Newsletter
June 2022

Vishnu Daya & Co. LLP
Chartered Accountants

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Direct Tax – Circular & Notifications

Circulars issued by CBDT in the month of May 2022

1. **CBDT modifies portal functionality for the purpose of Sec. 206AB / 206CCA.**

   Circular no. 10 / 2022, dated 17th May 2022

   CBDT modifies Circular No. 11/2021 in the light of Finance Act, 2022 that deals with functionality for compliance of Sections 206AB and 206CCA. The Circular emphasises that as per the proviso to the two sections, specified person shall not include a non-resident who does not have a PE in India and since the functionality does not have the visibility of non-resident having PE in India, there is likelihood that non-resident having PE in India may not get reflected in the list drawn afresh at the start of each financial year.

   Clarifies that tax deductors & collectors are expected to carry out necessary due diligence in respect of non-residents about the applicability of Sections 206AB and 206CCA.

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

Notifications issued by CBDT in the month of May 2022

1. **CBDT notifies new Forms for applying for Advance Rulings.**

   Notification no. 49 / 2022, dated 5th May 2022

   CBDT notifies new forms for applying for advance ruing under Section 245Q i.e. Form No. 34C, 34D, 34DA, 34E, 34EA. Amends Rule 44E(2) to provide for: (i) signing of the applications digitally, if the applicant is required to furnish the return of income under digital signature or (ii) communicating about the application through a registered email address, in any other case.

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

2. **CBDT notifies changes in various Forms applicable to charitable entities, research institutions.**

   Notification no. 51 / 2022, dated 9th May 2022

   CBDT notifies changes in Forms 3CF, 10A, 10AB, 10BD & 10BE.

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

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3. CBDT mandates PAN for depositing / withdrawing Rs. 20 Lakhs or more in cash, opening current / CC A/c.

Notification no. 53 / 2022, dated 10th May 2022.

CBDT amends Rule 114(3) to make application for PAN mandatory for any person at least seven days before the date of entering into transaction which is notified by virtue of Section 139A(1)(vii). CBDT inserts Rule 114BA to prescribe transaction under Section 139A(1)(vii) with banking companies and co-operative banks or a Post Office which are: (i) cash deposit(s)/withdrawal(s) aggregating to Rs. 20 Lakhs or more during one FY, in one or more account of a person with banking companies and co-operative or a Post Office, and (ii) opening of a current account or cash credit account.

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

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4. CBDT notifies Faceless Penalty (Amendment) Scheme, 2022

Notification no. 54 and 55 / 2022, dated 27th May 2022.

CBDT notifies Faceless Penalty (Amendment) Scheme, 2022 to amend Faceless Penalty Scheme, 2021 and to give effect to Faceless Penalty (Amendment) Scheme, 2022. Provides that where a personal hearing is requested, a virtual hearing shall be allowed by the income-tax authority of relevant unit through National Faceless Penalty Centre. Omits the Regional Faceless Penalty Centre from the Faceless Penalty Scheme and provides that electronic record shall be authenticated by National Faceless Penalty Centre by way of an electronic communication instead of by affixing the digital signature whereas the penalty unit or review unit or technical unit or verification unit is required to affix the digital signature. As per the amended Scheme, the terms Penalty Units and Penalty Review Unit shall refer to an Assessing Officer having powers so assigned by the Board.

Click here to read / download the copy of the notification no. 54.

Click here to read / download the copy of the notification no. 55

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Direct Tax – Legal Rulings

1. **HC: Upholds higher compounding fee for 'repeat TDS offender' as per CBDT Guidelines**

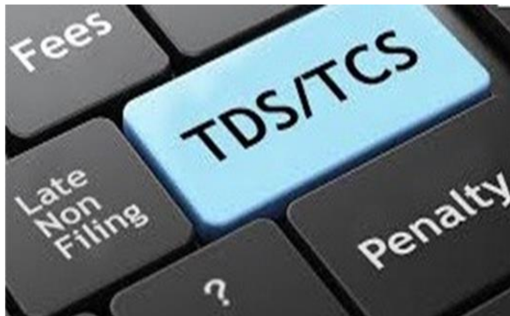
   Maspar Industries Private Limited & Ors [TS-334-HC-2022(DEL)]

   Delhi HC holds that Revenue is entitled to impose a higher compounding fee i.e. five per cent instead of three per cent as the Assessee is a repeat offender.

   Assessee-Company applied for compounding of offence of delayed payment of tax deducted at source and the Revenue compounded the offence under Section 279(2) at the rate of five per cent of amount of tax in default as compounding charges. Revenue also passed an order imposing compounding fee at the rate of ten per cent payable by the Assessee-Company.

   Opines that the Guidelines issued by the CBDT, vide Circular dt. Dec 23, 2014, clearly stipulate that after compounding of the first offence, if the same person comes forward for compounding of another offence through any subsequent application, the applicable rate will be five per cent instead of three per cent.

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



2. **ITAT: Upholds disallowance of amount paid through bearer cheques & weekly payments to contractors**

   Shree Buildcon & Associates [TS-406-ITAT-2022(PUN)]

   Pune ITAT dismisses Assessee's appeal, upholds disallowance of amounts paid in violation of Section 40(A)(3) through bearer cheques and of amounts paid towards weekly labour bill contended to be covered under Rule 6DD by the Assessee.

   Assessee-Firm, builder and developer engaged in civil construction, and rendering allied legal and technical services was subjected to disallowance of Rs.24.65 lakh in terms of Section 40A(3) where certain payments were made through bearer cheques, which was upheld by the CIT(A) against which Assessee preferred the instant appeal. ITAT finds it was an admitted position that the impugned amount was paid through bearer cheques and neither of the payments were covered by Rule 6DD.

   As regards disallowance of the amount paid to contractors towards weekly bill of labour, ITAT rejects Assessee's contention that the payment were covered under Rule 6DD(k) and states that in the instant case, it is seen that Assessee made payment to contractors and such payments were as such recorded as expenditure in books of account the Assessee. Observes that it could not be said that contractors were agents of the Assessee for provision of labour and that Assessee paid to the contractors on principal-to-principal basis and no agency of any sort was involved in the transaction.

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

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3. ITAT: Imposes Rs.25,000 cost on Assessee for 'lackadaisical & non-cooperative attitude' in assessment proceedings while restoring matter for rehearing.

Vavasi Telegence P. Ltd [TS-395-ITAT-2022(DEL)]

Delhi ITAT imposes cost of Rs. 25,000 on Assessee for 'lackadaisical and non-cooperative attitude' towards the quantum proceedings, restores the matter to Revenue in the larger interest of justice by providing the Assessee another opportunity.

For AY 2013-14, Assessee-Company was subjected to best judgment assessment under Section 144, due to non-compliance of statutory notices issued by Revenue, which led to additions for unexplained cash credit and disallowing certain expenses. ITAT notes that in the first appeal also, the Assessee did not attend the proceedings despite multiple notices, observes that the Assessee failed to assign any valid reason for continuing non-compliance before the Revenue and CIT(A).

Accordingly, restores the matter to file of AO and imposes cost of Rs. 25,000, to be deposited to The Prime Minister Relief Fund within 1 month. Further states that the Assessee shall fully co-operate in the proceedings without any demur and shall furnish the evidences/documents etc. as called for expeditiously.

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

4. HC: Commission to directors & relatives with no special expertise in procurement, unreasonable. Upholds Sec. 37 disallowance

Oripol Industries Ltd [TS – 374 – HC – 2022 (ORI)]

Orissa HC dismisses Assessee's appeal, upholds disallowance of commission paid to directors and their relatives holding it to be unreasonable and excessive.

For the AY 2010-11, Assessee-Company, manufacturer of PP woven sacks used for packing cement & fertilizer, paid commission of Rs. 53.49 Lacs to its directors and their relatives. Assessee submitted that it had obtained an export order for supply of Iron Ore Fines (IOF) and since the supply was time-bound and the materials could not be gathered by the Directors themselves, their relatives were engaged and commission was paid to them for the aforesaid services after duly deducting tax thereon.

Revenue disallowed part commission of Rs.30.08 Lacs holding it to be unreasonable and the same was confirmed by CIT(A) and ITAT observing that *"Merely because TDS had been deducted, would not justify allowing the entire amount as claimed towards commission."*. Opines that Revenue was justified in disallowing the commission since the Assessee failed to demonstrate the special expertise of directors and their relatives in procuring IOF from markets in India.

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

5. ITAT: Holds CAM charges contractual payments, Lifestyle International liable for TDS under Sec.194C, not Sec.194-I

Lifestyle International Pvt. Ltd [TS-352-ITAT-2022(Bang)]

Bangalore ITAT allows Assessee's appeal, holds common area maintenance (CAM) charges liable for tax deduction at source under Section 194C and not 194-I.

Assessee-Company, engaged in retailing ready-made garments, leather products,

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furniture etc. was subjected to a survey whereby Revenue observed that CAM charges paid on the leased properties was treated as contractual payments and tax was deducted at source under Section 194C, at the rate of 2%. Revenue observed that CAM charges were directly relatable to and part of the rental activity and thus held the payments to be covered under Section 194-I, liable for tax deduction at 10%.

Revenue treated the Assessee as 'assessee-in-default' under Section 201(1). On appeal, the CIT(A) observed that there was a single lease agreement for the premise's rent and thus concluded that the CAM charges are an integral part of the lease agreement. ITAT finds the coordinate bench in Assessee's case for the earlier year had observed that "*CAM charges are in the nature of contractual payments towards electricity, water supply, security, lift maintenance etc., falling within the meaning of section 194C whereby these charges are paid for carrying out the work for maintenance of the common area that are available along with the lease premises*" and held that CAM charges are in the nature of contractual payments made for availing maintenance services and they are not paid for use of any premises / equipment. ITAT follows the coordinate bench ruling and holds that Assessee has applied the right rate of tax deduction and therefore the Assessee cannot be held in default.

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

6. **ITAT: Includes reimbursement of share based payments as operating cost under TNMM. Deletes TP adjustment**

Tesco Bengaluru Pvt Ltd [TS-309-ITAT-2022(Bang)-TP]

Bangalore ITAT deletes TP adjustment made w.r.t reimbursement of share based payments, holds it to be not a separate international transaction for assessee (engaged in the business of software development and providing IT enabled services) for AY 2011-12.

The group company has issued shares to the employees of the assessee as part of its "International Bonus Plan". The AE has charged the assessee towards the cost of the shares and the same has been reimbursed. Assessee submitted that there was failure on TPO and DRP's part to understand the nature of transaction w.r.t reimbursement of share based payments and the expenditure was part of operating cost (included in cost of services), hence this transaction was interlinked and inter related with the company's main activity.

ITAT notes that shares issued to employees were free of cost, so expenses incurred by assessee was on behalf of employees only, therefore, views that TPO was incorrect in treating it as non-beneficial shareholder services, since the issue of shares was to the employees of the assessee as part of incentive plan designed for the employees, hence should form part of assessee's operating cost. Also views that the reimbursement formed integral part of cost of services and could not be treated as separate international transaction. Agrees with assessee in aggregating the same with cost of services and directs AO/TPO to delete TP adjustment made in respect of the reimbursement. Directs aggregation with cost of providing SWD and ITeS and ALP be determined after including this expenditure under TNMM.

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

7. **ITAT: Management fee prior to project-completion in SEZ, not revenue expenditure. Denies plea of consistency.**

Ascendas IT Park (Pune) Private Limited [TS-370-ITAT-2022(PUN)]

Pune ITAT dismisses Assessee's appeal, upholds disallowance of general management fee paid by the Assessee in the course of setting up an IT/ITeS project in SEZ.

Assessee-Company, engaged in the business of IT/ITeS Parks on a SEZ land was subjected to scrutiny assessment whereby Revenue disallowed general management fee paid by the Assessee to ASIPL on the grounds that the fee was not revenue expenditure and should be capitalized as the project was still under

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consideration. Assessee submitted that similar expenses incurred in the earlier years was allowed as revenue expenditure and thus, on the principle of consistency, it should be allowed to the Assessee.

ITAT finds that Assessee was in the process of setting up SEZ project wherein, SEZ provider creates assets in the form of building and let out/the building, and remarks that this activity could not be said to be in relation to real estate business. ITAT remarks that the SC ruling in *Challapalli Sugars* would squarely be applicable in the instant case, wherein it was held that revenue expenditure incurred till the business is set-up should only add to the capital cost of the project.

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

8. ITAT: Holds deduction under Sec.80-IC not available while computing book profits for MAT

Chheda Electricals and Electronics Pvt. Ltd [TS-405-ITAT-2022(PUN)]

Pune ITAT dismisses Assessee's appeal, holds deduction under Section 80-IC is not available in computation of book profits under Section 115JB. Also holds that claim for deduction under Section 80-IC is to be restricted to the gross total income.

Assessee-Company was engaged in manufacture of auto electricals and electronic components for two and three wheelers, claimed deduction under Section 80-IC for Rs.7.57 Cr. which was restricted by the Revenue to Rs.3.11 Cr. being the extent of gross total income which was upheld by the CIT(A).

ITAT observes that total amount of deductions under Chapter VIA cannot breach the amount of total income, and that in the instant case, Assessee's final gross total income was Rs.3.11 Cr. ITAT observes the statute did not provide for reducing the amount of book profit with the amount of deductions under Chapter VIA which includes Section 80-IA.

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

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

Due Date	Form	Period	Comments
07.06.2022		May 2022	Payment of equalization levy
07.06.2022	Challan No. 281	May 2022	Due date for deposit of tax deducted /collected for the month of May, 2022.
14.06.2022	TDS certificate	April 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in the month of April 2022.
15.06.2022	TDS certificate	January to March 2022	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March, 2022
15.06.2022	Challan No. 280	AY 2023-24	First instalment of advance tax for the assessment year 2023-24
15.06.2022	TDS certificate	FY 2021-22	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2021-22
15.06.2022	ESI Challan	April 2022	ESI payment.
15.06.2022	E-Challan & Return	April 2022	E-payment of Provident fund
30.06.2022		May 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194-IC in the month of May 2022.
30.06.2022		FY 2021-22	Furnishing of Equalisation Levy statement for the Financial Year 2021-22

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MCA Updates

1. **Ministry of Home Affairs clearance mandatory for appointing neighboring countries' nationals as Director**

   MCA amends Companies (Appointment and Qualification of Directors) Rules, 2014, to provide that in case the person seeking appointment as Director is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs (MHA), Government of India shall also be attached along with the consent furnished by such person.

   Accordingly, MCA inserts a new proviso under Rule 10 (allotment of DIN), which states that no application number shall be generated in case the person applying for DIN is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs has been attached with the application for DIN

   Also, adds 2 new declarations in this regard, in Forms DIR-2 and DIR-3.

2. **MCA extends timeline for filing of Annual Return by LLPs for FY 2021-22, upto June 30**

   MCA extends the timeline for filing of Annual Return by LLPs (Form 11) for FY 2021-22, without paying additional fees, upto June 30.

3. **MCA Extends due date for Form CSR-2 for FY 2020-21, from May 31 to June 30**

   MCA extends the due date for filing Form CSR-2 for the preceding FY 2020-21, from May 31, 2022 to June 30, 2022, to be filed separately, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS).

   Further, adds a new proviso to Rule 12 (1B), to state that "…for the financial year 2021-2022, Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

4. **MCA allows LLPs to file all event-based e-forms without additional fees, upto June 30**

   MCA relaxes payment of additional fees in case of delay in filing all the event based e-forms by LLPs which are due on and after February, 2022 to May 31, 2022, up to June 30, 2022.

   Decision comes in view of representations received in this regard, owing to transition from version-2 of MCA-21 to version-3, as also to promote compliance on part of the LLPs.

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5. **Merger with companies incorporated in neighboring countries to entail declaration indicating compliance with FEMA-requirements**

   MCA amends Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which lays down provisions governing merger or amalgamation of a foreign company with an Indian Company and vice versa.

   It stipulates that, in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application u/s 230 of the Companies Act.

   Accordingly, notifies the format for Form No. CAA-16 (Declaration in terms of Rule 25A), inter alia mandating the company/body corporate to disclose whether it is required to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

6. **MCA modifies e-Forms INC-9, INC-32, inserts declaration on compliance with Govt. approval under FEMA**

   MCA introduces amendments to Form No. INC-9 and Form No.INC-32 (SPICe+) under the Companies (Incorporation) Rules, 2014, w.e.f. June, 2022.

   Revises Form No. INC-9 (Declaration by Subscribers and First Directors of the proposed company) to include two checkboxes declaring that either – (i) Subscribers and First Directors are required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed, or (ii) Subscribers and First Directors are not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares.

   Further, inserts the following Declaration under Part-B of Form No.INC-32 (SPICe+) – "I, on behalf of the proposed directors, hereby declare that person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from the Ministry of Home Affairs, Government Of India shall be attached with the consent…(if yes is opted, a copy of the security clearance is to be attached).

7. **MCA amends Share Capital and Debenture Rules, introduces new declaration in Form SH-4**

   MCA notifies amendment to Companies (Share Capital and Debenture) Rules, 2014, inserts a Declaration in Form No. SH-4 of the Annexure, before the Enclosures, w.e.f. May 4, 2022.
   The declaration *inter alia* states that transferee is not required to obtain the Govt. approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares.

   The Declaration stipulates that "*Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.*"

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8. **Government approval mandatory for securities allotment to entities in countries sharing land-border with India**

   MCA notifies amendment to Companies (Prospectus and Allotment of Securities) Rules, 2014, *inter alia* states that no offer or invitation of any securities under this Rule shall be made to a body corporate incorporated in, or a national of, a country which shares land border with India, unless such today corporate or the national has obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement cum application letter.

   Accordingly amends Form PAS-4, requiring the applicant to check a box as to whether or not the applicant is required to obtain Govt. approval under Foreign Exchange Management (Non-debt Instruments) Rules prior to subscription of shares.

9. **Section 8 companies cannot amend Object Clause to include microfinance activities**

   MCA calls for immediate action on part of ROCs to prevent Sec. 8 companies from amending their object clause for carrying out microfinance activities. Refers to its earlier direction letter dated February 10, 2020, and letter dated August 31, 2020, wherein the Ministry had manifestly directed the ROCs not to allow Sec. 8 companies to amend their main objects for inclusion of micro-finance/credit activities, inasmuch as incorporation of micro-finance companies u/s 8 of the Companies Act is not feasible, as they do not comply with any stringent criterion of Net owned fund as laid down in the relevant RBI directions.

   Thus directs the Director-General of Corporate Affairs (DGCoA) to ensure strict compliance by all the ROCs with the instructions contained in the letters issued earlier by MCA on this issue. Decision comes in light of various section 8 companies altering their object clause for carrying out microfinance activities by way of passing Special Resolution, changing Activity code and subsequently filing e-form MGT-14 with the concerned ROCs, even though at initial incorporation, the ROC (CRC) is not allowing Section 8 companies to get incorporated with the objects of microfinance activities.

10. **Due Dates:**

    Form 11 for LLPs – June 30, 2022
    Form DPT 3 for companies – June 30, 2022
    Form CSR 2 – June 30, 2022
    FLA Return to be submitted to RBI – July 15, 2022

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Indirect Tax Updates

GST Notifications

1. CBIC has waived off the late fee leviable under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22.

   ***Click here** to read / download the notification no. 07/2022 – Central Tax dated 26th May 2022.*

2. The Government, on the recommendations of the Council notified that the rate of interest per annum to be 'Nil', for some class of registered persons, who were required to furnish the statement in FORM GSTR-8, but failed to furnish the said statement for the specified months by the due date, for the period From the date of depositing the tax collected under subsection (1) of section 52 of the said Act in the electronic cash ledger till the date of filing of statement under subsection (4) of section 52.

   ***Click here** to read / download the notification no. 08/2022 – Central Tax dated 07th June 2022*

GST Instructions

3. **Instructions Regarding Deposit of tax during the course of Search, Inspection or Investigation:**

   The above matter has been examined by the board and has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice ls permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

   It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where 'recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

   Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should, however, inform the taxpayers

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regarding the provisions of voluntary tax payments through DRC-03.

Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

***Click here** to read / download the instruction no. 01 / 2022 – 23 (GST - Investigation) dated 25th May 2022*

Indirect Tax Rulings

1. **2022-TIOL-403-CESTAT-MAD**

   Aurobindo Pharma Ltd Vs CC

   Cus - Appellant had imported certain goods under Advance Authorization Scheme vide various licenses - As the Advance Authorization expired, appellants were unable to fulfill their export obligation as stipulated in these licenses - They have paid appropriate duty and interest on quantity of inputs which were not used in manufacture of finished products for exports - The duty was paid manually vide TR6 challan - As the differential duty comprised a portion of IGST also, appellant had filed refund claim for the reason that there is no provision to avail credit of IGST which is paid through TR6 challan - Same was rejected on the ground that there is no excess payment and that the duty liability arose on account of non-fulfillment of conditions of the license - It has to be noted that duty was paid as appellants were not able to fulfill export obligation as per Advance Authorization license - It then becomes clear that inputs have not been used in manufacture of final products for export - Tribunal do not find any reasons to take a different view from the decision of Tribunal in case of Servo Packaging Ltd. 2020-TIOL-664-CESTAT-MAD wherein it is held that the refund is not eligible - The impugned order does not call for any interference: CESTAT

   - Appeal dismissed: CHENNAI CESTAT

2. **AGGARWAL DYEING AND PRINTING WORKS**
   Vs

   STATE OF GUJARAT AND 2 OTHER(S)

   J B Pardiwala & Nisha M Thakore, JJ

   Dated: February 24, 2022

   Petitioner Rep. by: Natasha Sutaria(7907)
   Respondent Rep. by: None

   GST - Petitioner has inter alia sought a direction to the Respondent No. 3 to revoke cancellation of the registration of the writ applicant; direction to the Respondent No. 2 to consider the Appeal on merits; award costs etc. - Controversy in all these writ applications is in the narrow compass i.e. Whether the show cause notice seeking cancellation of registration and the consequential impugned order cancelling registration under the GST Act, 2017 is valid and sustainable in eye of law?

   Held: It is settled legal position of law that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice - Assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reason which is the heart and soul of the decision and said reasons must be

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the result of independent re-appreciation of evidence adduced and documents produced in the case - Wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision - Show cause notice, though issued in the prescribed form does not elaborate the reasons and the one-line reason mentioned is nothing but the reproduction of either of the reasons provided under rules regarding cancellation of registration - Respondent authority i.e. the Assistant/Deputy Commissioner, State tax Officer ought to have at least incorporated specific details to the contents of the show cause - Any prudent person would fail to respond to such show cause notice bereft of details thereby making the mechanism of issuing show cause notice a mere formality and an eye wash - Respondent authority has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for - Even the impugned order is not only non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom - Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position - Bench, therefore, has no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences - Liberty granted to the respondent No. 2 to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits - Writ applications allowed: High Court [para 11, 12, 12.1, 13, 13.1, 14, 19]

GST - AGP submitted that on account of technical glitches in the portal, the department is finding it very difficult to upload the show cause notice as well as the final order of cancellation of registration containing all the necessary details and information therein.

Held: Due compliance of the laws of GST involves lot of technology and not just the law - Until the Department is able to develop and upload an appropriate software in the portal which would enable the Department to feed all the necessary information and material particulars in the show cause notice as well as in the final order of cancellation of registration that may be passed, the authority concerned shall issue an appropriate show cause notice containing all the necessary details and information in a physical form and forward the same to the dealer by RPAD - In the same manner, when it comes to passing the final order, the same shall also be passed in a physical form containing all the necessary information and particulars and shall be forwarded to the dealer by RPAD: High Court [para 18.1]

Petitions allowed

3. **2022-TIOL-408-CESTAT-KOL**

Jindal Steel And Power Ltd Vs Pr.CCGST & CE

ST - The appellant is a company inter alia engaged in business of manufacturing steel - The Supreme Court cancelled the allotment of 203 coal mines, one of which was Jitpur Coal Mine allocated to appellant - As per provisions of Section 16 of Coal Mines (Special Provisions) Act, 2015 (CMSPA), at the time of re-allocation of cancelled coal blocks to successful bidder, prior allottees were to be compensated for transfer of right, title and interest in land and mine infrastructure to successful bidder - Accordingly, appellant being a prior allottee, received an amount as compensation in respect of land and mine infrastructure - Appellant was issued a SCN alleging that it had tolerated the act of cancellation of coal blocks by Ministry of Commerce, Government of India, in lieu of which it received compensation, on which it was liable to discharge Service Tax - The appellant had no choice of tolerating cancellation or not - Appellant has not chosen to tolerate the cancellation - The cancellation was in pursuance of order of Supreme Court and not as a result of a contract to tolerate cancellation - There was no consideration for tolerating cancellation, only a compensation provided for statutorily for investment made

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in mines by appellant - Both the cancellation of allocation of blocks and receipt of compensation are by operation of law - They are like the receipt of a compensation when one's land is acquired by Government in public interest or payment to a Government employee of an amount equal to salary for unused leave at the time of his/her retirement - No Service Tax can be levied on amounts received by appellant as compensation - Since the matter is decided in favour of the appellant on merits, it is not necessary to examine the question of limitation - For the same reason, all the penalties are set aside - Impugned order is set aside: CESTAT

- Appeal allowed: KOLKATA CESTAT

4. 2022-TIOL-724-HC-KOL-GST

Sanchita Kundu Vs Asstt. Commissioner ST

GST - The petitions have been filed by petitioners being aggrieved by action of revenue concerned denying the benefit of Input Tax Credit (ITC) on purchase of goods in question from suppliers and asking the petitioners to pay penalty and interest under relevant provisions of GST Act, on the ground that registration of suppliers in question has already been cancelled with retrospective effect covering transaction period in question - Case of petitioner is remanded to respondents officer concerned to consider afresh on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of transactions in question and the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of suppliers and also to consider as to compliance of statutory obligation by petitioners in verification of identity of suppliers (RTP) - The cases of petitioner shall be disposed of by respondents concerned by passing a reasoned and speaking order after giving effective opportunity of hearing to petitioners within eight weeks: HC

- Matter remanded: CALCUTTA HIGH COURT

5. 2022-TIOL-48-SC-ST-LB

CC, CE & ST Vs Northern Operating Systems Pvt Ltd

ST - overseas company has a pool of highly skilled employees who are entitled to a certain salary structure as well as social security benefits - these employees having regard to their expertise and specialisation are seconded (sent on deputation) to the assessee for the use of their skills - while the control over the performance of the seconded employees work and the right to ask them to return, if their functioning is not as desired, is with the assessee, the fact remains that their overseas employer, in relation to its business, deploys them to the assessee on secondment - secondly, for whatever reason pays them their salaries - terms of employment even during the secondment are in accord with the policy of the overseas company who is their employer - the quid pro quo for the secondment agreement where the assessee has the benefit of experts for limited period is implicit in the overall scheme of things - question of revenue neutrality is an irrelevant detail - Orders of CESTAT affirmed by this Court in the cases of Volkswagen and Computer Sciences Corporation are unreasoned and of no precedential value - Held that the assessee was for the relevant period service recipient of the overseas group company concerned, which can be said to have provided manpower supply or a taxable service: Supreme Court Larger Bench (Para 55, 57, 58, 60, 61)

Limitation - Fact that CESTAT in the present case relied upon two of its previous orders and also that in the present case itself, the Revenue discharged the latter two SCNs evidences that the view held by the assessee about its liability was neither untenable nor malafide - For these reasons the revenue was not justified in invoking the extended period

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of limitation to fasten liability on the assessee - Revenue's appeals succeed in part - impugned order of CESTAT is set aside: Supreme Court Larger Bench (para 64, 66)

- Appeals partly allowed: SUPREME COURT OF INDIA

6. **2022-TIOL-418-CESTAT-DEL**

Balaji Edibles Pvt Ltd Vs Dy.CC

CX - The appellant apparently is a contract manufacturing unit engaged in manufacturing biscuits for its principle i.e. M/s. PBPL - Whether M/s. PBPL was justified in distributing credits on input services attributable to final product on pro rata basis proportionate to turnover of each unit between manufacturing plants of M/s. PBPL and its contract manufacturing units including appellant in terms of Rule 7(d) of Cenvat Credit Rules, 2004 - From the decision relied upon by appellant in M/s. Krishna Food Products 2021-TIOL-420-CESTAT-DEL , it is clear that the said issue has already been decided by larger bench of Tribunal hence remains no more res integra - Further perusal of said decision shows that the decision in case of Sunbell Alloys 2014-TIOL-38-CESTAT-MUM and others as have been relied upon by Commissioner while passing the order under challenge have also been discussed and distinguished by Larger Bench of this Tribunal - Said decision has already been followed in similar facts and circumstances by this Bench in case of M/s. Ajmer Foods Products Pvt. Ltd. 2022-TIOL-78-CESTAT-DEL - No distinguished fact is apparent on record in present appeal nor could have been brought to the notice by revenue, who rather expressed no objection for following the decision of Larger Bench - M/s. PBPL was justified in distributing credits on input services attributable to final product on pro rata basis proportionate to turnover of each unit between their manufacturing plants and its contract manufacturing units including appellant under Rule 7(d) of CENVAT Credit Rules - Accordingly, appellant is held entitled to avail CENVAT credit where input services is attributed to the goods on which the excise duty is paid and includes the cost of services on which credit was taken - Impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

7. **2022-TIOL-433-CESTAT-DEL**

Allied Chemicals And Pharmaceuticals Pvt Ltd Vs CCE & CGST

CX - The dispute is, whether the appellant is entitled to interest on amount of pre-deposit under Section 35FF of Central Excise Act, - Claim of interest has been rejected on the observation that the refund have been given within three months from the date of application for refund and accordingly it was held that they are not entitled to interest - Under similar facts and circumstances, Division Bench of Tribunal in case of Parle Agro Pvt. Limited 2021-TIOL-306-CESTAT-ALL held that an assessee is entitled to interest on such pre-deposit on being successful in appeal, from the date of deposit till the date of refund @ 12% p.a., following the ruling of Supreme Court in case of Sandvik Asia Ltd. 2006-TIOL-07-SC-IT - Accordingly, appellant is entitled to interest @ 12% p.a., from the date of deposit till the date of grant of refund - Adjudicating Authority is directed to disburse the amount of interest within a period of 45 days: CESTAT

- Appeal allowed: DELHI CESTAT

8. **2022-TIOL-774-HC-KERALA-ST**

Nikunjam Constructions Pvt Ltd Vs UoI

ST - Petitioner is engaged in construction of residential buildings and complexes - Alleging that certain discrepancies were noted during audit, petitioner was issued with audit notes - Subsequently, petitioner filed a reply and pointed out various anomalies in audit notes - However, ignoring the objections of petitioner, a SCN was issued proposing to demand service tax, allegedly short paid by petitioner - On perusal of audit notes, it is

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noticed that the presence of DIN in said documents cannot be disputed, but by an inadvertent mistake, an additional digit was erroneously added to said DIN - Said extra digit does not ipso facto make the document null and void on the ground of absence of DIN - By master circular 1053/02/2017 , it is mandatory to issue a pre-show cause notice for consultation, prior to issue of SCN, in cases involving demands of duty above Rs.50,00,000/- - The issuance of SCN without following the mandatory requirement of pre-show cause consultation is arbitrary and against the circulars - Therefore, SCN is set aside - However, liberty is granted to respondents to initiate fresh proceedings commencing from stage of preshow cause notice consultation: HC

- Writ petition allowed: KERALA HIGH COURT

9. 2022-TIOL-60-AAR-GST

Rahul Ramchandran (Inspire Academy)

GST - Applicant provides services by way of Pre-School education and as per clause 2(y)(i) of notification 12/2017-CTR , the applicant i.e. Nashik Cambridge Pre-School can be considered as an "Educational Institution" - Consequently, services provided by them to its students, faculty and staff attracts NIL rate of GST in view of Sr. No. 66 of Notification No. 12/2017-CT, dated 28th June, 2017 - Furthermore, "Nashik Cambridge Pre-school" is also entitled for Nil rate of tax as per Serial No. 66 of the Notification no. 12/2017-CT (Rate), on the supply of Pre-school education service to its students against fee; on the supply of transportation service to its Pre-school students without any consideration; on the supply of transportation service to its Pre-school students for some consideration; on the supply of transportation service to its faculty and staff for some consideration and on the supply of canteen service to its faculty and staff for some consideration - Insofar as supply of goods such as books, stationery, drawing material, sports goods, foods items, milk, beverages to its students without any consideration, as the cost thereof will be covered in the fee charged, since such goods are a part of the composite supply comprising of principal supply in the form of educational services, the applicant is entitled for Nil rate of tax as per Sr. no. 66 of 12/2017-CTR, in respect of supply of the aforementioned goods to its pre-school students without any consideration - However, when the said goods are sold by the applicant for some consideration, it implies sale of goods and the same cannot be considered as a part of any composite supply - Inasmuch as a standalone supply of goods cannot be covered under Sr. no. 66 of 12/2017-CTR which is applicable only in respect of supply of service: AAR

- Application disposed of: AAR

10. 2022-TIOL-755-HC-AHM-VAT

IN THE HIGH COURT OF GUJARATAT AHMEDABAD

R/Special Civil Application No. 124 Of 2019

AXIS BANK LTD
Vs
STATE OF GUJARAT AND 5 OTHER(S)

J B Pardiwala & Nisha M Thakore, JJ

Dated: May 04, 2022

Petitioner Rep. by: Mr PM Dave(263), Mr Utkarsh Sharma, AGP Govt. Pleader
Respondent Rep. by: Mr Yogeshkumar A Ratanpara(7260)

Gujarat VAT Act - Writ - Section 48

Keywords - Auction of property - First charge over property - Recovery of tax

THE respondents nos.3 and 4 respectively are the original borrowers. They had availed loan facility from the writ-applicant - bank. At the time of grant of the necessary finance, the original borrowers had mortgaged the subject property and thereby, had created a charge in favour of the writ-applicant - bank. As the

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original borrowers defaulted in the repayment of the loan amount, the subject property was taken over by the writ-applicant - bank in accordance with the provisions of the SARFAESI Act, 2002 and was ultimately, put to auction. The respondent No. 5 was declared as the highest bidder in the public auction conducted by the bank. The bid ultimately came to be finalized in favour of the respondent No. 5. The bank has put the respondent No. 5 in possession of the subject property. The sale certificate has also been issued by the bank. The sale-deed has also been registered in favour of the respondent No. 5 duly executed by the bank.

In writ, the High Court held that,

Whether since first charge over an mortagaged property lies with the bank, the Revenue Department cannot auction said property for recovery of tax dues - YES: HC

++ It is the case of the bank that in accordance with the provisions of the SARFAESI Act, more particularly, Section-26E and also, in view of the two pronouncements of this High Court one in the case of Bank of India vs. State of Gujarat and others; and another in the case of Kalupur Commercial Co-operative Bank Ltd. vs. State of Gujarat, the bank will have the first precedence and the department cannot put forward its claim for the purpose of recovering the dues towards VAT;

++ What came to be purchased by the writ-applicant in the auction proceedings conducted by the Bank of Baroda was a secured asset under the provisions of the SARFAESI Act. In such circumstances, the State cannot claim preference over the subject property for the purpose of recovery of the dues towards tax. It is not in dispute that the first charge was created in favour of the bank and the bank in exercise of its powers under the SARFAESI Act, put the subject property to auction;

++ In view of the settled position of law, this writ-application succeeds and is hereby allowed. It is hereby declared that the State cannot claim any first charge over the subject property on the strength of Section-48 of the GVAT Act, 2003. The respondent No. 6 is directed to post and certify a mutation entry to record the certificate of sale by the writ-applicant - bank in favour of the respondent No. 5 with respect to the subject property. If there is any entry of the State in the form of charge in the revenue records, the same stands deleted.

11. 2022-TIOL-444-CESTAT-AHM

Bombay Market Art Silk Cooperative (Shops And Warehouse) Society Ltd Vs CCE & ST

ST - The issue involved is that whether the appellant is entitled for Cenvat credit in respect of Construction/Works Contract Service for re-carpeting of road in their industrial estate - The lower authorities denied Cenvat credit on the ground that it is a new construction of road under works contract service which is excluded in definition of Input Service under Rule 2(l) of Cenvat Credit Rules, 2004 - The fact is not under dispute that industrial estate already existed and for moving around Industrial Estate the tar roads were also existing - The works contract/construction was executed for purpose of re-carpeting of existing road - Therefore, said services are for the purpose of repair and renovation of exiting industrial estate - Therefore, this service is for repair and renovation and not for originating the new construction - This issue has been considered in decision of Tribunal in Reliance Industries Limited - 2022-TIOL-359-CESTAT-AHM and from the said decision, it is clear that any construction and works contract if used for repair and renovation of existing factory, the same falls under inclusion clause of definition of Input Service, accordingly, Cenvat credit is admissible - The impugned order is set-aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

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12. 2022-TIOL-443-CESTAT-MAD

Doowon Automotive Systems India Pvt Ltd Vs CGST & CE

ST - During audit of accounts, it was noticed that assessee is liable to pay service tax under category of renting of immovable property service, ocean freight charges and scientific and technical services - Assessee paid the tax along with applicable cess - As they were eligible to avail credit on amount paid under reverse charge mechanism, they filed refund claim under section 11B of Central Excise Act, 1944 r/w section 142(3) of CGST Act, 2017 - The original authority rejected the refund claim holding that there is no provision to grant refund after the introduction of GST - On appeal, Commissioner (Appeals) held that the assessee is eligible for refund, however, the issue as to whether the refund is time-barred has to be verified - Following the decision in case of Punjab National Bank 2021-TIOL-453-CESTAT-BANG , rejection of refund claim on the ground of limitation is not justified - The impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

13. 2022-TIOL-445-CESTAT-MUM

ATA Freightline India Pvt Ltd Vs CCGST & CE

ST - M/s ATA Freightline (India) Pvt Ltd is in the business of integrated logistics and cargo transportation and in conjunction with M/s ATA Freightline Ltd, New York, provides end-to-end delivery; the recompense from overseas entity for the period between July 2012 and March 2015, to the extent attributable to carriage within India, was sought to be taxed by recourse to Place of Provision of Service Rules, 2012 - The span of the dispute lies entirely within scheme of levy under section 66B of Finance Act, 1994 imposed on all 'services', as defined in section 65B (44) of Finance Act, 1994, that were either not excluded by section 66D of Finance Act, 1994 or not exempted by notification issued under section 93 of Finance Act, 1944 - There is no demand for pre-'negative list' period and that it was only the inevitable passage of 'export goods' through India at commencement of outward journey till loading on 'foreign going' vessel/aircraft that was considered to be necessary and sufficient reason for invoking rule 4 of Place of Provision of Service Rules, 2012 - In this implied convergence of rule 4 and rule 10 of Place of Provision of Service Rules, 2012, transaction between M/s ATA Freightline Ltd, New York and M/s ATA Freightline (India) Pvt Ltd was split-as one within India and one thereafter-by appropriating accountal segregation adopted by appellant - The adjudicating authority has complicated the transaction set by assigning the role of agent of M/s ATA Freightline Ltd, New York to appellant entrusted with charge of taking delivery of related goods made available by exporter for rendering service - Besides that artifice, it was further held that 'ex works' service terminated at the port of export which, in the context of statutory provision predicated on 'goods', is tantamount to erasure of existence of goods - Both these are presumptions of adjudicating authority without any evidence to render these as acceptable conclusions and far removed from reality of a composite transaction for carriage of goods from within India to a place outside India - Place of Provision of Service Rules, 2012 is not a provision for charging of tax; it is limited to determination of location of taxable entity as an adjunct to charging provision in section 66 B of Finance Act, 1994 - The impugned order has not evaluated the impugned activity from that perspective - In the context of identifiable recipient of service located outside taxable territory, and concomitant absence of 'goods provided by recipient of service' as well as marked absence of recipient of service in truncated segment of impugned activity and of the goods being put to use for rendering of service, rule 4 of Place of Provision of Service Rules, 2012 is not applicable - That the activity is transportation of goods is foundation of proceedings against appellant, as is evident from contrived segmentation of stages according to geography and from unarguable existence of recipient outside India; rule 10 of Place of Provision of Service Rules, 2012 is unambiguously clear about the consequent

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non-taxability - Impugned order is set aside: CESTAT

- Appeal allowed: MUMBAI CESTAT

14. PRINCIPAL COMMISSIONER CENTRAL TAX AND SERVICE TAX
Vs
CADILA HEALTHCARE LTD

J B Pardiwala & Nisha M Thakore, JJ

Dated: March 30, 2022

Appellant Rep. by: Priyank P Lodha (7852)
Respondent Rep. by: Mr Anand Nainawati (5970)

ST - Principal substantial question of law, involved in all the appeals is whether a Partner (in this case M/s. Cadila Healthcare Ltd.) in the Firm can be said to be rendering services to the Partnership Firm (in this case M/s. Zydus Healthcare) so as to fall within the ambit of services as per the Finance Act, 1994 - CESTAT has in its order dated 27.04.2021 - **2021-TIOL-257-CESTAT-AHM** while allowing the assessees appeal held that that the impugned activities of the appellant are undisputedly its obligation as a partner as per partnership deed; that there is no separate contract of services between the appellant and the partnership firm; that, therefore, the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed; that such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to Service Tax - Revenue is in appeal against this order.

Held: Supreme court in the case of Commissioner of Income Tax Vs R.M. Chidambaram Pillai - ***2002-TIOL-2675-SC-IT*** held that a partnership firm has no legal existence separate from the partners, under the Partnership Act - It can, therefore, be said that a partnership firm is not a separate entity than its partners - Section-65(105)(zzb) applies to service provided to a client by a person in relation to business auxiliary service and hence, two distinct persons are required to attract this levy - The partnership firm, M/s Zydus Healthcare cannot be considered as a 'person' distinct from the Respondent - partner - Therefore, there cannot be a service provider-service recipient relationship between a partner and the partnership firm when a partner discharges his duties as a partner pursuant to deed of partnership - Hence no service tax is payable on the activities performed by the respondent in the capacity of partner to the firm - Any income, salary, bonus, etc. received by a partner for discharge of obligations as per the partnership deed is nothing but a special share in profits of the firm - Partner's capital to a firm can be in the form of cash/asset - It can also be in the form of contribution of skill and labour alone without contribution in cash-"sweat equity" - Remuneration received by a partner by employing his skill and labour as per the partnership deed is also a profit, the profit in such circumstances can be a special share in the profit - All the appeals of the revenue fail - The substantial questions of law are answered in favour of the respondents and against the revenue: High Court [para 16.1, 16.3, 19.1, 19.2, 20, 21, 21.2, 24]

Appeals dismissed

15. 2022-TIOL-746-HC-MAD-GST

ABI Technologies Vs Asstt. CC

GST - IGST Refund - Petitioner seeks a Mandamus to direct the respondent to sanction a sum of Rs.24,72,018/- as refund on the exports made by the petitioner during July, 2017, September, 2017 and October, 2017 - It is the specific case of the petitioner that though they had correctly declared the details in the monthly returns in Form GSTR-1 regarding the exports made on payment of tax by debiting the input tax credit, a mistake was committed by the petitioner in GSTR-3B under Rule 61(5) of the Rules, 2017; that the petitioner should have filled the details in Form GSTR-3B in column 3.1(b) but, by mistake, has given the details of the export as outward taxable supply (other than zero rated, nil rated and exempted).

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Held: The export incentives have been given to encourage exports, so that there is inward remittance of foreign currency - The procedure prescribed under the aforesaid Rules is not intended to defeat such legitimate export incentives, if indeed on facts there is export on payment of integrated tax under the provisions of IGST Act, 2017 r/w CGST Act, 2017 - Procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives that are available to an exporter - Writ petition is disposed of by directing the respondent to get the data directly from the petitioner and from their counterparts in the customs department and if indeed there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers, the refund shall be granted: High Court [para 10, 11, 12]

- Petition disposed of: MADRAS HIGH COURT

16. 2022-TIOL-715-HC-AHM-GST

Ayana Pharma Ltd Vs UoI

GST - Deputy State Tax Commissioner, Circle-2, Ahmedabad has solely rejected the application of writ applicant company on the ground that instead of online application seeking refund, the writ applicant has submitted manual / physical application - Petitioner is before the High Court.

Held: It seems that the respondent No. 4 has no idea about Rule 97A of the Rules which starts with the non-obstante clause - Rule 97A clarifies that notwithstanding anything contained in Chapter X of the Rules any reference to electronic filing of an application would include manual filing of the said application - Impugned order is quashed and set aside - Writ petition succeeds in part: High Court [para 13, 15]

- Petition partly allowed: GUJARAT HIGH COURT

17. 2022-TIOL-412-CESTAT-MAD

Hyundai Motors India Ltd Vs CGST & CE

CX - The appellants are registered with Central Excise department as manufacturer as well as warehouse under Rule 9 and Rule 20 of Central Excise Rules, 2002 r/w Notification Nos. 35/2001-C.E.(N.T.) and 46/2001-C.E. (N.T.) as amended - During audit, it was found that they had cleared imported raw materials 'as such' on sale to their vendors and also 'stock transferred' to M/s. Mobis India Ltd. on account of business transfer on payment of duty - However, excise duty paid on such inputs cleared as such was not equal to CENVAT credit availed thereon inasmuch as the reversal included only CVD and related cess and not the Special Additional Duty (SAD) levied on imported raw materials which was originally availed as credit at the time of import - The foremost contention put forward by appellant is with regard to delay in adjudication of SCN - There is a delay of 10 years in adjudicating the matter - The observation made by adjudicating authority for confirming demand is that the appellants have not provided any evidence to show that they have reversed the SAD in respect of imported materials cleared as such - It is also stated that reversal shown in ER-1 was verified by Section Officer and found that they have not reversed SAD amount - If the adjudication had happened in close proximity with the reply furnished by appellant, they would have been in a better position to explain their defence - The High Court of Bombay in case of Parle International Ltd. 2020-TIOL-2032-HC-MUM-CX held that the inordinate delay of 13 years in adjudicating SCN is untenable - In the case of Bombay Dyeing 2022-TIOL-269-HC-MUM-CX , the High Court held that the delay of 16 years in conducting the adjudication is violation of principles of natural justice - The petitioner in the said case had filed reply within four weeks after receiving the SCN - The High Court held that it is not expected from petitioner to preserve the evidence/record for such a long period to be produced at the time of hearing of SCN - After replying to SCN, when no response is received from department with regard to personal hearing, petitioner may be under legitimate expectation that the reply has been

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received and accepted by department - Be that as it may, appellant has argued on ground of limitation also - In SCN, there is no specific allegation that appellant has willfully suppressed or mis-represented the facts with intention to evade payment of duty - In the absence of any specific allegation and proof that appellant has suppressed facts, extended period cannot be invoked - Appellant succeeds on the ground of limitation - The demand is held to be time-barred, impugned order is set aside: CESTAT

- Appeal allowed: CHENNAI CESTAT

18. 2022-TIOL-683-HC-AHM-CX

Pr.CCGST & CE Vs Reliance Industries Ltd

CX - CENVAT - Rule 6 of CCR - Refund - Respondent is engaged in the manufacture of excisable goods like Motor Spirit, High Speed Diesel etc. - Refund claim was made in respect of the CENVAT Credit Reversed / Paid under Rule 6(3) of the CENVAT Credit Rules, 2004 for the period between April, 2015 and March, 2016 on removal of the LPG under the Domestic Subsidy Scheme - Revenue has, in the present appeal, primarily contended that the Tribunal has erred in holding that LPG emerges as a by-product and hence the provisions of Rule 6 of CCR have no application; that the judgment in the case of Sterling Gelatin [2010-TIOL-897-HC-AHM-CX] is not applicable to the facts of the present case - Tribunal has observed that it is not as if respondent had set out to manufacture LPG; that the same arises in the refining process and that the same could not have been limited or curtailed the production of LPG nor could have been manufactured other value added products using a less quantity of input of input services as whether the LPG then or otherwise; that when the entire quantity of input and input services was required for manufacture of dutiable finished goods and when LPG emerged inevitably without any deliberate attempt to manufacture it, the provision of Rule 6 (1) was not violated in any manner. Held: This Court has in the case of Sterling Gelatin (supra) held that the provisions of Rule 6 of CCR are inapplicable if the dutiable final product could not have been manufactured using a lesser quantity of inputs and input services - Apex Court has, in the case of in the case of National Organic Chemical Industries Limited = 2008-TIOL-211-SC-CX held that if the dutiable final product could not have been manufactured using a lesser quantity of inputs, then the entire input must be attributed to having been used in the manufacture of the said dutiable final product, even if some other exempt final product emerges, inevitably - Thus, the issue whether the LPG is by-product or otherwise has become academic and need not required to be decide - Revenue Appeal fails and is dismissed: High Court [para 12, 15]

- Appeal dismissed: GUJARAT HIGH COURT

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