Newsletter
February 2022

Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars

Circulars issued by CBDT

1. **CBDT issues Guidelines for exemption u/s 10(10D).**

   Circular No. 2 / 2022, dated 19th January 2022. CBDT issues Guidelines u/s 10(10D) for computation of exempt income from one or more ULIPs issued on or after Feb 1, 2021. Guidelines explains the applicability of provisions under two situations where: (i) no consideration is received on any eligible ULIPs during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs but has not been claimed exempt and (ii) consideration is received under any one or more eligible ULIPs during any previous year preceding the current previous year and has been claimed to be exempt u/s 10(10D)

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

Direct Tax – Notifications

Notifications issued by CBDT

1. **CBDT notifies rules for computing exempt income for specified funds u/s 10(4D) & 115AD(1B). Effective from Apr 1.**

   Notification no. 6 /2022, dated 14th January 2022.

   CBDT inserts Rules 21AJA and 21AJAA along with the Forms 10-IK and 10-IL. The Rules come into force from Apr 1, 2022. Rule 21AJA prescribes a formula for computation of exempt income of specified fund, attributable to the investment division of an offshore banking unit, for the purposes of Section 10(4D). The rule also lays down the conditions to be complied with by an investment division of an offshore banking unit.

   Rule 21AJAA prescribes a formula for the determination of income of a specified fund attributable to the investment division of an offshore banking unit u/s 115AD(1B). Under both the Rules, the eligible investment division shall furnish an annual statement of exempt income in Form No. 10-IK electronically under digital signature on or before the due date under Explanation 2 to Section 139(1). Under Rule 21AJA, an investment division of an offshore banking unit shall also furnish a CA's report in Form 10-IL regarding maintenance and audit of separate books of account

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

2. **CBDT notifies e-Advance Rulings Scheme, 2022.**

   Notification no. 7/2022, dated 18th January 2022.

   CBDT notifies e-Advance Rulings Scheme, 2022. The Scheme applies to the applications for advance rulings made or transferred before the Board for Advance Rulings.

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

3. **CBDT notifies Rule 8AD for computation of capital gains from specified ULIP.**

   Notification no. 8/2022, dated 18th January 2022.

   CBDT inserts Rule 8AD for computation of capital gains u/s 45(1B). Prescribes formula for any person receiving any amount under a specified unit linked insurance policy, including the amount allocated by way of bonus on such policy at any time during any previous year. Provides that the capital gains so computed shall be deemed to be the capital gains arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

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

Direct Tax – Legal Rulings

Domestic and International Tax Rulings in the month of January 2022

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.

   ITAT finds that the Assessee had huge long term borrowings with nominal share capital and further that the balance of reserve and surplus was running in negative, whereas the major item of assets was loans and advances out of which Rs.9.22 Cr was paid to Director and thus remarks that the borrowed funds were utilized to give advance to the Director without any interest. ITAT finds that the purchase of land, for which the money was advanced, never materialized and that the amount was returned by the Director after a gap of 4 years. Remarks that the money was advanced even before identifying the property to be purchased.

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

2. **ITAT: Services rendered to MTR Foods outside India, not FTS under India-Singapore DTAA & domestic law.**

   Orkla Asia Pacific Pte Ltd [TS-1167-ITAT-2021(Bang)]

   Bangalore ITAT allows Assessee's appeal, holds that professional fees and reimbursement of expenses received by a tax-resident of Singapore from its wholly-owned subsidiary to be not taxable as 'Fees for Technical Services' as per Section 9(1)(vii) and Article 12 of India-Singapore DTAA.

   Assessee-Company provided shared marketing services to MTR Foods Pvt. Ltd. (100% subsidiary) and in terms of the service agreement received 50% of cost of the full-time employee providing sales and marketing services. Revenue, for AY 2015-16, held that the Assessee was assisting MTR Foods in market research, product launch, price negotiations, consultancy services by experienced personnel that helped in business development of MTR Foods and thus would be taxable as FTS under the Act as well as the DTAA.

   ITAT accepts Assessee's submission that the nature of transaction cannot be compared to secondment of employees. Opines that the services rendered by assessee were utilized in business carried on by MTR Foods outside India and the same cannot be deemed to have been accrued or arisen in the hands of the assessee in India. As regards taxability under the India-Singapore DTAA, ITAT notes that under Article 12(4)(b) only those services which made available technical knowledge, experience, skill or know-how etc. were covered as FTS. Notes that the services rendered by the non-resident assessee to MTR Foods are not taxable as per India Singapore DTAA.

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

3. **ITAT: Allows expenditure incurred on ESOP u/s 37(1).**

Aricent Technologies (Holdings) Limited [TS-17-ITAT-2022(DEL)]

Delhi ITAT allows Assessee's appeal, deletes disallowance made towards ESOP Expenditure.

Assessee-Company engaged in the business of developing packaged software, providing software consulting services and also in the business of ancillary products for the telecommunication industry was subjected to scrutiny under CASS for AY 2016-17 and its total income was assessed at Rs.3.46 Cr after disallowing: (i) Rs.14.99 Cr of ESOP expenditure and (ii) deduction of profit on sale of fixed assets amounting to Rs.2.20 Cr that resulted in double taxation.

ITAT finds similar disallowance for ESOP expenditure was made in Assessee's own case for AYs 2014-15 and 2015-16 which was deleted by the co-ordinate bench which held that "payment under the ESOP scheme wherein the reimbursement was paid to the parent company, towards ESOP for granting stock options to Assessee's employees is in the nature of employees compensation and is deductible as the expenditure incurred was wholly and exclusively for the purposes of business.". ITAT, thus directs the Revenue to delete the disallowance of ESOP expenditure.

As regards the non grant of deduction of profit on sale of assets, ITAT notes Assessee has submitted a copy of the Tax Audit Report, wherein undisputedly the sale consideration of sale of fixed assets has been reduced from the WDV of block of assets. ITAT remits the issue back to the Revenue for rectifying the computation of income after verification of Assessee's claim.

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

4. **ITAT: Contractual expenditure on common area's maintenance liable for TDS u/s 194C, not Sec.194-I.**

Connaught Plaza Restaurants P. Ltd [TS-1186-ITAT-2021(DEL)]

Delhi ITAT allows Assessee's appeal, holds common area maintenance (CAM) charges in the nature of contractual payment liable for TDS u/s 194C and not u/s 194-I.

Assessee-Company is engaged in the business of running fast food restaurants in North and East India under the brand name of McDonald's. Revenue, in the course of survey on Ambience Group, observed that the Assessee had hired space on lease in the malls owned by the Group and had deducted tax at source on CAM charges at 2% u/s 194C instead of 10% u/s 194-I. Revenue thus, subjected the Assessee to the proceedings as assessee-in-default for short deduction of tax at source on CAM charges of Rs.4.26 Cr., which was upheld by CIT(A).

ITAT finds that apart from rent, Assessee had also paid charges for availing common area maintenance services, provided either by the landlord or any other agency. Further opines that CAM charges were in the nature of contractual payment made to a person for carrying out the work in lieu of a contract and thus, the same would clearly fall within the meaning of 'work' as defined u/s 194C.

ITAT holds that CAM charges are not paid for use of land/building but are paid for carrying out the work for maintenance of the common area/facilities that are available along with the lease premises, therefore, the same could not be characterized and/or brought within the meaning of 'rent' as defined in Section 194-I.

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

5. **HC: Affirms ITAT's order adopting guidance value as full value of consideration for capital gains under JDA.**

Shankar Vittal Motor Co. Ltd. & Another [TS-1178-HC-2021(KAR)]

Karnataka HC dismisses Revenue's appeal, upholds ITAT's order adopting guidance value as mode of determination of full value of consideration for taxability of capital gains under joint development agreement (JDA).

Assessee-Company entered into a JDA for AY 2006-07, under which it was entitled to receive 25% of the built- up area with proportionate undivided share in common areas and facilities, which was transferred for a consideration of Rs.3 Cr. but not reflected in the books of account since it was not realized.

Revenue, in reassessment proceedings treated the cost of construction as the full of value of consideration. CIT(A) directed the Revenue to adopt the FMV as consideration against which the appeal was dismissed by the ITAT. On Revenue's appeal, HC notes that the main controversy revolves around the determination of full value of consideration.

Rejects Revenue's argument for adopting the cost of construction as consideration since Sections 50C and 50D were not applicable, finds the entire issue as revenue neutral.

HC holds that the guidance value of the land or the guidance value of the building would be appropriate mode to determine the full value of consideration in the case of a transfer where consideration for the transfer of a capital asset is not attributable or determinable and thus the guidance value adopted by the ITAT cannot be faulted with. Remarks that the issue relates to pure question of facts and no substantial question of law arises.

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

6. **ITAT: Fees for technical know-how paid to US Co., revenue expenditure, not hit by Sec.32(1)(ii).**

Frick India Ltd [TS-1169-ITAT-2021(DEL)]

Delhi ITAT allows Assessee's appeal, holds fees for using technical know-how paid to US Co. allowable as revenue expenditure.

Assessee-Company, engaged in the business of manufacturing and sale of air conditioning and refrigeration equipment, entered into an 'agreement' with Vilter Manufacturing Corporation (a US-based Co.), for a non-transferable licence to use technical know-how for manufacturing the products and parts in India and to market them against a part consideration of Rs. 82.73 Lacs paid during AY 2004-05 and claimed the same as revenue expenditure.

Revenue held that pursuant to the amendment in Section 32(1)(ii), the expenditure incurred towards technical know-how became capital expenditure eligible for depreciation @25%, which was also upheld by CIT(A).

ITAT accepts Assessee's submission that it is not a mere incurring of an expenditure by an Assessee towards fees for technical know-how, but the incurring of such expenditure being in the nature of a capital expenditure that would trigger the application of Section 32(1)(ii), also refers to Explanatory Notes to Finance (No.2) Act, 1998 explaining the purpose of inserting clause (ii) to Section 32(1) along with withdrawal of Section 35AB was provided, which clearly supported the Assessee's claim. ITAT peruses the agreement and highlights that the payment was made for running Assessee's ongoing business already in existence in a more technically viable manner and to facilitate improvements for yielding larger profits.

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

7. ITAT: Restricts addition over difference in stock for HP India to the extent substantiated by evidence.

HP India Sales Pvt. Ltd [TS-15-ITAT-2022(Bang)]

Bangalore ITAT partially allows cross appeals preferred by the Assessee and Revenue, restricts addition made over difference in the value of turnover as in the VAT return vis-a-vis income tax return to the extent of failure to furnish evidence supporting the difference.

Assessee was required to reconcile the turnover reported for indirect tax with that reported in the income-tax return whereby Assessee deducted Rs.167.58 Cr from the sales turnover in the VAT return to arrive at the sales turnover as per books of account. On Assessee's failure to furnish details pertaining to the amount, Revenue assessed the amount as income which was confirmed by the CIT(A).

ITAT opines that the disallowance should be restricted to the extent to which information was not furnished, and accordingly directs the Revenue. As regards Revenue's appeal over CIT(A)'s decision in deleting the addition of Rs.88.01 Cr relating to accrual entries, ITAT finds the Revenue did not furnish any specific comment with regard to the disallowance. Also finds that no details were furnished to support the claim that the year end provisions, that attract TDS liability have been included in the above said disallowances and thus restores the matter relating to applicability of provisions of Section 40(a)(ia) on the amount of Rs.6.98 Cr. to the Revenue for examining the same in accordance with law and sustains the relief to the extent of Rs.81.02 Cr as granted by the CIT(A).

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

8. ITAT: Denies deduction u/s 35(2)(ia). Finds capital expenditure 'bogus', R&D activities 'non-existent'.

The Official Liquidator in case of M/s. Jupiter Bioscience Limited [TS-08-ITAT-2022(Bang)]

Bangalore ITAT allows Revenue's appeal, upholds denial of deduction u/s 35(1)(iv) read with Section 35(2) in respect of 'bogus' capital expenditure for scientific research and also disallows the depreciation on fixed assets allegedly purchased during the year.

Assessee-Company, engaged in business of manufacturing and sale of drug intermediates, specialty chemicals and bulk drugs, claimed deduction of capital expenditure u/s 35(1)(iv) r.w.s. 35(2) amounting to Rs.10.13 Cr. for AY 2002-03, which was disallowed by Revenue by holding that: (i) bills produced by the Assessee evidencing the capital expenditure suffered from anomalies (ii) survey conducted on Assessee's factory premises revealed that no production activity was conducted and also no R&D activities were carried, (iii) no plant and machinery or lab equipment was installed in the factory for R&D purpose as claimed by the Assessee and (iv) Assessee's Finance VP admitted that the entire transactions shown under the head R&D expenditure are bogus and the vendors are non-existent. However, CIT(A) deleted the disallowance so made holding that the Assessee was denied opportunity of proper hearing and Revenue had made inadequate enquiries.

Observes that there was no material whatsoever produced by the Assessee to disprove the conclusions drawn by Revenue and positively prove that it purchased machineries in question for R&D and that it carried out R&D activities.

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

9. **ITAT: Upholds US-MAP margin for non US-AE for engineering design services. Rules on comparables for marketing support services.**

   Textron India Pvt Ltd [TS-06-ITAT-2022 (Bang) – TP]

   Bangalore ITAT rules on selection of comparables for contract engineering design services (EDS), remits working capital adjustment for allowance on actual basis, upholds applicability of 15.85% US mutual agreed procedure (MAP) margin to small value non-US AE transactions for assessee engaged in providing EDS & marketing support services (MSS) for AY 2011-12.

   For EDS segment, ITAT considered US AE transactions constituted 96.30% of the total turnover for the current AY, holds applicability of 15.85% margins to non-AE transactions as well. For MSS segment, ITAT directs similar exclusion of functionally different entities in assessee's case. Additionally, considering that post exclusion of these 2 companies, only one company was left, ITAT remits Cyber Media Research to the file of the TPO to determine the sufficiency or otherwise of one comparable company (after granting opportunity to assessee and based on facts of the case).

   Separately, ITAT allows assessee's claim of working capital adjustment, draws support from the decision of coordinate bench in Huawei Technologies India and remits with a direction to AO to allow on actual basis.

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

10. **ITAT: Accepts assessee's segmental-profitability and ALP for engineering-services. Discusses allocation keys, internal vs external TNMM.**

    Neilsoft Private Limited [TS-08-ITAT-2022 (PUN)-TP]

    Pune ITAT upholds ALP of rendering of engineering services, purchase of software (trading) and receipt of consultancy services from AEs for assessee for AY 2016-17.

    Segmental details was drawn up from the consolidated accounts under the following 3 heads. namely, Provision of services to AE, Provision of services to non-AEs and Trading activity. TPO rejected assessee's justification of ALP.

    ITAT upholds differential hourly rates for AE and non AE segments (supported by actual invoices raised) for booking revenues under service segment while acknowledging the validity of segmental profits even in case where separate accounts were maintained.

    ITAT notes that under the respective segments, direct cost of goods / services incurred like salaries were considered at actuals, basis number of hours spent by employees were deducted from direct revenues and further other indirect costs were deducted at actuals (like Consultancy charges, Commission and Discount, Provision for Doubtful Trade Receivables) or allocated based on various allocation keys (like Staff Welfare expenses, Power and Fuel, etc. based on Employee ratio and admin cost like Payment to Auditors, Software License fees etc. based on revenue ratio). Thus, ITAT rejects the AO/ DRP's reasons for rejecting the segmental profitability and accepts the segmental profitability as determined by the assessee.

    Separately, ITAT upholds standalone benchmarking of purchase of software under trading segment to be at ALP and comments aggregation of profits from trading activity under rendering of services would have only further increased the profits (already at ALP) from service transaction. Similarly, ITAT considering that consultancy services received were deployed commonly for rendering services both to the AEs and non-AEs upholds the ALP considering proper allocation (based on actuals) to respective AE and non AE service segments.

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

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

Due Date	Form	Period	Comments
07.02.2022	Challan ITNS-281	January 2022	Payment of TDS/TCS deducted /collected in January 2022.
07.02.2022		January 2022	Payment of equalization levy for January 2022.
14.02.2022	TDS certificate	December 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M
15.02.2022	TDS certificate	December 2021	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2021
15.02.2022	Form 3CD	FY 2020-21	Due date for filing of audit report under section 44AB
15.02.2022	Form 3CEB	FY 2020-21	Due date for filing of audit report under section 92E
15.02.2022	ESI Challan	January 2022	ESI payment.
15.02.2022	E-Challan & Return	January 2022	E-payment of Provident fund

MCA Updates

1. **MCA to launch web-based application for LLP filings**

   MCA notifies that it will launch a new application for e-filing for LLPs on MCA21 portal, on March 6, 2022, wherein all LLP filings will be web based.

   MCA States that since the LLP e-filings will be disabled from February 25, 2022, stakeholders must ensure that there are no SRNs in pending payment status.

   Further apprises that offline payments for LLP using Bank Challan and Pay later option would be stopped from February 19, 2022 12 AM and states.

   It further adds that DSC association and new user registration on MCA21 portal will be stopped on Feb 25, and these services will resume in new application with LLP launch.

   Lastly, clarifies that there will not be any interruption in filing of Company forms.

2. **MCA Prescribes higher additional fees for delay in filing certain e-forms w.e.f. July 1, 2022**

   MCA notifies the Companies (Registration Offices and Fees) Amendment Rules, 2022, w.e.f. July 1, 2022, prescribing a higher additional fee as a multiple of the normal fees (for certain cases), which shall be applicable for delay in filing of forms other than for increase in Nominal share capital or forms u/s 92/137 of the Companies Act (Annual Return, Financial Statements), or forms for filing charges.

   States that in case of delay of more than 15 days upto 30 days (Sec. 139 and Sec. 157) and upto 30 days in remaining forms, a higher additional fee 3 times of normal filing fees shall be leviable.

   Further, for a delay –
   - (i) of more than 30 days and upto 60 days, higher additional fee shall be 6 times of normal filing fees,
   - (ii) of 60-90 days, it shall be 9 times of normal filing fees,
   - (iii) of 90-180 days, 15 times of normal filing fees and
   - (iv) beyond 180 days, 18 times of the normal filing fees
   - Further, Specifies that "*Higher additional fees shall be payable, if there is a delay in filing e-form INC-22, or e-form PAS-3, on two or more occasions, within a period of 365 days from the date of filing of the last such belated e-form for which affectional fee or higher additional fee was payable.*"

3. **Supreme Court agrees to extend limitation period to file cases across the country in view of COVID-19**

   Supreme Court agrees to relax the limitation period to file cases under all general and

special laws across the country in view of the surge in COVID-19 cases.

A Bench of Chief Justice of India NV Ramana and Justices L Nageswara Rao and Surya Kant said that it is agreeing to the request by Supreme Court Advocates-on-Record Association (SCAORA) to suspend the limitation period to file cases.

A detailed order in this regard will be uploaded on the Supreme Court website later which will contain further details like the period for which the relaxation will apply.

4. IBBI Proposes to shorten voluntary liquidation timeline, introduce 'Compliance Certificate'

IBBI issues a Discussion Paper proposing to amend the provisions of IBBI (Voluntary Liquidation Process) Regulations ('Voluntary Liquidation Regulations'), w.r.t. Timelines and Compliance Certificate, solicits public comments by February 22, 2022.

Highlighting that the IBC does not stipulate any time limit for completion of the voluntary liquidation process, and the Voluntary Liquidation Regulations only provide that the liquidator shall "endeavour to complete the liquidation process of the corporate person within twelve months".

IBBI notes that 52% of the ongoing cases of voluntary liquidation processes have crossed the one-year time mark. Thus suggests that in those cases of voluntary liquidation, where no claims are received from creditors, the period for preparation of list of stakeholders by liquidator be reduced to 15 days (from extant 45 days).

Further, contemplating that distribution to the creditors should also take much lesser time than is currently stipulated (6 months), IBBI proposes that the period for distribution of proceeds from realization to the stakeholders may be reduced to 30 days from the receipt of the amount.

5. Due dates:

- For Filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL - February 15, 2022

- For filing of e-forms MGT-7/MGT-7A - February 28, 2022

Indirect Tax Updates

Notification issued by Department of Commerce

1. The last date of submitting applications for scrip-based FTP Schemes has been revised to 28th Feb 2022.

   Click here to read / download the Notification no. 53 / 2015-2020 dated 1st February 2022.

Indirect Tax Rulings

1. 2022-TIOL-30-CESTAT-CHD

Grey Orange India Pvt Ltd Vs Pr.CCGST

ST - Appellant filed refund claim with regard to eight purchase orders but the same was restricted to three purchase orders - They are claiming refund of service tax paid on advance received against these purchase orders - The sole issue arises whether the said refund claim is barred by limitation - The said advances so received is required to be adjusted against the amount of service provided by appellant - Admittedly, service tax paid by appellant was provisionally for services to be provided later on, but later on, no service has been provided by appellant and the purchase orders were cancelled - In those circumstances, the amount so paid provisionally is required to be adjusted when purchase orders were cancelled and the date of which the purchase orders were cancelled is the relevant date for filing refund claim - The refund claims were required to be filed within one year from the date of cancellation of purchase orders in terms of Section 11B (5) Explanation B (eb) of the ACT, 1944 - But, it is not clear as to whether the said refund claims have been filed within prescribed period, same is required to be examined by adjudicating authority - In case of Mafatlal Industries 2002-TIOL-54-SC-CX-CB , it is observed taht if any amount is payable by assessee and have been paid in accordance with law, refund of same is governed by Section 11B of the Act - Therefore, the refund claim is required to be filed within one year from the relevant date - The issue of passing the bar of unjust enrichment shall be examined by adjudicating authority based on documents placed by appellants - Matter is remanded back to adjudicating authority who shall entertain their refund claims as discussed herein, whether the same is barred by limitation: CESTAT

- Matter remanded: CHANDIGARH CESTAT

2. 2022-TIOL-23-HC-ALL-GST

Ranjana Singh Vs CTT

GST - Petition has been filed assailing the impugned orders dated 23.09.2021 and 28.10.2021, whereby, grant of GST registration has been rejected.

Held: [para 17, 18]

+ Once the petitioner has satisfied the requirement of the law for providing PAN, Aadhar and also house tax receipt / property receipt then the authority should not have insisted for submission of receipt of electricity bill.

+ Authorities below, without whispering any word or assigning any reason had rejected the application for non-specifying possession of the business premises and insisted for submission of electricity bill.

+ The authorities below have further erred in law in not pointing out any defect in submission of house tax receipt and insisted for submission of electricity bill whereas the notice dated 15.9.2021 gave an option for

submission of recent electricity bill or house tax receipt.

+ In the absence of any short comings or defect being pointed out in the reply submitted along with documents, the petitioner has every right to carry on her business lawfully and her right to do business cannot be confiscated in illegal and arbitrary manner.

+ It was bounded duty of the authorities to look into the same and then pass the order in accordance with law instead of their own whims and fancies.

+ It is clear from the records that all the documents as required under the Act and law as well as in compliance to the show cause notice were furnished by the petitioner and without pointing out any defect or short coming therein, the application should not have been rejected.

GST - Court is constrained to observe that the two authorities of the State have acted only with a view to harass the petitioner which cannot be accepted at any cost - This attitude of the respondents in this petition cannot be tolerated as the officers are being State functionary has to act fairly and their action must be in consonance with the provisions of the Acts as well as Rules

- Impugned orders dated 23.09.2021 and 28.10.2021 are quashed and the respondents are directed to pass an appropriate order within a period of seven working days - Writ petition is allowed with cost of Rs. 15,000/-, which shall be deposited before the High Court State Legal Services Committee, Allahabad within a period of 20 days - Respondents are at liberty to recover the cost from the erring Officer: High Court [para 19 to 22]

- Petition allowed: ALLAHABAD HIGH COURT

3. 2022-TIOL-22-HC-MEGHALAYA-GST

Pioneer Carbide Pvt Ltd Vs UoI

GST - Mistake in TRAN-1 filed u/r 117 of Rules, 2017 - Revision of declaration u/s 120A - It does not appear that the petitioner availed of such opportunity or requested the relevant Commissioner for a specific extension so that the petitioner could revise the declaration already furnished - Petition is allowed by permitting the writ petitioner to make a specific request to the relevant Commissioner under Rule 120A to extend the time for the petitioner to file a revised declaration upon correcting whatever mistake may be perceived to have been committed in the course of the initial filing - If such request is made by the petitioner within a fortnight, the Commissioner will consider the matter in appropriate perspective and without reference to the order impugned dated August 12, 2021 - In the unlikely event that the Commissioner declines the request, due reasons in support of such decision should be communicated to the petitioner - No coercive action will be taken against the petitioner in terms of the original show-cause notice or the order impugned till the time the Commissioner decides on the matter - Petition disposed of: High Court [para 7 to 9]

- Petition disposed of: MEGHALAYA HIGH COURT

4. 2022-TIOL-24-CESTAT-DEL

Hetram Sharma Vs CCGST & CE

ST - The appellant is a service provider under head 'Cargo Handling Service' being output service - It appeared to Revenue that cenvat credit on vehicles or capital goods availed, has neither been received from manufacturer nor from the registered dealer - As manufacturer's invoices issued against clearance of said goods from factory, did not show the name of appellant as consignee, it appeared that the documents are not proper in terms of Rule 9 of Cenvat Credit Rules, 2004 - The SCN proposed to disallow the cenvat credit and further proposal to impose penalty - Admittedly, M/s Shivam Motors is an Authorised dealer of M/s Tata Motors Limited and thus a representative of manufacturer of motor vehicle - Appellant have produced the invoices of dealer alongwith invoice-cum-challan issued by M/s Tata Motors Limited, when they initially cleared the goods to their specific counterpart

mentioning on invoice - 'internal customer' - The details of excise duty and cess as per invoice of M/s Shivam Motors is not in dispute, as have been taken notice of in SCN and also in O-I-O - Thus, there is an error on the part of Revenue in appreciating the documents, where a provider of service has received capital goods manufactured by M/s Tata Motors Limited through its authorised dealer - Accordingly, SCN is mis-conceived and no case of wrong cenvat credit taken as alleged, is made - The impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

5. 2022-TIOL-03-SC-CUS-LB

Sandoz Pvt Ltd Vs UoI

CIVIL APPEAL NO. 3358, 3359 OF 2020

Cus - A policy circular bearing No.16 (RE-2012/2009-14) dated 15.03.2013 came to be issued by the Director General of Foreign Trade to clarify that no refund of Terminal Excise Duty (TED) should be provided by the Office of DGFT/Development Commissioners, as supplies made by DTA Unit to EOU are ab initio exempted from payment of excise duty - The Development Commissioner eventually rejected the refund claim - Bombay High Court negatived the challenge to the stated policy circular as well as the order passed by the Development Commissioner and thus, dismissed the writ petition vide impugned judgment and order dated 01.08.2016 - Bombay High Court also noted that although in the past the regional authority had accepted refund request of EOUs, that cannot bestow any right much less vested right in EOUs so as to issue mandamus to the statutory authorities concerned to act contrary to the provisions of the FTP - As a matter of fact, to dispel the doubt entertained by EOUs, the position was restated by the Government vide notification dated 18.04.2013 issued in exercise of power conferred under Section 5 of the 1992 Act - In substance, the Bombay High Court observed that the impugned circular was only to restate and clarify that the regional authority of DGFT was not competent to entertain the refund application; and if EOU or the supplier so desired, were free to pursue refund claim before the competent excise authorities where amount towards duty had been deposited or paid.

CIVIL APPEAL NO.3360 OF 2020

This appeal by the Union of India assails the judgment and order dated 08.10.2018 passed by the Division Bench of the High Court of Delhi - The High Court of Delhi essentially relied upon its earlier decision in Kandoi Metal Powders Manufacturing Company Private Limited = 2014-TIOL-230-HC-DEL-EXIM to reinforce the view taken by it that the impugned circular invoked by the Department had prospective effect only - It was held that the view taken by DGFT that the respondent could avail of the refund under the provisions of the 1944 Act (CEA, 1944) and the Rules framed thereunder, was untenable in law - On facts, it noted that since the supply of excisable goods was prior to 15.03.2013, the question of invoking circular against the respondent-Company did not arise - Instead, the High Court held that refund application ought to have been processed by the DGFT in terms of para 8.3(c) of the FTP, as it stood prior to 15.03.2013.

CIVIL APPEAL NO.3705 OF 2020

This appeal by Union of India is against the decision dated 09.12.2019 of the Division Bench of the High Court of Karnataka in Writ Appeal No.286 of 2019 (T-TAR).

The Division Bench whilst dealing with the appeal filed by the Department, vide impugned judgment noted that the respondent Company had supplied computer systems to EOU on payment of TED from June 2009 till October 2009, which in terms of the FTP, in particular para 8.2(b), was deemed export - entitling the respondent-Company to claim refund of TED from the regional authority of DGFT in terms of para 8.3(c) of the FTP - The Division Bench of the High Court of Karnataka opined that there was no infirmity in the view taken by the Single Judge holding that the appellant cannot be heard to retain the amount which was not payable by way of tax being a case of deemed export.

Held:

+ Since the entitlement of exemption and refund of TED flows from the provisions of 1992 Act and FTP framed thereunder by the Central Government, which is an independent dispensation than the one provided in the 1944 Act and the rules framed thereunder, with the avowed purpose of promoting export and earning foreign exchange, it is the obligation of Authority responsible to implement the subject FTP, to deal with refund claim of the concerned entities. For, it is not a case of refund under the 1944 Act or 2002 Rules or 2004 Rules as such, but under the applicable FTP.

+ EOU entities, who had procured and imported specified goods from DTA supplier, are entitled to do so without payment of duty [as in para 6.2(b)] having been ab initio exempted from such liability under para 6.11(c)(ii) of the FTP, being deemed exports.

+ It would not be a case of entitlement of EOU, but only a benefit passed on to EOU for having paid such amount to the DTA supplier, which was otherwise ab initio exempted in terms of para 6.11(c)(ii) of the FTP coupled with the obligation to import the same without payment of duty under para 6.2(b).

+ If the DTA supplier as well as EOU had utilized its CENVAT credit for importing goods in question, the refund would be in the form of reversal of commensurate amount of CENVAT credit to the account of the concerned entity. However, if TED has been paid in cash by the EOU, the EOU may get refund of that amount from Authority implementing the applicable FTP in cash with simple interest at the rate of 6% per annum for the delayed refund of duty (para 8.5.1) on condition that it would not pass on that benefit to the DTA supplier owing to such refund/rebate.

+ As regards DTA supplier of goods to EOU, it is entitled to receive the refund of TED in terms of para 8.3(c) read with paras 8.4.2 and 8.5 of the applicable FTP subject to complying necessary formalities and stipulations provided therein, being a case of deemed exports.

+ Even, in the case of DTA supplier of goods to EOU, if TED has been paid by utilizing CENVAT credit, the refund would be in the form of reversal of commensurate amount in its CENVAT credit account. And if the amount towards TED has been paid in cash by the DTA supplier to the Authorities under the 1944 Act, the refund of TED amount would be made by the Authority implementing the applicable FTP in cash with simple interest at the rate of 6% per annum for the delay in refund of TED as per para 8.5.1.

+ In both cases, as aforesaid, responsibility of refund of TED in reference to applicable FTP would be that of the Authority responsible to implement the FTP under the 1992 Act, which has had consciously accorded such entitlements/benefits for promoting export and earning foreign exchange.

+ Further, the fact that the concerned entity had unsuccessfully applied for refund to the Authorities under the 1944 Act and the rules made thereunder, that would not denude it of its entitlement to get refund of TED under the FTP, as may be applicable being mutually exclusive remedies. It is so because it is well settled that the assessee is free to take benefit of more beneficial regime.

+ Appeals filed by the assessee (EOU) against the decision of the Bombay High Court partly succeed in the above terms; and the appeals filed by the Department against the decision of the High Court of Delhi and High Court of Karnataka are also partly allowed in the aforementioned terms. [para 41 to 45, 47]

- Appeals partly allowed: SUPREME COURT OF INDIA

6. 2022-TIOL-17-HC-MAD-GST

Aditya Energy Holdings Vs DGGI

GST - Alleged wrong availment of ITC - Petitioner seeks a writ of mandamus to direct

the respondent to refund a sum of Rs. 17,27,790/- and Rs. 12,60,472/- which was paid during the course when officers visited the petitioner's premises.

Held: There is no merits in this Writ Petition at this stage - The amount paid by the petitioner shall be treated as amount paid by the petitioner "under protest" and will be subject to the final appropriation in the proceedings to be initiated under Sections 73/74 of the CGST Act, 2017 - Respondent is also directed to return the photo copies of the seized documents - Petition is disposed of by directing the respondent or the proper officers concerned to complete the investigation and proceed to issue appropriate show cause notice to the petitioner within a period of six months - Respondent shall pass appropriate orders within a period of twelve months - In case, there is no case made out in the show cause proceedings, the respondent shall refund the amount to the petitioner, in accordance with law - Petition disposed of: High Court [para 6 to 8]

- Petition disposed of: MADRAS HIGH COURT

7. 2022-TIOL-23-AAR-GST

Rajesh Kumar Gupta

GST - Applicant can avail Input Tax Credit of the full GST charged on the invoice of the supply and no proportionate reversal of ITC is required in respect of commercial credit note issued by supplier for Cash discount for early payment of supply invoices (bills) and Incentive/schemes provided without adjustment of GST, if the said discount is not covered under Section 15(3)(b) of CGST Act, 2017 and the said discounts is not in terms of prior agreement - This is subject to the conditions that the GST paid for the said goods/service is not reversed or reimbursed / re-credited by the supplier to the applicant in any manner: AAR

GST - Since the amount received in the form of credit note is actually a discount and not a supply by the applicant to the supplier, no GST is leviable on receiver on cash discount/incentive/schemes offered by the supplier to applicant through credit note against supply without adjustment of GST: AAR

- Application disposed of: AAR

8. 2022-TIOL-15-HC-KERALA-GST

Jose Joseph Vs ACCT & CE

GST - Refund of unutilized ITC for the months of July, August, September and October, 2017 - Grievance of the writ petitioner arises from the allegation that Ext.P1 order was never uploaded on the web portal of the respondents and hence, the petitioner could not file appeals in the electronic form, which is mandated as per the present provisions of law; that the order was communicated to him only on 10.04.2019 and instead of filing the appeals in the electronic form, petitioner preferred appeals in the physical form, but in so doing, a delay occurred -Appellate authority rejected the appeals on the ground that the appeals are barred by limitation and that there is no provision for condoning the delay of more than 30 days -Petitioner further submits that since Ext.P1 order was never uploaded on the web portal, petitioner could not have, under any circumstances, preferred an appeal in the electronic form, that too, within the time prescribed; that, therefore, the order of the 2nd respondent Appellate Authority is liable to be set aside and the appeals ought to be considered on merits. Held : Appellate Authority went in a mechanical manner without appreciating that the orders though required to have been uploaded in the web portal, were never uploaded -Period of limitation will start to run, as per the provisions of the Act, only when the order is uploaded on the web portal and not when the order is received in the physical form by the petitioner - When admittedly there was a failure on the part of the respondents to upload the order in the original, petitioner cannot be mulcted with the responsibility of preferring appeals within the time period stipulated -When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three

months can start only when the assessee had the opportunity to file the appeal in the electronic mode - The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order - It is appropriate to notice that there is no provision for filing an appeal manually - Technical glitches are occurring in the transition phase - In such circumstances, a different approach is required, especially since the electronic mode of uploading the order and the electronic filing of appeal had not attained its technical perfection, at least till the recent past - Petitioner is entitled to have his appeals that were filed manually, to be treated as having been filed within time, in the light of the failure of the department to upload Ext.P1 order in the web portal - 2nd respondent is directed to treat the appeals as filed within time and thereafter, to pass final orders in the appeals on merits, after affording sufficient opportunity of hearing to the petitioner: High Court [para 9, 10, 11, 12, 15]

- Petitions allowed: KERALA HIGH COURT

GST - Entry 5 of Schedule III of SGST Act - Object for sale is land - Land will be converted into plots through some value addition works - Before OC, it is land and after OC, it will be a plot - land is excluded in entirety - Sale of plots is not a supply: AAR

- Application disposed of: AAR

9. 2022-TIOL-21-AAR-GST

Syngenta India Ltd

GST - Notice pay recovered by the applicant from its employees is not liable to GST - MP AAAR ruling in M/s Bharat Oman Refineries Limited 2021-TIOL-36-AAAR-GST and the decision of Madras High Court in GE T & D India Ltd. [2020-TIOL-183-HC-MAD-ST] relied upon - Maharashtra AAR decision in M/s Emcure Pharmaceuticals Limited 2022-TIOL-10-AAR-GST referred: AAAR

GST would NOT be payable on recoveries made from the employees towards providing parental insurance - Decisions in M/s Jotun India Private Limited [2019-TIOL-312-AAR-GST] and also in the case of M/s POSCO India Pune Processing Centre Private Limited [2019-TIOL-25-AAR-GST] relied upon: AAR

- Application disposed of: AAR

10. 2022-TIOL-116-CESTAT-MUM

Bhatia Shipping Pvt Ltd Vs CST

ST - The appellant is primarily engaged in business of freight forwarding, clearing and forwarding and other allied activities that involve booking of Containers/Air Cargo with various Shipping Lines/Airlines for their customers and recovering other miscellaneous charges from their customers - Appellant pays charges for space booking to different Shipping Lines/Airlines and later on sells such space to the exporters/importers at a slightly higher amount - The difference between the amount paid by appellant to Shipping Lines/Airlines and the amount recovered by appellant from the customers (exporter/importers) is called the "mark-up" - The Department was of the view that this "mark-up" was for services provided by appellant to customers and was therefore, liable to service tax under category of "support services of business or commerce BSS", covered under section 65(104) of FA, 1994 - Department has, however, placed reliance upon two decisions of Tribunal in Bhuvaneswari Agencies (P) Ltd. 2007-TIOL-1726-CESTAT-BANG and D. Pauls Consumer Benefit Ltd. 2017-TIOL-908-CESTAT-DEL and contended that the impugned orders do not suffer from any illegality - The Division Bench in earlier decision rendered in Satkar Logistics accepted the contention advanced on behalf of appellant that the appellant was only trading in space and was not providing any service - The decision in D. Pauls Consumer Benefit Ltd. was overruled by Larger Bench of Tribunal in Kafila Hospitality & Travels Pvt. Ltd. 2021-TIOL-159-CESTAT-DEL-LB - Thus, the impugned order cannot be sustained and is set aside: CESTAT

- Appeals allowed: MUMBAI CESTAT

11. 2022-TIOL-136-HC-AHM-GST

IN THE HIGH COURT GUJARAT

R/Special Civil Application No. 17567 of 2021
BARMECHA TEXFAB PVT LTD
Vs
COMMISSIONER
GOVERNMENT OF GUJARAT
Nisha M Thakore, J
Dated: January 12, 2022

Petitioner Rep by: Mr Avinash Poddar, Adv.
Respondent Rep by: Mr Utkarsh Sharma, Agp

GST - Petitioner has prayed for a direction to the respondent no.3 to unblock the Electronic Credit Ledger, more particularly, when the period of one year as prescribed under sub-rule 3 of Rule 86A of the CGST/GGST Rules has elapsed from the date of order of blocking of the Electronic Credit Ledger.

Held: Counsel for Revenue has fairly stated that the period of one year has elapsed in terms of sub-rule 3 of rule 86A of the Rules, 2017 - The rule itself has provided that the Electronic Credit Ledger can be blocked for a period of one year and on expiry of a period of one year, it would automatically get unblocked - In fact, it was the duty of the authority concerned to permit the assessee, i.e. the writ-applicant, to avail the input credit available in his ledger - Once the statutory period comes to an end, the authority has no further discretion in the matter, unless a fresh order is passed - In the case on hand, it is very unfortunate to note that despite the fact that the period of one year elapsed, the authority did not permit the writ-applicant to avail the credit available in his ledger - Even representation was filed in this regard but the authority thought fit not to pay heed to such representation - Bench observes that the authority did not permit the writ-applicant to avail the input credit available in his ledger for about more than two and a half months after the statutory life of the order came to an end - Bench, therefore, makes it clear that next time if it comes across such a case, then the authority concerned would be held personally liable for the loss which the assessee might have suffered during the interregnum period - Writ application is disposed of: High Court [para 4 to 6]

Petition disposed of

12. 2022-TIOL-04-AAAR-GST

Shree Dipesh Anilkumar Naik

GST - Applicant (now appellant) is the owner of land & develops the same with infrastructure as per requirement of the approved Plan Passing Authority - After this development of the land, the applicant sells developed land as plots - The sale price includes the cost of the land as well as the cost of common amenities, Drainage line, Water line, Electricity line, Land levelling charges, on a proportionate basis - Applicant sought to know as to whether GST is applicable on sale of plot of land for which, as per the requirement of approved by the Zilla Panchayat, Primary amenities such as, Drainage line, Water line, Electricity line, Land levelling etc. are to be provided by them - AAR held that a s per clause 5(b) of the Schedule-II of the CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer is a "Supply of service" and, hence, is liable to GST; that, therefore, the activity of sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer' and hence GST is payable on the sale of developed plots - Aggrieved, appellant is before the AAAR.

Held: Appellant is the owner of the land, who develops the land/gets the land developed with an infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per the requirement of the approved Plan Passing Authority (Jilla Panchayat) and thereafter, sells such developed land as plots - Sale of such sites is done to end customers who may construct houses/villas in the plots - The sellers charge the rate on super built-up basis and not the actual measure of the plot - The super built-up

area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis. -Thus, in effect, the seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis and all these are an intrinsic part of the plot allotted to the buyer - The above facts clearly indicate that sale of developed plot is not equivalent to sale of land but is a different transaction - Sale of such plotted development tantamount to supply/rendering of service - Supreme Court decision in Narne Construction P Ltd. relied upon [CIVIL APPEAL NOS. 4432-4450 OF 2012 dated 10 May 2012] - The appellant's sales price includes the cost of the land as well as the cost of common amenities, on a proportionate basis - Schedule II of the CGST Act, 2017 pertains to activities or transactions to be treated as 'supply of goods or supply of services' - As per clause 5(b) of the Schedule-II of the CGST Act, 2017, 'construction of civil structure or a part thereof, intended for sale to a buyer' is a 'Supply of service' and, hence, is liable to Goods and Services Tax (GST) - Thus, the activity of sale of developed plots would be covered under the clause 'construction of civil structure or a part thereof, intended for sale to a buyer' - Thus, the said activity is not covered under Entry No.5 of Schedule-III of the CGST Act, 2017 as contended by the appellant [i.e sale of land], but it is a supply of taxable service involving 'construction of civil structure or a part thereof, intended for sale to a buyer' falling under the head 'Construction services' appearing at Sr.No.3 of Notification No.11/2017-CTR and GST at the rate of 18% is payable - AAR/AAAR ruling in Maarq Spaces Ltd. - 2019-TIOL-454-AAR-GST , - 2020-TIOL-28-AAAR-GST and Bhopal Smart City Development Corporation Ltd. - 2022-TIOL-19-AAR-GST cited in support by the appellant cannot be relied upon since as per the provisions of s.103 of the Act, 2017, the Advance Ruling pronounced by the AAR or the AAAR shall be binding only on the applicant/appellant who had sought it in respect of any matter referred to in sub-section (2) of s.97 and the officer or the jurisdictional officer concerned in respect of the said applicant - Held, therefore, that the order passed by the AAR is upheld to the extent it has been appealed against - Appeal rejected: AAAR

- Appeal rejected: AAAR

13. 2022-TIOL-03-AAAR-GST

Aristo Bullion Pvt Ltd

GST - Applicant is of the view that the input tax credit earned on the Gold dore, silver dore [which are used in the manufacture of outward supplies viz. Gold and Silver bars along with gold coins of various purities] can be used for payment of GST on the Castor oil seed - A ruling was sought in this regard and the AAR held that such credit earned cannot be used for payment of GST as opined by the applicant; that the aforementioned inputs are not used or intended to be used in the course or furtherance of the business of supply of Castor oil seeds inasmuch as basic conditions envisaged in the provisions of Section 16(1) have not been fulfilled - Appeal filed before the AAAR.

Held: Section 16(1) of the CGST Act only states the eligibility and conditions for taking ITC - It does not impose any restriction on utilisation of the legitimately earned ITC - It does not prescribe that ITC available in electronic credit ledger to be utilized only for the specific outward supply, on whose inputs such ITC was availed - Section 16(1) nowhere mandates to prove one-to-one correlation of particular inputs with particular outward supply - In other words, Section 16(1) does not require that payment of outward tax on particular outward supply can be made only from the ITC taken on particular inputs, which have nexus or connection with that outward supply - Therefore, amount of input tax credit lying in electronic credit ledger can be utilised by appellant for making any payment of output tax payable by him - Held, therefore, that payment of output tax on Castor Oil Seeds through utilization of Input Tax Credit taken on Gold & Silver Dore Bars etc. cannot be denied merely on the ground that the inputs have no nexus with outward supply: AAAR

- Appeal allowed: AAAR

14. 2022-TIOL-119-HC-KAR-CUS

IN THE HIGH COURT OF KARNATAKA

AT BENGALURU

WRIT PETITION No.8862/2021 (T-RES)

M/s BIOCON LTD
20TH KM, HOSUR ROAD,
ELECTRONIC CITY, BENGALURU
KARNATAKA - 560100
Vs
1) DIRECTOR GENERAL OF FOREIGN TRADE
THROUGH THE CHAIRMAN POLICE RELAXATION
COMMITTEE 5TH FLOOR, UDYOG BHAWAN
NEW DELHI - 110001

2) ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
6TH FLOOR, KENDRIYA SADAN C AND E WING
KORAMANGALA 2ND BLOCK
17TH MAIN ROAD BENGALURU - 560034

3) DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE
POLICY 3 DIVISION
UDYOG BHAWAN NEW DELHI - 110001

4) PRINCIPAL COMMISSIONER OF CUSTOMS
AIRPORT/AIR CARGO COMPLEX
AI SATS AIR FREIGHT TERMINAL NEAR AIRPORT
DEVANAHALLI BENGALURU - 560300

5) UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN NEW DELHI - 110001

S Sunil Dutt Yadav, J

Dated: January 12, 2022

Petitioner Rep by: Sri Ravi Raghavan, Adv.
Respondent Rep by: Sri Amit Deshpande, Adv. for R4; Sri Jeevan J Neeralgi, Adv. for Sri V C Jagannath, CGC For R1, R2, R3; V/O Dated 11.08.2021, Service of Notice

Cus - Petition is filed with a prayer to quash and set aside the impugned review order dated 07.01.2020 read with order dated 28.05.2019 passed by respondent no. 1 and direct the respondent no.2 to consider the case of the petitioner and grant export incentive under MEIS or to reopen the online portal and allow the petitioner to rectify the inadvertent error or to accept and process physical application to grant export incentives under MEIS to the petitioner or to alternatively direct the respondent no.4 and amend the shipping bills granting the MEIS benefit - Petitioner submits that in the shipping bill there is a declaration 'We hereby declare that we shall claim the benefit under chapter-3', however, under the column 'Scheme reward', inadvertently the word "NO" was mentioned (by the Customs House Agent) though it ought to have been "YES"; that the petitioner approached the Policy Relaxation Committee (PRC) but their plea was rejected (order dt. 28.05.2019) and this order was upheld by the Appellate Committee (order dt. 07.01.2020) - Counsel for Respondent DGFT submitted that the scheme is so designed and the software created for the purpose of processing the scheme is such that any defect on the part of the petitioner cannot provide any window for reconsidering the claim made by the petitioner.

Held: The applicant has ticked 'NO' instead of "YES" in the reward column of the shipping bill - However, in the same shipping bill, in another portion, intention of the petitioner to claim MEIS reward has been reflected by declaration made as 'We hereby declare that we shall claim the benefit under chapter-3' - Orissa High Court in the case of Indian Metals & Ferro Alloys Ltd. [2021-TIOL-1871-HC-ORISSA-CUS], after detailed consideration of similar factual matrix has affirmed the view of the High Courts of Kerala, Madras and Bombay which provide for extension of benefit of MEIS scheme if the applicant has inadvertently typed "N" instead of "Y" in the shipping bill in the reward column - To err is human and whenever such bonafide mistakes have happened, procedures so designed ought to

provide for a way to rectify such bonafide mistakes - An error arising out of lapse and where parties seek to have the same rectified, the system must accommodate necessary procedure to rectify it - While noticing that the mistake that has happened is a technical mistake and is bonafide, on such technicalities, to deny substantive relief to the petitioner would amount to denial of justice - Court, therefore, sets aside the impugned decision of the PRC dated 28.05.2019 as well as the order dated 07.01.2020 passed by the appellate authority - Respondent no.1 is directed to allow the benefit under MEIS to the petitioner - Necessary formalities to facilitate extension of benefit under MEIS to be made by respondents - Petition disposed of: High Court [para 10, 12, 14, 15]

Petition disposed of

Case law cited -

Indian Metals & Ferro Alloys Ltd. [2021-TIOL-1871-HC-ORISSA-CUS]...para 7, 12...followed

15. 2022-TIOL-96-CESTAT-MUM

ACC Ltd Vs CCE & ST

CX - Appellant is engaged in manufacture of cement - It appeared to Department that they availed credit of steel used in civil structures which is in contravention of CCR, 2004 - A SCN was issued seeking recovery of credit and imposition of penalty - It is the case of appellant that the steel, which is used in manufacture of chimney and storage tanks is eligible for credit as they rightly used as inputs in relation to manufacture of capital goods which are further used for manufacture of excisable goods cleared on payment of duty

- The Tribunal in case of Dalmia Cement (Bharat Ltd.) 2015-TIOL-587-CESTAT-MAD relying upon the decision of Karnataka High Court in case of Hindalco Industries Ltd. , held that credit on cement and steels used in manufacture of storage tank "Silos" is admissible to appellant - The Courts and Tribunal have been consistent in holding that inputs which have gone into the manufacture of capital goods are admissible to credit notwithstanding the facts that said capital goods are embedded to earth - In respect of chimneys used in pollution control equipment, Supreme Court has held the same to be eligible for credit in case of Rajasthan Spinning and Weaving Mills 2010-TIOL-51-SC-CX - Appeal stands on merits of the case and when appeal survive on merits, other issue like penalty become irrelevant: CESTAT

- Appeal allowed: MUMBAI CESTAT

16. 2022-TIOL-94-CESTAT-DEL

Hindustan Zinc Ltd Vs CCGST

CX - The appellant is engaged in manufacture of Lead and Zinc Concentrates and is availing Cenvat Credit on various inputs, capital goods and input services in terms of provisions of CCR, 2004 - Appellant had made provision in books of accounts in respect of non/slow moving inventory, as a managerial tool to take decision for maintaining lowest possible inventory stock - The aforesaid entry in books of account does not change the value of inventory in any manner - This accounting entry had been made as per the established accounting principles - A SCN was issued proposing reversal of Cenvat credit for the period from April, 2016 to June, 2017 along with interest and penalty on the ground that the appellant had not paid or reversed the Cenvat Credit in respect of capital goods/inputs for which provision for alleged write-off was made during period of dispute, as was required under Rule 3(5B) of Cenvat Credit Rules - Admittedly, appellant has made only a 'general provision', which is not attributable to any particular capital asset/input - Revenue has not been able to identify the details of inventory or any asset, for which the general provision has been made - SCN is erroneous as the amount is for 'stores and spares provision' appearing in Trial balance as on 31.03.2017 whereas the amount of Rs.20,04,324/-is debit balance of 'stores and spares expenses' - The two being different account heads, have been wrongly taken together, making theSCN vague and

misconceived - Accordingly, impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

17. 2022-TIOL-92-CESTAT-AHM

Nirma Ltd Vs CC

Cus - The issue arises is that whether refund of deposit made with reference to provisional assessment as a security to the bond executed by assessee is governed by Section 27 of Customs Act, 1962 and the provision of time limit and unjust enrichment is applicable - The amount which the assessee is claiming as deposit was clearly paid as differential custom duty as is evident from bond - It is further observed that assessee has paid this amount vide TR6/GAR 7 Challan - From the aforesaid challan, it can be seen that under the Head of Account it is a customs duty which was paid and also in description coloumn it is clearly mentioned that deposit of amount is equal to 20% of provisional duty therefore, amount has been paid as customs duty only therefore it is not a deposit as has been claimed by assessee - Since in view of the documentary evidence, it is established that amount for which refund was sought for by assessee is not a deposit but it is a duty, therefore, refund is clearly governed by Section 27 of Customs Act, 1962 - Therefore, all the provision of limitation and unjust enrichment is clearly applicable - Accordingly, the impugned order is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

18. 2022-TIOL-91-CESTAT-DEL

Kukreti Steels Ltd Vs CCGST

CX - The appellant during investigation had made a deposit of Rs.5 lakhs - Thereafter, duty of Rs.50,05,446/- was confirmed vide O-I-O - Appellant in appellate proceedings before Tribunal succeeded - Thereafter, they filed a refund claim - The Asstt. Commissioner relying on Board's Circular 984/08/2014-CX adjudicated the refund application and the interest was allowed @ 6% from date of filing before Tribunal upto grant of refund - There is no ambiguity on reading Section 35 FF read with Section 35 F - The full amount of pre-deposit, even if it is more than the prescribed limit, has to be refunded by Department along with interest - Revenue is directed to grant further refund of balance amount along with interest on full amount @12% from the date of deposit till the date of granting refund, after making adjustments for the interest already granted - The impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

19. 2022-TIOL-14-CESTAT-DEL

Tradewell Vs CC

Cus - The issue arises is, whether the refund claim of SAD under Customs Act, which is in lieu of sales tax, have been rightly rejected as time barred by the Court - Appellant is before this Tribunal inter alia on the ground that it is a matter of common sense, that unless the right accrues to claim refund, limitation cannot start - They also relies on decision of Delhi High Court in Sony India 2014-TIOL-532-HC-DEL-CUS and states that the views of Delhi High Court is rational and have been followed in several decisions by Tribunal - Following the said decision, it is held that the appellant is entitled to refund, as their right to claim refund of duty in terms of Notification No. 102/2007-Cus. has accrued only when the sale took place - The findings of Delhi High Court clearly show understanding of department with regards to clause of limitation, provided in notification - The condition of limitation was not the part of original notification - It was only with the introduction of Circular No. 6/2008-Cus. and Notification No. 93/2008-Cus., department started insisting on limitation period prescribed w.e.f. 1.8.2008, became applicable - Merely because Section 27 of Customs Act, 1962 provides for a period of limitation for filing refund claim, it cannot be held that even for the purposes of claiming refund in terms of notification, same limitation has to be

applied - The Delhi High Court has also held that in the matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, parent enactment must clearly impose such obligations; subordinate legislation or Rules cannot prevail or be made, in such case - Therefore, impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

20. 2022-TIOL-09-CESTAT-DEL

Amzole India Pvt Ltd Vs CCGST

CX - The issue involved is, whether appellant a manufacturer of chemical products, imported raw material and paid the price for the same by way of Cost + Insurance + Freight (CIF) - Appellant received the goods and has shown receipt in their books of accounts and also other records when goods are received during the period - Neither there is any case of issue of supplementary invoices nor there is any case of fraud, collusion or mis-statement - Appellant is entitled to cenvat credit of service tax paid under reverse charge mechanism in October, 2018 - Further, appellant is entitled to refund of this amount in terms of Section 142(6) r/w 143(3) of CGST Act - Accordingly, Adjudicating Authority is directed to pay the refund within a period of 45 days alongwith interest as per Section 11BB of Central Excise Act, 1944: CESTAT

- Appeal allowed: DELHI CESTAT

21. 2022-TIOL-05-CESTAT-BANG

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH, BANGALORE COURT NO. 01

Service Tax Appeal No. 21032 of 2017

[Arising out of Order-in-Original No. MYS-EXCUS-000-COM-GVK-16-2016-17 ST ADJN, Dated: 30.03.2017
Passed by Commissioner of Customs, Central Excise & Service Tax, Mysore]

Date of Hearing: 09.11.2021
Date of Decision: 16.12.2021

M/S Adithya Builders And Developers
No. 912, 1st main road, near Canara Bank,
Ramakrishnanagara, Mysore-570023
Vs
Commissioner of Central TAX,
Mysuru, S1-S2, Vinaya Marga,
Siddharthanagar,
Mysore, Karnataka-570011

Appellant Rep by: Shri R Subramanya, Adv.
Respondent Rep by: Shri Rama Holla, AR

CORAM: S K Mohanty, Member (J)
P Anjani Kumar, Member (T)

ST - The appellant is engaged in selling of land, upon providing adequate infrastructure facilities - The scope of work and time limit for completion of project under said agreement were further extended by two more agreements - For carrying out assigned task, appellant was paid the amount as per norms prescribed in agreements - Department views that the activities undertaken by appellant in pursuance of agreements should fall under taxable category of "site formation and clearance, excavation and earth moving and demolition" service defined under Section 65(97a) of Finance Act, 1994 (up to 30.06.012) and thereafter, from 01.07.2012 under category of "Services", as defined under Section 65B(44) ibid - On examination of available records, it is found that the appellant had only undertook activities for completion of phase I of project and did not undertake any activities concerning phase II and phase III - Appellant had merely procured land and paid Government fees - This activity, in no way, can be considered as a taxable service under category of "site formation and clearance, excavation and earthmoving and demolition service" inasmuch as the work assigned under agreement for completion of phase I project do not attract any of the clauses itemized in definition provided under Section 65(97a) ibid - Thus, the activities undertaken by appellant pursuant to agreements entered

into with the society will not fall under taxing net for levy of service tax up to the period 01.07.2012 - Similarly, services provided by appellant would also not fall under purview and scope of definition of "service" as per Section 65B(44) ibid for period post 01.07.2012, onwards inasmuch as such definition clause has specifically excluded the activity of transfer of title in goods or immoveable property by way of sale - Hence, mere procurement of land from the farmers and getting necessary approval from government authorities will not create a tax liability under taxable category of "service" - It is a settled legal position that levy of service tax depends on service rendered, but not on the basis of agreements which were never fulfilled and no payment was received by service provider - No merits found in impugned order and as such, confirmation of service tax demand, interest thereon and imposition of penalties cannot be sustained - Therefore, impugned order is set aside: CESTAT

Appeal allowed

22. 2022-TIOL-07-CESTAT-AHM

Ultratech Cement Ltd Vs CCE & ST

CX - The appellant for their employee either provided accommodation in their residential colony and in some cases where the employees are residing outside factory, house rent allowance given - Case of department is that since the appellant have provided residential quarters free of rent to their employee, renting of residential quarter is exempted service and accordingly on the value of such service which department calculated by taking a deemed rent demanded 6%/7% of value of such service as deemed consideration under Rule 6(3) of Cenvat Credit Rules, 2004 - Appellant is not receiving any value by providing rental house to their employee within the premises - Since no value is flowing from employee to appellant there is no question of calculating 6%/7% on the value which does not exist - Since the house were provided to employees who are engaged in manufacture of final product hence ultimately all the activities get absorbed in manufacture of final product which is cleared on payment of duty - It is a settled law that in respect of removable of waste and scrap, refuse or by-product, Rule 6 ibid is not applicable as held by Bombay High Court in case of Hindalco Industries Limited and the said judgment has been upheld by Supreme Court - Even on scrap, demand of 6%/7% in terms of Rule 6(3) ibid is not sustainable - Demand raised under Rule 6(3) ibid is not sustainable, accordingly, the impugned order is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

23. 2022-TIOL-04-CESTAT-CHD

CIIS Educational Services Society Vs CCGST

ST - The appellant is in appeal against impugned order wherein demand of service tax has been confirmed on account of short levy or not paid for the period 2012-13 and 2013-14 by invoking extended period of limitation - On going through the audit report, it is found that no such objection of short-payment or non-payment of service tax has been raised during audit, during argument and admittedly, the SCN has been issued on 21.04.2017 which is beyond the period of limitation of one year, therefore, demand cannot be raised against appellant as there is no suppression on the part of appellant as audit took place on 02.04.2014 itself - Accordingly, impugned order is set aside: CESTAT

- Appeal allowed: CHANDIGARH CESTAT

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