Newsletter

August 2022

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Contents

Direct Tax – Circulars & Notifications

Circulars issued by CBDT in the month of July 2022

1. **CBDT authorises Principal Chief Commissioner of Income Tax (Pr. CCIT) / Chief Commissioner of Income Tax (CCIT) to condone delay upto 3 years in filing Forms 9A, 10, 10B & 10BB, AY 2018-19 onwards**

   Circular no. 15, 16, 17 / 2022, dated 19th July 2022

   CBDT authorises Pr. CCIT/CCIT to admit applications for condonation of delay of beyond 365 days up to three years in filing Form Nos. 10BB [Audit Report for entities under Section 10(23C)(iv) to (via)].

   CBDT authorises Pr. CCIT/CCIT to admit applications of condonation of delay in filing form 10B (Form 10B is an audit report which is required to be filed by a registered charitable or religious trust/institution in order to claim exemption from income) for AY 2018-19 or for any subsequent Assessment Years where there is a delay of upto 365 days and decide on merit basis.

   CBDT authorises Pr. CCIT/CCIT to admit applications for condonation of delay of beyond 365 days up to three years in filing Form No. 9A (Application in case of shortfall in application of funds) and Form No. 10 (Statement for accumulation set apart by Trusts).

   The Circulars operate for AY 2018-19 onwards and direct that Pr.CCIT/CCIT shall admit the applications for condonation of delay and decide on merits.

   Click here to read / download the copy of the circular no 15.

   Click here to read / download the copy of the circular no 16.

   Click here to read / download the copy of the circular no 17.

Notifications issued by CBDT in the month of July 2022

1. **CBDT specifies 'other condition' under Sec.47 (viiad) for original fund transferring capital asset to Category III AIF**

   Notification no. 80 / 2022, dated 8th July 2022

   CBDT notifies Income-tax (21st Amendment) Rules, 2022, inserting Rule 21AL. The Rule specifies 'other conditions' to be satisfied by original fund for the purpose of Section 47(viiad) as provided in Explanation (a)(iv) thereto. The Rule provides that in a case where a capital asset is transferred to a resultant fund being a Category III Alternative Investment Fund, the original fund shall fulfil the condition that the aggregate participation or investment in the original fund, directly or indirectly, by persons resident in India shall not exceed 5% of the corpus of such fund at the time of such transfer.

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

2. **Procedure of PAN application & Allotment for LLPs.**

   Notification no. 4 / 2022, dated 26th July 2022

   The Director General of Income-tax (Systems) lays down the classes of persons, forms, format and procedure for Permanent Account Number (PAN) for newly incorporated Limited Liability Partnership (LLP).

Application for allotment of Permanent Account Number (PAN) will be filed in FiLLip form using Digital Signature of the applicant as specified by the Ministry of Corporate Affairs. MCA will forward the data in form 49A to the Income-tax Authority under its Digital signature, Class 2/Class 3 of MCA.

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

3. Directorate Systems reduces time-limit for e-verification, ITR-V submission to 30 days from 120 days

Notification no. 5/2022, dated 29th July 2022.

Directorate of Systems notifies that where ITR data is electronically transmitted on or after Aug 1, 2022, the time-limit for e-verification or submission of ITR-V shall be 30 days instead of existing time limit of 120 days from the date of transmitting/uploading the data. Clarifies that where the return data is electronically transmitted before Aug 1, 2022, the earlier time limit of 120 days would continue to apply in respect of such returns.

Further clarifies that: (i) where e-verification or ITR-V submission is done within 30 days of electronic transmission of ITR data, the date of transmitting the data shall be considered as the date of furnishing the return and (ii) where e-verification or ITR-V submission is done beyond 30 days of electronic transmission of ITR data, the date of e-verification or ITR-V submission shall be treated as the date of furnishing the return and all consequences of late filing of return under the Act shall follow. Also clarifies that date of dispatch of Speed Post of duly verified ITR-V shall be considered for the purpose of determination of the said period of 30 days. The notification comes into effect from Aug 1, 2022.

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

Direct Tax – Legal Rulings

1. **SC: Substantive right to opt out under Sec.10B(8) warrants strict & timely compliance**

   Wipro Limited [TS-544-SC-2022]

   SC allows Revenue's appeal against Wipro Ltd., holds that to opt out of exemption under Section 10B, the twin conditions under Section 10B(8) are required to be satisfied mandatorily - (i) furnishing a declaration before the Assessing Officer and (ii) declaration to be filed before the due date of filing the return of income under Section 139(1).

   SC observes that the wordings of Section 10B are clear and unambiguous and opines that "*in our view, both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under sub-section (1) of section 139 are same/similar*".

   As regards Assessee's argument that it had a substantive statutory right to opt out of Section 10B, SC finds no substance therein and remarks that the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.

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

2. **ITAT: Disallows set-off of losses to Cummins despite HC's approval to demerger since sole underlying purpose was tax-benefit**

   Cummins Sales & Services (I) Ltd. [TS-523-ITAT-2022(PUN)]

   Pune ITAT holds that approval of demerger scheme by the jurisdictional HC does not *ipso facto* entitle Cummins Sales & Services (I) Ltd. to set-off of brought forward business losses where the demerger was contrary to the object behind Section 72A.

   Assessee-Company claimed set-off of brought forward business losses of Rs.16.54 Cr. and unabsorbed depreciation of Rs.3.47 Cr. pertaining to demerged undertaking that vested with the Assessee for AY 2006-07. Revenue disallowed Assessee's claim.

   ITAT notes that an undertaking was demerged and vested with the Assessee and notes Revenue's finding that the assets of the demerged undertaking were held for sale. Further observes that the Income-tax Act has prescribed the conditions under which the set-off of brought forward business losses can be allowed in the case of demerger, which means that demerger *ipso facto* does not entitle an Assessee to claim benefit of the set-off of brought forward business losses.

   ITAT notes that the demerger scheme did not deal with the issue of set-off of brought forward business loses and unabsorbed depreciation losses. Thus, opines, "*the objective behind enactment of entire provisions of section 72A is the same even after the insertion of sub-section (4) of section 72A dealing with cases of demerger*".

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

3. **ITAT: Rejects aggregation of transactions sans common agreement, order. Directs adoption of prior years' approach.**

Liebherr India Private Limited [TS-396-ITAT-2022 (Mum)-TP]

Mumbai ITAT rejects assessee's request for aggregation of transaction and considers RPM as MAM for trading segment, rejects closing stock and excise duty adjustment for assessee for AY 2012-13.

For prior years, assessee provided segmental workings in respect of three business segment viz. (i) commission segment having sales commission/agency and marketing income, (ii) service segment having income from services provided by in warranty and post-warranty period and (iii) trading segment having income from trading in spare parts and machines. Each of these segments was benchmarked separately using a different MAM - CUP, CPM and RPM respectively.

However, for AY 2012-13, assessee benchmarked all three segments on aggregation basis under TNMM on the basis that all the activities undertaken were closely interlinked and were dependent upon the outcome of each other. However, this approach was rejected by the TPO who proceed to benchmark on the basis for segmental data provided for AY 2011-12 and made an upward TP adjustment for the trading segment (using RPM).

ITAT also rejects assessee's request for aggregation. While stating that the principle of aggregation is accepted under TP principles, observes that assessee's conention of transactions being closely interlinked cannot be a sufficient reason for permitting aggregation. States that neither of the conditions for aggregation are satisfied in the current case.

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

4. **ITAT: Inland Haulage Charges, inextricably linked to shipping business, covered under Article 8 of India - UAE DTAA**

Avana Global FZCO [TS-565-ITAT-2022 (Mum)]

Mumbai ITAT allows Assessee's appeal, holds that Inland Haulage Charges (IHC) are inextricably linked to shipping business in international traffic, thus, not taxable as business profit in India.

Assessee-Company, a UAE's tax resident, was disallowed treaty benefit under Article 8 of the India-UAE DTAA on Inland Haulage Charges amounting to Rs.31.27 Cr. and taxed it at 10% as per Rule 10 for AY 2017-18. Before ITAT, Assessee submitted that the Assessee issues bill of lading from point to point and not from port to port which includes the leg of inland transportation that cannot be segregated from the international voyage. Assessee also submitted that IHC are not on account of a separate business of the Assessee and no separate agreement is entered into between the Assessee and its customers for the Inland Haulage services.

ITAT observes that Article 8 of India-UAE DTAA does not explicitly cover trailers and related equipment for the transport of container. However, holds that considering the nature of activity and the services provided by the Assessee to its customers under a composite Bill of Lading, it can be safely inferred that the activity of Inland Haulage is directly connected with transportation of goods in international traffic.

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

5. **ITAT: Lease equalisation charges basis AS-19, allowable. Logo development expenses for contract terminated midway, deductible.**

Claridge Hotels Pvt. Ltd [TS-520-ITAT-2022 (DEL)]

Delhi ITAT allows Assessee's appeal, allows uniform deduction for lease equalisation charges determined on the basis of average rent per year over the tenure of the lease, in accordance with AS-19. Also allows deduction for logo development expenditure wherein the contract with the logo developer was terminated midway and no new logo was delivered to the Assessee.

Assessee Company made a provision for rent of Rs.8.28 Lakh which was accounted for as Rent Equalization Reserve which was disallowed by the Revenue.

ITAT explains that lease equalization charge is bifurcation of lease rentals in order to arrive at real income and based on AS-19, observes that it expressly allows lease rent claim on straight line basis over the period of lease term. ITAT remarks that that deduction on the basis of average rent per year will not affect the tax revenue as the difference between actual payment of lease rent and deduction claimed, would be net off at the end of the lease term.

As regards the allowability of logo development expenses, ITAT finds that Assessee entered into a contract with the advertisement company based in Denmark for the development of new logo which was terminated midway and no further payment was made in respect of the contract. Observes that no intangible asset in the form of new brand or logo as alleged by the Revenue came into existence, thus, holds that the expenditure incurred cannot be treated as capital expenditure and directs the Revenue to allow the same as revenue expenditure u/s 37(1) or business loss u/s 28(i).

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

6. **ITAT: TDS on gross contractual payment to digital media agency covered under Sec.194C, not Sec.194J**

Cowtown Software Design Pvt. Ltd. [TS-604-ITAT-2022 (Mum)]

Mumbai ITAT allows Assessee's appeal, holds that the entire payments made by the Assessee to the digital media advertisement agency (Ad agency) would fall only within the ambit of provisions of Section 194C and not under Section 194J.

Assessee-Company, engaged in the business of providing shared services to group companies, was subject to survey during the course of which Revenue discovered that Assessee, for the AY 2017-18 made payments to an Ad agency after deducting TDS under Section 194C at 2%. Revenue concluded that the entire payment would fall within the ambit of professional services under Section 194J and liable to TDS at 10%, accordingly, passed the order under Section 201/201(1A) for the difference of 8% TDS. CIT(A) confirmed the order under Section 201 and 201(1A), against which the Assessee preferred the present appeal.

ITAT observes that the Assessee is bound to make payments only on the advertisement content received from Ad agency in digital format, which would constitute the payment made for carrying out any "work" falling within the ambit of provisions of Section 194C. Notes that the Assessee deducted tax at 10% on the service charges component and opines that even the payment of service charges would be liable for tax under Section 194C since the Ad agency is not rendering any professional services to the Assessee, thus states that Assessee has in fact deducted excess TDS in respect to the payment of service charges.

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

7. **ITAT: Sale of carbon credit, capital receipt where not linked to business but to environmental concern**

Essel Mining & Industries Limited [TS-531-ITAT-2022 (Mum)]

Mumbai ITAT allows Assessee's appeal, holds receipt on sale of carbon credit to be a capital receipt and not a business receipt or income.

Assessee-Company was subjected to certain disallowances during the course of scrutiny assessment for AY 2015-16, including taxability of carbon credit of Rs.10.20 Lakh which was confirmed by the CIT(A). ITAT finds the issue in the instant case was whether receipts from sale of alleged carbon credits was revenue or capital in nature.

ITAT refers to the amendment by Finance Act, 2017 whereby Section 115BBF was inserted with effect from Apr 1, 2018 for taxation of income from transfer of carbon credits. Observes that in view of the amendment which is prospective, income on transfer of carbon credit is to be given a special treatment, table at 10% and not a part of normal business income of the Assessee. ITAT observes that receipt on sale of Renewable Energy Certificate (Carbon Credit) is a capital receipt and could not be a business receipt or income as it is not linked directly to Assessee's business nor is any asset generated in the course of business, but it is generated due to environmental concern. Thus, holds the addition as not sustainable.

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

8. **ITAT: Denies to condone over 1000 days' delay in appeal against ex parte order. Finds Assessee negligent**

Malnad Organics Pvt. Ltd [TS-587-ITAT-2022(Bang)]

Bangalore ITAT dismisses Assessee's appeal by refusing to condone the delay of 1028 days in filling present appeal by holding that the delay was caused due to the negligence and inaction on part of the Assessee and that there was no sufficient cause for such inordinate delay.

Assessee-Company, for AY 2015-16, declared agriculture income of Rs.31.80 Lacs as exempt on the basis that it was derived from a leased agricultural land whereby total receipt from agricultural produce was of Rs.1.73 Cr against expenses of Rs.1.41 Cr. Revenue added the entire sum of Rs.1.73 Cr under Section 68 and levied interest under Section 234B of Rs. 17.91 Lacs. CIT(A) confirmed the assessment in an ex-parte order.

ITAT observes that affidavit stating that CIT(A) order was misplaced in Assessee's hands does not mention the date of receipt of the order and fails to mention as to who was handling the case. Observes that the affidavit filed by the Assessee explaining the reasons for the delay, is too general for which no credit could be given and construes it as a self-serving document. Holds that the delay was caused due to the negligence and inaction on the part of Assessee and that there exists no sufficient and good reason for such inordinate delay, thus refuses to condone the delay.

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

9. **ITAT: Share transfer taxable in India where Assessee's residential status not in dispute.**

Prabhukumar Aiyappa Kullatira [TS-504-ITAT-2022 (Bang)]

Bangalore ITAT dismisses Assessee's appeal, holds capital gains on sale of shares of a Dubai-based company as taxable in India

since it was established that Assessee was a resident for the year under consideration.

Asesseee-Individual was subjected to assessment whereby Revenue made an addition of Rs.2.48 Cr. as long term capital gains which was confirmed by the CIT(A), against which Assessee preferred the instant appeal. ITAT finds Assessee was employed in Muscat for 20 years during which he made investment of 1,62,000 Dirhams in the shares of a company incorporated in Dubai and was one of the promoters of the company. Also notes that the Assessee transferred the shares held by him to the existing shareholders and claimed the resultant capital gains as exempt in terms of India-UAE DTAA. ITAT observes that Revenue disagreed with the Assessee's claim though Assessee provided proof for incorporation of the company in Dubai since he was a resident of India for the year under consideration and there was nothing on record to conclusively substantiate that the business operations were managed from UAE. Observes that the Assessee was not in a position to negate or refute Revenue's findings with regard to the management and control of the company. Also observes that it was not in dispute that the Assessee was a resident in India in the instant case and thus the taxability of capital gains was to be determined in accordance with the provisions of the Act.

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

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

Due Date	Form	Period	Comments
07.08.2022		July 2022	Payment of equalization levy
07.08.2022	Challan No. 281	July 2022	Due date for deposit of tax deducted /collected for the month of July, 2022.
14.08.2022	TDS certificate	June 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB / 194M in the month of June 2022.
15.08.2022	TDS certificate	April to June 2022	Quarterly TDS certificate (in respect of tax deducted for payment other than salary) for the quarter ending June 30, 2022.
15.08.2022	ESI Challan	July 2022	ESI payment.
15.08.2022	E-Challan & Return	July 2022	E-payment of Provident fund
30.08.2022		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.

MCA Updates

1. **Spending CSR funds on 'Har Ghar Tiranga' campaign related activities, 'eligible CSR activity'**

   MCA clarifies that spending of CSR funds for activities related to the campaign 'Har Ghar Tiranga', such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

   'Har Ghar Tiranga' is a campaign under the aegis of *Azadi Ka Amrit Mahotsav*, aimed at invoking the feeling of patriotism in the hearts of the people and promoting awareness about the Indian National Flag. MCA States that the companies may undertake the aforesaid activities, subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry, from time to time.

2. **Commerce Ministry Notifies uniform WFH policy for employees in SEZ Units**

   Commerce Ministry notifies a new rule, namely Rule 43A providing for Work from Home (WFH) in Special Economic Zones Rules, 2006 across all Special Economic Zones, pursuant to demand from the industry for making a provision for a country wide uniform WFH policy across all Special Economic Zones (SEZ).

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Apprises that the new Rule provides for WFH for the following categories of employees in SEZ –
(i) Employees of IT / ITeS SEZ units,
(ii) Employees, who are temporarily incapacitated,
(iii) Employees, who are travelling,
(iv) Employees, who are working offsite.

Pertinently, the new Notification provides that WFH may be extended to a maximum of 50% of total employees including contractual employees of the SEZ unit, and grants flexibility to the Development Commissioner (DC) of SEZs to approve a higher number of employees (more than 50%) for any bona-fide reason to be recorded in writing.

Ministry highlighting that WFH is now allowed for a maximum period of one-year, Ministry indicates that the same may be further extended for a period of one year at a time by the DC on the request of units, providing a transition period of 90 days to seek approval, to those SEZ units whose employees are already working from home.

Lastly, mandates SEZ Units to provide equipment and secured connectivity for the purpose of WFH to perform authorized operations of the units.

Click here to read /download the notification relating to Work From Home.

FEMA Updates

1. Trade Settlement in INR

A.P. (DIR Series) Circular No. 10 dated July 11, 2022

In order to promote global trade with emphasis on exports from India and to support increasing interest of global trade community in INR, it has been decided to put in place additional arrangement for invoicing, payment and settlement of exports / imports in INR. AD Bank shall obtain prior approval of RBI (FED, Central Office, Mumbai) before putting this mechanism in place.

Broad framework for same is as delineated below:

a. Invoicing: all imports and exports may be denominated and invoices in rupee (INR).

b. Exchange Rate: exchange rate between currencies of two trading partner countries may be market determined.

c. Settlement: The settlement shall take place in INR.

AD Banks are permitted to open Rupee Vostro Accounts in terms of Regulation 7(1) of Deposit Regulations. In order to allow settlement through this arrangement it has been decided that:

a. Indian importers shall make payment in INR which shall be credited to special vostro account of correspondent bank of partner country, against invoice for supply of goods or services from the overseas supplier / seller.

b. Indian exporters, shall be paid export proceeds in INR from the balances in the designated vostro account of the correspondent bank of the partner country

- **Documentation:**

  Export/Import undertaken and settled shall be subject to usual documentation and reporting requirements. Letter of credit and other trade related documentation may be decided mutually between banks of the partner trading countries under overall framework of Uniform Customs and Practice Documentation Credits (UCPDC) and incoterms.

- **Advance against Exports:**

  Advance against exports can be received in Indian rupees. Before allowing any such receipt of advance against exports Indian banks must ensure that available funds in these accounts are first used towards payment obligations arising out of already executed export orders / export payments in pipeline. The permission for advance against export shall be in accordance with conditions mentioned in para C.2 of Master Direction on Export of Goods and Services 2016. In order to ensure that the advance is released only as per the instructions of the overseas importer, the Indian bank maintaining the Special Vostro account of its correspondent bank shall, apart from usual due diligence measures, verify the claim of the exporter with the advice received from the correspondent bank before releasing the advance.

- **Setting off of export receivables:**

  'Set-off' of export receivables against import payables in respect of the same overseas buyer and supplier with facility to make/receive payment of the balance of export receivables/ import payables, if any, through the Rupee Payment Mechanism may be allowed, subject to the conditions mentioned in para C.26 on Set-off of export receivables against import payables under Master Direction on Export of Goods and Services 2016.

- **Bank Guarantee:**

  Issue of Bank Guarantee for trade transactions, undertaken through this arrangement, is permitted subject to adherence to provisions of FEMA Notification No. 8, as amended from time to time and the provisions of Master Direction on Guarantees & Co-acceptances.

- **Use of Surplus Balance:**

  The Rupee surplus balance held may be used for permissible capital and current account transactions in accordance with mutual agreement. The balance in Special Vostro Accounts can be used for: (a) Payments for projects and investments. (b) Export/Import advance flow management (c) Investment in Government Treasury Bills, Government securities, etc. in terms of extant guidelines and prescribed limits, subject to FEMA and similar statutory provision.

- **Approval Process:**

  The bank of a partner country may approach an AD bank in India for opening of Special INR VOSTRO account. The AD bank will seek approval from the Reserve Bank with details of the arrangement. AD bank maintaining the special Vostro Account shall ensure that the correspondent bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures.

2. **Asian Clearing Union (ACU) Mechanism – IndoSri Lanka Trade A.P. (DIR Series) Circular No. 9 dated July, 2022**

   The extant provisions of Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 have been reviewed and in terms of clause b of sub-Regulation 2 of Regulation 3 and clause c of sub-Regulation 2 of Regulation 5 of said regulations, it has been decided that all eligible current account transactions including trade transactions with Sri Lanka may be settled in any permitted currency outside the ACU mechanism until further notice.

3. **Overseas Foreign Currency Borrowings of Authorised Dealer Category I Banks**

   A.P. (DIR Series) Circular No. 8 dated July 07, 2022

   As announced in paragraph 4 of the press release on "Liberalisation of Forex Flows" dated July 06, 2022, AD Cat-I banks can utilize the funds raised from overseas foreign currency borrowings between July 08, 2022 and October 31, 2022 (both dates included) in terms of paragraph Part-C(5) (a) of the Master Direction - Risk Management and Inter-Bank Dealings dated July 05, 2016, as amended from time to time, for lending in foreign currency to constituents in India.

   Such lending shall be subject to the end-use prescriptions as applicable to External Commercial Borrowings (ECBs) in terms of paragraph 2.1(viii) of the Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019, as amended from time to time. This facility will be available till the maturity / repayment of the overseas foreign currency borrowings.

Indirect Tax Updates

GST Updates

1. The Central Government, on the recommendations of the Council, has rescinded the notification no.45/2017 – CTR dated 14/11/2017 with effect from 18th July 2022, which provides the concessional GST rate of 2.5% on scientific and technical equipment supplied to public funded research institutions

   Click here to read/download the notification no. 11/2022-Central Tax (Rate) dated 13th July 2022.

2. Now, all the fly ash bricks shall attract same concessional rate of 6% irrespective of fly ash content as mentioned in the Notification No. 02/2022-Central Tax (Rate) dated 31st March 2022. the Entry has been substituted with Item – 'Fly ash bricks; Fly ash aggregates; Fly ash blocks. As a simplification measure, the condition of 90% content is being omitted.

   Click here to read/download the notification no. 10/2022-Central Tax (Rate) dated 13th July 2022.

3. As per the latest GST amendments to RCM notification, the registered recipient is liable to pay GST under RCM on rent paid towards residential dwelling.

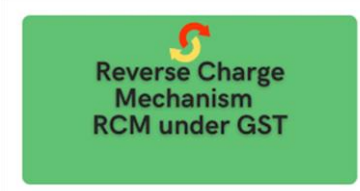
   RCM on rent paid by registered person towards Residential Dwelling:

- ❖ Entry 12 Notification No 12/2017 CTR provides for exemption on services by way of renting of residential dwelling for use as residence
- ❖ Amendment made to the entry to withdraw exemption with respect to renting of residential dwelling to a registered person w e f 18. 07. 2022
- ❖ Entry 5 AA inserted in Notification No 13/2017 CTR to provide that GST on service by way of renting of residential dwelling by any person to a registered person shall be paid by the registered person under RCM.
- ❖ In substance, renting of residential dwelling to a registered person will attract GST at the rate of 18 and such GST shall be paid by the registered person under RCM.

Various Scenarios:

Service Provider	Service Receiver	RCM applicability
Registered	Registered	Yes
Registered	Unregistered	No {No GST is payable in the hands of service provider also as per exemption notification no 12/2017)
Unregistered	Registered	Yes
Unregistered	Unregistered	No

Click here to read/download the notification no. 05/2022-Central Tax (Rate) dated 13th July 2022.



4. Changes on applicability of RCM payable on GTA services received and collecting the declaration from GTA service provider:

   Various Scenarios of RCM applicability:

GTA service provider	**RCM applicability in the hands of recipient**	**ITC eligibility in the hands of recipient**
Registered and opted for 12% under FCM	Not applicable	ITC eligible
Registered and opted for 5% under FCM	Not applicable (collect the FCM declaration from GTA as per the attachment)	ITC eligible
Registered and opted for 5% under RCM	Applicable @ 5%	ITC eligible
Un registered	Applicable @ 5%	ITC eligible

   FCM – Forward charge mechanism

   RCM – Reverse charge mechanism

   Note: The last date for exercising the above option by GTA for any financial year is the 15thMarch of the preceding financial year. The option for the financial year 2022-2023 can be exercised by 16th August 2022.

   Click here to read/download the notification no. 05 / 2022-Central Tax (Rate) dated 13th July 2022.

Customs

5. Instruction to review the permissions granted till now and to deny the further permissions to Warehousing of solar power generating units or items like solar panel, solar cell etc. for power plants with resulting goods 'electricity' under Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019 read with section 65 of the Customs Act, 1962.

   Click here to read/download the instruction No.13/2022-Customs dated 09th July 2022.

6. Central Government has amended the notification No. 51/96-Customs dated the 23rd of July 1996 for withdrawing the IGST Exemption, when Imported into India.

   Click here to read/download the notification no. 42/2022-Customs dated 13th July 2022.

Indirect Tax Rulings

1. 2022-TIOL-57-SC-GST

UoI Vs Filco Trade Centre Pvt Ltd

GST - Goods and Services Tax Network (GSTN) directed to open common portal for filing concerned forms for availing transitional credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f 01.09.2022 to 31.10.2022 - GSTN to ensure that there are no technical glitches during the said time: Supreme Court [para 1, 3]

GST - Aggrieved registered assessee is directed to file the relevant form or revise the form already filed irrespective of whether the taxpayer has filed Writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC) - Officers Concerned are given 90 days thereafter to verify the veracity of the claims/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned and thereafter the allowed transition credit is to be reflected in the Electronic credit ledger: Supreme Court [para 2, 4, 5]

GST Council [CBIC] may issue appropriate guidelines to field formations in scrutinising the claims - Special Leave Petitions are disposed of: Supreme Court [para 6]

- Petitions disposed of: Supreme Court Of India

2. 2022-TIOL-636-CESTAT-AHM

Tega Industries Ltd Vs CCE & ST

ST - The issue involved is that whether the appellant is entitled for refund in terms of Notification No. 12/2013-S.T. r/w Section 11B of CEA, 1944 during period January 2017 to March 2017 - Commissioner (Appeals) have denied the refund on the ground that first the service is not included in approved list and secondly, the service provider and service recipient both are the same entity - As regard the inclusion of service in approved list firstly, the invoice issued by service provider is clearly in respect of Business Support Service - Business Support Service is clearly included in list approved by approval committee - Even if it is assumed that the service falls under marketing service and same is not included in approval list even then for this being a procedure lapse refund cannot be denied - Merely for the reason that the service is not included in approved list, refund cannot be denied - As regard the contention of Commissioner (Appeals) that the appellant's service provider and appellant are same entity, there is no dispute that the appellant's service provider is located in Kolkata which is a DTA unit and the appellant's unit is located in SEZ - As per sub-rule (7) of Rule 19 of the Special Economic Zone Rules, 2006, even if appellant is not a separate legal entity, the unit being located in SEZ shall be treated as distinct identity, therefore, denial of refund on this ground also not tenable - Appellant is clearly entitled for refund under Notification No. 12/2013-S.T. - Accordingly, impugned order is not sustainable, hence, the same is set aside: CESTAT

- Appeal allowed: Ahmedabad Cestat

3. 2022-TIOL-633-CESTAT-DEL

Vaibhav Global Ltd Vs CC

Cus - The moot question to be adjudicated is, whether the appellant was eligible for exemption from duty while clearance of re-imported goods despite that the procedure as incorporated in Notification No. 52/2003-Cus. under which said exemption was claimed was not followed by appellant; whether the

condition that goods to be re-exported have to be manufactured goods has been fulfilled by appellant - With respect to first point of adjudication, there is nothing on record to show that exemption as claimed, irrespective in absence of said procedure, there is any element of fraud has been committed by appellant - It cannot be ruled out that non observance of impugned condition was mere lack of knowledge of amendment as was introduced vide Notification No. 68/2017-Cus. that too in June 2017 - Procedural condition of Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 were not at all the substantive condition but was merely a technical condition - Apparently, benefit of exemption from customs duty to a 100% EOU is a substantive benefit - Such substantive benefit cannot be denied for want of compliance of technical procedural conditions - Denial of exemption to appellant is absolutely wrong - The order under challenge is set aside on this score - Coming to the another point of adjudication, appellant while replying to SCN as well as making submission in defence before Adjudicating authority below has specifically mentioned that goods in question after being imported were stored in 100% EOU and after processing such as cleaning and re-packing that the goods were re-exported - It is submitted that this particular activity satisfies the compliance of all condition of Notification No. 52/2003 r/w Notification No. 45/2017 - As impressed upon by appellant, the Circular No. 489/55/99 is perused - There is no denial nor it is the case of Department that the goods in question were not repacked by appellant before exporting goods in question were not repacked by appellant by exporting those goods again - The packing activity amounts to manufacture, it is held that the second condition of the impugned exemption notification that the goods have to be manufactured goods also stands complied with by appellant - Adjudicating authority is held to have committed an error by holding the repackaged goods as non manufactured goods - The order under challenge to that extent is also set aside: CESTAT

- Appeal allowed: Delhi Cestat

4. **2022-TIOL-632-CESTAT-DEL**

Jai Baba Castings Pvt Ltd Vs CCE & ST

CX - The issue involved is, whether on the basis of third party records, demand of duty and penalty have been rightly made from appellant - On the basis of incriminating documents seized from premises of M/s Pankaj Ispat Ltd. (PIL) and also as per statement of its Director, revenue segregated the entries relating to appellant as per private records of Pankaj Ispat, wherein it appeared that appellant had purchased rejected moulds from M/s PIL and have also sold Ingots, without accounting for the same in their records regarding purchase, sales, production, they have also sold ingots - The statement of Manager of appellant was recorded during investigation, who inter alia stated that he looks after the work relating to sales, accounting during 2010-11 and 2011-12 and also purchased/rejected moulds from PIL - Further stated that the consignment mentioned in their ledger, where the actual transactions and rest of the entries shown in chart were not sold by them and they do not know about such consignment - Similar statement was given by Director of the appellant company - It is further evident from SCN that neither M/s Pankaj Ispat Ltd. nor its director, Mr. Pankaj Agarwal has been made co-noticee - Thus, SCN is bad for non joinder of necessary party - Impugned order is set aside: CESTAT

- Appeal allowed: Delhi Cestat

5. **2022-TIOL-640-CESTAT-AHM**

J P Biscuits Pvt Ltd Vs CCE & ST

ST - This appeal has been filed by appellant against denial of refund of certain amount deposited through GAR challan - Appellant deposited a certain amount through GAR challan - Thereafter, in three days they informed revenue that the said deposit is in nature of a deposit under Rule 6(1A) of Service Tax Rules, 1994 - Said deposit has never been adjusted against any tax liability in any subsequent return filed by appellant - Amount deposited has never attained

character of tax or duty - Relying on decision of Tribunal in case of Cochin International Airport Ltd 2021-TIOL-168-CESTAT-BANG , refund is allowed: CESTAT

- Appeal allowed: Ahmedabad Cestat

6. 2022-TIOL-987-HC-MAD-GST

BCVM Traders Vs Supdt. of CGST

GST - Petitioner seeks quashing of the order rejecting his application for registration - The main ground upon which the order is assailed is that it is cryptic and entirely non-speaking.

Held: The impugned order has come to be passed rejecting the application by way of a monosyllabic order dated 13.05.2022 - simply 'rejected' without assigning any reasons or explanation for rejection thereof - An order of this nature is in-defensive insofar as it is non-speaking, arbitrary and evidently has not taken into account the explanation furnished by the petitioner - Reliance by the counsel for the Revenue on the word 'may' in rule 9(4) of the Rules, 2017 to emphasise that the same grants discretion to the authority to assign reasons is rejected since the word 'may' only refers to the discretion to reject and not to blatantly violate the principles of natural justice - If the assessing authority is inclined to reject the application, which he is entitled to, he must assign reasons for such objection and adhere to the proper procedure, including due process - Impugned order is set aside - Petitioner is to be heard on the objection raised and orders be passed within a period of four weeks - Petition is allowed: High Court [para 6, 7]

- Petition allowed: Madras High Court

7. 2022-TIOL-1006-HC-DEL-ST

Ambience Commercial Developers Pvt Ltd Vs UoI

ST - The petition is directed against statement issued by Designated Committee in prescribed form i.e. SVLDRS-3 and the order dated 23.01.2020, whereby petitioner's rectification application preferred under Section 128 of FA, 2019 was rejected - According to petitioner, total demand raised for period in issue was Rs. 16,61,78,084/- - Against this amount, it is submitted that petitioner would be entitled to a rebate of 50% under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, which would peg the amount payable at Rs.8,30,89,042/- - Petitioner contends that Rs. 6,39,36,641/- having been paid, it should be called upon to pay towards tax, under extant scheme, remaining amount equivalent to Rs.1,91,52,401/- - On the other hand, revenue contend that the petitioner ought to have paid Rs. 5,95,38,784/-, as was indicated by them while seeking to avail of benefit of the Scheme - The Designated Committee cannot go beyond either the counters of SCN or the operative directions contained in O-I-O - Perusal of directions would show that the demand is pegged at Rs. 16,61,78,084/- which is evident on a bare perusal of clause (a) of operative directions - Insofar as clause (b) is concerned, it simply says that CENVAT credit amounting to Rs. 8,07,72,766/- which was wrongly availed and utilised against payment of service tax liability, is disallowed and in that behalf Rule 14 of CCR, 2004 has been invoked - The intrinsic evidence, which is available indicates that this amount i.e., the CENVAT credit which has been disallowed, is embedded in demand of Rs. 16,61,78,084/- - What the revenue dispute is, that the demand cannot be limited to Rs. 16,61,78,084/-, as the amount which was disallowed by way of CENVAT credit i.e., Rs. 8,07,72,766/-, had to be added to the same - It is not in dispute that the petitioner has already deposited Rs.1,91,52,401/- - The Designated Committee is directed to issue a fresh statement in prescribed form, having regard to what is stated herein: HC

- Writ petition allowed: Delhi High Court

8. 2022-TIOL-1010-HC-MUM-CUS

Pinnacle Life Science Pvt Ltd Vs UoI

Cus - Petitioner is seeking relief in the form of direction to Respondent Nos. 3 and 4 to

permit petitioner to amend six shipping bills for inserting Advance Authorization details thereon which according to petitioner was not mentioned on the GST Invoices and Commercial Invoices due to clerical error - Petitioner is also seeking relief in the form of conversion of the aforesaid shipping bills from Drawback Scheme to Advance Authorization Scheme - By the impugned letter dated 30th December 2021, Respondent No. 3 rejected petitioner's amendment application on the ground that (a) the request in respect of five of the six shipping bills was time barred [relying upon Circular No. 36/2010-Customs dated 23rd September, 2010] without going into the merits of the case; and (b) as regards sixth shipping bill, documentary evidence has not been produced

Held: Such a circular No. 36/2010-Customs could not have been issued by the Central Board of Excise & Customs (CBEC) providing for three months' time period to make a request for amending the shipping bills - This is because in Section 149 of the Act, no time period has been prescribed and if in any specific statutory provision of law, no time period has been prescribed, then such circular could not have been issued by the CBEC - Time limit of three months laid down vide paragraph No. 3(a) of the circular is especially illegal and without jurisdiction - Impugned communication dated 30th December, 2021 is quashed and set aside and Respondent No. 3 is directed to consider the amendment application without raising an issue of time limit and dispose the amendment application on merits and in accordance with law, within a period of six weeks - Petition disposed of: High Court [para 6, 7]

- Petition disposed of: Bombay High Court

9. 2022-TIOL-624-CESTAT-AHM

Forward Resources Pvt Ltd Vs CCE & ST

For confirmation of service tax demand, Commissioner also relies upon TDS /26AS Statement - The said statement under provisions of Income Tax Act, 1961 is an Annual Consolidated tax statement - Income tax and service tax are two different/ separate and independent Acts and their provisions operating in two different fields - Tribunal finds support from the decision of M/s Ved Security 2019-TIOL-3162-CESTAT-KOL wherein it was held that the value of taxable services cannot be arrived at merely on the basis of TDS statements filed by clients inasmuch as even if the payments are not made by client, expenditure are booked based on which the form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax - Demand of services tax is not sustainable on the basis of TDS /26AS statements.

Appeal allowed: Ahmedabad Cestat

10. 2022-TIOL-610-CESTAT-KOL

MSP Sponge Iron Ltd Vs CCGST & CE

CX - The SCN demands major part of Central Excise duty liability for period beyond five years from the date of SCN and Adjudicating authority has also confirmed the same, which has been further upheld by Commissioner (A) - SCN is issued on 31.10.2011 while the demands have been confirmed for period from 01.04.2004 to 31.10.2006 - Provisions of Section 11A of CEA, 1944 mandates recovery of tax not paid/short paid for a period of up to five years by invoking extended period - The SCN definitely cannot demand Central Excise duty liability for period prior to October 2006 - To that extent, demand of Central Excise duty liability which is confirmed for period from 01.04.2004 to 31.09.2006 is set aside - As far as for remaining demand for period i.e. October 2006 falling under five years of limitation and beyond one year of limitation, apart from general aversion, there is no evidence to show that duty has not been paid by way of fraud or suppression of facts with intention to evade payment of duty - Case has been booked on the basis of audit objection by scrutinizing financial records of appellant - It is well settled law and as held by Tribunal in case of Aditya College of Competitive Exam. 2009-TIOL-2216-CESTAT-BANG and Mega Trends Advertising Ltd. 2019-TIOL-2945-CESTAT-

ALL that extended period of five years cannot be invoked in case of audit objection - Since entire demand is time barred, therefore, Tribunal refrain from going into the merits of case - The impugned order is not sustainable and the same is set aside: CESTAT

- Appeal allowed: Kolkata Cestat

11. 2022-TIOL-606-CESTAT-AHM

Drrk Foods Pvt Ltd Vs CC

Cus - Appellant had exported Rice under disputed Shipping Bills which were originally booked for Iran, but investigation revealed that the consignments were delivered to UAE and hence violated the provisions of para 2.40 and 2.53 of Foreign Trade Policy - Accordingly, SCN was issued to appellant - The whole case revolves around irregularities in respect of receipt of currency with regard to exported goods - These violations relate to post export conditions - There is no doubt that any violation relating to foreign exchange are covered under FEMA, 1999 and not under Customs Act, 1962 - Though the SCN invoked Section 113(d) and 113(i) of Customs Act, 1962 but these provisions were invoked by only alleging violation of para 2.53 of FTP and Section 8 of FEMA, 1999 - There was no violation of Customs Act in any manner - There is no dispute about description of goods, its quantity and value - The export of rice was neither prohibited nor restricted - It is a well settled law that in respect of alleged violation of foreign exchange, it is the erstwhile FERA authorities or FEMA authorities who are competent to initiate the proceedings against party - With regard to violations of Exim policy, adjudication can be done only by authorities notified under Section 13 of Foreign Trade (Development & Regulation Act), 1992 - Hence, since it was only a case of alleged violation of provisions of Foreign Trade (Development & Regulation Act) and rules made there under as well as that of Foreign Exchange Management Act, the Customs authorities did not have jurisdiction to issue the SCN for said violation.

- Appeals allowed: Ahmedabad Cestat

12. 2022-TIOL-958-HC-JHARKHAND-GST

Juhi Industries Pvt Ltd Vs State of Jharkhand

GST - Rule 142(1)(a) of the JGST Rules provides that the summary of show cause notice in Form DRC-01 should be issued "along with" the show cause notice under Section 74(1). The word "along with" clearly indicates that in a given case, show cause notice as well as summary thereof both have to be issued - As per Rule 142(1)(a) of the JGST Rules, the summary of show cause notice has to be issued electronically to keep track of the proceeding initiated against the registered persona whereas a show cause notice need not necessarily be issued electronically - in the case of M/s NKAS Services Pvt. Ltd. = 2021-TIOL-2079-HC-JHARKHAND-GST note was taken of the said position of law and it has been categorically held that Summary of Show Cause Notice in Form DRC-01 is not a substitute of show cause notice under Section 74(1) - Foundation of the proceeding in both the cases suffers from material irregularity and hence not sustainable being contrary to Section 74(1) of the JGST Act; thus, the subsequent proceedings/impugned Orders cannot sanctify the same - Though the petitioner submitted their concise reply vide letter dated 11-10-2018, the respondent State cannot take benefit of the said action as summary of show cause notice cannot be considered as a show cause notice as mandated under Section 74(1) of the Act - It is well settled that there is no estoppel against statute - A bonafide mistake or consent by the assessee cannot confer any jurisdiction upon the proper officer - The jurisdiction must flow from the statute itself - The rules of estoppel is rule of equity which has no role in matters of taxation - Summary of show-cause notices issued in Form GST DRC-01, the orders issued under section 74(9) of JGST Act and also the final orders passed after rectification are quashed and set aside - Writ applications stand allowed: High Court [para 7, 8, 9, 11]

- Petitions allowed: Jharkhand High Court

13. 2022-TIOL-27-AAAR-GST

Bhopal Smart City Development Corporation Ltd

GST - AAR had held that development of land is not akin to construction of a complex or building; that concept of obtaining a completion certificate is applicable to the construction of a complex or building and not to development of land, so far as GST is concerned; that sale of developed land by the applicant where the development work is limited to providing common amenities (common drainage, water line, electricity line, land levelling, road and street light) and no development work will be done by the applicant after the sale of the developed land, then it does not constitute a supply within the meaning of Section 7 of the GST Laws and, therefore, GST is not applicable on such sale; that if development and sale of such developed land by a person is treated to be a taxable supply distinct from sale of land, then each subsequent sale of such parcel / plot of land would also become a taxable supply which makes the interpretation give an absurd result; that the Principles of interpretation of Statutes, Deeds and Documents refer to an Absurdity Limit, which states that a statute cannot be interpreted literally if it would lead to an absurd result - Aggrieved by this order, Revenue authorities are in appeal before the AAAR.

Held: Appellate authority is of the opinion that this transaction squarely falls under clause 'b' of para 5 of Schedule II of the CGST Act, 17 as the process of developing a plot of land by providing amenities such as sewage line, water line, electricity line, land levelling, and common facilities viz. road and street light etc. are preparatory part of the activity of construction of whatever structure that is proposed to be constructed on that piece of land - In its judgement in M/s Name Construction P. Ltd. in Civil Appeal Nos. 4432-4450 of 2012, Supreme court has discussed the issue of difference between virgin land and developed land and the element of Service provided on account of this development - Even though this judgement deals with the definition of 'service' under the Consumer Protection Act, 1986, but the issue discussed has full similarity with the issue in the present appeal - It is fairly well-settled that the activity of Development of land involving offer of plots for sale to its customers with an assurance of development of infrastructure/amenities, lay-out approvals etc. is a 'service' - In Para 2 of Notification No. 11/2017-Central Tax (Rate), the mechanism for quantification of service portion in transactions involving transfer of property in land has been clearly spelt out for levy of applicable GST - Moreover, AAR has not given due consideration to the crucial issues related to the difference between sale of barren land and developed land - Therefore, the AAR in its order dated 22.11.2021 has erred in ordering that the sale of developed land, by the applicant does not constitute a supply within the meaning of Section 7 of the GST Laws - Appellate Authority is of the opinion that the activity of the sale of developed land is covered under 'construction of a complex intended for sale to a buyer' and is thus covered under 'construction services' and GST is payable - Appeal allowed: AAAR

- Appeal allowed :AAAR

14. 2022-TIOL-917-HC-KOL-GST

Ramesh Kumar Patodia Vs CITI Bank NA

GST - Petitioner is holder of a valid Citi Bank Credit Card - He received an email communication on 21.02.2019 from the Bank offering an instant loan of Rs. 6,50,000/- at 13% interest above the credit limit - Petitioner took the offer and obtained a loan of Rs.6,50,000/- on his credit card - Upon receipt of the credit card statements of two successive periods, the petitioner detected that IGST @ 18% was charged on the initial interest as well as interest component of EMI - Petitioner by several letters protested against charging of IGST on the interest component of the EMI and requested the Bank to reverse the said IGST charges - Since the respondents did not take any steps for reversing the said IGST charges and continued to charge IGST, this writ petition is filed. Held: Maintainability - Principal objection of the respondents is that the writ petition against the bank, which is not a nationalised bank is not maintainable -

Article 226(1) of the Constitution of India lays down that notwithstanding anything in Article 32, High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of any of the rights conferred by part III and for any other purpose - Thus, it is evident that the High Court has power to issue directions, orders or writs to any person or authority - Since the petitioner has prayed for a relief to compel the respondent bank to grant exemption as per the provisions of the relevant statute upon a declaration being made in that regard, the instant writ petition is maintainable [Supreme Court decision in Federal Bank Ltd. (2003) 10 SCC 733 relied upon] - It is not in dispute that the office of the respondent no.1 is beyond the jurisdiction of the High Court of Calcutta, however, in the credit card statements issued by the bank, it is mentioned that the place of supply is the State of West Bengal and the demand draft (of the loan amount) was despatched to the petitioner at his residential address which falls within the territorial jurisdiction of this Court - Thus part of the cause of action arose within the territorial jurisdiction of this Court - since the part of cause of action arose within the jurisdiction of this Court, this court has no hesitation to hold that this Hon'ble Court has jurisdiction to try and entertain the instant writ petition: High Court [para 11, 12, 20, 21, 23] On Merits GST - The criteria for processing the loan, the manner in which the EMI of loan is reflected in the Credit Card statements and the charging of interest in case there is a shortfall in the payment of the amount due as well as the mode of payment all goes to prove that the service rendered by the Bank in extending the loan in question is nothing but a service pertaining to the said credit card -The expression "other than interest involved in credit card services" appearing under Serial No. 28 of the said notification carves out an exception by "excluding" the interest on credit card services from the purview of the said exemption notification -Since this Court has already held that the services rendered by the bank by way of extending loans to the petitioner in the instant case amounts to credit card services, the interest component of EMI of the said loan is nothing but interest involved in credit card services which is not exempted by notification no. 9/2017 -IT(R) - Court, therefore, holds that the interest component of EMI of loan advanced by the bank is not exempted under the said notification dated June 28, 2017 - Thus, the second issue is answered in the negative and against the petitioner - Writ petition is dismissed: High Court[26, 30 to 32, 35]

- Petition dismissed: Calcutta High Court

15. 2022-TIOL-563-CESTAT-DEL

Power Finance Corp. Ltd Vs CCE & ST

ST - The appellant is a non-banking finance corporation engaged in financing projects and has been paying service tax on banking and other financial services rendered by it - The issue is, whether the expenditure incurred by appellant in discharging its Corporate Social Responsibility (CSR) can be considered as input service or output services rendered by it - Undisputedly, the output services rendered by appellant were "banking and other financial services" - It is not open for Tribunal to modify or enlarge the scope of Rule 2(l) of Cenvat Credit Rules, 2004 which is a legislative or quasi-legislative function - It can only apply it as such - One cannot read words "activities relating to business" into definition of input services under rule 2(l) ibid - Therefore, appellant was not entitled to Cenvat Credit on services used for CSR. As far as invocation of extended period of limitation are concerned, there is no evidence of fraud or collusion or wilful statement or suppression of facts - Accordingly, demand can only be raised within normal period of limitation - The denial of Cenvat Credit on expenses incurred on CSR within the normal period of limitation is upheld - The demand for extended period on limitation and the penalties are set aside - Matter is remanded to original authority for limited purpose of calculating the amount of Cenvat Credit to be denied: CESTAT

- Appeal partly allowed: DELHI CESTAT

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