Newsletter
July 2022

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Chartered Accountants

Contents

Direct Tax – Circulars

Circulars issued by CBDT in the month of June 2022

1. **CBDT modifies conditions in Form 10AC issued since Apr 1, 2021 to align with amended provisions.**

   Circular no. 11 / 2022, dated 3rd June 2022

   CBDT clarifies that conditions contained in Form No. 10AC, issued between Apr 1, 2021 till Jun 3, 2022 shall stand substituted as per the Annexures to the Circular.

   Further clarifies that Form No. 10AC is issued during FY 2021-2022 with the heading 'Order for provisional registration' or 'Order for provisional approval' instead of 'Order for registration' or 'Order for approval', then all such Form No. 10AC shall be considered as an 'Order for registration or approval. In cases where Form No. 10AC has been issued under section 'applications seeking re-registration', then the words , 'provisional Registration' shall be read as 'registration' and the word 'provisionally registered' shall be read as 'registered'.

   Further clarifies that under 'applications seeking re-approval', the words 'provisional approval' shall be read as 'The 'Provisional Approval/ Approval Number' or 'Provisional Registration/ Registration Number' in Form No. 10AC shall be read as 'Unique Registration Number'

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

2. **CBDT issues guidelines for 194R (2) of the Income Tax Act, 1961.**

   Circular no. 12 / 2022, dated 16th June 2022

   Finance Act 2022 inserted a new section 194R with effect from 1st July 2022. The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. In exercise of the power conferred by sub-section 2 of section 194R, the Board with the prior approval of the Central Government issues the guidelines regarding this.

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

3. **CBDT issues Guidelines under Sec.194S.**

   Circular no. 13 / 2022, dated 22nd June 2022

   CBDT issues Circular, laying down Guidelines for removing difficulties in implementation of Section 194S i.e. TDS on payment for transfer of virtual digital assets.

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

4. **CBDT issues Circular for TDS on Virtual Digital Asset transactions outside Exchange.**

   Circular no. 14 / 2022, dated 28th June 2022

   CBDT issues Circular for TDS under Section 194S on transactions other than those taking place on or through an Exchange.

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

Direct Tax – Notifications

Notifications issued by CBDT in the month of June 2022

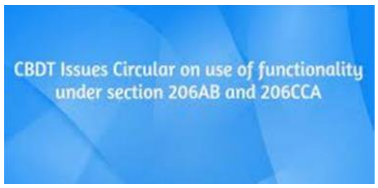
1. **Directorate of Income Tax (Systems) issues notification regarding compliance check functionality for Section 206AB and 206CCA of Income Tax Act 1961.**

   Notification no. 1 / 2022, dated 9th June 2022

   Section 206AB and 206CCA imposed higher TDS/TCS rate on the 'Specified Person'. Income Tax Department has released a functionality "Compliance check for section 206AB & 206CCA" to facilitate tax deductors / collectors to verify if a person is a 'Specified Person' as per section 206AB & 206CCA. This functionality is made available through (http://report.insight.gov.in) of the Income Tax Department.

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

   Click here to read / download the compliance check reference guide.

2. **CBDT notifies 331 as Cost Inflation Index for FY 2022-23.**

   Notification no. 62 / 2022, dated 14th June 2022

   CBDT notifies 331 as cost inflation index for FY 2022-23. The Notification comes into force from Apr 1, 2023, thus, applies to AY 2023-24 onwards.

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

3. **CBDT extends the safe harbour rules to Assessment Year 2022-23.**

   Notification no. 66 / 2022, dated 17th June 2022

   Safe harbour rules mentions the threshold limit for the eligible transactions and also the acceptable safe harbour transfer price in certain cases. The safe harbour rules is extended for the Assessment Year 2022-23.

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

4. **CBDT notifies TDS compliance for Sec.194R, 194S among others.**

   Notification no. 67 / 2022, dated 21st June 2022

   CBDT notifies amendments in the Income-tax Rules specifying various forms and timelines for furnishing such forms for the purpose of TDS compliance under Section 194B, 194-IA, 194-IB, 194S, 194R and 194M. Notifies Form 26QE for the purpose of TDS under Section 194S and amends Form 26Q for Sections 194R and 194B, Form 26QB for Section 194-IA, Form 26QC for Section 194-IB, Form 26QD for Section 194M. Also notifies Form 16E to be furnished by every specified person referred to in Section 194S and responsible for TDS therein, to the payee within fifteen days from the due date for furnishing Form 26QE. Also clarifies that Section 206AB is not applicable with respect to TDS under Sections 194-IA, 194-IB and 194M with effect from Apr 1, 2022

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

5. **The Government notifies tolerance limit for consideration of arm's length price.**

Notification no. 70 / 2022, dated 28th June 2022

The Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2022-2023.

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

6. **CBDT notifies Form 26QF for Sec.194S compliance by Virtual Digital Asset (VDA) Exchange.**

Notification no. 73/2022, date 30th June 2022.

CBDT amends Rule 31A to provide that where under the Guidelines issued under Section 194S, an Exchange agrees to pay tax in relation to transfer of a virtual digital asset owned by it as an alternative to TDS by the buyer, such Exchange shall file a quarterly statement of such transactions in Form No. 26QF. Further provides that the Exchange shall furnish particulars of account paid or credited on which tax was not deducted in accordance with the Guidelines. CBDT, thus, notifies Form 26QF for this purpose.

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

7. **Government specifies scope of VDAs. Excludes gift/discount coupons, mileage points, website subscriptions & includes certain Non-Fungible Tokens.**

Notification no. 74 and 75 / 2022, date 30th June 2022.

Central Government notifies exclusion of the following from the definition of virtual digital assets: (i) Gift cards or vouchers for purchase of or discount on goods or services, (ii) Mileage points, reward points or loyalty cards given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program for purchase of or discount on goods or services. (iii) Subscription to websites or platforms or application. Central Government specifies non-fungible token as virtual digital asset which shall not include a token whose transfer results in transfer of ownership of underlying tangible asset which is legally enforceable.

Click here to read / download the copy of the notification 74.

Click here to read / download the copy of the notification 75.

Direct Tax – Legal Rulings

1. **SC: Declines interference in HC order dismissing challenge against reassessment proceeding under new regime.**

   GIAN Castings Private Limited [TS-486-SC-2022]

   SC declines to interfere with the dismissal of Assessee's writ petition by the Punjab & Haryana HC against reassessment proceeding under the new regime. SC, thus, disposes of the SLP after hearing the Assessee and perusing the material available on record but keeps all contentions of the Assessee open which can be raised at the appropriate stage. Assessee had submitted that its reply to Section 148A(b) notice had not been considered, thus, Section 148A(d) order was passed mechanically. HC observed that jurisdictional error is distinguishable from an error of law/fact within the jurisdiction and the latter is rectifiable within the statutory framework. HC had declined to invoke extraordinary powers under Article 226/227 at the intermediate stage. Therefore, SC declined to interfere with the dismissal of Assessee's writ petition.

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

2. **HC: Upholds prosecution since ITR furnished only after survey & reassessment notice.**

   Dharampal Pandia [TS-494-HC-2022(MAD)]

   Madras HC dismisses Assessee's petitions challenging prosecution initiated by Revenue for offences under Sections 276C(1) (wilful tax evasion) and Section 276CC (non-filing of return) spanning over six AYs where, subsequent to survey operations, Assessee cumulatively offered income of over Rs. 5 Cr. in returns furnished in response to notice under Section 148. States that by concealing the income, Assessee deprived the exchequer of payment of taxes for several months and opines that there are enough and specific allegations made with regard to concealment of income which are sufficient for the case to go for trial.

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

3. **HC: Expounds on NaFAC's authority & faceless assessment regime. Rejects challenge against ex- parte assessment.**

   S K Srivastava [TS-433-HC-2022(DEL)]

   Delhi HC dismisses Assessee's writ petition, holds that National Faceless Assessment Centre (NaFAC) is well within it's authority under Article 265 of the Constitution.

   Assessee-Individual, a non-filer, preferred the writ petition against the ex parte assessment order and various notices issued prior to passing of the order starting from the issuance of Section 148 notice. HC expounds on the faceless assessment regime as contained under Section 144B and observes that the assessment, re-assessment and re-computation is required to be made in a faceless manner without deviating from the principles of assessment as provided under various provisions of the Act which was done in Assessee's case. Therefore, dismisses Assessee's contention that NaFAC does not fall within the authority of law as provided under Article 265 of the Constitution. Dismisses Assessee's contention that NaFAC as provided under Section 144B has no authority to frame the assessment.

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

4. **FC: Danish Tax Council holds German company's employee's home-office in Denmark constitutes PE.**

Sporger [TS-510-FC-2022(DEN)]

Danish Tax Council (DTC) holds that German Company constituted a PE in Denmark through its employee residing and working from Denmark.

Assessee-Company, registered and domiciled in Germany, engaged in production and sale of certain products worldwide through subsidiaries, external dealers or through direct sales from Assessee's head office in Germany. Assessee hired a sales employee, domiciled in Denmark, who for personal reasons did not move to Germany and continued working from his residence in Denmark.

DTC notes that in order to constitute a PE in Denmark, three conditions should be satisfied as per Article 5 of Danish-German DTAA i.e. (i) there must be place of business, (ii) it must be 'fixed' and (iii) the foreign entity must carry on its business 'wholly or partly' from such place of business. DTC refers to Commentary on OECD Model Tax Convention 2017 wherein it was clarified that a home office can be considered to be at the disposal of an enterprise if the employee does not have an office provided by the enterprise and the employee continuously carries out the enterprise's business activity from the home office. Opines that the tasks performed by the employee from home in Denmark are closely related to the sales activities in connection with customer visits and thus the company's core activity and thus cannot be considered to be of preparatory and auxiliary nature. Accordingly, holds that the employee's home office constitutes a permanent place of business for Assessee.

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

5. **ITAT: Bosch's receipt from sub-licensing technology, taxable as royalty. Rejects capital receipt plea.**

Bosch Ltd. [TS-451-ITAT-2022(Bang)]

Bangalore ITAT holds receipts from sub-licensing of technology to be revenue in nature, this, taxable as business income. Assessee-Company received Rs. 1.09 Cr from Malaysian company from sub-licensing of technology relating to manufacture and sale of products and spares for AY 2009-10 and contended it to be taxable as long term capital gains. Revenue opined that the receipt was in the nature of royalty and taxable as business income, which was confirmed by CIT(A).

ITAT observes that under similar facts and circumstances, receipts from sub-license of technology to Iranian company was held to be taxable as business income by the coordinate bench in Assessee's own case for AY 2007-08.

Opines that the license to use is covered under Explanation 2(ii) to Section 9(1)(vi) and thus, holds that the payments received by the Assessee including the lump sum received is royalty which is revenue in nature. States that the claim of the Assessee that there was transfer of capital asset is not legally tenable as: (i) Assessee hasn't recognised the Technical knowhow as capital asset in its books of account and had never claimed depreciation on it, (ii) contents of the sub clauses of the agreement make it clear that there is no transfer and there is only rendering of continuous support, imparting of training and make available of knowledge and (iii) the technology which was licensed to Malaysian company was obtained by the Assessee from its AE Robert Bosch GmbH, which were claimed as royalty by the Assessee and only for the reason the Assessee charged a part of the payment on lump sum basis from its Malaysian company, sub licensing cannot make it capital gain.

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

6. **ITAT: Holds management-fee as operating expense, directs consideration on composite basis following APA 'principle' of merged entity.**

Capgemini Technology Services India Ltd [formerly AXA Group Solutions Pvt Ltd] [TS-337-ITAT-2022(Bang)-TP]

Bangalore ITAT rejects TPO's determination of Nil ALP for management fees paid to AE by assessee (providing Software Development Services and Admin Support Services) for AYs 2010-11 and 2011-12. Assessee aggregated management fee payment with primary transaction of SWD and administrative support services for benchmarking purposes using TNMM. However, TPO took the view that payment of management fee 'is a class of its own' and separately computed ALP thereof at NIL using CUP method.

Assessee contended before CIT(A) that it had merged with another entity w.e.f 1.4.2012 and the merged entity viz. AXA Technologies Shared Services P Ltd had entered into an APA with CBDT as per which management fee payment was part of operating cost. Notes assessee's submissions that management fee paid to AE was for intra-group services, to bring efficiency in the business. Further, notes that despite sharing invoices, agreement copies, etc, TPO rejected the documents and determined ALP at NIL. Accordingly remands back the issue to AO/TPO to examine the issue afresh in accordance with the law after giving reasonable opportunity of being heard to the assessee.

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

7. **ITAT: Transfer of shares with eroding net-worth received from loan-conversion, colourable device. Rejects commercial expediency plea.**

O3 Capital Global Advisory Pvt. Ltd [TS-468-ITAT-2022 (Bang)]

Bangalore ITAT dismisses Assessee's appeal, holds conversion of loan into shares of a company with negative net worth and its subsequent sale resulting in short term capital loss to be a bogus transaction. Observes that the documents submitted by the Assessee along with the arguments are a smoke screen to cover up the true nature of transactions.

Assessee-Company was subjected to assessment for AY 2013-14 whereby Revenue disallowed the short term capital loss of Rs.4.43 Cr. arising from sale of shares of its subsidiary which was upheld by the CIT(A). Assessee's loan was converted into shares of Rs. 10/- each by way of a Board Resolution on Feb 18, 2013 and within a period of seven days on Feb 25, 2013, by another Board Resolution, Assessee sold the shares for a consideration of mere Rs.15 Lakh and booked the difference as short term capital loss.

ITAT notes the lower authorities' claims that there were no assets with MCAPL to make a claim and that its net worth was eroded, thus, bogus loss was booked to claim benefit under the Act. Holds that the Assessee only prepared the paper work in making investment in shares in net-worth fully eroded company so as to create artificial short term capital loss and by selling the same at very exorbitant low price only to claim short term capital loss thereby evade tax which is bogus transaction, and thus the transaction of purchase and sale of shares of MCAPL to be a bogus transaction.

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

8. **ITAT: Rejects LIBOR base for benchmarking outstanding AE-receivables on grounds of profit shifting to AE.**

Zeta Interactive Systems (India) Pvt Ltd [TS-367-ITAT-2022 (HYD)-TP]

Hyderabad ITAT rules on interest on outstanding receivables for AY 2011-12. With respect to interest on outstanding receivables, ITAT notes that in light of non cooperation of the assessee in filing TP study w.r.t interest chargeable from AEs and also no objection of the assessee, TPO had computed interest @ 12%. Subsequently, CIT(A) reduced 12% to 8% and also noted that 60% of the total turnover were receivables from the AE alone by the assessee.

ITAT holds that instead of 8% interest rate, rate of interest of 6% be applied on outstanding receivable at the year end. Rejects assessee's plea seeking application of LIBOR+200 points as it will amount to shifting of profit from assessee to its AE, which cannot be countenanced under Chapter X, clarifies that "*the rate of interest on loan transaction (LIBOR+points) cannot be equated with delayed receipt of the outstanding amount by assessee from its AE, as both stands on different premises having different purpose and nature*".

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

9. **ITAT: Rejects Sec.11 exemption, civil contract activities not aligned with Trust's objects. Holds Art.12, 289 of Constitution inapplicable.**

Udupi Nirmithi Kendra [TS-498-ITAT-2022 (Bang)]

Bangalore ITAT denies exemption under Section 11 by holding that the civil contract activities carried on by the Trust were not in accordance with its objects. Further holds that provision of Article 289 is not applicable as the Trust did not fall under Article 12 of the Constitution since it has a separate legal entity distinct from the state.

Assessee-Trust, formed with an object of serving as a seminal agency to generate and propagate innovative ideas on housing, claimed exemption under Section 11. Revenue held that the activities carried out by the Assessee are purely commercial, carried out by any civil contractor and are not for charitable purpose as provided in Section 2(15), thereby denied Assessee the exemption under Section 11, which was upheld by CIT(A).

Observes that when the State Government decides that purpose of Nirmithi Kendra has been achieved and discontinues the same by passing the dissolution order, in such an event only the income, assets, liabilities of the Nirmithi Kendra will be vested with the State Government and not otherwise. Thus, Dismisses Assessee's claim of being State under Article 12 of the Constitution and holds that the provision of Article 289 of the Constitution cannot be applied to the present case as it is not considered as State.

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

Direct Tax / PF / ESI compliance due dates for July 2022

Due Date	Form	Period	Comments
07.07.2022		June 2022	Payment of equalization levy
07.07.2022	Challan No. 281	June 2022	Due date for deposit of tax deducted /collected for the month of June, 2022.
07.07.2022	Challan No. 281	April to June 2022	Due date for deposit of TDS when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
15.07.2022	TDS certificate	May 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in May 2022.
15.07.2022	Form 27EQ	April to June 2022	Quarterly statement of TCS deposited for the quarter ending 30 June, 2022
15.07.2022		FY 2021-22	Foreign Liabilities and Assets Return to be submitted through online portal of RBI
15.07.2022	ESI Challan	June 2022	ESI payment.
15.07.2022	E-Challan & Return	June 2022	E-payment of Provident fund
30.07.2022		June 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 June 2022.
30.07.2022		April to June 2022	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2022
31.07.2022		April to June 2022	Quarterly statement of TDS deposited for the quarter ending June 30, 2022
31.07.2022	Income Tax Return	AY 2022-23	Return of income for the assessment year 2022-23 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are not required to be audited) or (c) partner of a firm whose accounts are not required to be audited or (d) an assessee who is not required to furnish a report under section 92E.
31.07.2022	Form 67	AY 2022-23	Due date for claiming foreign tax credit, if the assessee is required to submit return of income on or before July 31, 2022.

MCA Updates

1. **MCA Introduces new conditions for restoration of Independent Director's name in databank**

   MCA notifies amendments to Appointment and Qualification of Directors Rules, inserts new sub-rule (5) under Rule 6, to state that any individual whose name has been removed from the databank (of Independent Directors) under sub-rule (4), may apply for restoration of his name on payment of fees of Rs. 1000, and the Indian Institute of Corporate Affairs shall allow such restoration subject to certain conditions; Sub-rule (4) states that every individual whose name is so included in the databank shall pass an online proficiency self-assessment test conducted by the institute within a period of 2 years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute.

   According to one of the conditions under new sub-rule (5), the Director's name shall be shown in a separate restored category for 1 year, within which he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only if he passes the online proficiency self-assessment test; According to the other condition under the new provision, in case he fails to pass the proficiency self-assessment test within 1 year from the date of restoration, his name shall be removed from the databank and he shall be required to apply afresh for inclusion of his name in the databank.

2. **MCA prescribes penalty of Rs. 5000 for non-compliance with NFRA Rules**

   MCA amends the National Finance Reporting Authority Rules, 2018, substitutes Rule 13 pertaining to punishment in case of non-compliance with NFRA Rules.

   Further provides that, whoever contravenes any of the provisions of these Rules, shall be punishable with fine not exceeding Rs. 5000, and where the contravention is a continuing one, with a further fine not exceeding Rs. 500 for every day after the first during which the contravention continues.

3. **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.

4. **MCA allows LLPs to file e-form 11 without additional fees, upto July 15**

   MCA relaxes payment of additional fees in case of delay in filing of e-form 11, up to July 15, 2022.

5. **Due Dates:**
   - Form 11 for LLPs – July 15, 2022
   - FLA Return to be submitted to RBI – July 15, 2022

FEMA Updates

1. Guidelines to Import of Gold by Qualified Jewellers as notified by – The International Financial Services Centre Authority (IFSCA) A.P. (DIR Series) Circular No. 04 dated May 24, 2022

In terms of Notification No. 49/2015-2020 dated January 5, 2022, in addition to nominated agencies as notified by RBI (in case of banks) and nominated agencies as notified by DGFT, Qualified Jewellers (QJ) as notified by International Financial Services Centers Authority (IFSCA) will be permitted to import gold under specific ITC(HS) Codes through India International Bullion Exchange IFSC Ltd. (IIBX);

In order to enable resident Qualified Jewellers to import gold through IIBX or any other exchange approved by IFSCA and the DGFT, Government of India the following directions under FEMA are being issued:

i. Qualified Jewellers will be permitted by Indian banks to remit advance payment for eleven days for import of gold through IIBX in compliance with extant FTP and regulations issued under IFSC Act. Such import through exchange/s authorised by IFSCA shall be as per the terms of the sale contract or other document in the nature of an irrevocable purchase order in terms of IFSC Act and regulations made thereunder by IFSCA. AD bank shall carry out all the due diligence and ensure the remittances sent are only for the bona fide import transactions through exchange/s authorised by IFSCA.

ii. The advance remittance for import of Gold should not be leveraged in what-soever form for importing Gold worth more than the advance remittance made.

iii. In case the import of Gold through IFSCA authorised exchange, for which advance remittance has been made, does not materialize, or the advance remittance made for the purpose is more than the amount required, the unutilised advance remittance shall be remitted back to the same AD bank within the specified time limit of eleven days.

iv. For gold imported through IIBX, QJ shall submit the Bill of Entry (or any other such applicable document issued/approved by Customs Department for evidence of import), issued by Customs Authorities to the AD bank from where advance payment has been remitted.

v. All payments by qualified jewellers for imports of gold through IIBX, shall be made through exchange mechanism as approved by IFSCA in terms of IFSC Act and regulations. Any deviation from the extant guidelines for import of Gold through IIBX need to be approved in advance by IFSCA and other applicable and appropriate authority/ies.

IFSC Authority (IFSCA) will conduct all required due diligence on the exchange - IIBX including all other entities involved in enabling import of Gold by QJs in terms of the IFSCA regulations. IFSCA shall also put in place necessary system to ensure that the advance remittance received from QJs are solely for the purpose for the import of gold through IIBX.

Following shall also be ensured by AD Bank:

a. Required documentation, custom related procedure and filing Bill of Entry as import evidence etc. is complete.

b. Single/multiple QRMs created and matched with corresponding BOEs and closed properly in IDPMS.

c. QJs comply with relevant extant instructions relating to imports under FEMA 1999, FTP, FTDR Act 1992 and regulations of IFSCA.

AD banks may frame their own internal guidelines to deal with such cases, with the approval of their Board of Directors.

Following are Reporting requirement by AD banks:

i. AD bank shall create Outward Remittance Message (ORM) for all such outward remittances in IDPMS in terms of extant guidelines.

ii. All these transactions need to be reported in FETERS in terms of extant guidelines.

iii. AD bank shall report the import of gold through QJ in XBRL as prescribed in para C.11.1 of Master Direction – Import of Goods and Services

2. Discontinuation of Return under Foreign Exchange Management Act, 1999

A.P. (DIR Series) Circular No. 05 dated June 09, 2022 Reference may be drawn to A.P. (DIR series) circular No 20, dated August 29, 2012, Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and the Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, as amended from time to time wherein 'Statement for reporting of nonresident guarantees issued and invoked in respect of fund and non-fund based facilities between two persons resident in India' was required to be filed.

It has now been decided to discontinue the above return, with effect from the quarter ending June 2022.

3. Extension of timeline for implementation of certain provisions of Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, 2022

Considering various representations received from the industry stakeholders, it has been decided to extend the timeline for implementation of the following provisions of the Master Direction to October 01, 2022:

a. Paragraph 6(a)(vi) - Card-issuers shall seek One Time Password (OTP) based consent from the cardholder for activating a credit card, if the same has not been activated by the customer for more than 30 days from the date of issuance. If no consent is received for activating the card, card-issuers shall close the credit card account without any cost to the customer within seven working days from date of seeking confirmation from the customer.

b. Paragraph 6(b)(v) - Card-issuers shall ensure that the credit limit as sanctioned and advised to the cardholder is not breached at any point in time without seeking explicit consent from the cardholder.

c. Paragraph 9(b)(ii) - No capitalization of unpaid charges/levies/taxes for charging/ compounding of interest.

The stipulated timeline for implementation of rest of the provisions of the Master Direction remains unchanged.

Indirect Tax Updates

Customs

1. The Honorable finance minister in the budget speech of year 2022 announced the implementation of a simplified regulatory framework to facilitate export of jewellery through E-commerce. This can be implemented through a standard operating procedure (SOP) for bringing uniformity and certainty on the process and steps to be followed to facilitate such exports via International Courier Terminals (ICTs). Accordingly, an SOP has been formulated. To accommodate the e commerce business need, it incorporates a re-import process for returns of jewellery. For this, the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 have also been suitably amended vide Notification No. 57/2022 Customs (N.T.) dated 30.06.2022. The SOP is applicable on e-commerce export of jewellery made of precious metals (whether or not studded or set with precious or semi-precious stones) falling under CTH 7113 (excluding parts of jewellery falling under CTSH 71131190 and CTSH 71131960) and imitation jewellery falling under CTH 7117 of the first schedule to the customs Tariff Act, 1975.

   Click here to read/download the Circular No. 09/2022 – Customs dated 30th June 2022.

2. In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes some further amendments in each of the notifications of the Government of India, Ministry of Finance (Department of Revenue) issued earlier.

   Click here to read/download the Notification No.37/2022 – Customs dated 30th June 2022.

3. CBIC has provided instructions relating to FSSAI imports related Directions on rectifiable labelling information for imported food consignments and import of clove stem.

   Click here to read/download the Instruction No. 10/2022 – Customs dated 28th June 2022.

GST

4. CBIC has Notified Procedure relating to sanction, post-audit & review of refund claims.

   Click here to read/download the Instruction No. 3/2022 – Customs dated 14th June 2022.

Notification issued by Department of Commerce

5. The last date of submitting applications under MEIS, for exports made in the period 01.09.2020 to 31.12.2020 has been extended upto 31.08.2022.

   Click here to read/download the Notification no. 15/2015-2020 dated 1st July 2022.

Indirect Tax Rulings

1. 2022-TIOL-824-HC-MAD-GST

Mahendra Feeds And Foods Vs Deputy CGST & CE

GST - According to Revenue, ITC claimed by the petitioner was a wrong claim because there was a complete mismatch between the supplier and the petitioner, as the supplier in support of his outward tax has not paid the tax or not shown the same in their accounts, as if that they paid the tax - SCN was issued and impugned order was passed which is sought to be quashed by way of the present petition - Petitioner submits that under Section 42(3) of the GST Act there is an obligation on the part of the Revenue to communicate to both the supplier and the dealer who received the goods by way of input supply about the mismatch of ITC as the supplying dealer has not paid the output tax at their end - However since no such communication has been issued and they issued the show cause notice, it is a procedural violation.

Held: After receipt of the show cause notice, if at all the petitioner wanted to rectify the mismatch between the petitioner and the supplying dealer, the supporting documents to substantiate that the output tax had been paid by the supplying dealer at their end should have been procured and filed along with the reply submitted by the petitioner, which they failed to do - Technical reason that u/s 42(3) of the Act, 2017, it should have been communicated at the earliest point of time and, therefore, the show cause notice cannot be treated as communication intimating the mismatch between the supplier and the petitioner, cannot be countenanced - Court feels that the impugned order cannot be successfully challenged - Petition dismissed: High Court [para 9, 10]

- Petition dismissed: MADRAS HIGH COURT

2. 2022-TIOL-825-HC-MAD-ST

Tamil Nadu Dr Mgr Medical University Vs Pr. Addl. Director General Directorate General of Goods and Services Tax, Intelligence

ST - Petitioners are State Universities created under the Act of State Legislature - Certain immovable properties are rented out which are located in the respective University campuses for the purpose of housing Bank, ATM, Post Office, Staff Canteen, Students Canteen etc. - According to the petitioners these activities are educational activities and, therefore, whatever the fee or rent collected by these Universities from those for whom it has been rented out, as the same are only for the benefit of the students and staff of the Universities, the Universities are to be exempted from the purview of Service Tax; that the issue is no more res integra as it has been exhaustively considered and decided in the matter of Madurai Kamaraj University = 2021-TIOL-1812-HC-MAD-ST and,
therefore, the show cause notice issued in respect of petitioner University in W.P.No.21907 of 2021 and the Order-in-Original issued in respect of petitioner University in W.P.No.26300 of 2021 are liable to be set aside in view of the law declared in the said order (supra).

Held: Issue raised in these writ petitions is no more res integra, at least for the present, in view of the judgment made in Madurai Kamaraj University dated 16.08.2021 made in W.P.(MD) No.20502 of 2019 = 2021-TIOL-1812-HC-MAD-ST - Insofar as the objections raised by the respondents that the rental income derived by these Universities cannot be treated as educational services is concerned, that has also been dealt with separately in order dated 16.08.2021 [para 24 refers] - Therefore, the services rendered by the petitioner Universities by way of affiliation and allied activities including the conduct of examinations, awarding of degrees, diplomas etc., and also the income they derived from rent paid by the third

parties like Postal Department, Banks etc., and also to run Canteen for the purpose of Students and Staff, were considered to be allied services attached with the educational activities undertaken by the Universities and, therefore, they are also exempted -Impugned SCN and O-in-O are set aside - Writ petitions in all respects are allowed: High Court [para 14 to 17]

- Petitions allowed: MADRAS HIGH COURT

3. 2022-TIOL-514-CESTAT-DEL

Asiatic Drugs And Pharmaceuticals Pvt Ltd Vs CCGST

ST - Appellant is engaged in manufacture of Cefadroxil Monohydrate Trihydrate - On being advised, that as appellant has already paid customs duty, CVD on the import price, which includes ocean freight, appellant was not required to pay service tax again on freight - Accordingly, appellant filed the refund application praying for refund of amount of tax with interest and penalty - It was alleged in SCN that appellant have not produced any document evidencing that they have not taken credit of said amount, therefore refund claim appears to be bad - Accordingly, appellant was required to show cause as to why the refund claim, not be rejected - The SCN was adjudicated on contest - Appellant had urged that service tax cannot be levied on same transaction/activity twice (ocean freight), as the value of ocean freight has already been included in value of goods, on which customs duty and CVD has been paid - In fact, payment of service tax on ocean freight has resulted in double taxation - The transaction value for Custom duty and Excise duty (CVD), includes the/ ocean freight, and accordingly appellant has suffered the double taxation, by again paying service tax on ocean freight, as demanded by Revenue - Accordingly, appellant is entitled to refund of service tax, Interest and Penalty - This amount should be refunded to appellant within a period of 45 days alongwith interest as per provisions of Section 11BB of Central Excise Act: CESTAT

- Appeal allowed: DELHI CESTAT

4. 2022-TIOL-936-HC-MAD-ST

Redington India Ltd Vs Pr.Addl. Director General

ST - Writ Petitions have been inter alia filed against the impugned SCNs issued by the ADG, Directorate of GST Intelligence of the respective Zonal Units and Principal ADG, DGSTI, Chennai Zonal Unit and ADG, DGSTI (Hqrs.), New Delhi - Writ Petitions have also been filed against the impugned Orders-in-Original passed by the Adjudicating Authority.

Held:

++ Reasoning of the Supreme Court in Commissioner v. Sayed Ali = 2011-TIOL-20-SC-CUS and in Canon India Pvt Ltd = 2021-TIOL-123-SC-CUS-LB cannot be imported in the context of the Central Excise Act, 1944 and/or The Finance Act, 1994; without doubt, the officers from the Directorate of Central Excise Intelligence are "Central Excise Officers" as they have been vested with the powers of central excise officers.

++ Definition of "Central Excise Officer" in Section 2(b) of the Central Excise Act, 1944 was made applicable for Section 73 of Chapter V of the Finance Act, 1994 which prescribes a machinery for recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.

++ Under Rule 3 of the Service Tax Rules, 1994, the Board can appoint any other officer to exercise power within the "local limits". However, that would not mean that the officers of "Directorate of Central Excise Intelligence (DGCEI) [presently The Directorate of GST Intelligence]" who are already "Central Excise Officers" under Notification No. 38/2001-C.E. (N.T) , dated 26.06.2001 for whole of India cannot exercise power pan India. Notification No. 22/2014-ST dated 6.09.2014 is to be read in conjunction with Notification No. 38/2001- C.E. (N.T) , dated 26.06.2001; therefore, the argument of the petitioners that the officer of Directorate of Central Excise Intelligence (DGCEI) [presently The Directorate of GST

Intelligence] is not "Central Excise Officer" and cannot exercise function Pan India cannot be accepted.

++ No restriction can be inferred on the powers of the Board while appointing the officers of the Directorate of Central Excise Intelligence (DGCEI) [presently The Directorate of GST Intelligence] to act as "Central Excise Officers"; therefore, it cannot be said that the officers who have been vested with the powers under the impugned Notification No. 22/2014-S.T., dated 06.09.2014, are not the "Central Excise Officers".

++ As far as challenge to impugned show cause notices on the ground that they have been issued contrary to the C.B.E. & C. Master Circular No. 1053/2/2017-CX , dated 10-3-2017, Bench is of the view that merely because there was no pre-consultation as per the said circular, it cannot be said that the proceedings are bad. Master Circular is intended to only facilitate the defaulting assessee to come forward to pay the amount so that the department is not burdened with show cause proceedings.These circulars are neither binding on the Court [RATTAN MELTING AND WIRE INDUSTRIES = 2008-TIOL-194-SC-CX-CB refers] nor are contemplated under the provisions of the Finance Act, 1994.Therefore, show cause proceedings initiated under Section 73 of the Finance Act, 1994 seeking to demand tax which was allegedly not paid cannot be allowed to be scuttled in the light of the above circular. No merits in the challenge to the impugned show cause notice/Order in Original. [para 189, 190, 192, 195 to 200]

CONCLUSION:

++ Challenge to the proceedings which have been impugned on the ground of limitation etc, involves disputed questions of facts. Therefore, these issues are best left to be adjudicated by the Central Excise Officer. [para 202]

++ As long as the SCNs have been issued by a competent officer under the Finance Act, 1994 read with relevant notification, challenge to the proceeding based on the alleged failure to follow the circular cannot be countenanced. Issues touching on the merits are best left to be decided by the adjudicating authorities and appellate authorities in the hierarchy of the authorities under the Act.Therefore, there is no merits in these present writ petitions. [para 203, 204]

++ Challenge to impugned Notification No. 22/2014-ST dated 16.09.2014 fail and, therefore, these writ petitions are dismissed. [para 205]

- Petitions dismissed/disposed of: MADRAS HIGH COURT

5. 2022-TIOL-913-HC-AHM-GST

Shama Fatima Vs State of Gujarat

GST - Order of seizure passed by respondent No. 2 pertaining to articles belonging to the petitioner have been challenged in both the petitions. Held: In the first case, out of 21 articles which were seized by the respondent authority, 18 items have been released and have been handed over to the petitioner - Similarly, in the second case, out of five articles which were seized by the respondent authority, three items have been released and have been handed over to the petitioner - However, iPhone (2 nos.), Oppo Mobile phone, Lenovo laptop and DVR are yet to be released and the Counsel for the Revenue submits under instructions that as and when the details are retrieved from the aforesaid electronic gadgets, the same shall be released and handed over to the petitioner but not later than 31st July, 2022 - In view of above statement being made by AGP, the petitions would not survive and are disposed of accordingly: High Court [para 10 to 12]

- Petitions disposed of: GUJARAT HIGH COURT

6. 2022-TIOL-548-CESTAT-DEL

Ram Sewak Tiwari Vs CC

ST - The issue is about classification as to whether the services rendered by appellant are that of Erection, Commissioning and Installation or are of nature of Works Contract Services - The services provided by appellant since involve the goods also which are leviable to sales tax/VAT, the contracts in question are definitely in nature of works contract - Even if those being the contracts for Erection, Commissioning and Installation service - Since, the property in goods is also involved in rendering said services, appellant was entitled for benefit of abetment of 67% under notfn no. 19 of 2013 - The appellant was entitled for exemption of 67% or gross amount charged as the same was including value of pumps, plants and other equipments - There appears no liability of appellant as was proposed vide impugned SCN and as has been confirmed by Commissioner (A) who no doubt has been given the benefit of 67% abetment - The findings of Commissioner (A) therefore are opined to rather be contradictory in nature - The question of invoking extended period of limitation also does not arise as appellant is a registered service provider and was regularly submitting ST-3 returns with no objection by Department except for impugned SCN - No suppression of facts or malafide intent to evade duty can be attributed to appellant - Hence, no occasion for Department to invoke the proviso of Section 73 of Finance Act - Impugned order is hereby set aside: CESTAT

- Appeal allowed: DELHI CESTAT

7. 2022-TIOL-529-CESTAT-AHM

Lonsen Kiri Chemical Industries Ltd Vs CCE & ST

CX - Appellant imported certain raw materials and warehoused the same in 100% EOU - Since the goods could not be used in manufacture, they cleared after four years - At the time of clearance, appellant had paid customs duty and also paid interest after period of three years of bonding - Case of department is that appellant is required to pay interest after expiry of 90 days in terms of Section 61(2)(ii) of Customs Act, 1962 - Appellant being 100% EOU, imported goods exempted under Notification No. 50/2003-Cus. - There is no dispute about intention of said goods to be used in manufacture of final product in 100% EOU unit of appellant - Section 61(1) ibid does not provide that goods should be used in manufacture but it only requires that goods imported with intention of use in 100% EOU - As regards intention for use, it is not disputed - Therefore, appellant's clearances falls under Section 61(1)(aa) ibid, according to which the interest provisions provided under sub-section (2)(i) of Section 61 ibid shall apply, which provides that interest to be charged only after expiry of three years till the date of payment of duty - Appellant have discharged customs duty along with interest beyond three years till the date of payment - Therefore, as per statutory provisions, demand of interest over and above the interest paid by appellant is not sustainable - Impugned order is set-aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

8. 2022-TIOL-528-CESTAT-MUM

Raychem Rpg Pvt Ltd Vs CGST & CE

CX - The appeals of assessee arise from partial rejection of claim for refund preferred under Rule 5 of Cenvat Credit Rules, 2004 - An assessee, manufacturing primarily for international market, has little scope for utilization of CENVAT credit in normal course of discharge of duty liability - It is not the case of Revenue that the assessee had cleared goods domestically on payment of duty and was, through the refund route, attempting to recover the same; there is a certain lack of logic too in that - Any remnant by application of formula, and its precise intendment, can trace its origin to input lying unutilized or input service yet to be utilized for manufacture - Its utilization in some subsequent period can be reflected only by restoration of rejected portion of a claim for refund - The restoration is permitted by law

and the availment suffices to entitle inclusion for apportionment towards export of a subsequent quarter - The claim of assessee has been wrongly discarded by lower authorities - Consequently, impugned order is set aside: CESTAT

- Appeal allowed: MUMBAI CESTAT

9. 2022-TIOL-864-HC-KAR-ST

TPI Advisory Services India Pvt Ltd Vs CCT

ST - Substantial question of law is whether Tribunal is justified in dismissing the appeal of the Appellant thereby upholding rejection of refund claim of the service tax paid by the Appellant despite the fact that they had also paid Goods and Service Tax (GST) on the very same transaction - Facts are that the appellant had raised four Invoices dated 17.04.2017, 16.06.2017 and 30.06.2017 for the period from April to June, 2017 for payment of Service Tax of Rs. 17,84,952/- against WNS Global Services Private Limited, Tech Mahindra, USA & Morgan Stanley Advantage Services Pvt. Ltd. - Clients in whose names the Invoices were raised had expressed reservation to make the payment in view of the transition from service tax to GST, therefore, appellant issued credit notes to those customers and raised fresh Invoices under the provisions of GST, on 30.09.2017, 08.11.2017 and 31.12.2017 for a sum of Rs. 21,41,944/- and paid the said amount - Refund was, thereafter, filed of the service tax of Rs.17,84,952/- paid earlier and which was rejected by the lower authorities and Tribunal, therefore, the present appeal.

Held : In view of the undisputed facts that the appellant has paid the service tax and also the GST and the Commissioner of Central Excise has held that appellant was not liable to pay GST, rejection of applications for refund is untenable - Having paid the service tax in the year 2017 and having submitted its application, the appellant is awaiting the refund from March 2018 till date - Appeal is allowed - Respondents are directed to refund Rs. 17,84,952/- with statutory interest payable under Section 11BB of the Central Excise Act, 1944 within three months: High Court [para 11, 12]

- Appeal allowed: KARNATAKA HIGH COURT

10. 2022-TIOL-869-HC-MP-GST

Ushman Khan Vs State of Madhya Pradesh

GST - Registration of petitioner was cancelled vide order dated 04.02.2019 -Thereafter, with a delay of 865 days, the petitioner preferred an appeal before the Joint Commissioner who dismissed the appeal vide order dated 04.01.2022 and,therefore, the present petition - Petitioner submits that they are entitled for the relaxation as provided by the Apex Court in the matter of Cognisance for extension of Limitation orders in SMW(C) No. 3/2020.

Held: Section 29 of the Act of 2017 is confined to an application for revocation against cancellation of registration whereas Section 107 of the Act of 2017 deals with the provisions of Appeal including limitation to file appeal - The limitation under Section 107 of the Act of 2017 is three months which is evident from the perusal of the statutory provision contained in Section 107 of the Act of 2017 - However, Section 29 of the Act of 2017 is entirely different and only deals with the application for revocation of cancellation of registration - CBIC Circular dated 25.06.2020 deals only with section 29 of the Act, 2017 and not s.107 of the Act and is of no assistance to the case of the petitioner - Furthermore, the directive of Apex Court were issued subsequently upon out break of Covid-19 pandemic in the year 2020 whereas in the present case, the registration was cancelled on 04/02/2019 and the appeal was preferred on 16/09/2021 - Reasoning given by the lower Appellate Authority are just and proper, therefore, petition is dismissed: High Court [para 7, 8, 9]

- Petition dismissed: MADHYA PRADESH HIGH COURT

11. 2022-TIOL-867-HC-MP-GST

Sanjay Trading Company Vs State of Madhya Pradesh

GST - Petitioner assails the order on the ground that the search was not carried out in accordance with the provisions of Section 67 of the M.P. GST Act, 2017 inasmuch as to carry out the search under the provisions of Goods and Services Tax Act, the procedure as laid down in Code of Criminal Procedure 1973, is applicable which inter alia stipulates that the search is required to be carried out in the presence of two witnesses but in the present case, no independent witnesses were present and respondent did not seize any material from the premises of the petitioner, therefore, it was obligatory on the part of the Revenue to re-measure the stock of coal lying in the premises.

Held: If the Panchanama is perused, it is evident that on the date of search itself, the amount of tax and a penalty was deposited by the petitioner as discrepancies were found in the stock and thus there was no question of any kind of seizure - Moreover, there were independent witnesses as well as the petitioner's own representatives who did not raise any objection as regards search, thus, filing of the application before respondent No.5 to re-measure the stock was an afterthought - Moreover, it is beyond comprehension, that once the search team, after search left the premises on 25/01/2022, the stock of coal would have remained untouched and not alienated during the subsequent period - T here is no infirmity as far as the order/letter impugned are concerned - Petition being devoid of merits stands dismissed: High Court [para 8, 9]

- Petition dismissed: MADHYA PRADESH HIGH COURT

12. 2022-TIOL-870-HC-MAD-CUS

IN THE HIGH COURT OF MADRAS

WP Nos. 33099 of 2015, 18918 of 2016, 27344 of 2017, 8242, 9306, 9405, 9407, 9434, 9484, 11156, 11268, 11271,11274, 12929, 12933, 26200 & 27009 of 2021 and WMP.Nos.22162.2021, 29238, 29239 / 2017, 8791, 9874, 9997, 10019, 10020, 10143, 10081, 10083, 10085, 11790, 11791, 11925, 11927, 11929, 13732, 13733, 13735, 27651, 27653 & 28453/2021

M/s N C ALEXENDER
REP BY ITS PROPRIETOR, N C ALEXANDAR

Vs

THE COMMISSIONER OF CUSTOMS
CHENNAI II COMMISSIONERATE,
CUSTOMS HOUSE
NO. 60, RAJAJI SALAI, CHENNAI-600001

C Saravanan, J

Dated: June 09, 2022

Petitioner Rep. by: Mr S Krishnanandh
Respondent Rep. by: Mr K Mohanamurali, Sr. Panel Counsel

Cus - Petitioners have challenged the impugned Order-in-Originals passed by the respective jurisdictional officers of the Customs -Other petitioners have challenged the impugned Show Cause Notices issued by the officers from the Directorate of Revenue Intelligence - It is the uniform submission that the respective Show Cause Notices as also the respective impugned Order-in-Originals are without jurisdiction as they emanate from a person who is not a "proper officer" within the meaning of Section 2(34) of the Customs Act, 1962 - Challenge is inspired from the decision of the Supreme Court in *Sayed Ali* = ***2011-TIOL-20-SC-CUS*** and the decision in *Canon India Private Limited* = ***2021-TIOL-123-SC-CUS-LB*** and which decision is now the subject matter of a review before the Hon'ble Supreme Court - Writ petition is opposed primarily on the ground that the petitioner has an alternate remedy and that the petitioner has indulged in evasion of customs duty by suppressing the import value and had wrongly availed the benefit of the Customs

Notification and, therefore, is also liable to duty and penalty.

Held:

++ Currently, the senior officers in the Directorate of Revenue Intelligence (DRI) consist of Officers of the Customs who are on deputation to the Board. The Officers of the Directorate of Revenue Intelligence (DRI) like their counterparts in the Director General of GST Intelligence (formerly Directorate General of Central Excise Intelligence), are Officers drawn from these Group A and Group B Services of the Department of Revenue, Ministry of Finance.

++ In fact, these officers from the Directorate of Revenue Intelligence (DRI) under the Department of Revenue, Ministry of Finance (MOF) do not cease to be Officers of Custom on their deputation to the said Directorate.

++ Under the Act, the Central Government by a notification can also entrust the function of the customs officers on any other officers from other departments including officers from the State Government and Local Body.

++ Sweeping changes have been brought to the Customs Act, 1962 by Finance Act, 2022 leaving no scope for any doubt as to status of the officers including the officers from the Directorate of Revenue Intelligence (DRI) as officers of Customs.

++ Supreme Court appears to have not been informed about the important changes brought to Section 17 of the Customs Act, 1962 vide Section 38 of the Finance Act, 2011 with effect from 08.04.2011 when it passed its decision in *Canon India Private Limited* **= *2021-TIOL-123-SC-CUS-LB***

++ Thus, over a period of time, the officers of Directorate of Revenue Intelligence (DRI) who are primarily drawn from the Customs Department were also given the task of issuing show cause notice and adjudicating the same in terms of Notifications issued as "Proper Officer", as defined in Section 2(34) of the Customs Act, 1962.

++ Now, under the amended Section 2(34), the word "under Section 5" has been inserted. Thus, what was implicit in the Customs Act, 1962 has now been made explicit in the amendment to the Customs Act, 1962 vide Finance Act, 2022.

++ Such officers can also exercise the powers and discharge the duties conferred or imposed on any other officers of customs who is subordinate to such officers. This aspect was also not brought to the attention of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs case referred to supra.

++ Officers from the Directorate of Revenue Intelligence (DRI) are now explicitly recognized as "Officers of Customs" under the Customs Act, 1962 by virtue of the amendment to the Customs Act, 1962 vide amendment in the Finance Act, 2022.

++ That apart, there is validation of all action taken by such officers under Section 97 of the Finance Act, 2022. Therefore, these writ petitions are liable to be dismissed on the ground that the officers of the Directorate of Revenue Intelligence (DRI) have indeed the power to issue Show Cause Notice. The defence that they are incompetent is no longer available to these petitioners.

++ Both the revenue and assesses have not brought to the attention of the Hon'ble Supreme Court in *Canon India Private Limited* **= *2021-TIOL-123-SC-CUS-LB*** that the officers of Directorate of Revenue Intelligence have already been appointed as "Officers of Customs" under Notification issued under Section 4(1) of the Customs Act, 1962.

++ A reading of Section 6 of the Act further makes it clear that it applies only to officers from other departments other than the Officers of the Customs under Section 4 of the Customs Act, 1962. The Officers of the Directorate of Revenue Intelligence (DRI) are not any other officers of the Central Government or the State Government or the Local Authority to be entrusted with the function of the Board and the Customs Officers. The Officers of the Directorate of Revenue Intelligence (DRI) are already officers of the Customs by virtue of the Notification issued under Section 4(1) of the Customs Act, 1962.

++ As the Officers from the Directorate of Revenue Intelligence, Ministry of Finance (MOF) are already "Officers of Customs" before their induction and deputation to the Board in various Directorates, there is no impediment on their being appointed as proper officers for the purpose of Section 2(34) of the Customs Act, 1962.

++ Merely because the Officers of the Customs and Central Excise Department are selected and are deputed in the respective Directorates does not mean that they cease to be Officers of the respective Departments as these Directorates are created only to assist the Board to implement the object of respective fiscal enactments. It is an internal arrangement within the Ministry of Finance, Department of Revenue (DRI)

++ As mentioned above, assessment is neither by the Group 'B' Executive - Gazetted Officer nor by Group 'B' Executive - Non-Gazetted Officer after 08.04.2011. Only, prior to 08.04.2011, the assessment of goods at the port was vested with the Group 'B' Executive - Gazetted Officer. However, after the said date, the fundamental of assessment has undergone a sea change and changed permanently as mentioned above.

++ These fundamental changes brought to the manner of the assessment under the Customs Act, 1962 with effect from 08.04.2011 appear to have not been brought to the attention of the Hon'ble Supreme Court and therefore the assumption in the paragraph Nos.12 to 15 in the case of Canon India Private Limited = ***2021-TIOL-123-SC-CUS-LB*** may require a re-consideration insofar as pending cases before the Supreme Court and other Courts.

++ Further, union tax laws undergo periodical amendments during successive Finance Act. The Central Excise Act, 1944, the Customs Act, 1962, Chapter V of the Finance Act, 1994 as also the Income Tax Act, 1961 are no exception. They have undergone several amendments. These changes have a bearing on the law.

++ Therefore, it is important that these are brought to the knowledge of the Court so that the Courts can interpret them and lay down the law to govern the assessees and Department under the respective tax enactments.

++ If the provision as stood during the period in dispute are not produced for the attention of the Court which is seized of the case, the Courts may, by oversight, end up giving ratio which are not consistent with the provisions as in force for the period in dispute.

++ Though the law laid down by the Hon'ble Supreme Court in Canon India Private Limited case referred to supra is a declaration of law under Article 141 of the Constitution of India and, therefore, binding on this Court and, therefore, some of these Writ Petitions would have to be allowed. However, in view of the validations in Section 97 of the Customs Act, 1962 vide Finance Act, 2022, Bench is unable to allow these Writ Petitions.

++ Therefore, there is no merits in these Writ Petitions filed by the respective petitioners challenging the Show Cause Notices issued by the Officers under the Directorate of Revenue Intelligence. Therefore, the consequential orders passed under Section 28 of the Customs Act or under Section 124 and other provisions of the Customs Act also cannot be assailed.

++ That apart, notices issued under the various other provisions of the Customs Act, 1962 cannot be quashed in the light of the law laid down in Canon India Private Limited case referred to supra, as the ratio laid therein is neither applicable to the proceedings under the provisions of the Customs Act, 1962 nor can the impugned Show Cause Notices / Orders-in-Original be quashed in view of the validation in Section 97 of the Finance Act, 2022 to the pending proceedings.

++ However, where reliance is placed on the statement of third party who were not produced for cross-examination before the impugned Orders-in-Originals were passed, Bench is inclined to quash those impugned Orders-in-Originals and remit the case back to the respective adjudicating authority to pass a speaking order de novo.

++ What was implicit in the provisions of the Customs Act, 1962 has been now made by explicit in the amendment to the Customs Act, 1962 vide amendment in Finance Act, 2022. Therefore, these writ petitions are liable to be

dismissed by giving liberty to the petitioners to work out their remedy before the alternate forum.

++ Further, show cause notices issued under various provisions cannot be stifled to legitimize evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices and were not officers of customs.

++ Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

++ In the light of the above discussion, the challenges to the impugned Show Cause Notices and the Orders in Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited = ***2021-TIOL-123-SC-CUS-LB*** fail.

++ In the result, the following Writ Petitions are dismissed with liberty to file a statutory appeal before the Central Excise, Customs and Service Tax Appellate Tribunal (CESTAT) within a period of thirty days from the date of receipt of a copy of this Order:

++ Rest of the Writ Petitions challenging the impugned Show Cause Notices are dismissed by directing the jurisdictional adjudicating authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order.[para 176 to 178, 181, 221, 245, 246, 248, 259, 260, 262, 267, 277 to 281, 284, 285, 287, 288, 290, 297 to 300, 308]

Petitions dismissed

13. 2022-TIOL-865-HC-MAD-CUS

Global Oil And Company Vs Asstt. CC

Cus - Petitioners have imported a consignment of betelnut from entities based in Indonesia and Myanmar - Goods have been detained and investigation is ongoing with regard to classification and assessment of duty and whether goods are prohibited - Petitioners have moved representations seeking re-export of the consignment sans adjudication, fine and penalty but same are pending - Counsel for Revenue submits that there is no cooperation on the part of the petitioners.

Held: Petitioner is directed to cooperate with the respondents in respect of the pending proceedings and to notices, if any, received from the respondents - Prayer of the petitioners for a direction to the respondents to re-export the consignment is not liable to be acceded to, seeing as the question of re-export involves determination of various facts, which only the authorities would be competent to undertake - Writ petitions are disposed of: High Court [para 6, 8]

- Petitions disposed of: MADRAS HIGH COURT

14. 2022-TIOL-522-CESTAT-DEL

Aadhar Stumbh Township Pvt Ltd Vs CCE & CGST

ST - Appellant had dispatched refund applications by speed post on 8.11.2016, which were returned by Department by refusing to accept - Further, refusing of refund by Department is evident from the facts on record, as the Service Tax Division has been shifted from CGO Complex, New Delhi to Ambedkar Bhawan, Rohini, New Delhi - Thus, appellant had dispatched refund application well within the period of limitation - Such dispatch is also proved by fact that the appellant has soon thereafter receipt back of mail with remark "refused to accept", has again filed the application by hand on 5.12.2011 - Refund application has

been filed within limitation as prescribed under Section 102(3) of Finance Act - In view of Section 102(1) and (2) of Finance Act, service tax deposited by appellant has taken the changed character of revenue deposit, by operation of law as the Government of India extended exemption with retrospective effect vide Notification No. 9/2016-S..T read with Section 102 introduced by FA, 2016 - Thus, rejection of refund by Revenue is also hit by Article 265 of Constitution of India - No limitation is applicable for refund, due to the amount lying with the Revenue having the nature of revenue deposit - The Adjudicating Authority is directed to grant refund within a period of 45 days along with interest under Section 11 BB: CESTAT

- Appeal allowed : DELHI CESTAT

15. 2022-TIOL-510-CESTAT-DEL

M P Audyogik Kendra Vikas Nigam (Indore) Ltd Vs CCGST & CE

ST - The issue involved is, whether the appellant is liable to service tax on amount of penalty collected from their contractor - There is no contract between appellant and their contractor to refrain from an act or to tolerate an act or a situation or to do an act in favour of their contractor or to tolerate any act or situation - Further, for such alleged act or tolerance, no remuneration is prescribed in contract - The amount of liquidated damages levied by appellant from their contractor is in nature of penalty, and not by way of any consideration for any service as defined under Section 66E(e) of Finance Act, 1994 - This Tribunal in case of Lemon Tree Hotel 2020-TIOL-1114-CESTAT-DEL under the fact that their customer used to book accommodation by making advance payment, and upon cancellation of the booking, the hotel was retaining or forfeiting some of the advance deposit in the nature of penalty, by way of cancellation charges, Tribunal held that the said amount collected by hotel is in nature of penalty and not consideration as defined under Section 66E(e) ibid - Accordingly, impugned order is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

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

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

For more information, please visit www.vishnudaya.com

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