Newsletter
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Contents

Direct Tax – Circulars

Circulars issued by CBDT

1. CBDT provides one-time relaxation for e-verification of all ITRs e-filed for AY 2020-21, applicable upto 28th February 2022.

Circular No. 21/ 2021, dated 28th Dec 2021.

CBDT provides a one-time relaxation for submission of ITR-V/e-Verification of ITRs for AY 2020-21 and for regularisation of the ITRs that have remained pending for want of receipt of ITR-V or pending e-Verification. Permits verification of such returns either by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP mode by Feb 28, 2022.

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

2. CBDT extends due date for Tax Audit Report to Feb 15, for ITR to Mar 15

Circular No. 1 / 2022, dated 11th January 2022

CBDT, vide Circular No. 1 of 2022, extends the due date for filing tax audit reports, report u/s 92E for AY 2021-22 to Feb 15, 2022. Extends due date for filing ITRs to Mar 15, 2022.

Sl. No.	Compliance	Existing Date	Extended Date
1.	Report of Audit under any provision for the Financial Year 2020-21 where original due date was Sep 30, 2021.	Jan 15, 2022	Feb 15, 2022
2.	Report of Audit under any provision for the Previous Year 2020-21 where original due date was Oct 31, 2021.	Jan 31, 2022	Feb 15, 2022
3.	Due date of furnishing of Report from an Accountant u/s 92E for the Previous Year 2020-21.	Jan 31, 2022	Feb 15, 2022
4.	Due date of furnishing of Return of Income for the Assessment Year 2021-22, which was originally Oct 31, 2021.	Feb 15, 2022	Mar 15, 2022
5.	Due date of furnishing of Return of Income for the AY 2021-22, which was originally Nov 30, 2021.	Feb 28, 2022	Mar 15, 2022

Clarification 1: It is clarified that this extension shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No.9/2021, Circular No.17/2021 and this Circular) provided in that Act, shall be deemed to be the advance tax.

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

Direct Tax – Notifications

Notifications issued by CBDT in the month of December 2021

1. **CBDT notifies Rule 21AK for exemption of NR's income from transfer of non-deliverable forward contracts u/s 10(4E)**

   Notification no. 136 /2021, dated 10th December 2021.

   CBDT notifies Income-tax (33rd Amendment) Rules, 2021 to insert Rule 21AK for the purpose of Section 10(4E). The income accrued/arisen to / received by a non-resident from transfer of non-deliverable forward contracts shall be exempt if: (i) the non-deliverable forward contract is entered into by the non-resident with an offshore banking unit of an International Financial Services Centre holding a valid certificate of registration, and (ii) such contract is not entered into by the non-resident through or on behalf of its permanent establishment in India. The Rule further requires the offshore banking unit to ensure compliance with the second condition.

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

2. **CBDT notifies Faceless Appeal Scheme, 2021**

   Notification no. 139 /2021, dated 28th December 2021.

   CBDT notifies Faceless Appeal Scheme, 2021 in supersession of Faceless Appeal Scheme, 2020. A personal hearing through Video Conference can be requested by assessee.

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

3. **CBDT notifies Rule 16DD, Form 56FF for claiming deduction u/s 10A. Applicable retrospectively from Jul 29, 2021**

   Notification no. 140 /2021, dated 29th December 2021.

   CBDT notifies Rule 16DD. Rule 16DD prescribes Form No. 56FF for furnishing of particulars along with the return of income for fulfilling the conditions of Section u/s 10A(1B)(b). The Rule comes into force from July 29, 2021 and CBDT clarifies that since Rule 130 was brought into force from July 29, 2021 where Rule 16DD and Form 56FF were inadvertently mentioned (now omitted), the retrospective effect is given to maintain continuity.

   Click here to read / download the copy of the notification

4. **CBDT specifies appeals covered under Faceless Appeal Scheme, 2021**

   CBDT, by an Order under Para 3 of Faceless Appeal Scheme, 2021, specifies that all the appeals under Section 246A or 248 pending or instituted on or after Dec 29, 2021 (except those falling under Central Charge or International Taxation) shall be completed under the new Scheme.

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

Direct Tax – Legal Rulings

B. Domestic and International Tax Rulings in the month of December 2021

1. ITAT: Interest on borrowing related to advance that benefitted Director personally, not allowable

Rukmini Realtors Pvt. Ltd [TS-1160-ITAT-2021(Bang)]

Bangalore ITAT dismisses Assessee's appeal, upholds disallowance of interest on loan availed for advance made to a Director for purchase of property on Assessee's behalf, before identification of such property. Holds the advance to be for Director's personal benefit and rejects Assessee's contention of commercial expediency.

Assessee-Company engaged in real estate activities was subjected to scrutiny assessment for AY 2014-15 whereby Revenue disallowed Rs.1.47 Cr. of interest expenditure on the grounds that Assessee had taken the loan and paid an advance to its Director, and thus the loan was not utilized for business purpose. On appeal, CIT(A) rejected Assessee's contentions that advance of money to the Director for purchase of property was wholly and exclusively for business and upheld the disallowance.

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

2. DC: Delayed remittance of TDS punishable u/s 276B. Rejects plea of mens rea, financial constraints

Panacea Hospital Pvt Ltd [TS-1154-DC-2021(Bang)]

Special Court for Economic Offences at Bangalore holds Assessee-Company guilty u/s 276B for delayed remittance of TDS, imposes fine of Rs.20,000/- and acquits its MD as the Revenue failed to prove his involvement in the day-to-day affairs of the business. Holds that non-imposition of penalty for TDS default is no defence against prosecution u/s 276B.

Assessee, a multi-specialty hospital, was found to have not paid TDS of Rs.1.07 Cr. for FY 2016-17 to the Revenue within the stipulated period. Revenue launched prosecution against the Assessee and its Managing Director (MD) u/s 276B and 278B, respectively. Special Court observes that the penal provisions have to be strictly interpreted and whenever two views are possible, the one which favours the accused is to be upheld but that does not mean that "*the penal provisions have to be interpreted in a way to avoid the penal consequence only*".

Special Court further rejects the argument based on Section 40(a)(ia) that TDS was paid before the due date of filing ITR, therefore, the time provided for remitting TDS is up to the date of filing ITR, holds that the filing of ITR is completely different from the remittance of tax deducted but not paid. Holds that *mens rea* is not a prerequisite for invocation of Section 276B. Thus, observes that non-remittance due to negligence or using the TDS amount to meet some financial requirements certainly is not a reasonable cause and holds the Assessee guilty u/s 276B and imposes a fine of Rs.20,000/-

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

3. ITAT: Holds Government's promotional subsidy as capital-receipt, cannot form part of operating revenue for margin-computation

Hyundai Construction Equipment India Pvt Ltd [TS-611-ITAT-2021(PUN)-TP]

Pune ITAT holds Government's subsidy to promote new industrial units in less developed areas as capital receipt which cannot form part of operating revenue

for margin-computation, denies excess custom duty deduction while computing operating margin and restricts TP adjustment to AE transactions for assessee (engaged in manufacturing and trading of excavators and trading of spares) for AY 2014-15.

The assessee had received subsidy under the Package Scheme of Incentives (PSI) given by the Government of Maharashtra. ITAT notes subsidy received by the assessee was taxed as a revenue receipt but removed from the operating revenues in the computation of PLI for the manufacturing segment. ITAY holds subsidy as a capital receipt not chargeable to tax. Further holds that "*(the subsidy) cannot form part of operating revenue of the Manufacturing segment of the assessee company for the purpose of determining the ALP under the TNMM.*".

Separately, notes that the issue of ignoring impact of excess custom duty on imports while computing operating margin from the manufacturing operations was decided against the assessee by the coordinate bench for AY 2011-12. Holds that the profit margins of the comparables cannot be reduced by the difference in the amount of Custom Duty absent evidence of any differential rates paid by the assessee as well as the comparables.

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

4. ITAT: Fees for 'using' IT Infrastructure taxable as Royalty. Holds transaction not covered by Engineering Analysis ruling

Bekaert Industries Private Limited [TS-1135-ITAT-2021(PUN)]

Pune ITAT holds that payment made by the Assessee to its AE in Belgium for using the IT Infrastructure facility set up by the AE falls within the ambit of royalty u/s 9(1)(vi) and also under Article 12 of India-Belgium DTAA, confirms disallowance of Rs.1.71 Cr. u/s 40(a)(i) for TDS default. ITAT holds that SC ruling in *Engineering Analysis* applies only on copyright royalty cases and not on industrial royalty cases and the transaction of availing access to the IT Infrastructure facility set up by its AE, is a payment of industrial royalty.

Assessee-Company, for AY 2012-13, was subjected to disallowance of IT support service fees paid to N.V. Bekaert SA (AE in Belgium) for failure to deduct tax at source. ITAT examines the explanation provided by the Assessee and opines that it is not only support services rendered by N.V Bekaert SA to the Assessee but is a description of the complete IT Infrastructure facility. Further taking note of the pricing mechanism, notes that the costs incurred by NV Bekaert SA in setting up and maintaining the IT Infrastructure facility have been allocated to group entities with a mark-up. ITAT holds that the IT infrastructure set up by NV Bekaert SA is in the nature of an equipment covered under clause (iva) of Explanation 2 to section 9(1)(vi), thus, "*This unmistakably brings the case within the ambit of 'Royalty' u/s.9(1)(vi).*". As regards taxability under the DTAA, ITAT refers to Article 12(3)(a) and states that there is no material difference in the definition of the term `Royalty' under section 9(1)(vi) of the Act and the DTAA insofar as clause (iva) of Explanation 2 dealing with payment of consideration for use or right to use of any industrial, commercial or scientific equipment, is concerned.

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5. ITAT: Directs segregation of ALP-determination for Contract Software Development and ITeS segments.

Orange Business Services India Solutions Pvt Ltd [TS-595-ITAT-2021(DEL)-TP]

Delhi ITAT sets aside Revenue's order and restores the matter to AO/ TPO for determination of ALP for Contract Software Development Services (CSD) and Information Technology Enabled Services (ITES) segment and ALP of interest on AE receivables for assessee for AY 2016-17. TPO had rejected assessee's separate benchmarking for CSD and ITeS segment and adopted a combined approach to determine the ALP. ITAT relies on the order of the Tribunal in assessee's own

case for AY 2013-14 wherein it was observed that the issue of benchmarking the international transaction is required to be examined qua both the segments i.e. CSD and ITES separately and independently for factual analysis of taxpayer's TP study.

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

6. **ITAT: Treats royalty payment of 4% at ALP. Upholds SBI linked benchmarking for CCDs**

Praxair India Private Limited [TS-606-ITAT-2021(Bang)-TP]

Bangalore ITAT holds royalty payment of 4% to be at ALP and upholds assessee's treatment of Compulsory Convertible Debentures (CCDs) for assessee (engaged in the manufacture and supply of industrial gas) for AY 2011-12.

Assessee had benchmarked royalty payment of 4% to its AEs by aggregating the same with other international transactions. TPO had rejected the TNMM applied by assessee and determined ALP of royalty @ 1% under CUP method. Basis assessee's appeal, ITAT observed that in assessee's own case for AY 2009-10 and 2010-11, TPO, after receiving direction from co-ordinate bench of the Tribunal, had accepted royalty payment of 4% to be at ALP. ITAT holds that the payment of royalty at 4% in the year under consideration is to be treated as being at arm's length.

As regards treatment of CCDs as ECB by the TPO, ITAT holds that " *The TPO and DRP erred in treating CCDs as ECBs and benchmarked the interest rate against LIBOR rate. The CCDs is a hybrid instrument and cannot be per se treated as ECB / loan*.". Further ITAT observes that since the CCDs were issued in INR, interest was paid in INR and CCD's are repaid also in INR, holds that "*TP study of the assessee to justify the interest rate by arriving at average rupee cost and comparing the same with SBI prime lending rate is correct*".

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

7. **ITAT: Offshore maintenance, support services by GE Energy to PGCIL not taxable as FIS**

GE Energy Management Services Inc [TS-1103-ITAT-2021(DEL)]

Delhi ITAT holds that offshore maintenance and support services provided by Assessee do not make available to the recipient any technical knowledge, experience, skills, know how or processes as the nature of services are repetitive and ongoing and thus, consideration for such services do not qualify as FIS under Article 12(4) of India-US DTAA.

Assessee-Company entered into an agreement with Power Grid Corporation of India Limited (PGCIL) to provide offshore maintenance and support services. Revenue held that services rendered by the Assessee to PGCIL were taxable as FTS/FIS u/s 9(1)(vii)/Article 12(4) of the India-US DTAA.

ITAT notes that the offshore maintenance and support services provided by the Assessee are not geared towards making available any technical knowledge, experience, skills, know how or processes to PGCIL and services provided by the Assessee are ongoing in nature which means that PGCIL is not able to apply technical or skill use by the Assessee for rendering such services. Holds that in light of repetitive nature of the services, it cannot be alleged that services are making available any technical knowledge, expertise, skill, knowhow or processes to PGCIL.

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

8. **HC: Sum received by EY Global for providing software-access to EY network firms not taxable as royalty**

EY Global Services Limited [TS-1104-HC-2021(DEL)]

Delhi HC follows SC ruling in Engineering Analysis, holds that payment received by EY Global for providing access to computer

software to its member firms in India does not amount to royalty under the domestic law as well as India-UK DTAA, thus, overturns AAR ruling. Rejects Revenue's submission that SC ruling is confined to the four categories mentioned therein and holds, *"Though the Supreme Court was on facts considering the four categories of cases that arose in the appeals before it, it has laid down the law for general application"*.

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

9. ITAT: Upholds profit attribution of 10% to Bombardier's PE, in-line with prior year's ALP basis FAR analysis

Bombardier (Singapore) PTE. Ltd [TS-612-ITAT-2021(DEL)-TP]

Delhi ITAT upholds 10% profit attribution to Indian PE for assessee (a Singapore based company primarily engaged in providing design, installation, operation and maintenance services of transport systems to its group companies) for AY 2011-12.

Assessee had entered into an agreement with an Indian Company i.e. Bombardier Transportation India Ltd. ("BTIL") for providing marketing, sales, project management and business development services, the receipts from which were not offered to tax in India (on the contention of them being cost reimbursements). AO held that the assessee had a PE in India and attributed profits therefrom despite the TPO's finding that the transaction between the assessee and BTIL was at arm's length.

When CIT(A) upheld attribution of 10% of the amount received from BTIL as profits of the Indian PE, assessee appealed before the ITAT. ITAT upholds CIT(A) order which provided for 10% attribution to Indian PE. Co-ordinate bench had upheld the 10% attribution by the CIT(A) in AY 2009-10 also on the basis that attribution of profit margin @ 10% was based on proper functions, assets and risk analysis and also considering the similar transaction of another group entity.

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

10. ITAT: Allows Sr. Adv. Harish Salve proportionate tax-credit u/s 90 on overseas income offered to tax in India

Harish N. Salve TS-1116-ITAT-2021(DEL)]

Delhi ITAT allows credit of taxes paid in the UK in proportion to the taxes on overseas income offered in India, follows earlier order on allowability of Scholarship Expenses.

Assessee-Individual declared income of Rs.93.40 Cr. for AY 2015-16 which was assessed at Rs.94.40 Cr. in scrutiny assessment by disallowing the 'Scholarship Expenses' of Rs.99.84 Lacs incurred on education of Indian students at the Oxford University. Revenue disallowed the credit of Rs.8.57 Cr. u/s 90 for taxes paid in the UK.

ITAT observes that it is an undisputed fact that the overseas income earned by the Assessee in UK has been offered to tax in India whereby the corresponding amount of income has already been offered to tax in India and accepted by the Revenue, the credit of the taxes paid on such income deserves to be allowed. ITAT, on disallowance of Scholarship Expenses, refers to earlier order in Assessee's own case and finds no distinguishing feature in the present case. Allows Scholarship Expenses.

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

Direct Tax/PF /ESI compliance due dates during the month of January 2022

Due Date	Form	Period	Comments
07.01.2022	Challan ITNS-281	December 2021	Payment of TDS/TCS deducted /collected in December 2021.
07.01.2022	Challan ITNS-281	October 2021 to December 2021	Quarterly deposit of TDS under section 192, section 194A, section 194D or section 194H
14.01.2022	TDS certificate	November 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M
15.01.2022		October 2021 to December 2021	Quarterly statement of TCS for the quarter ending December 31, 2021
15.01.2022	ESI Challan	December 2021	ESI payment.
15.01.2022	E-Challan & Return	December 2021	E-payment of Provident fund
30.01.2022		October 2021 to December 2021	Quarterly TCS certificate in respect of quarter ending December 31, 2021
30.01.2022		December 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194M
31.01.2022		October 2021 to December 2021	Quarterly statement of TDS for the quarter ending December 31, 2021

MCA Updates

1. MCA Allows companies to hold AGM for 2021-22 via VC till June 30, 2022.

MCA clarifies that companies whose Annual General Meetings are due in the year 2021, will be allowed to conduct them on or before June 30, 2022 through VC or OAVM.

Further clarifies that "*…this Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013* and *the companies which have not adhered to the relevant timelines shall be liable to legal action…*"

Vide another Circular, permits companies to conduct their EGMs through VC or OAVM or transact items through postal ballot upto June 30, 2022.

2. Over 17,000 Implementing Agencies registered with MCA for undertaking CSR activities.

Union Minister of State for Corporate Affairs Shri. Rao Inderjit Singh, in reply to a question in Lok Sabha, apprises that as of October 31, 2021, there are 17,130 Implementing Agencies registered with the MCA Registry, which undertake CSR work as per Sec. 135 of the Companies Act, 2013.

Highlighting that the CSR architecture is disclosure based and only CSR mandated companies are required to file details of CSR spent annually in the MCA21 registry, states that based on filings made by companies, they have spent a cumulative amount of Rs. 20,150.27 Cr. in FY 2018-19, Rs. 24,688.66 Cr. in FY 2019-20 and Rs. 8828.11 Cr. in FY 2020-21 respectively. Adds that "An analysis of CSR filings made by the companies reveals that of the total annual CSR spent, approximately 60% of the CSR expenditure has been done through implementing agencies…"

3. MCA Relaxes additional fees on annual financial-statements filing upto Feb 15, for FY 2020-21.

MCA relaxes the additional fees on the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL upto February 15, 2022, and upto February 28, 2022 for filing of e-forms MGT-7/MGT-7A, in respect of the financial year ended on March 31, 2021.

Further States that "During the said period, only normal fees shall be payable for the filing of the aforementioned e-forms.

RBI Updates

1. A.P. (DIR Series) Circular No. 19 dated December 08, 2021

In view of imminent discontinuance of LIBOR as benchmark rate it has been decided to make following changes to all-in-cost benchmark and ceiling for FCY ECBs / TCs:

i. Redefining benchmark rate for FCY ECBs/ TCs - The benchmark rate in case of FCY ECB/TC shall now be any widely accepted interbank rate or alternative reference rate (ARR) of 6 month tenor, applicable to the currency of borrowing. LIBOR has now been replaced with any accepted interbank rate.

ii. Change in all-in-cost ceiling for new ECBs/ TCs - To take into account differences in credit risk and term premia between LIBOR and the ARRs, the allin-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.

iii. One time adjustment in all-in-cost ceiling for existing ECBs/TCs - To enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

There is no change in the all-in-cost benchmark and ceiling for INR ECBs/ TCs.

2. Introduction of Legal Entity Identifies for Cross-Border Transactions, A.P. (DIR Series) Circular No. 20 dated December 10, 2021.

The Legal Entity Identifies (LEI) is a 20-digit number user to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

In order to get the benefits of LEI it has been decided that AD Category I Banks with effect from October 1, 2022 shall obtain LEI from resident entities (non-individuals) undertaking capital or current account transactions of Rs. 50 crore and above (per transaction) under FEMA, 1999.

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Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the GLEIF, the body tasked to support the implementation and use of LEI.

In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (https://www.ccilindialei.co.in), which is also recognised as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007. The rules, procedures and documentation requirements may be ascertained from LEIL.

Indirect Tax Updates

GST Notifications

1. The budget 2021 has presented various amendments to the GST Law through Finance Act, 2021. However, the same were not notified at that time. Now the department has issued Notification No. 39/2021 – Central Tax dated 21/12/2021 notifying the applicability of the majority of the of the amendments with effect from 1st January, 2022. (Except Section 7(1)(aa) and Section 50 – which are retrospective from 1st July, 2017).

   Click here to read/download the Notification No. 39/2021 – Central Tax dated 21/12/2021

2. On recommendations of the council, Government has further amended the Central Goods and Services Tax Rules, 2017, namely:

   a. In rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

      (4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless, -

      (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

      (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60;

   b. Due date for GSTR-9 as well as GSTR-9C for the F.Y 2020-21 has been extended from 31st Dec, 2021 to 28th Feb, 2022.

   c. Rule 95 has been amended to provide that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

   d. Rule 142 has been amended to align it with new provisions of Sec 129 providing for 7 days time for issuance of notice and further 7 days for issuance of order.

   e. A new rule 144A has been inserted providing for ―Recovery of penalty by sale of goods or conveyance detained or seized in transit.

      i. Where the penalty u/s 129 is not paid within 15 days of date of receipt of order of detention, Proper officer shall proceed for sale or disposal of goods or conveyance so detained.

      ii. The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10.

iii. Auction process shall be cancelled where the person transporting said goods or the owner of such goods pays the amount of penalty, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period of 15 days but before the issuance of notice for auction.

iv. At least 15 days' notice to be given for auction.

v. Where an appeal has been filed by the person under the provisions of sub-section (1) read with subsection (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed.

f. Rule 154 has been substituted to provide for ―Disposal of proceeds of sale of goods or conveyance and movable or immovable property.

g. Rule 159 has been amended to provide that a copy of order of attachment in FORM DRC-22 shall also be sent to the person whose property is being attached under section 83.

h. Other changes in Rule 159 have been made to incorporate the changes made in Sec 83 providing for attachment of property of a person other than the taxable person i.e., any person specified in sub-section (1A) of section 122.

i. Any objection to the order of provisional attachment of property is to be filed in FORM DRC-22A whose format has also been notified now.

j. Changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01 to incorporate above changes as well as the changes brought vide Notification no. 39/2021-CT dated 21st Dec, 2021.

Click here to read/download the Notification No. 40/2021 – Central Tax dated 29/12/2021

GST Circulars

1. Circular on GST on service supplied by restaurants through e-commerce operators:

The GST Council in its 45th meeting held on 17th September 2021 recommended to notify ‚Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e- commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

CBIC has provided some clarifications related to this and the same is as follows:

S. No	Issue	Clarification
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	The ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover
5	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO,

		these are not to be reported as inward supply (liable to reverse charge).
6	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies

9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

Click here to read / download the Circular No. 167 / 23 /2021 – GST dated 17/12/2021

2. **Circular on Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.**

The Board hereby prescribes the following procedure in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file refund claim for the period prior
to merger:

i. The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.

ii. At this stage, the applicant is not required to make any debit from the electronic credit ledger.
iii. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.

iv. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim.

v. No refund claim, requiring debit from the electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger, shall be filed using old GSTIN.

Click here to read/ download the Circular No. 168/24/2021 – GST dated 30th December, 2021

Notification issued by Department of Commerce

1. The last date of submitting applications for scrip based FTP Schemes has been revised to 31st Jan 2022.

   Click here to read/ download the Notification no. 48/2015-2020 dated 31st December 2021.

2. The department has given an option to file manual/physical EODC applications for all such Advance Authorization Scheme which have been issued prior to 1st December 2020.

   Click here to read/ download the Trade Notice No. 28 /2021-2022 dated 31st December 2021.

Indirect Tax Rulings

1. 2021-TIOL-2273-HC-KERALA-CX

IN THE HIGH COURT OF KERALA AT ERNAKULAM

CE Appeal No. 49 of 2018
(Order No. 22978/17 Of Cestat, South Zonal Bench
In Appeal E/21411/2017-DB)

POMSY FOOD PRODUCTS PVT LTD
K S PURAM, VAVVAKAVU P O, OCHIRA
KOLLAM, KERALA

Vs

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX APPEALS,
CR BUILDINGS, I S PRESS ROAD, COCHIN-682018

S V Bhatti & Basant Balaji, JJ

Dated: December 01, 2021

Petitioner Rep by: Karunakaran C K, Adv.
Respondent Rep by: Sreelal N Warrier, Adv.

CX - CESTAT dismissed the appeal as the appellant had not complied with the mandate of pre-deposit under Section 35F of the Central Excise Act, 1944, hence the present appeal - Short question to be considered is whether the appeal can be entertained by the CESTAT without complying with the mandate of pre-deposit under Section 35F ibid - Appellant submitted that the original order was passed on 19.3.2014 and the insertion of Section 35F ibid was done with effect from 6.8.2014 and, therefore, the *lis* has commenced prior to that amendment and in that situation he cannot be compelled to make deposit under Section 35F ibid; that the appeal filed against the original order was also on 17.6.2014 before the amendment and he is not bound to make deposit as it was prior to 6.8.2014.

Held: CESTAT has dismissed the appeal (on technical grounds) for failure on the part of the appellants in making mandatory deposit - The merits of the case projected by the appellants were never gone into - In that view of the matter, Bench feels that an opportunity can be granted to the appellant to make pre-deposit as mandated under Section 35F ibid, so that the CESTAT would be in a position to entertain the appeal and to go into the merits of the case of the appellant - Appellant is granted three months' time to comply with the condition of payment as mandated under Section 35F ibid - Upon compliance, CESTAT to dispose of appeal within six months - Appeal disposed of: High Court *[para 13, 14]*

2. 2021-TIOL-286-AAR-GST

Bharat Oman Refineries Ltd

GST - Tax is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period in view of clause 5(e) of schedule II of CGST Act: AAR

GST - Premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST: AAR

GST - Employer and employee are related persons as per Explanation to Section 15 and, therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees: AAR

GST - Applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals: AAR

GST - In respect of the tax payable/paid by the applicant in respect of premium paid of Group Medical Insurance policy, canteen facility and telephone charges, the applicant is eligible to claim ITC on the same since they are not blocked credits u/s 17 of the Act: AAR

GST - Canteen services provided to the employees are to be treated as supply even if there is no consideration - It will be liable to tax as per value determined in accordance with Rule 28: AAR

GST - In respect of canteen services provided by applicant to its employees without charging any amount (free of cost), applicant is not eligible to claim ITC - clause (ii) of Sl. No. 7 of 11/2017-CTR r/w clause (xxxii) of paragraph 4 relating to explanation given in 11/2017-CTR: AAR

- Application disposed of: AAR

3. 2021-TIOL-1946-ITAT-AHM

IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'D' AHMEDABAD

ITA Nos. 418 & 419/Ahd/2019
Assessment Year: 2014-15 & 2015-16

SHRI DESHI LOHANA
VIDHYARTHI BHAVAN, NR. VYAYAM VIDHYALAY
KANKARIA, AHMEDABAD-380022
PAN NO: AAAAS5836R

Vs

INCOME TAX OFFICER (EXEMPTION)
WARD-2, AHMEDABAD

Waseem Ahmed, AM & Madhumita Roy, JM

Date of Hearing: July 28, 2021
Date of Decision: September 30, 2021

Appellant Rep by: Shri Vartik Choksi & Shri Biren Shah, ARs
Respondent Rep by: Dr Shyam Prasad, Sr DR

Income Tax – Sections 2(15) & 11

Keyword – Denial of Exemption - Hostel Facility - Education Activity.

THE assessee public charitable trust was engaged in providing basic and necessary facilities to students in order to expedite them in getting the education. Thus assessee constructed a building which was used as hostel. In hostel, certain facilities were provided to students for living, food and other educational help. The assessee, in the hostel building, had also created a facility by constructing a hall which was being provided for social and other activities to members and public. The AO held that there was no documentary evidence furnished by the assessee suggesting that the assessee was engaged in charitable activity by providing education to students. The AO held that the activity of renting out hostel facility could not be treated as activity for helping and facilitating the students in getting education. The AO held that activity of hostel facility and renting out of the hall is nothing but a commercial activity therefore the same could not be allowed exemption u/s. 11. The ultimate use of the money received by assessee from letting out activity was of no relevance as provided in the proviso to section 2(15). The AO denied the exemption claimed u/s.11 and treated amount of surplus of income over expenditure amounting to Rs. 3,10,343 as income of the assessee. The CIT(A) upheld order of the AO.

On appeal, Tribunal held that

Whether assessee is entitled to claim exemption u/s 11 with respect to its activity of renting out hostel facilities to students being in nature of education – YES: ITAT

++ assessee owns 2 buildings. One of the building is located at Khidja pole Ahmadabad which has been let out on rental basis. The rent qua to this building is shown under the head income from house property. There was no change in the aims and objects of the trust. The Tribunal hold that the assessee was entitled to claim exemption under section 11 of the Act with respect to its activity of renting out the hostel facilities to the students being in the nature of education. Once the activity of the assessee has been held as educational in

nature, then the proviso to section 2(15) shall not be applicable. Restrictions imposed under the proviso to section 2(15) cannot be made applicable in the case on hand as the assessee is engaged in the activity of education. Activity of renting out the hall cannot be categorized as educational activity but the status of the assessee will not change being a charitable organization. It is for the reason that this activity is the ancillary activity which is supporting the assessee to achieve its goals of primary activities. Furthermore, there is no prohibition under the Act that the assessee being a charitable organization cannot carry on the business which is incidental to the attainment of the objective of the trust. Rather subsection (4A) to section 11, authorizes educational institution to carry on business which is incidental to attainment of the main objective of the trust. The tribunal has already held that the activity of the assessee is in the nature of educational activity. The assessee is eligible for deduction under the provisions of section 11(1)(d).

Assessee's appeal allowed

4. 2021-TIOL-2288-HC-MUM-CX

IN THE HIGH COURT OF BOMBAY

Writ Petition No.5753 of 2021

PRAKASH RAGHUNATH AUTADE

Vs

THE UNION OF INDIA & ANR

Dipankar Datta, CJ & M S Karnik, J

Dated: December 03, 2021

Appellants Rep by: Mr Arshad Hidayatullah, Sr. Adv. a/w Mr Makarand Joshi, Mr Rakesh Sawant, Shamiyana Hussain i/by MAX Legal

Respondents Rep by: Mr Jitendra B Mishra a/w Dhananjay B Deshmukh

CX - SCN dated 24 September 2020 was issued by Principal ADG, DGGSTI, Pune - Petitioner by a letter dated 23 October 2020 addressed to the Commissioner of CGST, Kolhapur denied the allegations levelled and requested the Commissioner to produce the witnesses based whereon the SCN came to be issued, for being cross-examined by him - Commissioner, by a letter dated 13 July 2021 responded by stating that the petitioner not having relied to the SCN, his request for cross-examination of the witnesses was premature; that as and when the petitioner files his reply, his request for cross-examination of witnesses would be examined - Aggrieved with this communication, the present petition has been filed seeking a writ of prohibition prohibiting the respondents from taking any steps or holding any proceeding pursuant to or in furtherance of implementation of the SCN dated 24 September 2020 until the respondent no.2 complies with the mandatory statutory procedure prescribed u/s 9D of the CE Act, 1944.

Held: A stage prior to issuance of show-cause notice cannot be regarded as an inquiry or proceeding as contemplated in the Act - Prior to the issuance of a show-cause notice, neither any inquiry nor a proceeding can be said to have commenced - Therefore, any statement recorded prior to the issuance of such show-cause notice is not a statement recorded in the course of an inquiry or proceeding and no right accrues in favour of a noticee to insist that he be offered for cross- examination the witnesses, whose statements have been recorded and are referred to in the show-cause notice, even prior to a reply thereto being submitted - The only question is at what stage would he be entitled to cross-examine the witnesses - As has been held in G-Tech Industries (***2016-TIOL-2749-HC-P&H-CX***) as well as in Parmarth Iron Pvt. Ltd. (**2012-TIOL-1264-HC-ALL-CX**), it is only after the statements of witnesses are recorded by the relevant authority in course of adjudication of proceedings and such evidence is regarded as relevant that the noticee has the right to claim that he be extended the opportunity to cross-examine such witnesses so as to extend to him fair, reasonable and adequate opportunity of defence - Petitioner is granted liberty to file final reply within a fortnight - If in the course of adjudication proceedings , any witness is summoned, in terms of the power conferred by s.14 and

his statement is recorded and found relevant, such statement shall not be relied upon unless the petitioner has been given suitable and reasonable opportunity to cross examine such witness - Aforesaid exercise is to be completed within six months - Petition disposed of: High Court [para 12, 13]

Petition disposed of

Case laws cited:

Commissioner of Central Excise, Meerut-I vs. Parmarth Iron Pvt. Ltd., reported in 2010 (260) E.L.T. 514 (All.)...Para 7

Kanpur Cigarettes Ltd. vs. Union of India, reported in 2016 (344) E.L.T. 82 (All.)...Para 8

G-Tech Industries vs. Union of India, - 2016-TIOL-2749-HC-P&H-CX...Para 9

5. 2021-TIOL-2280-HC-MUM-GST

Meritas Hotels Pvt Ltd Vs State Of Maharashtra

GST - An order of assessment of tax liability was passed under Section 62 on April 20, 2019 - On the very same day, the scanned copy of the impugned assessment order was communicated to the General Manager of the petitioner company - It is the case of the petitioner that the email received on April 20, 2019 remained to be reported by the General Manager to the Management of the petitioner company - It is only after the attachment of the bank account of the petitioner on July 1, 2019, upon initiation of recovery proceedings against the petitioner, that an application for certified true copy came to be made on November 5, 2019 - The certified true copy was made available on November 6, 2019 and the appeal under Section 107(1) of the Act was attempted to be filed in the physical form on November 20, 2019 which the respondent no.5 refused to accept or even acknowledge - The impugned assessment order was uploaded on GSTN portal only on January 8, 2020 whereupon the petitioner tried to file online appeal on the GSTN portal on January 10, 2020 - However, the status on the portal showed that there is a delay in filing the appeal - The point that arises for consideration in the present petition is, whether in the facts of the present case, the period of limitation for the purpose of filing an appeal under Section 107(1) of the said Act would commence from the date when the impugned assessment order is uploaded on the GSTN portal or from the date of service upon the petitioner of the scanned copy of the impugned assessment order by email on April 20, 2019.

Held: In the present case, the impugned assessment order passed by the respondent no.4 was communicated by email to the General Manager of the petitioner on April 20, 2019 - It is not the case of the petitioner that the General Manager was not competent and/or not authorised to receive the communication of the impugned assessment order on behalf of the petitioner - Failure on the part of the General Manager to inform the petitioner regarding receipt of the impugned assessment order will not have the effect of extending the period of limitation prescribed under sub-section (1) of Section 107 of the said Act - The language of sub-section (1) or (4) of Section 107 of the said Act leaves no scope for any ambiguity - The period of three months prescribed will commence from the date on which the said decision or order is communicated to the petitioner - Sub-section (4) of Section 107 of the said Act provides for a window enabling the assessee to present the appeal within a further period of one month, if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months - It is well settled that the right of appeal is a natural or inherent right but has to be regulated in accordance with the laws in force at the relevant time, the conditions having to be strictly fulfilled - Submission of the petitioner that except for communication of the impugned assessment order on the GSTN portal, all other communications are to be disregarded for the purpose of sub-section (1) of Section 107 of the said Act, is fallacious and too far fetched - Rule 108 no doubt prescribes that the appeal has to be filed electronically, but it nowhere prescribes that the same is to be filed only after impugned assessment order is uploaded on GSTN portal online - In the

present case, having regard to the express provisions of sub-Section (1) and (4) of Section 107 of the said Act, for the purpose of limitation, the date of communication of the impugned assessment order is to be regarded as April 20, 2019 viz. the date on which the order was sent by email to the petitioner - In the facts of this case, having regard to the express and unambiguous language of sub-section (1) of Section 107 of the said Act, Bench does not find any force in the contention of the petitioner that the date of uploading of the impugned assessment order on the GSTN portal has to be regarded as the date of communication for the purpose of calculating limitation - Though the petitioner was in receipt of the impugned assessment order by email on April 20, 2019 itself, the petitioner applied for certified true copy of the order dated April 20, 2019 on November 5, 2019, only after the recovery proceedings were initiated against the petitioner by attaching the bank account on July 1, 2019 - The petitioner has by such belated action lost the statutory remedy of appeal - Petition is dismissed: High Court [para 8, 9, 12, 16, 17, 18]

- Petition dismissed: BOMBAY HIGH COURT

6. 2021-TIOL-767-CESTAT-MUM

Shri Javed Akhtar Vs CCGST

ST - Issue involved is whether the appellant is entitled for refund of service tax paid under protest without challenging the assessment proceedings, which was held to be not payable by authorities concerned in an appeal of another assessee of the very same transaction? Facts: Appellant Javed Akhtar was a co-writer along with Salim Khan of film Zanjeer (1973) - A film by the same name was produced in the year 2013 by Reliance Big Entertainment P Ltd. - Appellant and Salim Khan jointly filed a suit before the Bombay High Court against Reliance Big Entertainment Pvt. Ltd. for infringement of copyright, claiming damages to the tune of Rs. 6 crores - In the said Suit, out of Court settlement was made and a payment of Rs. 2 crores each was made by Reliance to the Appellant as well as to Mr. Salim Khan in the year 2013 itself - Department was of the opinion that service tax needs to be paid on the said amount as the same falls under the definition of declared services - Appellant stated that he has not rendered any service and the amount received is the compensation towards the damages of copyrights and moral rights done by the producers of Zanjeer (2013) but despite that the appellant paid the service tax amount of Rs.22 lakhs under protest along with interest on 31.01.2014 and requested for closure of proceedings vide letter dated 23.06.2014 - Commissioner passed an order of closure of proceedings - Incidentally, in the matter of similar proceedings initiated by the department against Salim Khan, although the amount of service tax was paid under protest, the Commissioner(A) in appeal proceedings held that the amount of Rs.2 crores received was an ex gratia payment and NOT a payment for a consideration relating to any service - Since the said order was not appealed by the department, it attained finality and a refund was sanctioned to Salim Khan on 30.10.2017 - The appellant also filed a refund claim on 15.03.2018 on the primary ground that he too had paid the amount of tax under protest and as the amount paid to/by Salim Khan arises out of the same transaction, he too is entitled for the refund on similar lines - The claim was rejected by lower authorities and hence appeal filed before Tribunal.

Held:

+ Commissioner (A) has recorded a specific finding that the payment made by the appellant was not voluntary and is under protest and also that the application for refund is not barred by limitation. Aforesaid findings of the commissioner have not been challenged by the department and, therefore, it attained finality.

+ It is settled position that if the payment made by the assessee is not for any services rendered by him, the amount collected by Revenue as service tax is without authority

of law and cannot be termed as tax even and can't be retained by them.

+ Where there is no levy of service tax, amount wrongly paid cannot partake the character of 'service tax'. Had it been a tax then one would have understood the case of revenue but since in another case arising out of the same transaction it has been held not to be taxed since no service has been provided, then the amount paid by the appellant herein and that too under protest cannot be termed as tax, but merely a deposit.

+ Retention of any amount paid without any liability or in excess of the liability violates Article 265 of the Constitution of India.

+ Therefore, the contention that the assessment in the case of the appellant has attained finality and hence, he cannot claim refund unless the assessment is challenged is misconceived and contrary to the law. The authority concerned is duty bound to refund such amount as retention of such amount would be hit by Article 265 of the Constitution of India which bears the heading "Taxes not to be imposed save by authority of law" and lays down that no tax shall be levied or collected except by authority of law.

+ Act of the authorities by keeping the deposit is directly in conflict with Article 265. When the amount deposited by the appellant is not a tax and merely a deposit, there is no question of applying the provisions of the Finance Act for its refund.

+ Refund provisions should be interpreted in a reasonable and practical manner and when warranted, liberally in favour of the assessee.

+ Appeal is allowed with consequential relief.

- Appeal allowed: MUMBAI CESTAT

7. 2022-TIOL-03-HC-SIKKIM-GST

IN THE HIGH COURT OF SIKKIM

AT GANGTOK

Writ Petition (Civil) No. 48 of 2020

GLENMARK PHARMACEUTICALS LTD REPRESENTED BY SAMIK SARKAR, ATTORNEY HOLDER OF GLENMARK PHARMACEUTICALS LIMITED, SAMLIK-MARCHAK INDUSTRIAL GROWTH CENTRE, NEAR RANIPOOL EAST SIKKIM, SIKKIM-737135

Vs

1) UNION OF INDIA THROUGH THE SECRETARY, DEPARTMENT OF REVENUE MINISTRY OF FINANCE, NORTH BLOCK NEW DELHI-110001

2) DIRECTOR DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE MINISTRY OF COMMERCE AND INDUSTRY UDYOG BHAWAN, NEW DELHI-110001

3) THE ASSISTANT COMMISSIONER CENTRAL GOODS & SERVICE TAX, GANGTOK DIVISION, GANGTOK INDRA BY-PASS ROAD, NEAR DISTRICT COURT, SICHEY EAST SIKKIM, GANGTOK-737101

4) THE COMMISSIONER OF CGST SILIGURI, GANGTOK DIVISION, GANGTOK-II RANGE-737101

Meenakshi Madan Rai & Bhaskar Raj Pradhan, JJ

Dated: November 24, 2021

Petitioner Rep. by: Mr Rahul Tangri and Mr Aditya Makkhim Advs.

Respondent Rep. by: Mr Ajay Rathi, Sr. Standing Counsel with Mr Dilip Kumar Agarwal, Jr. Standing Counsel

GST - Dispute relates to the rejection of the petitioners claims for budgetary support under a "Scheme of Budgetary Support

under Goods and Services Tax" regime on the ground that the claims were made for the period prior to the registration which is impermissible.

Held: Although the application for registration and issuance of UID made by the petitioner had been received by the respondent No. 3 on 12.12.2017, the authority neither registered the petitioner nor rejected the application compelling the petitioner to re-apply for the same electronically pursuant to which registration and UID was granted on 31.10.2018 - The fact that registration and UID was granted makes it evident that the petitioner was eligible for the budgetary support under the scheme - Since, the Respondent No. 3 failed to grant the registration to the petitioner, although it was an eligible unit, the petitioner could not have made their claims for budgetary support before being allotted the UID - The impugned orders rejected the petitioner's claim for budgetary support on that sole ground without examining the application as to how much of the amount claimed was liable to be sanctioned as admissible amount of budgetary support - The stand of the respondents is fallacious as it is not only without substance but clearly illegal inasmuch as it sought to take advantage of its own wrong and deprive the petitioner of its rights under the scheme - Once a unit is found to be an eligible unit, the only question kept open to the authorities is the admissible amount of budgetary support from the claims made by the eligible unit on compliance of the requirement of the scheme - Impugned orders are set aside and writ petition is allowed - It is directed that the authorities shall process the four claims made by the petitioner for budgetary support and sanction reimbursements as found eligible within three months: High Court [para 16, 17]

Petition allowed

8. 2022-TIOL-01-AAR-GST

Aie Fiber Resource And Trading India Pvt Ltd

GST - Applicant sells the imported goods before goods cross the customs frontier of India i.e., prior to clearance of goods from the customs to pre-identified customers and invoice would be raised from their office located in the State of Telangana - On other occasions, applicant would import the goods and entrust them to a logistic service provider M/s DHL who will store the imported goods at their FTWZ facilities of Mumbai & Chennai - The applicant would then identify the Indian customer and on their directions M/s. DHL would cause delivery of goods to the Indian customer - In such cases, Indian customer would take delivery of such goods by filing ex-bond BOE and discharge their customs liability - The applicant is desirous of a clarification regarding liability of the said supplies to IGST and availability of ITC against such supplies - Applicant is also desirous of knowing whether issuing of invoice from Hyderabad for supply of goods from FTWZ to their local customers in other States would satisfy the conditions enumerated under Section 31 of the CGST Act. Held: Free Trade Warehousing Zone (FTWZ) is part of SEZ scheme and it is a customs bonded warehouse - FTWZ operates similar to an SEZ - The transactions proposed to be made by the applicant are covered by Entry 8 of Schedule III [Activities or transactions which shall be treated neither as a supply of goods nor as a supply of services] of Acts, 2017 i.e., supply of goods by the consignee to any other person, by endorsement of document of title of the goods, after the goods have been dispatched from the port of origin located outside India but before the clearance for home consumption; or supply of warehoused goods to any person before clearance for home consumption - Such transactions by virtue of Entry 8 of Schedule III do not attract tax under CGST or SGST or IGST - Further, according to explanation to section 17(3) of CGST Act, all transactions falling under Schedule III except Entry 5 will not be considered as 'value of exempted

supply' for purpose of reversal of ITC of common input services, therefore, the value of the transaction referred above will not form part of value of the exempt supply - Further, the applicant directs the FTWZ warehouse keeper to deliver the goods to a customer chosen by the applicant - Under Section 10(1)(a) of the IGST Act, the place of supply in such cases shall be the location of goods at the time at which the movement of goods terminates for the delivery to the recipient - Further, the applicant i.e. supplier is situated in Hyderabad, Telangana State whereas the goods are delivered in Other States, therefore it is an inter-state supply - Hence, the applicant need not obtain any registration in the Other State in order to effect such inter-state transactions: AAR

- Application disposed of: AAR

9. 2021-TIOL-2370-HC-AHM-GST

Hardik Textiles Vs State of Gujarat

GST - The petitioner is seeking to approach this Court being aggrieved by fact that the eligible refund amount which was credited in wrong account due to inadvertent mistake of petitioner's consultant should not penalize the petitioner - The bank details are to be entered under RFD-05 - The petitioner also did not raise grievance immediately and made an application with reference to said issue after nearly three months - The amount which had gone to the wrong account of M/s. Meet Textiles had been refunded by way of DRC-03 under Section 73(5) by way of voluntary payment - It emerges that second time when the application had been made by petitioner, rejection has come as there is a technical glitch - Even by specifying that the refund is being claimed under head "others" system has not permitted the amount to be given by way of refund to petitioner - Undoubtedly, it was a mistake which was committed by consultant of petitioner and therefore, the third party namely M/s. Meet Textiles had been benefited where the amount had been deposited - The amount once again has gone back to the authority by way of DRC-03, hence, the only way out now for availing legitimate claim of petitioner is by depositing the amount in his account which he has mentioned - Let the refund amount be accordingly credited in bank account of petitioner, as it is not the fault of petitioner to be deprived of this amount of refund and the stand on the part of both the counsels of respondents also being fair, according to them, this is a technical glitch as the system itself does not permit it to happen, therefore, court is constrained to interfere - The process to be completed in four weeks period, lest it shall fetch interest at the rate of 12% from date of second application: HC

- Petition disposed of: Gujarat High Court

10. 2021-TIOL-850-CESTAT-DEL

Lightspeed India Partners Advisors LLP Vs CCT

ST - The appellant had accumulated Cenvat Credit with respect to Management and Business Consulting services being exported by him - However, during the period prior CGST Act, 2017 came into effect, said credit has apparently not been debited by appellant, but has been reversed in Books of accounts of appellant - Foremost, it is to be checked as to whether the Books of accounts of appellants/private record can be considered as record admissible into evidence or as to whether it is statutory document - Madras High Court in case of BNP Paribas Global Securities Operations Pvt Ltd. 2021-TIOL-908-HC-MAD-ST has held that for the transaction pertaining to period prior to 30.6.2017, appellant since could not file ST-3 return post July, 2017, any reversal/ credit shown in his private accounts/ the Books of accounts become the statutory documents as admissible in evidence - Commissioner (A) has denied the refund of such incentive laying emphasis not merely upon Notification No. 27/2012 but also on the non-compliance thereof also in terms of Section 142 of CGST Act - The perusal of this provisions makes it abundantly clear that refund of any duty or tax which was paid for period prior to

coming into force of GST law can be claimed even after the appointed date of 01.07.2017 - The provision itself makes it clear that such claim is to be dealt with in terms of earlier existing law - Apparently and admittedly, there is no reason showing that the refund was otherwise not available to appellant - These observations about section 142 of GST Act, are sufficient to hold that Commissioner (Appeals) has failed to appreciate provisions as a whole and has wrongly held that in terms of section 142, impugned refund was not allowed. Coming to the Rule 15 of Cenvat Credit Rules which has also been emphasised as a ground for rejecting claim, no doubt this Rule mandates the transfer of entire Cenvat Credit available under CCR, 2004 relating to period ending the date immediately preceding the date of 01.07.2017 in the electronic credit ledger but Rule itself talks about compliance of Chapter XX of GST Act, 2017 for making such transfer - The said chapter and the transition provision includes section 142 CGST - Once that is so, no illegality found in the act of appellant who has reversed the Cenvat Credit of period pertaining to existing law to his Books of Accounts instead of transferring the same to electronic credit ledger. The Commissioner (A) has miserably failed to observe that with the introduction of GST Act, filing of ST-3 return was absolutely done away due to which there was no other possible way with the appellant to debit and to reflect the existing credit in its ST-3 return - The Notification No. 27/2012 with its condition No 2(h) was applicable only during the period prior to GST regime - Since the GST regime has done away with ST 3 return, there remain no provision in GST system to reflect the refund claim in CENVAT credit balance - The only option was to show its reversal in Books of accounts - Such reversal still amounts to non availment of Credit and refund whereof remains eligible - Support drawn from decision in case of M/s. Kiwi Technologies India Pvt Ltd. In case of Inguest Technologies Software (P) Ltd. Tribunal has allowed the refund clam of such transitional period when the reversal from Books of accounts was shown even after filing of refund - The rejection of two refund claims for the period January, 2017 to March 2017 and April, 2017 are held to have wrongly been rejected: CESTAT

- Appeal allowed: DELHI CESTAT

11. 2021-TIOL-36-AAAR-GST

Bharat Oman Refineries Ltd

GST - AAR had held that Tax is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period in view of clause 5(e) of schedule II of CGST Act; that Premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST; that Employer and employee are related persons as per Explanation to Section 15 and, therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees; that Applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals; that in respect of the tax payable/paid by the applicant in respect of premium paid of Group Medical Insurance policy, canteen facility and telephone charges, the applicant is eligible to claim ITC on the same since they are not blocked credits u/s 17 of the Act; that Canteen services provided to the employees are to be treated as supply even if there is no consideration and that it will be liable to tax as per value determined in accordance with Rule 28; that in respect of canteen services provided by applicant to its employees without charging any amount (free of cost), applicant is not eligible to claim ITC - Appeal is filed against this order of AAR.

Held:

+ GST is not applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period since merely because the employer is being compensated it does not mean that any

services have been provided by him or that he has 'tolerated' any act of the employee for premature exit - Ratio of Madras High Court decision in GE T & D India Ltd. [2020-TIOL-183-HC-MAD-ST] is squarely applicable to the present case: AAAR

+ GST is not payable by the employer on the amount of premium paid towards Group Medical Insurance policy of non-dependent parents recovered from employees and from retired employees since the activity undertaken by the applicant like providing of mediclaim policy for the employees' non-dependent parents/retired employees through insurance company neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017: AAAR

+ GST is not payable by the employer on recovery of "nominal" amount for availing the facility of canteen as it is only a facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider - GST is not applicable on the collection, by the appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider : AAAR

+ GST is not payable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL as activity undertaken by the applicant like providing of telephone facility to employees through BSNL neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Input credit of GST paid to BSNL on usage charges recovered from employees would not be available to the appellant as they are not providing any outward supply of telephone services and the facility is also not attributable to the purposes of their business in terms of Section 17(1) of the CGST Act: AAAR

+ Input credit of GST paid to the insurance provider would not be available to the applicant as health insurance is in the excluded category under Section 17(5) of the CGST Act and as said insurance services are not any outward supply of the applicant: AAAR

+ Input credit of GST paid to canteen service provider would be available to the appellant in terms of proviso under Section 17(5)(b) where it is obligatory for an employer to provide the same to its employees under any law. Provision of canteen services to all the employees without charging any amount (free of cost) will not fall under Para 1 of Schedule III of GST Act as there is nothing on record to show that the said facility provided to employees is part of the wage structure: AAAR

- Appeal disposed of: AAAR

12. 2021-TIOL-845-CESTAT-DEL

Bridgestone India Pvt Ltd Vs CC & CGST

Cus - The appellant filed bills of entry and assessed duty including Anti-Dumping duty and paid the same - Thereafter, without challenging assessment of bills of entry, it filed refund claims - Relying on the judgment of Delhi High Court in Aman Medical Products 2009-TIOL-566-HC-DEL-CUS , matter was remanded to Original Authority by Tribunal in the first round of litigation directing the matter to be decided based on whether or not there was a ' lis ' between appellant and Revenue in these matters - Thereafter, said judgment has been set aside by Larger Bench of Supreme Court in case of ITC Limited 2019-TIOL-418-SC-CUS-LB - It has been categorically held that any assessment including self-assessment needs to be appealed against and in absence of such an appeal and consequential re-assessment, no refund can be sanctioned - The judgment of Supreme Court is binding on all judicial and quasi-judicial authorities and it is found that the Commissioner (Appeals) has, in impugned order, correctly relied upon this judgment and upheld the rejection of refunds - The impugned order is upheld: CESTAT

- Appeal rejected: DELHI 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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