been exercised and have been allotted or transferred by CBDT to the Interim Board. The Scheme provides that the Interim Board shall conduct an e-settlement in accordance with the procedure envisaged under the Scheme. The proceedings under the Scheme shall not be public and the opportunity for hearing would be provided through video conferencing or video telephony. The Scheme does not provide for an appearance either personally or through an authorised representative before the Interim Board.

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

Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of November 2021

1. **ITAT: Allows depreciation at 60% on computer software, whether canned or uncanned**

   Plintron Mobility Solutions Pvt. Ltd [TS-1020-ITAT-2021(CHNY)]

   Chennai ITAT holds Assessee eligible for depreciation at 60% on software, being operating system for Windows, further holds payment made to non-resident for purchase of software not liable for tax deduction u/s 195.

   Assessee-Company engaged in the business of providing software solutions was subjected to scrutiny assessment for AY 2014-15 whereby additions were made towards excess depreciation on computer software and payment to non-resident for purchase of software without deduction of tax at source which was confirmed by the CIT(A).

   ITAT finds Assessee purchased software being operating system for Windows for Rs.1.92 Cr and claimed depreciation @ 60%. ITAT remarks that since Assessee purchased software like Windows, MS Office and other operating system which is embedded in computer system and thus considered as an integrated part of computer system eligible for 60% depreciation.

   With regards to non-deduction of tax on payment to non-resident for purchase of software, ITAT remarks that what was purchased by the Assessee was a copyrighted article but not a copyright itself and relying on various judicial precedents including the SC ruling in Engineering Analysis, holds that payment made by the Assessee for purchase of software to non-resident supplier is outside the scope of definition of royalty as defined u/s 9(1)(vi) and thus there was no liability for tax deduction u/s 195. Thus, deletes disallowance for payments made.

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

2. **ITAT: Taxability of capital gains for charitable trust governed by Sec. 11(1A), Sec. 50C inapplicable**

   Swami Sukhdevanand Trust [TS-1023-ITAT-2021(DEL)]

   Delhi ITAT dismisses Revenue's appeal, holds provisions of Section 50C are not applicable to computation of capital gains u/s 11(1A) for a Trust.

   Assessee -Trust was subjected to scrutiny assessment for AY 2014-15 whereby it was noticed that Assessee sold a property for Rs. 80 lakhs having a stamp duty value (SDV) of Rs. 2.86 Cr and thus Revenue invoked the provisions of Section 50C to adopt the SDV as the sale consideration and assessed income at Rs. 1.91 Cr. On appeal CIT(A) held that legal fiction of Section 50C could not be imported into the provisions of Section 11(1A) which was a separate specific section that governed the over-all taxability of capital gains with respect to trust and deleted the addition.

   ITAT holds that in case of charitable trust whose income is computed u/s 11,12 and 13, the provisions of Section 50C did not apply. ITAT also holds that consideration not accrued to the trust or received by the trust, but which is enhanced by virtue of Section 50C could not be invested in new property.

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

3. **ITAT: Voluntary donations properly recorded, duly audited not taxable as 'anonymous donations' u/s 115BBC**

   Mayank Welfare Society [TS-1031-ITAT-2021(Ind)]

Indore ITAT dismisses Revenue's appeal, holds voluntary donation received by charitable hospital not taxable as 'anonymous donation' u/s 115BBC since the Assessee maintained proper records which were audited and furnished Gram Sarpanch's certificate and also donors' confirmations to substantiate the donations.

Assessee-Society was registered u/s 12AA and approved under Sections 80G, 10(23C)(vi) and 35AC. Revenue, for AY 2013-14 found that the Assessee received donation of Rs.14.06 Cr. towards corpus fund which as per the Assessee's submission was donated by the family of thousands of patients whereas the Revenue found the explanation unsatisfactory and taxed Rs.14.06 Cr. as anonymous donation u/s 115BBC which was deleted by the CIT(A) on the basis of certificate given by Gram Sarpanch stating the reason for making the donation.

Revenue preferred an appeal. The Assessee submitted that Section 115BBC is inapplicable because the Assessee has maintained complete record of the identity of the donors. ITAT holds "*if a person receiving a voluntary contribution maintains the records of the identity of donor indicating name and address of the person making such contribution, then such voluntary contribution cannot be treated as anonymous donation*". Further notes that the Assessee's accounts are duly audited and details of name and address of each and every donors has been maintained and holds that the alleged donation cannot be held to be taxable as 'anonymous donation' u/s 115BBC.

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

4. **ITAT: Rules on BSS comparables being akin to market support services. Remits working-capital adjustment**

Lloyds Offshore Global Services Private Limited [TS-557-ITAT-2021(Bang)-TP]

Bangalore ITAT rules on comparables selection in respect of assessee's provision of Business Support Services (BSS) in the nature of staff welfare support, risk and compliance management, incident and crisis management coordination etc. for AY 2011-12. TPO rejected assessee's comparables and recomputed the ALP based on fresh set of 3 companies engaged in "market support services".

Notes assessee's acceptance of BSS being akin to market support service. Opines writing off of liabilities no longer required and therefore is an operating income, basis being part and parcel of business activities carried on by the assessee. Cites, "*Accordingly, we direct the A.O. to include reversal of provision amounting to Rs.6,03,728/- as operating in nature.*". Further negates assessee's plea of considering paid penalty under Employee Provident Fund and Miscellaneous Provisions ("EPF") as non-operating, taking cognizance of the fact that payment under EPF is linked to salaries paid by the assessee. Remits the issue of grant or otherwise working capital adjustment, considering DRP's disallowance basis absence of adequate details. Acknowledges assessee's willingness to furnish necessary details if an opportunity is provided. Finally also remits (+/-) 5% variation benefit while computing the ALP on merit.

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

5. **ITAT: Rentals from use of rhodium/platinum-based alloys, sans right to intellectual property, not taxable as Royalty**

Owens Corning Inc [TS-1028-ITAT-2021(Mum)]

Mumbai ITAT holds rentals received by Assessee (Owens Corning Inc.) against use of rhodium and platinum based alloys for refabrication of bushings used in manufacture of glass fibres from Indian subsidiaries not taxable as Royalty u/s 9(1)(vi) and Article 12(3) of India-US DTAA.

Assessee-Company, a tax resident of the US, was subjected to scrutiny assessment for AY 2012-13 whereby Revenue held rentals received from leasing out alloys comprising of rhodium and platinum taxable as Royalty. Assessee's subsidiary Owens Corning India Pvt Ltd. (OCIPL) engaged in manufacture of

glass fibres in India obtained the required quantity of the alloys for refurbishing and refabricating the bushings on lease from the Assessee.

ITAT observes that in terms of the agreement, Assessee provided only alloys to OCIPL, for which it charged rentals based on the weight of the alloy metal leased, and remarks that payments made by the Indian subsidiaries were not for design of bushing but only towards the rentals. ITAT further observes that Assessee did not provide any services to OCIPL in connection with intellectual property related to bushing and since the rights over the intellectual property on the bushings were with another group Company, consideration for alloys could not be treated as Royalty.

ITAT notes that technology for manufacture of the glass fibre including the use of bushing was provided by another group Company to which Assessee had paid the royalty amount and held that lease rental on alloys which are used to refurbish and refabricate the bushing cannot be treated as Royalty. ITAT sets aside the directions of the DRP and directs the Revenue to delete the additions.

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

6. **ITAT: Upholds gross margin as 'PLI' under Other Method. Rejects Foreign AE as tested party. Remits ALP determination.**

A Raymond Fasteners India Private Limited [TS-558-ITAT-2021(PUN)-TP]

Pune ITAT rejects assessee's choice of foreign AEs as tested party for purchase of raw materials, upholds gross margin as 'PLI' under Other Method for ALP determination of purchase price. Determines turnover filter of 23 times for comparable selection of sale of goods transaction. Restricts adjustment only w.r.t international transaction and remits ALP computation for purchase of raw materials and sale of finished goods on terms indicated above for AY 2014-15.

Assessee entered into two international transactions, namely, purchase of raw material from and sale of finished goods for which the assessee respectively considered 2 foreign AEs and itself as the tested party. ITAT rejects the Foreign/AE as tested party basis them being more complex entities than Assessee, inadequate data given the absence of Annual Reports for both foreign AEs and comparables.

As regards adoption of MAM w.r.t. purchase of raw materials, rejects TPO's application of combined TNMM and accepts assessee's request for considering the gross margin (with reference to purchase cost of raw material) as PLI i.e. application of "Other Method" for the purchase transaction in accordance with Rule 10AB of the Income-tax Rules.

As regards selection of comparables for sale of finished goods, notes that assessee sought to retract ITW India as a comparable after having included the same in its TP report. While agreeing with assessee's right to withdraw the same as a comparable despite having included it earlier, pinpoints discrepancy in assessee's approach of including Lifelong India as a comparable (having turnover of 10 times assessee's turnover), while contesting exclusion of ITW India Limited basis substantial turnover (while total turnover was higher, the comparable turnover for sale of goods was 16.88 times of the assessee). Rejects exclusion of ITW India as a comparable. Separately, adjudicates that transfer pricing adjustment should be restricted only to the international transactions as against entity level transactions.

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

7. **FC: US Tax Court holds FTC under tax treaties not independent of domestic law**

Catherine S. Toulouse [TS-1034-FC-2021(USA)]

Catherine S. Toulouse, the taxpayer, was a United States ('US') citizen residing in a foreign country. The taxpayer claimed credit for taxes paid in earlier years in France and Italy against the levy of net investment income tax (NIIT) in the US while filing the income tax return for 2013. [NIIT is a tax on investment

income such as capital gains, dividends, and rental property income.]

The tax authorities informed the taxpayer that credit for foreign taxes is provided only against taxes levied under Chapter 1 of the US Internal Revenue Code ('IRC') whereas NIIT was a levy under Chapter 2A. The tax authorities accordingly opined that the credit for taxes paid in France and Italy was not available because the IRC does not provide for the offset of foreign taxes against the levy of NIIT.

The US Tax Court dismissed the appeal filed by the taxpayer on account of the following reasons:

- Under the IRC, US citizens are generally taxed on their worldwide income regardless of where they reside. The deductions against such income and credits against tax are matters of legislative discretion.
- The IRC provides that the offset of the foreign tax is permissible only against the levy of regular tax and not against the levy of NIIT.
- The relevant text of the French tax treaty and Italian tax treaty explicitly provide that foreign tax credit must be determined as per the IRC. The claim of the foreign tax credit is, thus, limited by the IRC's provision of foreign tax credit.

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

8. FC: Australian Federal Court holds FTC allowable only to the extent of doubly-taxed income

Craig Burton [TS-867-FC-2019(AUS)]

The taxpayer, Craig Burton, was a tax resident of Australia. During the years 2011 and 2012, the taxpayer was the trustee of an Australian discretionary trust which *interalia* held investments in the United States ('US'). The US law regarded such trust as a 'grantor trust', and the income of such trust was attributed to the 'owner' (i.e. the taxpayer in his personal capacity). The taxpayer *interalia* derived capital gains from his US investments during 2011 and 2012. As the investments were held for more than a year, the taxpayer was taxed at a concessional rate of tax of 15% (instead of the regular rate of 35%) under US tax law. The capital gains so derived were also subject to tax in Australia under the residence rule, since the taxpayer was a tax resident of Australia. In Australia, capital gains income was also entitled to concessional treatment, i.e. 50% discount to the capital gain, as part of the formula, post which only net amount was included in assessable income.

The taxpayer claimed the benefit of the whole of the tax paid in the US as a foreign tax credit according to Article 22(2) of the tax treaty between Australia and the US ('tax treaty'). However, the Australian tax authorities did not allow the whole of the taxes paid in the US and restricted it to the extent attributable to capital gains which formed part of the taxpayer's assessable income.

The Federal Court of Australia noted and held (through majority) as follows:

- Article 22 of the tax treaty is not concerned with the allocation of taxing power. Further, Article 22(2) operates on the assumption that *each* sovereign nation has validly imposed a tax on the same amount, thus giving rise to the need for relief;
- Double taxation arises only where foreign and Australian taxes are imposed on 'the same amount' and not where foreign and Australian taxes are imposed on the same' subject matter' (namely, the same underlying gain);

The Federal Court of Australia (Full Court) held that the taxpayer is entitled to the credit for taxes paid in the US only to the extent of Australian tax payable on 50% of the capitals gains derived in the US as per Article 22(2) of the tax treaty.

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

Direct Tax/PF /ESI compliance due dates during the month of December 2021

Due Date	Form	Period	Comments
07.12.2021	Challan ITNS-281	November 2021	Payment of TDS/TCS deducted /collected in November 2021.
15.12.2021	Challan ITNS 280		Third instalment of advance tax for the assessment year 2022-23 (75% of Advance Tax Liability)
15.12.2021	TDS certificate	October 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M
15.12.2021	ESI Challan	November 2021	ESI payment.
15.12.2021	E-Challan & Return	November 2021	E-payment of Provident fund
30.12.2021		November 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194M
31.12.2021	ITR	FY 2020-21	Income Tax return for the FY 2020-21 in case of Individual and other assessees not liable for tax audit / statutory audit / transfer pricing audit.
31.12.2021	Equalisation Levy Statement	FY 2020-21	Furnishing of Equalisation Levy statement for the Financial Year 2020-21
31.12.2021	Form no. 3CEAC	FY 2020-21	Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India in Form 3CEAC.
31.12.2021	Form no. 3CEAD	FY 2020-21	Report by a parent entity or an alternative reporting entity or any other constituent entity, resident in India, in Form no. 3CEAD
31.12.2021	Form no. 3CEAE	FY 2020-21	Intimation on behalf of an international group, which is required to be made in Form no. 3CEAE

MCA Updates

MCA – Disqualification of DINs

Ministry of Corporate Affairs had flagged the DINs of Directors found to be disqualified under sub-section 2(a) of section 164 of the Companies Act, 2013 w.e.f. 1st November 2016 for a period of five years. This is for the information of all the concerned that DINs eligible to be de-flagged on expiry of the period of disqualification are in the process of verification. Necessary action shall be taken shortly.

Due date:

Due date to file Form 8 (Statement of Account and Solvency) for FY 2020-2021 without paying additional fees, upto December 30, 2021.

Due date to file form AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and MGT-7/MGT-7A in respect of financial year ended on March 31, 2021, upto December 31, 2021.

FEMA Updates

Foreign Currency (Non-resident) Accounts (Banks) Scheme [FCNR(B)] - Master Direction on Interest Rate on Deposits

In view of the impending discontinuance of LIBOR as a benchmark rate, it has been decided to permit banks to offer interest rates on FCNR (B) deposits using widely accepted 'Overnight Alternative Reference Rate (ARR) for the respective currency' with upward revision in the interest rates ceiling by 50 bps.

As a measure to handle the information asymmetry during the transition, FEDAI may publish the ARR till such time the widely accepted benchmark is established.

Indirect Tax Updates

GST Circulars

1. **Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow**

   Based on the recommendations of Gst Counsel, the following issues are clarified:

   i. Fresh vs dried fruits and nuts;
   ii. Classification and applicable GST rates on Tamarind seeds;
   iii. Coconut vs Copra;
   iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;
   v. Scented sweet supari and flavored and coated illaichi;
   vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;
   vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;
   viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;
   ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;
   x. External batteries sold along with UPS Systems/ Inverter;
   xi. Specified Renewable Energy Projects;
   xii. Fiber Drums, whether corrugated or non-corrugated.

   Click here to read / download Circular No. 163/19/2021-GST dated 06/10/2021.

2. **Clarifications regarding applicable GST rates & exemptions on certain services:**

   GST Council in the 45th meeting of the Council held on 17th September, 2021 has provided clarification in relation to the following issues:

   1. Services by cloud kitchens/central kitchens,
   2. Supply of ice cream by ice cream parlors,
   3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of „Scholarships for students with Disabilities",
   4. Satellite launch services provided by NSIL.
   5. Overloading charges at toll plaza,
   6. Renting of vehicles by State Transport Undertakings and Local Authorities,
   7. Services by way of grant of mineral exploration and mining rights attracted GST,
   8. Admission to amusement parks having rides etc. ,
   9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

   Click here to read / download Circular No. 164/20/2021-GST dated 06/10/2021.

3. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020

The Board has clarified the issue as under:

i. It is observed that from the present wording of S. No. 4 of Circular No. 156/12/2021 dated 21stJune 2021, doubt arises whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange. It is mentioned that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

ii. Accordingly, to clarify the matter further, the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted as below:

4.	*" In cases, where receiver of services is located outside India, and payment is being received by the supplier of services ,through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?*	*No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."*

***Click here* to read / download Circular No. 165/21/2021-GST dated 17/11/2021.**

4. Clarification on certain refund related issues

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues relating to refund. The board has examined the same and clarifies each of these issues as under:

Sl. No.	***Issue***	***Clarification***
1	*Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?*	*No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.*
2	*Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?*	*No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.*
3	*Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balancein cash ledger?*	*The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debitin electronic cash ledger, as per his choice and availability of balance in the said ledgers.* *Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.*
4	*Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be*	*Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under:* *"(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;"*

	relevant for the purpose of determining relevant date for such refunds?	*On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.* *Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.*

***Click here** to read / download Circular No. 166/22/2021-GST dated 17/11/2021*

5. The Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:

i. these rules shall come into force on the date of their publication in the Official Gazette.
ii. in rule 137, with effect from the 30th day of November 2021, for the words "four years", the words "five years" shall be substituted.
iii. in FORM GST DRC-03, –
   a. in the heading, after the words "or statement", the words, letters and figures "or intimation of tax ascertained through FORM GST DRC- 1A" shall be inserted;
   b. against item 3, in column (3), for the word and letters "Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)", the words, letters, figures and brackets "Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)" shall be substituted;
   c. against item 5, in column (1), after the word and figures "within 30 days of its issue", the words, letters, figures and brackets ", scrutiny, intimation of tax ascertained through Form GST DRC01A, audit, inspection or investigation, others (specify)" shall be inserted;
   d. for the table, under serial number 7, for the table, the following table shall be substituted, namely: -

"Sr. No.	*Tax Period*	*Act*	*Place of supply (POS)*	*Tax/ Cess*	*Interest*	*Penalty, if applicable*	*Fee*	*Others*	*Total*	*Ledger utilised (Cash/credit)*	*Debit entry no.*	*Date of debit entry*
1	2	3	4	5	6	7	8	9	10	11	12	13

***Click here** to read / download Notification No.37/2021 – Central Tax dated 01st December 2021*

Indirect Tax Rulings

1. 2021-TIOL-621-CESTAT-DEL

Bhansali Engineering Polymers Ltd Vs CCE & CGST

CX - Appeals relates to rejection of refund claim for unutilised cenvat credit under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012-C.E. (N.T.) - The refund claims were filed prior to 30.07.2017, which were rejected by Adjudicating Authority - Thereafter, Commissioner (Appeals) rejected the same in year 2018 - The appellant instead of filing further appeals before Tribunal, under some erroneous advice, took re-credit of rejected amount of refund and thereafter, again filed the refund claims before Adjudicating Authority, which were again rejected - On appeal, Commissioner (Appeals), held that once the appeals were rejected by Commissioner (Appeals), though the appellant may be entitled to take re-credit under repealed provisions of Notification No. 27/2012-C.E. (N.T.), he is not entitled again to claim the refund amount, as the same has lapsed under the first Proviso to Section 142(3) of CGST Act, 2017 - Appeals are bad under principles of res judicata , as the same issue of refund attained finality on passing of the order by Commissioner (Appeals) in the year 2018 as the appellant chose not to file any further appeal before the higher forum - The subordinate legislation is effective or in force till the date of Parent Act only - As the Parent Act in this case is repealed w.e.f. 1.7.2017, when the CGST provisions, came into force - Accordingly, the appellant have erred in taking re-credit of the rejected refund amount in the year 2018 and thereafter they have again filed claim for the rejected amount of refund - No merit found in appeals and same are rejected: CESTAT - Appeals dismissed: DELHI CESTAT

2. 2021-TIOL-650-CESTAT-KOL

Shyam Steel Industries Ltd Vs CCGST & Excise

CX - The assessee is engaged in manufacture and sale of TMT Bar, inter alia through dealers - They had processed the discounts (turn-over discount/cash discount) in favour of its dealers through Credit Notes - Only issue that arise for consideration is whether the grant of refund of excess excise duty paid on transaction value without seeking an adjustment for discounts to the appellant shall be hit by principle of unjust enrichment - The law in this regard is well settled by Supreme Court in Addison case 2016 – TIOL-146-SC-CX-LB that the onus is upon the person claiming refund of excise duty on post clearance discount to establish that the incidence of duty on such discount has not been passed on to any other person - The Supreme Court has held in unequivocal terms that Credit Notes are valid instrument for the purposes of passing post-clearance discounts and that an assessee is entitled for filing the claim for refund on the basis of Credit Notes raised by him towards discount - The CA certificate goes to show that the assessee has not passed on the incidence of duty on discount to its dealers - It is also found from the sample certificates issued by dealers that such dealers were not registered under Central Excise Law for the purposes of availing or passing of Cenvat credit - Therefore, the question of any double benefit in the form of refund of excise duty on component of discount as well as Cenvat credit on said component does not arise - These evidences establish that the duty

element on the discount component was borne by assessee himself - The impugned order is therefore, set aside: CESTAT

- Appeal allowed: KOLKATA CESTAT

3. 2021-TIOL-668-CESTAT-AHM

Gujarat Mineral Development Corporation Ltd Vs CCE & ST

CX - The issue arises is that whether the appellant is required to pay an amount as per Rule 6 of CCR, 2004 in respect of exempted product, namely, Silica Sand and Ball Clay when the input service is used for mining of Lignite as well as Silica Sand and Ball Clay - The main contract is for mining of Lignite while doing the excavation to achieve Lignite, the over burden has to be removed and this over burden constitute Silica Sand and Ball Clay, thereafter the Lignite is excavated - Therefore, from the nature of mining of Lignite, it is clear that the Silica Sand and Ball Clay are generated unavoidably which is inevitable - Any input/input services contained in any by-product/waste/refuse, Cenvat Credit cannot be varied or denied - With this logic, demand under Rule 6 in respect of by-product is not applicable - Once it is established that the product in question are by-product then it is settled in respect of by-product demand under Rule 6 will not sustain - Accordingly, Silica Sand and Ball Clay being a by-product, no demand under Rule 6 shall sustain - The impugned orders are set aside: CESTAT

- Appeals allowed: AHMEDABAD CESTAT

4. 2021-TIOL-682-CESTAT-KOL

Bharat Coking Coal Ltd Vs CCE & ST

CX - Assessee is in appeal against impugned order, whereby the Cenvat Credit has been denied on services availed for setting up of Coal Handling Plant (CHP) for the period from June 2013 to November 2015 - The purpose of setting up of CHP is to load the coal into railway wagons in an automated manner after the coal is crushed into the desired size - Services used by appellant is for modernisation of coal loading process - In the case of Pepsico India Holdings (P) Ltd, Tribunal has observed that without setting up of the factory, there cannot be any manufacture and the mere fact that the words "setting up of factory" has not been retained in definition of input services post 01.04.2011, the same will not mean that the benefit of credit has been taken away by the legislature - Thus, services used for setting up of factory even after 01.04.2011 would be eligible for credit - The Commissioner has allowed credit on certain invoices assuming the same to be pure services and disallowed the credit on remaining portion by considering the same to be in the nature of civil portion - In view of the decisions of various High Courts and Tribunal wherein the user test principle has consistently been followed, Cenvat availed by appellant for setting up of CHP, which is used for evacuation of coal by rapid loading process, cannot be legally denied - Since the credit has been allowed by Department on certain invoices raised by Contractor, Department has in-principle found the service to be eligible for credit - The mode of valuation adopted by Contractor to discharge service tax on 40% of contract value is in accordance with law contained in Service Tax Valuation Rules and cannot be disputed while deciding credit eligibility at the appellant's end - When service tax has been levied only on 40% of the total value, it essentially means that service tax has been paid only on the service portion - Impugned demand order cannot be sustained and hence, the same is set aside: CESTAT

- Appeal allowed: KOLKATA CESTAT

5. 2021-TIOL-678-CESTAT-BANG

John's Cashew Company Vs CC

Cus - The issue for consideration in this case is the eligibility of the appellant for refund of 4% of Special Additional Duty (SAD) in terms of Notification No. 102/2007-Cus, dated 14/09/2007 - The appellant made claim for refund and after due adjudication, vide the Order-in-Original dt. 04/08/2018, the Assistant Commissioner rejected 4% SAD as being time barred in terms of the Notification - The Commissioner (Appeals) passed the Order-in-Appeal & upheld the rejection.

Held - There can be no dispute on the proposition that irrespective of whether or not the judgments of non-jurisdictional High Courts are binding, these judgments deserve utmost respect which implies that, at the minimum, these judgments are to be considered reasonable interpretations of the related legal and factual situation - Doctrine of precedence only mandates that it is the ratio in the decision of higher courts to be followed, and not conclusions - Considering legal position and propriety, it is inappropriate to choose views of one of the High Courts based on perceptions about reasonableness of the respective viewpoints, as such an exercise will de facto amount to sitting in judgment over the views of the High Courts - When there is a reasonable interpretation of a legal and factual situation, which is favourable to the assessee, such an interpretation is to be adopted - The Apex Court in CIT v. Vegetable Products Ltd. has laid down that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted - Although this principle so laid down was in the context of penalty, and Their Lordships specifically stated so in so many words, it has been consistently followed for the interpretation about the statutory provisions as well - Hence the denial of refund is bad in law: CESTAT

- Assessee's appeal allowed: BANGALORE CESTAT

6. 2021-TIOL-242-AAR-GST

VL Traders

GST - Advance Ruling cannot be used as a mechanism to nullify and frustrate the inquiry proceedings already initiated vide section 70(1) of CGST Act: AAR

GST - An Admission order no GUJ/GAAR/ADM/2020/112 dated 30-12-2020 was issued earlier, admitting the subject application and it was stated in the Admission order itself that as the applicant has made a declaration that the question raised in the application is not already pending or decided in any proceedings in their case under any of the provisions of the Act and that nothing contrary to this declaration was found by the Authority, the application was, earlier, held as maintainable - However, the applicant has suppressed the material facts that DGGI had initiated inquiry with respect to the same Questions raised in the subject Application and that the proceedings initiated by DGGI vide relevant sections of CGST Act was initiated prior to filing of subject Advance Ruling application - Inasmuch as the applicant had been issued Summons vide Section 70 CGST Act, prior to the filing of subject Application - Authority is of the view that the usage of the words "any proceeding" in the proviso to Section 98(2) of the CGST Act will encompass within its fold the investigation proceedings launched by the DGGI under Section 70 of CGST Act - The applicant has contravened the provision of Section 98(2), CGST Act, in so much that it mis-declared that it had no proceedings pending under any provisions of the Act, with an intention to fraudulently obtain Ruling and frustrate the proceedings initiated by DGGI, for the Question raised in the subject Application dated 5-3-20 and issue for which Investigation was initiated vide Section 70(1) of CGST Act, 2017 by DGGI are the same - Held that investigation initiated against the applicant is a proceeding within the ambit of Section 98 (2) of CGST Act - Application is rejected as non-maintainable and inadmissible: AAR

- Application dismissed: AAR

7. 2021-TIOL-2079-HC-JHARKHAND-GST

Nkas Services Pvt Ltd Vs State of Jharkhand

GST - Show-cause notice issued by the Deputy Commissioner of State Taxes under Section 74 of the JGST Act, 2017 has been challenged by the petitioner along with the consequential challenge to summary of show-cause notice in FORM DRC-01 - Petitioner assails the Show Cause Notice (SCN) dated 7th June 2021 as being vague; without jurisdiction and that the proceeding initiated without service of FORM GST-ASMT-10 is void ab-initio. Held: [para 14 to 18] + A bare perusal of the impugned show-case notice creates a clear impression that it is a notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax. + Proceedings under Section 74 have a serious connotation as they allege punitive consequences on account of fraud or any wilful misstatement or suppression of facts employed by the person chargeable with tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. + This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. + Apex Court has [in Oryx Fisheries P. Ltd. (2010) 13 SCC 427] held that the concept of reasonable opportunity includes various safeguards and one of them is to afford opportunity to the person to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based. + It is also true that acts of fraud or suppression are to be specifically pleaded so that it is clear and explicit to the noticee to reply thereto effectively. + Impugned notice completely lacks in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice. + Court is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case. + Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague. + Impugned notice and the summary of show-cause notice in Form GST DRC-01 are quashed. Respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks.

- Petition allowed: JHARKHAND HIGH COURT

8. 2021-TIOL-2082-HC-MAD-CX

Mahanadi Coalfields Ltd Vs CESTAT

CX - PVC impregnated colliery conveyor belting was purchased by the assessee from M/s. Fenner India Limited, Madurai - Said goods were classified by the Department under Sub-Heading 3920.11/3920.12 but the supplier M/s. Fenner India Limited contested the above classification stating that the said goods were classifiable under Sub-Heading 3922.90/3926.90 - Dispute was finally settled by the Supreme Court in favour of the supplier by holding that the said goods were classifiable under Sub-Heading 3922.90/3926.90 - As the assessee had borne the entire duty burden paid by the supplier they filed a claim on 22.7.2003 for refund of central excise duty to the tune of Rs.23,14,715/- - They also stated that

they had not passed on the duty liability to its customers, as the goods involved were capital goods and no duty was payable on the final product, for which, such goods were used - Since this claim was rejected by the lower authorities, the assessee is in appeal before the High Court.

Held: Decision in Western Coalfields Ltd. case 2019-TIOL-72-SC-CX and more particularly the conclusion in paragraph 14 is a clear answer to the assessee's case - Indisputably, the application was filed by the appellant as a buyer of the goods from the supplier namely the said M/s. Fenner India Ltd., which paid duty under protest after the period of limitation prescribed in law and, therefore, this would dis-entitle the claim of refund to the assessee as prayed for by applying the law laid down by the Hon'ble Supreme Court in the case of Allied Photographics India Ltd., wherein it was held that the purchaser of the goods was not entitled to a claim for refund of duty made under protest by the manufacturer without complying with the mandate of Section 11B of the Act - Appellant assessee has not made out any case to interfere with the impugned order passed by the Tribunal - Civil miscellaneous appeal stands dismissed: High Court [para 23 to 25]

- Appeal dismissed: MADRAS HIGH COURT

9. 2021-TIOL-670-CESTAT-BANG

Lekshmi Engineers Vs CCE & CT

ST - The appellant filed a claim for refund of service tax paid on the services provided to Military Engineering Services (MES) - The said services were exempted from payment of service tax vide Notification No. 25/2012-S.T. as amended by Notification No. 09/2016-S.T. - Notification No. 09/2016-S.T. ibid provided for retrospective exemption from service tax on specified services - A SCN was issued proposing to reject the refund claim on the ground of unjust enrichment and the lower authority after due process, rejected the same - This Bench on an earlier occasion, in an almost identical situation, in the case of SN Atiwadkar 2019-TIOL-1560-CESTAT-BANG has considered this very issue and observed that the appellant is claiming the refund as a representative of MES and not on his own account and therefore the principle of unjust enrichment under the provisions of Section 11B of Central Excise Act, 1944 is not applicable - The denial of refund cannot be sustained and hence, the impugned order is set aside: CESTAT

- Appeal allowed: BANGALORE CESTAT

10. 2021-TIOL-240-AAR-GST

Gujarat State Road Development Corporation

GST - Government of Gujarat has established GSRDC as its wholly owned company and entrusted it with the development of roads and bridges, therefore, GSRDC satisfies the definition of Government Entity - GSRDC also constructs roads, sideways, paths on the land which falls under the jurisdiction of Municipality and Panchayat - Roads and bridges are activities entrusted to a municipality under Article 243W of the Constitution and to a Panchayat under Article 243G of the Constitution - Therefore in such specific cases where GSRDC constructs municipal roads/bridges or village roads/bridges, it satisfies the definition of Government Authority - Supply by applicant is exempted vide Sr. No. 3 of Not. No. 12/2017-CT (Rate) : AAR

- Application disposed of: AAR

11. 2021-TIOL-2136-HC-KAR-VAT

IN THE HIGH COURT OF KARNATAKA
AT BENGALURU
STRP No. 296/2018

THE COMMISSIONER OF COMMERCIAL TAXES VANIJYA THERIGE KARYALAYA, GANDHINAGAR BENGALURU-9
Vs
M/s K M S COACH BUILDERS PVT LTD NO. 125-IB, NEAR BMTC DEPOT 12 INDUSTRIAL AREA, KENGERI BENGALURU-560060
S Sujatha & Ravi V Hosmani, JJ
Dated: September 23, 2021
Petitioner Rep by: Sri K Hema Kumar, AGA
Respondent Rep by: Smt Lakshmi Menon, Adv.
Karnataka Value Added Tax Act, 2003 - Writ - Sections 15(1)(b) & 65(1); Rule 3(2)(m)
Keywords - Aggregate turnover - Inter State trade - Total consideration - Vale of contract

THE assessee is a dealer registered under the provisions of the KVAT Act and is engaged in the business of bus body building. During the tax periods April 2013 to March 2014, the assessee/respondent had filed returns in Form - VAT 100 claiming deduction of labour and like charges as per the standard rate prescribed under the Rule 3(2)(m) of the Karnataka Value Added Tax Rules, 2003. The AO rejected the deduction claimed and levied interest and penalty under the provisions of the KVAT Act. Aggrieved by the said order, the assessee preferred appeal before the First Appellate Authority. Being unsuccessful, the matter was carried to the Tribunal. The Tribunal has held that the standard rate of deduction on labour and like charges claimed by the assessee is in accordance with law allowing the appeal of the assessee.

In writ, the High Court held that,
Whether meaning assigned to the phrase "value of the contract" that it includes all the amount received whether as taxes or labour, is correct - YES: HC

++ "Total turnover" as defined under Section 2(35) of the KVAT Act means "the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale";

++ Taxable turnover has to be determined under sub-Rule (2) of Rule 3 of the KVAT Rules allowing the deductions specified therein. Clause (h) of Rule 3(2) of the KVAT Rules provides all amounts collected by way of tax under the KVAT Act has to be deducted for determining the taxable turnover from the total turnover. Thus, the total amount paid or payable to the dealer for consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract including any amount paid as advance to the dealer as a part of such consideration, the entire contract of such value has to be considered as per clause (l) of Rule 3(2);

++ Even the payment of tax under composition scheme under Section 15(1)(b) of the KVAT Act which employs the phrase "total consideration" of contract necessarily is inclusive of tax collected as there is a deduction provided before the taxable value is determined. On the conjoint reading of these provisions, the meaning assigned to the phrase "value of the contract" by the Tribunal that it includes all the amount received whether as taxes or labour cannot be faulted with. We do not see any perversity or illegality in the order.

Revision petition dismissed
JUDGEMENT
Per: S Sujatha:

This revision petition is filed by the State under Section 65(1) of the Karnataka Value Added Tax Act, 2003 ('KVAT Act' for short) assailing the judgment dated 05.01.2018 passed in STA No. 961/2016 by the Karnataka Appellate Tribunal at Bengaluru ('Tribunal' for short), whereby the appeal filed by the assessee has been allowed deleting the tax, interest and penalty levied on the difference of labour charges stated to have been claimed as in excess of eligibility.

2. The revision petition was admitted by this Court to consider the following question of law:-
"Whether the tribunal has erred in holding that the standard rate of deduction in respect of labour and like charges, as prescribed under Rule 3(2)(m) of Karnataka Value Added Tax Rules, is to be applied on the gross turn over of the dealer inclusive of the tax collected from its customers?"

3. The assessee is a dealer registered under the provisions of the KVAT Act and is engaged in the business of bus body building. During the tax periods April 2013 to March 2014, the assessee/respondent had filed returns in Form - VAT 100 claiming deduction of labour and like charges as per the standard rate prescribed under the Rule 3(2)(m) of the Karnataka Value Added Tax Rules, 2003 ('KVAT Rules' for short). The Assessing Authority rejected the deduction claimed and levied interest and penalty under the provisions of the KVAT Act. Aggrieved by the said order, the assessee preferred appeal before the First Appellate Authority. Being unsuccessful, the matter was carried to the Tribunal. The Tribunal has held that the standard rate of deduction on labour and like charges claimed by the assessee is in accordance with law allowing the appeal of the assessee. Being aggrieved, the State has preferred this revision petition.

4. Learned AGA for the appellant - State would submit that the taxable turnover of a dealer has to be calculated after deducting the amounts specified under Rule 3(2) of the KVAT Rules. It was submitted that rule 3(2) of the KVAT Rules would be applicable in cases where the labour and like charges incurred by a works contractor are not ascertainable from the books of accounts. Since the total turnover of a dealer does not include taxes collected therein, the standard rate of deduction was to be applied only to the sale value of the goods i.e., exclusive of taxes collected by the assessee. The Tribunal erred in holding that the total consideration of contract i.e., inclusive of tax collected, as there is a deduction provided before the taxable value is determined.

5. Learned counsel for the respondent - assessee justifying the impugned judgment submitted that the contract was executed inclusive of taxes as per the understanding between the parties. The assessee had raised invoices for executing the contract showing the element of deduction and the taxes separately. The Table under Rule 3(2)(m) in column (3) contemplates "value of the contract" which is the amount payable to the contractor as per the agreement and would include the tax element. The Tribunal having analyzed the material evidence has rightly allowed the appeal and the same deserves to be confirmed by this Court rejecting the revision petition filed by the appellant - State.

6. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

7. Rule 3(2)(l) and 3(2)(m) of the KVAT Rules reads thus:-
"3(2). The taxable turnover shall be determined by allowing the following deductions from the total turnover.-
(a) to (k) xxxxx
(l) All amounts actually expended towards labour charges and other like charges not involving any transfer of property in goods in connection with the execution of works contract including charges incurred for erection,

installation, fixing, fitting out or commissioning of the goods used in the execution of a works contract.
(m) Such amounts calculated at the rate specified in column (3) of the Table below towards labour charges and other like charges as incurred in the execution of a works contract when such charges are not ascertainable from the books of accounts maintained by a dealer.

8. The relevant portion of the Table annexed to the said Rule is as under:-

Sl.No.	Type of contract	Labour and like charges as a percentage of the value of the contract
(1)	(2)	(3)

9. Rule 3(1) of the KVAT Rules deals with the determination of turnover.

10. "Total turnover" as defined under Section 2(35) of the KVAT Act means "the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale."

11. Section 2(34) of the KVAT Act defines "Taxable Turnover" as under:-
"*Taxable turnover*" *means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale.*"

12. Taxable turnover has to be determined under sub-Rule (2) of Rule 3 of the KVAT Rules allowing the deductions specified therein. Clause (h) of Rule 3(2) of the KVAT Rules provides all amounts collected by way of tax under the KVAT Act has to be deducted for determining the taxable turnover from the total turnover.

13. Thus, the total amount paid or payable to the dealer for consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract including any amount paid as advance to the dealer as a part of such consideration, the entire contract of such value has to be considered as per clause (l) of Rule 3(2).

14. Even the payment of tax under composition scheme under Section 15(1)(b) of the KVAT Act which employs the phrase "total consideration" of contract necessarily is inclusive of tax collected as there is a deduction provided before the taxable value is determined.

15. On the conjoint reading of these provisions, the meaning assigned to the phrase "value of the contract" by the Tribunal that it includes all the amount received whether as taxes or labour cannot be faulted with. We do not see any perversity or illegality in the order impugned.

16. For the reasons aforesaid, we answer the question of law in favour of the assessee and against the revenue.
In the result, the revision petition stands dismissed.

12. 2021-TIOL-247-AAR-GST

TIF Integrated Industrial Parks Pvt Ltd

GST - Applicant is a company formed by industrialists as required by the Telangana State Industrial Infrastructure Corporation

Limited (TSIIC) as a special purpose vehicle (SPV) representing the member industrialists with an objective of providing industrial infrastructure by development of land acquired by TSIIC - It is informed by the applicant that a sale deed will be executed with TSIIC upon completion of development of internal infrastructure - Similarly, the applicant is authorised, in turn, to sell to individual industrialists after each of his allottee commences commercial operation by executing individual sale deeds - Applicants seeks to ascertain whether the transaction of sale of developed plot between himself and his member falls within the ambit of GST and whether the infrastructure development undertaken by the applicant qualifies as supply under GST.

Held: Activity undertaken by the applicant for construction of the immovable property would qualify to be a "works contract" if (i) It is executed in pursuance of a contract or agreement; and (ii) There is a transfer of property in goods in execution of works contract from the contractor to the contractee; and (iii) There is a consideration paid by the contractee to the contractor - P erusal of the contract entered by the applicant with the TSIIC Ltd clearly indicates that the property in land will be transferred to the applicant only when the applicant completes the development of infrastructure of schedule land -However, this clause in the agreement appears to have been made to meet the larger objective enumerated in industrial policy of the State - Though there is a contract for development of the land the other two conditions enumerated are not fulfilled i.e., transfer of property in goods from the applicant to the TSIIC Ltd and payment of consideration by TSIIC Ltd to the applicant, hence the activity is not a Works Contract - If the applicant sells the land after developing by way of erecting a civil structure or a building or a complex, then such supply is liable to tax under CGST/SGST Acts - However, if land is sold without any development involving any civil structure or building or complex, such supply falls under paragraph 5 of schedule III to Section 7(2) of CGST Act, 2017 and hence would be exempt from tax - If the applicant executes works contracts involving transfer of property in goods for a consideration under an agreement of contract, such consideration will be liable to tax - However, if these elements are missing in execution of a construction, it shall not be liable to tax: AAR

- Application disposed of: AAR

13. 2021-TIOL-696-CESTAT-MAD

Terex India Pvt Ltd Vs CGST & CE

ST - The appellant is engaged in manufacture and export of mining machineries - They also provide business support services for which they were paying service tax and they filed ST-3 returns - A spot memo was issued to appellant directing to pay the service tax on Business support services on foreign remittances under RCM - The appellant paid the amount along with interest - Though they were eligible for credit since the time to carry forward the Cenvat Credit to GST regime had expired on 27.12.2017, appellant could not follow the procedure to carry Cenvat Credit to GST regime - They then applied for refund of said credit which has been rejected resorting to Section 142 (8) (a) of GST Act, 2017 - The department views that the payment made by appellant is consequent to an assessment/adjudication proceeding and therefore, when recovered as an arrears of tax, appellant is not eligible for input tax credit under GST Act, 2017 - There is no assessment/adjudication tax as contemplated under provisions of erstwhile law - The appellant has paid the tax when pointed out by Audit Officers - Such payment does not fall under recovery of arrears of tax by an assessment or adjudication proceedings - The sub-section (8) to Section 142 only means that after assessment or adjudication proceedings if an assessee pays the tax so determined, he

cannot claim the benefit of availment of credit under the CGST Act, 2017 - The claim is only for refund and not proceedings for assessment or adjudication - In such a scenario, only sub-section (3) of section 142 will be attracted - Rejection of the refund claim by referring to sub-section (8) of Section 142 of CGST Act, 2017 is mis-placed - For these reasons, rejection of refund is unjustified and impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

14. 2021-TIOL-2224-HC-DEL-GST

Tarun Jain Vs Directorate General of GST Intelligence

GST - Allegations of fraudulently availing and passing on ineligible/fake Input Tax Credit amounting to Rs.72 crores - Applicant seeking anticipatory bail in a matter pertaining to Section 132 of the Act, 2017.

Held:

++ There is no embargo under the CGST Act restraining the petitioner from seeking pre-arrest bail. Economic offences such as tax evasion, money laundering, etc. affect the economy of the country and thus are considered grave in nature. To deter persons from indulging in such economic offences, criminal sanctions are required to be imposed. One of the most prominent criminal sanctions imposed with regard to economic offences is that of arrest. It is widely acknowledged that arrests result in deprivation of liberty of a person. Thus, while it is imperative to maintain law and order in society, the power to arrest must also always be subject to necessary safeguards. [para 36]

++ The question of bail under the Act remains unsettled [para 38]

++ In the present case, there cannot be any conflict with the fact that petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than five years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view the offences under the Act are not grave to an extent where the custody of the accused can be held to be sine qua non. [para 44]

++ Since, anticipatory bail is a statutory right in consonance with the Right to life and personal liberty under Article 21, it is essential to be alive to the various facets that form a part of rights under Article 21 of the Constitution. [para 49]

++ In the present case, the Petitioner has been accused of wrongfully utilizing the Input Tax Credit amounting to Rs.72 Crores, an offence under Section 132(b) and (c). Since the alleged amount exceeds five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under the Act are bailable and non-cognizable except for the offence under Section 132(5) of the Act. Additionally, under Section 135 of the Act, in any prosecution under the Act requiring culpable mental state, the court is bound to presume culpable mental state of the accused. [para 52]

++ It is the case of the Petitioner that he failed to appear due to his ill health, which evidently no more exists. The other ground pertains to apprehension of arrest, which can be removed by allowing the present application. It is very well possible that the respondent department might get the information as required if the Petitioner cooperates with the authorities concerned and arrest might not be necessary. [para 54]

++ Custodial interrogation in the instant matter is neither warranted nor provided for by the statute. Detaining the petitioner in Judicial Custody would serve no purpose rather would adversely impact the business of the petitioner. [para 55]

++ It is without an iota of doubt that the Petitioner needs to be more cooperative in investigation, joining the same as and when required for, by the Respondent. [para 56]

++ This court must give effect to Article 21 of the Constitution in letter as well as in spirit while deciding the anticipatory bail application. The basic tenet on which our criminal justice system operates is - "innocent until proven guilty" and in view of this the Supreme Court has time and again reiterated that "bail is the rule while jail is an exception". Such principles cannot remain a dead letter of law and this court must intervene to give effect to such principles. [para 58]

++ Court allows the instant application under section 438 of Code of Criminal Procedure. In the event of arrest, the petitioner be released on bail on his furnishing a personal bond in the sum of Rs.5,00,000/- with two solvent sureties of like amount and with terms and conditions. [para 60]

- Application disposed of: DELHI HIGH COURT

15. 2021-TIOL-2220-HC-DEL-IT

IN THE HIGH COURT OF DELHI

WP (C) No. 7644/2021 & CM APPL. No. 23916/2021
WP (C) No. 7645/2021 & CM APPL. No. 23918/2021
GE INDIA INDUSTRIAL PVT LTD AS SUCCESSOR IN INTEREST TO GE INDIA TECHNOLOGY CENTRE PVT LTD
NOW AMALGAMATED
Vs
(1) ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 10 1, NEW DELHI & ANR
(2) ASSISTANT COMMISSIONER OF INCOME TAX, OSD-10, NEW DELHI & ANR
Rajiv Shakdher& Talwant Singh, JJ
Dated: November 17, 2021
Petitioner Rep by: Mr Sachit Jolly, Mr Rohit Garg, Ms Disha Jham, Ms Mehak Sachdeva and Mr Sohum Dua, Advs.
Respondent Rep by: Mr Abhishek Maratha, Sr. Standing Counsel
Income Tax - Writ - Section 148
Keywords - Merger

THE assessee claimed that notice was issued to entities i.e., GE India Technology Centre Pvt. Ltd. and GE India Exports Pvt. Ltd., which were not in existence at the relevant time, as they had merged with the assessee-company, i.e., GE India Industrial Pvt. Ltd. Hence the assessee claimed that notice was issued in the name of a company which had been merged & so was non existent at the time of issuing of notice.

In writ, the High Court observes it to be settled position in law that notice issued in the name of an entity which is since merged with another merits being quashed, since the noticee entity ceases to exist upon merger.

Writ petition disposed of
JUDGEMENT
Per: Rajiv Shakdher:

1. On the previous date, i.e., 11.11.2021, we had heard the counsel for the parties and made, thereafter, the following observations in W.P. (C) 7644/2021:
"1. Mr. Abhishek Maratha, Advocate has entered appearance on behalf of the respondents/revenue.
2. Mr. Sachit Jolly, who appears for the petitioner-company, says that, apart from anything else, the impugned notice issued under Section 148 of the Income Tax Act, 1961 [in short "the Act"], is flawed, for the reason that it was served on an entity i.e., GE India

Technology Centre Pvt. Ltd., which was not in existence at the relevant time, as it had merged with the petitioner-company i.e., GE India Industrial Pvt. Ltd.

3. Prima facie, there appears to be merit in the contention advanced by Mr. Jolly.

3.1. Mr. Maratha says that, he will revert with instructions on this aspect of the matter.

4. We may also note that although opportunity was given to the respondents/revenue to file a counter-affidavit in the matter; no affidavit has been filed, as yet.

5. List the matter for directions on 17.11.2021.

6. Interim order dated 05.08.2021 is made absolute during the pendency of the writ petition. CM No. 23918/2021 is, accordingly, disposed of."

1.1. Similar observation were made in the order dated 11.11.2021, passed in W.P. (C) 7645/2021.

2. Mr. Abhishek Maratha, learned counsel appearing for the respondents/revenue, has reverted with instructions.

2.1. Mr. Maratha says that, admittedly, notice(s) were issued to entities i.e., GE India Technology Centre Pvt. Ltd. and GE India Exports Pvt. Ltd., which were not in existence at the relevant time, as they had merged with the petitioner-company i.e., GE India Industrial Pvt. Ltd.

2.2. It is, however, Mr. Maratha's contention that it was an inadvertent error, and therefore, the respondents/revenue are entitled in law to issue fresh notice(s) in the above-captioned matters, under Section 148 of the Income Tax Act, 1961 [in short "the Act"], and that these notice(s) will relate to the period prior to 30.06.2021.

2.2(a) However, Mr. Jolly, vehemently, opposes the aforesaid submissions adverted by Mr Maratha.

3. To our minds, the impugned notice(s) issued under Section 148 of the Act cannot be sustained, as they were issued to entities [i.e., *GE India Technology Centre Pvt. Ltd. in W.P. (C) 7644/2021* ***= 2010-TIOL-128-SC-IT*** *and GE India Exports Pvt. Ltd. in W.P. (C) 7645/2021]* = ***2010-TIOL-128-SC-IT***, which were not in existence at the relevant time, as they had merged with the petitioner-company i.e., GE India Industrial Pvt. Ltd.

3.1. Therefore, the impugned notice(s) dated 30.06.2021 are set aside.

4. The respondents/revenue will have liberty to take next steps in the matter, albeit as per law. In case any such steps are taken, the petitioner-company will have the liberty to assail the same, in accordance with law.

5. The above-captioned writ petitions are disposed of in the aforesaid terms. Consequently, pending application(s) shall also stand closed.

16. 2021-TIOL-270-AAR-GST

Mahavir Nagar Shiv Srushti Co-Operative Housing Society Ltd

GST - Applicant Co-operative Housing Society has appointed M/s. Unique Rehab Pvt. Ltd., a contractor for carrying out major repairs, renovations and rehabilitation works for the society - The said contractor is charging service charges along with the GST for carrying out the works contract service - The applicant seeks to know whether they are eligible to obtain the ITC of such GST charged by contractor.

Held : A housing society is a collective body of persons, who stay in a residential society and the collective body, supplies certain services to its members, like collecting statutory dues to be remitted to statutory authorities, or maintenance of the building, etc. - As per section 2(17)(e) of the CGST Act, 2017, provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is deemed to be a business - Thus, a housing society may be seen to be providing club and association services to its members but does not provide works contract service to its members - The housing society i.e. the applicant in the subject case, is making provisions of the facilities/benefits to its members and is not providing any works contract services to its members and, therefore, the applicant is debarred from

taking Input Tax Credit under the provisions of Section 17(5)(c) of the CGST Act, 2017: AAR

- Application disposed of: AAR

17. 2021-TIOL-757-CESTAT-MAD

PKF Sridhar And Santhanam LLP Vs CGST & CE

ST - The issue is with regard to rejection of refund claim on the ground that it is barred by limitation - The refund arises out of excess payment - The excess payment can be ascertained only when the appellant files ST-3 returns - When such facts are put into consideration, in strict sense, it cannot be said that there is a delay in filing the refund claim - It is an excess payment made by appellant - Needless to say that the department cannot retain any amount which is not collected/paid under authority of law - The jurisdictional High Court in case of 3E Infotech 2018-TIOL-1268-HC-MAD-ST has categorically held that section 11B cannot be applied when the tax has been paid under mistake and when not required to be paid - Similar view was taken by High Court of Karnataka in case of Way2Wealth Brokers Pvt. Ltd. 2021-TIOL-1969-HC-KAR-ST - This Tribunal in the case of Bhavya Enterprises and Nilkamal Ltd. 2021-TIOL-450-CESTAT-MAD has followed the decisions of jurisdictional High Court - Applying the said judgments/decisions, rejection of refund claim as time-barred in terms of section 11B of CEA, 1944 r/w section 83 of FA, 1994 cannot sustain - Impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

About Us:

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

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

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