Newsletter

October 2022

Vishnu Daya & Co. LLP
Chartered Accountants

Contents

Direct Tax – Circulars & Notifications

Circular issued by CBDT in the month of September 2022

1. **CBDT issues Additional Guidelines on Sec.194R**

   Circular no. 18 / 2022, dated 13th September 2022

   CBDT issues Circular to remove difficulties on implementation of TDS on benefits or perquisites under Section 194R. Provides additional guidance on: (i) one-time loan settlement/ waiver of loan, (ii) reimbursement of expenses incurred by a 'Pure Agent', (iii) interplay of 194R and other TDS provisions, (iv) expenditure incurred on dealers' conference, (v) availability of depreciation on car gifted to dealer, (vi) liability to deduct by Embassy or High Commissions and (vii) liability on issuance of bonus/right shares.

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

Notifications issued by CBDT in the month of September 2022

1. **CBDT notifies ITR-A under Sec.170A, for filing modified return pursuant to business reorganisation**

   Notification no. 110 / 2022, dated 19th September 2022

   CBDT notifies Rule 12AD and Form ITR-A as return of income under Section 170A to be filed by the successor entity pursuant to a business reorganisation. The Rule comes into force with effect from Nov 1, 2022. The Rule provides that if the assessment proceedings for an AY relevant to the year in which the order of the business reorganisation applies have been completed or are pending on the date of furnishing of the modified return in accordance with the provisions of section 170A, the AO shall, pass an order modifying the total income of the relevant AY determined in such assessment, or proceed to complete the assessment proceedings, in accordance with the order of the business reorganisation and the modified return so furnished. The Rule also modifies ITR-6 for AY 2022-23 or prior AYs to include a tick box for ITR filed as per Section 170A.

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

2. **CBDT notifies mechanism for disallowing cess or surcharge, pursuant to Sec.40(a)(ii) retrospective amendment**

   Notification no. 111 / 2022, dated 28th September 2022

   CBDT notifies Rule 132 along with Forms 69 and 70 for re-computation of total income pursuant to Section 155(18) after disallowing cess or surcharge claimed and allowed as deduction under Section 40(a)(ii) in prior years. As per the Rule, the application for this purpose shall be made in Form 69 on or before Mar 31, 2023. On receipt of the application the AO shall recompute the income by amending the relevant order and issue notice under Section 156, specifying the time period within which amount of tax payable, if any, is to be paid. The Assessee is then required to make the payment of tax and intimate about it to the AO in Form 70 within 30 days of making the payment. The Rule comes into effect from Oct 1, 2022

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

3. **CBDT extends ITR-A filing time-limit to Mar'23 for companies ordered business reorganisation upto Sep'22**

   Order dated 26th September 2022

   CBDT extends time-limit for filing modified return i.e. ITR-A to Mar 31, 2023 by the successor companies in cases where business reorganisation is ordered between Apr 1, 2022 and Sep 30, 2022. The extension is ordered to remove genuine hardship caused and to provide adequate time for filing modified return to the companies undergoing business reorganisation between Apr 1, 2022 and Sep 30, 2022 as the ITR-A has been notified with effect from Nov 1, 2022 that has reduced the time available for filing ITR-A.

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

Direct Tax – Legal Rulings

1. **ITAT: Disallows foreign travel expenses incurred for parent's business & interest on loans diverted within group for non-business purpose**

   PVP Ventures Ltd. [TS-746-ITAT-2022(CHNY)]

   Chennai ITAT confirms the disallowance of foreign travel expenses by holding that the Assessee cannot be allowed expenditure since it was incurred for the business of parent company and not for Assessee's business purpose. Further upholds CIT(A) order confirming the disallowance on account of interest expenses under Section 36(1)(iii) of Rs.13.31 Cr since the loans were not utilised for business purposes but were advanced to the sister concerns, the commercial expediency of which could not be proved by the Assessee. Also disallows depreciation on plant & machinery of Rs. 3.29 by holding that the Assessee was not entitled for depreciation as the assets had not been put to use in its business.

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

2. **HC: ITAT: Service tax not includible in Cathay Pacific's gross receipts for presumptive taxation under Sec.44BBA**

   Cathay Pacific airways Limited [TS-707-ITAT-2022(Kol)]

   Kolkata ITAT dismisses Revenue's appeal and holds that service tax of Rs.89.12 Cr collected by Cathay Pacific does not form part of the gross receipts for the purpose of computing total income on presumptive basis under Section 44BBA, since the service tax is a statutory levy which is collected for and on behalf of the Central Government.

   Assessee, a non-resident company, engaged in the business of airlines service for passengers and cargo, offered tax for AY 2015-16 on presumptive basis under Section 44BBA on the gross receipts of Rs.2042.43 Cr.. Revenue noted that Assessee had excluded service tax collection of Rs. 89.12 Cr from the gross receipts, thus, added it to the Assessee's income by it as a part of turnover.

   On Revenue's appeal, ITAT notes that Assessee collected and deposited service tax component of Rs.89.12 Cr as a service provider. ITAT opines that, *"only such amounts which are paid or payable for the service provided by the Assessee can form part of the gross receipts for the purpose of computation of gross total income u/s. 44BBA(1)"*. Concurs with Assessee's contention that service tax is collected from Assessee's customers on behalf of the Central Government on account of a statutory levy thus, it does not form part of the receipts on which income accrues or arises to Assessee.

   Relies on CBDT Circular dated April 28, 2008 and Jan 13, 2014 wherein the CBDT (in respect of service tax collected on rent and fees for professional services) clarified that service tax collected by service providers is not the income of the service provider since service provider acts as a collecting agency for the Government for collection of service tax. Thus, finds no reason to interfere in CIT(A)'s order.

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

3. **ITAT: Subsidiary's unsubstantiated valuation not acceptable for valuing holding company's shares. Confirms Sec.56(2)(viib) addition**

   Quark Enterprises Private Limited [TS-747-ITAT-2022(HYD)]

Hyderabad ITAT allows Revenue's appeal, sets aside CIT(A) order deleting addition of Rs. 23.94 Cr made under Section 56(2)(viib). Holds that Assessee's valuation based on the valuation of its subsidiary under DCF method cannot be considered as 'proper valuation' as per Rule 11UA. Explains that the valuation should be based on the fundamentals and economic conditions of the Assessee and must be in accordance with the method prescribed for that purpose, remarks that "*the valuation of subsidiary company shares done on the basis of DCF method cannot be yardstick to determine the valuation of shares of assessee company*".

As regards disallowance of interest expense of Rs. 1.76 Cr, ITAT observed that Revenue disallowed the interest on the ground that assessee has borrowed funds at a higher rate and used the same for advancing loans and making investment in its subsidiary company and charged lesser rate of interest, which was deleted by the CIT(A). ITAT considers Assessee's submission that both the interest paid and received are at the same rate i.e at the @12% p.a. and the difference arose due to the holding period only. Opines that the matter requires a revisit to verify as to whether the assessee has charged the interest at the same rate at which it has obtained loans. Directs that Revenue to allow the interest expense "*If the interest paid on borrowed funds and charged from the subsidiary are at the same rate and the difference is only due to the period of holding only…*"

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

4. **HC: No 'deemed' registration under Sec.12AA on expiry of 6 months. Follows SC ruling in Harshit Foundation**

Raghuraji Devi Foundation Trust [TS-690-HC-2022(ALL)]

Allahabad HC allows Revenue's appeal, holds that period of 6 months stipulated in Section 12AA(2) is to be calculated from the date of application made under Section 12AA and any decision taken afresh in pursuance to directions of the appellate authority will not hit by the limitation period of 6 months. Also holds that non disposal of application for registration within the period of 6 months as stipulated under Section 12AA(2) will not result in a deemed grant of registration.

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

5. **ITAT: Rejects IPCA's 'basket of product' for benchmarking unrelated products. Confirms TP-adjustment qua sales-transaction**

IPCA Laboratories Ltd [TS-577-ITAT-2022(Mum)-TP]

Mumbai ITAT confirms TP-adjustment made qua sale of pharmaceutical products in Nigeria by IPCA Laboratories Ltd for multiple years. For AY 2008-09, notes that assessee sold 20 pharmaceutical products to IPCA Pharma Nigeria Limited (AE) and determined ALP by adopting CUP method under the "basket of products" approach (taking 20 products together to state that international transaction will be at ALP). Confirms TPO's rejection of assessee's claim to adopt "basket of products" approach on the premise that there is no provision in the statute to apply such methodology while computing ALP under CUP method and only product-by-product comparison is required to be made.

Separately, ITAT rejects classification of loan given by assessee to AE as quasi equity, directs TPO to adopt LIBOR+200 points. For AY 2005-06, ITAT confirms CIT(A)'s application of CUP method (as adopted by assessee) over TPO's CPM method for benchmarking of goods sold to National Drugs (Pty) Ltd (AE).

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

6. **ITAT: Upholds taxability of GoDaddy's receipts from domain registration as Royalty. Declines to distinguish earlier ruling**

   Godaddy.com LLC [TS-756-ITAT-2022(DEL)]

   Delhi ITAT dismisses Assessee's appeal, holds that receipt from domain name registration received by GoDaddy.com LLC is in the nature of royalty under Section 9(1)(vi) read with Section 115A.

   For AY 2015-16, AO observed that Assessee, a US-based company had not offered receipts from domain name registration services amounting to Rs. 74.50 Cr. Although AO accepted Assessee's submission that the receipts from domain registration cannot be regarded as FTS, it was held that the receipts are in the nature of royalty under Section 9(1)(vi), which was upheld by DRP relying on coordinate bench ruling in Assessee's own case.

   ITAT observes that Assessee had entered into an agreement with ICANN for registration of domain names of its customers with ICANN for which Assessee charged a fee. ITAT refers to the definition of royalty under Section 9(1)(vi) and concurs with Revenue's contention that domain name is an intangible asset similar to trade mark and while registering the domain name in favour of a customer the Assessee transfers the right to use the trade mark and thus the receipts therefrom is in the nature of royalty.
   As regards taxability of web-hosting charges as FTS under Section 9(1)(vii) as well as Article 12 of the India-US DTAA, ITAT relies on coordinate bench ruling in Assessee's own case and holds that the receipts from web hosting services is ancillary to domain name registration services and thus, taxable as FTS.

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

7. **SC: Remands Infosys case on 'royalty' characterisation, permits Engineering Analysis reliance. Ratio inapplicable, argues Revenue**

   Infosys Technologies Ltd. ETC [TS-711-SC-2022]

   SC disposes Infosys Technologies' appeal by setting aside Karnataka HC ruling and remanding the matter back to HC to re-examine the issue of TDS on payments over royalty characterisation. Karnataka HC had quashed the ITAT order, where tax liability under Section 201(1) and interest levied under Section 201(1A) was deleted, by relying on the coordinate bench ruling in *Samsung Electronics* that was later overruled by a three-judge bench of SC in *Engineering Analysis*.

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

MCA Updates

1. Insolvency Bankruptcy Code-2016

In exercise of the powers conferred by sub-section (2) of section 55 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Corporate Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide S.O. 1911(E), dated the 14th June, 2017, namely:-

In the said notification, for clause (b), the following clause shall be substituted, namely:-

"(b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 127(E), dated the 19th February, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 19th February, 2019 and as amended from time to time; or".

2. Constitution of the Company Law Committee

MCA notifies in Continuation of the orders of even no. dated 23.09.2021, dated 17.09.2020 and dated 18.09.2019, the tenure of the company law committee is hereby further extended by one year i.e. till 16.09.2023.

3. Short title and Commencement (Paid up capital and turnover of the Small Company)

MCA notifies (1) These rules may be called Companies (Specification of definition details) Amendment Rules, 2022.

(2) They shall come into force from the date of their publication of this notification in the Official Gazette.

In the Companies (Specification of definition details) Rules, 2014, in rule 2, in sub-rule (1), for clause (t), the following clause shall be substituted, namely:- "(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.".

4. CSR Updates:

(1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

The following proviso shall be inserted, namely: -

"Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.";

The following sub-rule shall be substituted, namely: -

'(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through, –

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or

(b) a company established under section 8 of the Act or a registered trust or a

registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Explanation.- For the purpose of clause (c), the term "entity" shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.'.

(i)for the words "five percent", the words "two per cent." shall be substituted;
(ii) for the words "whichever is less", the words "whichever is higher" shall be substituted.

Format for the Annual Report on CSR activities to be included in the Board's Report for the Financial Year commencing on or after the 1st Day of April, 2020 is updated on MCA site.

5. Due Dates:

- For filing form DIR 3KYC and Web based DIR 3KYC – October 15, 2022 (Extension)
- For holding Annual General Meeting for the financial year ended March 31, 2022 – September 30, 2022.
- ADT-1 to be filed within 14 days of AGM date
- AOC-4, CFS & XBRL to be filed within 30 days of AGM. By 29th October, 2022 if AGM is held on 30th September, 2022
- MGT-7 to be filed within 60 days of AGM. By 28th November, 2022 if AGM is held on 30th September, 2022
- MSME-1, if applicable to be filed by the Companies for the half year April 2022 to Sept 2022 by 30th October.
- LLP Form 8 to be filed by 30th October, 2022

FEMA

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999 (FEMA)

RBI/2022-23/122 A.P. (DIR Series) Circular No. 16 dated 30th September 2022

The Late Submission Fee (LSF) was introduced for reporting delays in Foreign Investment (FI), External Commercial Borrowings (ECBs) and Overseas Investment related transactions with effect from November 07, 2017, January 16, 2019 and August 22, 2022 respectively. It has now been decided to bring uniformity in imposition of LSF across functions. The following matrix shall be used henceforth for calculation of LSF, wherever applicable:

Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	[7500 + (0.025% × A × n)]

Notes:

a) "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.

b) "A" is the amount involved in the delayed reporting.

c) LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN will be treated as one instance for the fixed component. Further, 'A' for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.

d) Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.

e) Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of "n".

f) The facility for opting for LSF shall be available up to three years from the due date of reporting/ submission. The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of Foreign Exchange Management (Overseas Investment) Regulations 2022.

g) In case a person responsible for any submission or filing under the provisions of FEMA, neither makes such submission/filing within the specified time nor makes such submission/filing along with LSF, such person shall be liable for penal action under the provisions of FEMA, 1999.

The above provisions shall come into effect immediately for the delayed filings made on or after the date of this circular.

Indirect Tax Updates

GST Updates

1. The Central Government has notified the effective date as **01st October 2022**, on which the provisions of Section 100 to 114 of the Finance Act, 2022 except clause (c) of section 110 and section 111, of the said Act shall come into force.

   i. Section 100 – Amendment of section 16 of the CGST Act,2017.
   ii. Section 101 – Amendment of section 29 of the CGST Act,2017.
   iii. Section 102 – Amendment of section 34 of the CGST Act,2017.
   iv. Section 103 - Amendment of section 37 of the CGST Act,2017.
   v. Section 104 – Substitution of New section for Section 38 of the CGST Act, 2017.
   vi. Section 105 – Amendment of section 39 of the CGST Act, 2017.
   vii. Section 106 - Substitution of New section for Section 41 of the CGST Act,2017.
   viii. Section 107 – Omission of Sections 42,43 & 43A of the CGST Act,2017/
   ix. Section 108 – Amendment of section 47 of the CGST Act, 2017
   x. Section 109 – Amendment of section 48 of the CGST Act, 2017
   xi. Section 110 – Amendment of section 49 of the CGST Act, 2017
   xii. Section 112 – Amendment of section 52 of the CGST Act, 2017
   xiii. Section 113 – Amendment of section 54 of the CGST Act, 2017
   xiv. Section 114 - Amendment of section 168 of the CGST Act, 2017

***Click here** to read / download the Notification No. 18/2022–Central Tax dated 28th September 2022.*

2. The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

   1. Short title and commencement. –

      (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2022.

      (2) Save as otherwise provided in these rules, they shall come into force with effect from the 1st day of October 2022.

2. In the Central Goods and Services Tax Rules, 2017 (herein after referred to as the said rules), in rule 21, after clause (g), the following clauses shall be inserted, namely: -

   (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

   (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods;

3. In rule 36 of the said rules, –

   (a) in sub-rule (2), the words, letters and figure, —, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person‖ shall be omitted;

   (b) in sub-rule (4), in clause (b), after the words, —the details of‖, the words, —input tax credit in respect of‖ shall be inserted;

4. In rule 37 of the said rules, –

   (a) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely: -

"(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the

supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1);

(b) sub-rule (3) shall be omitted;

5. In rule 38 of the said rules, –

   (a) in clause (a), in sub-clause (ii), the word, letters and figure, "in FORM GSTR-2" shall be omitted;

   (b) in clause (c), for the words, letters, and figure, "and shall be furnished in FORM GSTR-2", the words, letters and figure, "and the balance amount of input tax credit shall be reversed in FORM GSTR-3B" shall be substituted;

   (c) clause (d) shall be omitted;

6. In rule 42 of the said rules, in sub-rule (1), in clause (g), the words, letters and figure, "at the invoice level in FORM GSTR-2 and" shall be omitted;

7. In rule 43 of the said rules, in sub-rule (1), the words, letters and figure, "FORM GSTR-2 and" at both the places where they occur, shall be omitted;

8. In rule 60 of the said rules, in sub-rule (7), for the words "auto-drafted", the words "auto-generated" shall be substituted;

9. rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 of the said rules shall be omitted;

10. In rule 83 of the said rules, in sub-rule (8), in clause (a), the words "and inward" shall be omitted;

11. In rule 85 of the said rules, in sub-rule (2), –
    (a) in clause (b), for the words,"said person;", the words "said person; or" shall be substituted;
    (b) clause (c) shall be omitted;

12. In rule 89 of the said rules, in sub-rule (1), –
    (a) after the words "claiming refund of", the words, brackets and figures "any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or" shall be inserted;
    (b) the first proviso shall be omitted;
    (c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted;
    (d) in the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted;

13. In rule 96 of the said rules, in sub-rule (3), for the words, letters and figures, "FORM GSTR-3 or FORM GSTR-3B, as the case may be", the letters and figure, "FORM GSTR-3B" shall be substituted;

14. Form GSTR-1A, Form GSTR-2 & Form GSTR-3 of the said rules shall be omitted;

15. In FORM GST PCT-05 of the said rules, in Part-A, in the table, against Sr. No.1, under the heading "List of Activities", the words, "and inward", shall be omitted.

Click here to read/ download the Notification No. 19/2022–Central Tax dated 28th September 2022.

3. The Central Government has Rescinded the Notification No.20/2018-Central Tax, dated 28th March 2018, which provides for claiming of refund of taxes paid on the notified supplies of goods or services or both received by any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be specified.

Click here to read/ download the Notification No. 20 /2022–Central Tax dated 28th September 2022.

Click here to read/ download the corrigendum to Notification No. 20

Customs Updates

4. Amendments to Rebate of State and Central Taxes and Levies (RoSCTL) Scheme:

The RoSCTL scheme notification No. 77/2021-Customs (N.T.) dated 24.09.2021 has been amended vide notification No. 76/2022 – Customs (N.T.) dated 14.09.2022. whereby the para 4(2), para 5(5) and the words "or the transferee" in para 6 of the principal notification have been deleted. The effect of these amendments is the deletion of certain conditions related to transferee-holder of the scrip.

Further, the Electronic Duty Credit Ledger Regulations, 2021 issued vide notification No. 75/2021-Customs (N.T.) dated 23.09.2021 have been amended vide notification No. 79/2022 - Customs (N.T.) dated 15.09.2022. In Regulations 6(2) and 7(3) of the principal regulations, the words "two years" have been substituted for the words "one year". The effect of these amendments is that the validity period of scrips is increased from one year to two years from the date of their generation.

Click here to read/ download the Notification No. 76/2022 – Customs (N.T.) dated 14th September 2022

Click here to read/ download the Notification No. 79/2022 – Customs (N.T.) dated 15th September 2022

Click here to read/ download the Circular No. 22/2022-Customs dated 26th September 2022

5. Amendments to Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP):

The RoDTEP scheme notification No. 76/2021- Customs (N.T.) dated 23.09.2021 has been amended vide notification No. 75/2022 – Customs (N.T.) dated 14.09.2022 whereby the para 4(2), para 5(5) and the words "or the transferee" in para 6 of the principal notification have been deleted. The effect of these amendments is the deletion of certain conditions related to transferee-holder of the scrip.

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Click here to read/ download the Notification No. 75/2022 – Customs (N.T.) dated 14th September 2022

Click here to read/ download the Notification No. 79/2022 – Customs (N.T.) dated 15th September 2022

Click here to read/ download the Circular No. 21/2022-Customs dated 26th September 2022.

6. It is Notified that 10th September 2022 will be the effective commence date for Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified vide Notification 74/2022 dated 9th September 2022.

***Click here** to read/download the Notification No. 74/2022 – Customs (N.T) dated 09th September 2022*

***Click here** to read / download the Circular No.18 /2022-Customs dated 10th September 2022*

Indirect Tax Rulings

1. 2022-TIOL-1213-HC-DEL-GST

Pratibha-Mosinzhstroi Consortium Vs CCGST

GST - Petitioner seeks quashing and setting aside the order of cancellation of RC dated 06.08.2021 and the order of rejection of revocation application dated 08.12.2021; and impugned order dated 22.02.2022 passed by the Jt. Commissioner.

Held: SCN dated 08.07.2021 gave no clue whatsoever, as to what was the infraction committed by the petitioner-consortium, and hence the case/allegation it had to meet - Secondly, although inspection of PIL's premises was carried out on 05.07.2021, it did not find mention in the SCN dated 08.07.2021 - Order dated 22.02.2022 passed by the Joint Commissioner is bereft of reasons and it does not deal with the information given by the petitioner as regards its re-location - Entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed, hence the impugned order is set aside - Liberty granted to Revenue to issue a fresh SCN, if deemed necessary - Registration of petitioner to be restored - Four weeks are granted to the petitioner-consortium to file the returns, for the relevant period - No interest or penalty will be levied on account of delay in filing the pending returns - Petition disposed of: High Court [para 7, 7.1, 10]

- Petition disposed of: DELHI HIGH COURT

2. 2022-TIOL-81-SC-VAT

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 6450 of 2012

TATA MOTORS LTD

Vs

CENTRAL SALES TAX APPELLATE AUTHORITY AND OTHERS

M R Shah & Krishna Murari, JJ

Dated: September 21, 2022

Appellant Rep by: Mr Amar Dave, Adv., Ms Nandini Gore, Adv., Ms Neha Khandelwal, Adv., Ms Manvi Rastogi, Adv., M/s Karanjawala & Co., AOR **Respondent Rep by:** Mr Nishe Rajan Shonker, Adv., Mrs Anu K Joy, Adv., Mr Alim Anvar, Adv., Mr Abraham C Mathews, Adv., Mrs Anil Katiyar, AOR, Ms Pragya Baghel, Adv., Mr Jayant Mohan, AOR, Mr Abhay Pratap Singh, AOR, Mr K S Kulkarni, Sr. Adv., Mr S Dhanjay Reddy, Adv., Mr Hitesh Kumar Sharma, Adv., Mr T Veera Reddy, Adv., Mr T N Rama Rao, Adv., M/s S Sandhya Rao, Adv., Ms C K Sucharita, AOR, Mr Milind Kumar, AOR, Ms Deepanwita Priyanka, AOR, Mr Nishe Rajen Shonker, AOR, M/s Corporate Law Group, AOR, Mr V N Raghupathy, AOR, Mr Kamal Mohan Gupta, AOR, Mr M Yogesh Kanna, AOR, Mr T S Sabarish, AOR, Mr Aaditya Aniruddha Pande, AOR, Mr B K Satija, AOR, Mr Pukhramban Ramesh Kumar, AOR, Mr Karun Sharma, Adv., Ms Anupam Ngangom, Adv., Mr Wahengbam Immanuel Meitie, Adv., Mr Bhakti Vardhan Singh, AOR, Mr Gopal Singh, AOR, Mr Ashok Kumar Singh, AOR, Mr Aravindh S, AOR, Mr Abbas B, Adv., Mr G S Makker, AOR, Mr Mahfooz A Nazki, AOR, Mr Polanki Gowtham, Adv., Mr Shaik Mohamad Haneef, Adv., Mr T Vijaya Bhaskar Reddy, Adv., Mr K V Girish Chowdary, Adv., Ms Rajeswari Mukherjee, Adv.

Central Sales tax Act, 1956 - Section 22(1B)

Keywords - inter State sale - stock transfer sale - adjustment of central tax

The assessee company preferred the present appeal challenging the order passed by the Central Sales Tax Appellate Authority, New Delhi, by which, though the transaction/sales of buses effected through RSO, Vijayawada sold to Andhra Pradesh State Road Transport Corporation were found to be in the nature of inter-state, no further consequential order had been passed by the Appellate Authority directing to adjust the amount of tax paid on the said transaction against the tax to be paid to the State of Jharkhand.

On appeal, the SC held that,

Whether State of Andhra Pradesh can retain amount of central sales tax paid by assessee on transaction of sale effected through RSO, Vijayawada with respect to vehicles sold to APSRTC, which was actually payable to State of Jharkhand - NO: SC

++ it is required to be noted and it is not in dispute that with respect to transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC, the sale/s is/are found to be in the nature of inter-state sale/s. In that view of the matter, the assessee was liable to pay central sales tax to the State of Jharkhand. However, treating the sale as stock transfer, the assessee had paid the tax on the said transaction to the State of Andhra Pradesh which is not leviable by the State of Andhra Pradesh. Therefore, the amount of central sales tax recovered by the State of Andhra Pradesh is required to be transferred to the State of Jharkhand and the same is required to be adjusted towards the amount of tax to be paid to the State of Jharkhand. At this stage, it is required to be noted that prior to insertion of Section 22(1B) to the Central Sales Tax Act, 1956, there was no provision by which the Appellate Authority could have issued directions for refund of the tax collected by the State which has been held by the Appellate Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, by the Finance Act, 2010 Section 22(1B) has been inserted to Act 1956, which states that the Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction, provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the assessee on the same transaction;

++ it is required to be noted that in the present case the transaction is for the period prior to insertion of Section 22(1B) to the Act 1956 and the order has been passed by the Appellate Authority pre-insertion of Section 22(1B) to the Act 1956. Therefore, as such, it cannot be said that the Appellate Authority has committed any error in not issuing any direction which now is permissible u/s 22(1B) of the Act 1956. However, at the same time, the State of Andhra Pradesh cannot retain the amount of central sales tax paid by the assessee on the transaction of sale effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC. Therefore, in line with Section 22(1B) of the Act 1956, the State of Andhra Pradesh is directed to transfer to the State of Jharkhand the amount of central sales tax deposited by the assessee with the State of Andhra Pradesh with respect to transaction in question, however, subject to the assessee submitting the proof of the amount of central sales tax already paid on the transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC treating the same as stock transfer sale. After due verification, the amount of central sales tax so paid by the assessee with respect to the said transaction be transferred to the State of Jharkhand immediately on such verification and the State of Jharkhand is directed to adjust the same towards the central sales tax liability of the assessee on such transaction, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC which are found to be in the nature of inter-state sale.

Case disposed of

JUDGEMENT

Per: M R Shah:

1. Feeling aggrieved and dissatisfied with the impugned order dated 29.06.2009 passed by the Central Sales Tax Appellate Authority, New Delhi (hereinafter referred to as the 'Appellate Authority') in Appeal No. 330/CST/2008, by which, though the transaction/sales of buses effected through RSO, Vijayawada sold to Andhra Pradesh State Road Transport Corporation (for short, 'APSRTC') were found to be in the nature of inter-state, no further consequential order has been passed by the Appellate Authority directing to adjust the amount of tax paid on the aforesaid transaction against the tax to be paid to the State of Jharkhand, the original appellant - Tata Motors Limited has preferred the present appeal.

2. We have heard Shri Amar Dave, learned counsel appearing on behalf of the appellant, Shri Mahfooz A. Nazki, learned counsel appearing on behalf of the State of Andhra Pradesh, Shri Arunabh Chowdhary, learned Senior Advocate appearing on behalf of the State of Jharkhand and Shri N. Venkataraman, learned Additional Solicitor General of India along with Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the Union of India.

3. At the outset, it is required to be noted and it is not in dispute that with respect to transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC, the sale/s is/are found to be in the nature of inter-state sale/s. In that view of the matter, the appellant - Tata Motors Limited was liable to pay central sales tax to the State of Jharkhand. However, treating the sale as stock transfer, the appellant/its representative had paid the tax on the aforesaid transaction to the State of Andhra Pradesh which is not leviable by the State of Andhra Pradesh. Therefore, the amount of central sales tax recovered by the State of Andhra Pradesh is required to be transferred to the State of Jharkhand and the same is required to be adjusted towards the amount of tax to be paid to the State of Jharkhand.

4. At this stage, it is required to be noted that prior to insertion of Section 22(1B) to the Central Sales Tax Act, 1956 (hereinafter referred to as the 'Act 1956'), there was no provision by which the Appellate Authority could have issued directions for refund of the tax collected by the State which has been held by the Appellate Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, by the Finance Act, 2010 Section 22(1B) has been inserted to Act 1956, which reads as under:

"*Section 22(1B) - The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction.*

Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction."

4.1 It is required to be noted that in the present case the transaction is for the period prior to insertion of Section 22(1B) to the Act 1956 and the impugned order has been passed by the Appellate Authority pre-insertion of Section 22(1B) to the Act 1956. Therefore, as such, it cannot be said that the Appellate Authority has committed any error in not issuing any direction which now is permissible under Section 22(1B) of the Act 1956.

5. However, at the same time, the State of Andhra Pradesh cannot retain the amount of central sales tax paid by the appellant on the transaction of sale effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC. Therefore, in line with Section 22(1B) of the Act 1956, the State of Andhra Pradesh is directed to transfer to the State of Jharkhand the amount of central sales tax deposited by the appellant with the State of Andhra Pradesh with respect to transaction in question, however, subject to the appellant submitting the proof of the amount of central sales tax already paid on the transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC

treating the same as stock transfer sale. After due verification, the amount of central sales tax so paid by the appellant with respect to the aforesaid transaction be transferred to the State of Jharkhand immediately on such verification and the State of Jharkhand is directed to adjust the same towards the central sales tax liability of the appellant on such transaction, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC which are found to be in the nature of inter-state sale. The aforesaid exercise shall be completed within a period of three months from today.

6. The present appeal is disposed of in the aforesaid terms.

3. 2022-TIOL-896-CESTAT-MAD

CC Vs Kutty Impex

Cus - Revenue is in appeal against impugned order, whereby First Appellate Authority has allowed the appeal filed by assessee by also ordering provisional release of impugned goods - Apex Court in case of M/s. Delhi Photocopiers , while staying confiscation of goods in view of fact that Notification dated 01.04.2020 was subject matter of controversy before Apex Court, had allowed the provisional release of goods involved - Further, this Bench has also held that valuation which was not disputed by either of parties did not call for any interference - With regard to goods in question being hazardous in nature within meaning of provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2008, Bench has observed that the goods in question were useful goods with residual life and therefore, cannot be called as 'hazardous waste' - The facts being identical, no reasons found to deviate from fin dings arrived at by this Bench in case of M/s. S.P. Associates 2021-TIOL-632-CESTAT-MAD and hence, First Appellate Authority has correctly ordered provisional release of impugned goods - When goods are held not confiscatable under Section 111(d) ibid, then it can be reasonably held that the import was not prohibited - Appeal filed by Revenue, being devoid of merits, is dismissed: CESTAT

- Appeal dismissed: CHENNAI CESTAT

4. 2022-TIOL-894-CESTAT-MUM

ICICI Prudential Life Insurance Company Ltd Vs CCE

ST - Dispute is about applicability of 'management of investment under unit linked insurance policy', impugned 'taxable service', to 'surrender charge', 'foreclosure charge' and 'reinstatement charge' recovered by appellant from their customers during period of dispute - The taxability of 'surrender charge' has already been determined by Tribunal in re Bharti AXA Life Insurance Co Ltd - It has been pointed out by appellant that 'foreclosure charge' is also no different from 'surrender charge' except that former is consequence of a positive decision to discontinue the policy while latter stems from non-payment of 'premium' that has effect of terminating the policy issued by appellant - Consequence of such termination is identical to that of a voluntary closure of policy beyond the threshold permissible in insurance contract - The termination of contract of insurance, whether within the agreed upon terms and conditio ns or from a breach of conditions, closes the relationship between provider and recipient - Such closure erases the provider-recipient framework which is essential for levy of service tax under Finance Act, 1994 - Accordingly, 'foreclosure charge' retained by appellant is in accord with decision of Tribunal in re Bharti AXA Life Insurance Co Ltd, not liable to tax under Finance Act, 1994 - As well as 'reinstatement charge' is concerned, termination leading to 'foreclosure charge' is pre-empted by such payment upon issue of mandatory notice prior to erasure of relationship between insurance company and policyholder - Consequence of such notice and response on the part of policyholder, restores the relationship to that of provider and recipient - The charge cannot, therefore, be considered to be a preliminary before relationship commences but is intended to facilitate the

continuance of relationship which was in jeopardy by non-compliance with conditions of contract - The restoration of relationship of provider-recipient is contingent upon such additional fee which cannot, in circumstances of such restoration, be anything other than consideration for continuance of 'taxable service' and, therefore, liable to service tax - Case of appellant against levy of tax on 'reinstatement charge' does not fit in with the matrix that excludes 'surrender charge' and 'foreclosure charge' from ambit of tax - Impugned order cannot be faulted to that extent - Demand of tax on 'foreclosure charge' and 'surrender charge' is set aside while upholding the tax liability of 'reinstatement charge' in impugned order - The provisions of Sections 65 and 65B of Finance Act, 1994 have no scope for doubt on taxability and failure to discharge tax on 'reinstatement charge' cannot be considered as deliberate evasion on their part - The justification offered for absence of intent to evade does not appear convincing - Therefore, penalties arising from, and limited to, 'reinstatement charge' is up held: CESTAT

- Appeal partly allowed: MUMBAI CESTAT

5. 2022-TIOL-1244-HC-DEL-GST

Seema Gupta Vs UoI

GST - Petition has been filed challenging clause A(b) of notification 4/2022-CTR dated 13 July 2022 [w.e.f 18.07.2022 and which seeks to amend notification 12/2017-CTR , Sr.no . 12] as unsustainable being ultra vires Article 14 of the Constitution and also being beyond the powers conferred under the Act, 2017 - It is inter ali a averred that the said amendment is particularly affecting those who are doing their business as a proprietary concern, like the petitioner; that denial of exemption solely on the basis that the tenant is registered under GST is not based upon any intelligible differentia and the said differentia has no rational relation to the object sought to be achieved - In the second supplementary affidavit dated 23rd September 2022, filed by the respondent UOI & Ors, it is mentioned that - "Since the government is bound by the recommendations of the GST Council, a proposal to amend notification no. 4/2022-CTR to bring in greater clarity regarding taxability of registered persons is being examined to be placed before the GST Council as the notification 4/2022-CTR does not specify that GST would be charged only where the registered person has rented (taken on rent) residential dwelling in course or furtherance of business ; However, for the present purposes, it is reiterated for clarity that renting of a residential dwelling to a proprietor of a registered proprietorship firm who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of business of his proprietorship firm and such renting is on his own account and not that of the proprietorship firm, shall be exempt from tax under notification 4/2022-CTR dated 13.07.2022."

Held: The aforesaid clarification that renting of a residential dwelling by a proprietor of a registered proprietorship firm, who rents it in his/her own personal capacity for use as his/her own residence as well as not for use in the course or furtherance of business of his/her proprietorship firm and such renting is on his/her own account and not that of proprietorship firm shall be exempt from GST, is accepted by this Court and all the respondents are held bound by the same - Accordingly, no further orders are called for in the present petition - Petition disposed of: High Court

- Petition disposed of: DELHI HIGH COURT

6. 2022-TIOL-1236-HC-RAJ-GST

Baker Hughes Asia Pacific Ltd Vs UoI

GST - The petitioner, procured the goods by paying GST from 5% to 28% (Input Tax) and supplied the same to the Vedanta at the fixed GST rate of 5% (Output Tax) under the

notification No.3/2017-Central Tax (Rate) - It is claimed that Input Tax Credit available to the petitioner is much higher than its Output Tax Liability and as a consequence, after complete utilization of the credit towards the Output Tax Liability, a significant percentage of Input Tax Credit accumulated in favour of the petitioner on account of difference in rate of tax (GST) which was much higher than the rate of output tax - The petitioner has thus claimed that it is entitled to refund under the inverted duty structure as provided by the CGST and RGST Acts - The petitioner alleges that, to its utter surprise, a notice under FORM-GST-RFD-08 dated 19.12.2020 was received requiring the petitioner to show cause as to why the refund claim to the tune of Rs.27,02,26,876/- be not rejected in light of the Circular dated 31.03.2020 issued by the Central Board of Indirect Taxes and Customs (CBITC) which stipulates that refund under the inverted duty structure in terms of Section 54(3)(ii) of the CGST/RGST Act would not be available where the input and output supplies are the same - Petitioner relies upon Para 59 of the Circular No. 125/44/2019-GST-CBEC-20/16/04/18-GST wherein, it has been clarified that refund under Section 54(3)(ii) of the CGST Act i.e. inverted duty structure, is to be allowed when the inputs are being procured at the normal GST rate and the output supplies are being made at a lower GST rate becaus e of the lower rate notification in place - Nonetheless, the respondent No.3 rejected the refund claim submitted by the petitioner with reference to para 3 of the Circular dated 31.03.2020, vide impugned order dated 05.01.2021 and, therefore, the present petition.

Held: Section 54(3)(ii) of the CGST Act is absolutely unambiguous and does not carve out any exception that Input Tax Credit under the Inverted Tax Structure would not be applicable where the input and the output goods are the same - Circular issued on 31.03.2020 is in the nature of an explanation whereas the petitioner's claim for refund was a prior period between September, 2018 to September, 2019 on which date, the clarification dated 18.11.2019 was in force which clearly stipulates that a registered dealer who supplies goods at concessional rate is eligible for refund under the Inverted Tax Structure - Clause (ii) of Sub-Section (3) of Section 54 of the CGST Act does not indicate that ITC would be admissible only if the goods supplied had been subjected to some process - The provision allows refund of credit accumulated on account of supplies and does not mention that the credit could be claimed only if the sup plier has made any value addition/ enhancement to the goods supplied - The very purpose of fixing the rate of GST at 2.5% each towards CGST/RGST on goods supplied for execution of petroleum projects was introduced with the object of promoting the oil and gas exploration activities - The Central Government Notification dated 28.06.2017, in unambiguous terms, stipulates that upon being satisfied that it is necessary in the public interest to do so, on the recommendations of the council, intra-State supply of goods, was being exempted/taxed at lower tax rates - Circular 135/05/2020-GST dated 31.03.2020, being a subordinate legislation, is repugnant and conflicting to the parent legislation i.e. Section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner - Otherwise also, the claim for refund of ITC filed by the petitioner was for a period prior to issuance of the circular dated 31.03.2020 - Cons equently, rejection of the petitioner's claim for accumulated input tax credit by the respondent No.3 with reference to para 3 of the Circular dated 31.03.2020, is invalid on the face of the record and cannot be sustained - Order dated 05.01.2021 is quashed and set aside - The respondents are directed to forthwith, refund the accumulated input tax credit - Petition allowed: High Court [para 10, 11, 14, 15]

- Petition allowed: RAJASTHAN HIGH COURT

7. 2022-TIOL-872-CESTAT-HYD

OSI Systems Pvt Ltd Vs CCT

ST - Issue involved is denial of refund of Cenvat credit with regard to service tax paid under reverse charge mechanism after 30.06.2017 - Under transitional provision under section 142(3) of CGST Act, limitation has been done away with and the only thing required for refund is to see whether unjust enrichment is attracted - No unjust enrichment is attracted as appellant have admittedly paid service tax in August, 2018 out of their own pocket - Adjudicating authority is directed to grant refund within a period of 60 days along with interest under section 11BB of CEA, 1944: CESTAT

- Appeal allowed: HYDERABAD CESTAT

8. 2022-TIOL-870-CESTAT-AHM

PSL Ltd Vs CC

Cus - Case of the department is that HDPE compounded with 2% carbon black is not eligible for exemption under Serial No. 477 of Notification No. 21/2002-Cus. - The facts in the case cited by appellant and in present case are absolutely identical inasmuch as in present case also the HDPE contains 2% Carbon Black - Department has denied exemption on the ground that exemption is available only to HDPE and not for HDPE compound whereas in present case the HDPE is compounded with 2% Carbon - In the absence of any support for conclusion that product imported by appellant has been chemically modified or it is not known as HDPE in market, benefit of exemption under Sr. No. 477 has to be extended to appellant - Impugned order is set-aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

9. 2022-TIOL-114-AAR-GST

Maddi Seetha Devi

GST - Transfer of development rights by the landowner to the developer is consideration received by such developer for supply of construction service as per notification 4/2018-CTR - The liability to pay GST by the developer-promoter shall arise at the time of transfer of possession or right in the constructed complex or constructed flats and not at the time of receipt of development rights: AAR

- Application disposed of: AAR

10. 2022-TIOL-111-AAR-GST

Myntra Designs Pvt Ltd

GST - Applicant seeks to know as to whether they would be entitled to avail ITC on the vouchers and subscription packages procured by applicant from third party vendors and which are made available to eligible customers participating in loyalty program.

Held: It can be seen from the loyalty program that the applicant, on the basis of a particular transaction / purchase by the customer through their e-commerce platform allows the customer to earn loyalty points - The applicant in the said transaction recovers the full amount from the customer and gives loyalty points free of cost - Further, the said loyalty points, in the applicant's own admission, does not have any monetary value, are non-transferable and cannot be converted to cash - The redemption of loyalty points, admittedly involves no flow of consideration from the customer - Thus redemption of loyalty points by the customer for receiving vouchers from the applicant implies that the "vouchers are issued free of cost" to the customer and amounts to disposal of vouchers (goods) by way of gift and squarely covered under clause (h) of Section 17(5) of the Act, ibid - Held, therefore, that Applicant is inel igible to avail input tax credit in terms of Section 16 of the CGST Act

2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program: AAR

- Application disposed of: AAR

11. 2022-TIOL-855-CESTAT-KOL

Mining Associates Pvt Ltd Vs CCGST & CE

ST - Issue is with regard to applicability of rate of Service Tax in respect of services provided to Central Mining Planning and Design Institute Limited (CMPDIL) vide work orders - Case of appellant is that said services were rendered prior to 01.04.2012 when rate of Service Tax on said service was increased from 10% to 12% vide Notification No. 2/2012-S.T. - It is the case of Department that supplementary invoices were raised in month of July 2012 and effective rate of Service Tax has been changed from 10% to 12% w.e.f. 01.04.2012 - The Supreme Court in case of Association of Leasing and Financial Service Companies 2010-TIOL-87-SC-ST-LB has observed that taxable event is rendition of service - Impugned tax is different and distinct from tax on sale of goods under Entry 54 List II of VIIth Schedule to Constitution - Therefore, rate of tax applicable on date on which services were rendered would be the one that would be relevant and not the rate of tax on date on which supplementary invoices were raised - Therefore, taxable event in so far as Service Tax is concerned, is rendition of service - Taxable events in appeal had admittedly occurred prior to 01.04.2012 - At that point of time rate of Service Tax applicable in respect of services in question was 10% and not 12% which came into effect only on or after 01.04.2012 - The issuance of supplementary invoices in month of July 2012 would not make any difference because it is not receipt of payment which is taxable event, but the rendition of service - Following the ratio as laid down by Supreme Court in case of Association of Leasing & Financial Service Companies , impugned orders are set aside: CESTAT

- Appeal allowed: KOLKATA CESTAT

12. 2022-TIOL-846-CESTAT-HYD

Bagadiya Brothers Pvt Ltd Vs CC, CE & ST

Cus - Appellant was exporting Iron ore fines which are chargeable to export duty at Rs. 300 per MT if Fe content is more than 62% - The first question which must be answered is, whether this testing has to be done on dry basis or on wet basis - There will be a difference between the two - It was held by Supreme Court in case of Gangadhar Narsingdas Aggarwal and it has been directed by CBEC's Circular dated 17.02.2012 that determination of Fe content has to be made on wet MT basis - It is clear from the third test report and fourth test report of impugned order that they were on dry basis - Since the entire demand is based on test report on dry MT basis, which is contrary to judgment of Supreme Court in case of Gangadhar Narsingdas Aggarwal and also contrary to CBEC Circular No. 04/2012 , entire basis of demand is not sustainable - Consequently, demand for differential duty and interest cannot be sustained - Confiscation in impugned order is under Section 113 of Customs Act, 1962 which provides for confiscation of export goods - Evidently, section 113 ibid contemplates only confiscation of goods which are attempted to be improperly exported and not goods which have actually been exported - The reason for this is once the goods are exported, Indian Customs has no control over goods and therefore, they cannot be confiscated - There is another reason why only goods which are attempted to be exported can be confiscated under section 113 ibid and not goods which are already exported - As per Section 126 ibid, on confiscation, unless the goods are redeemed on payment of redemption fine, property vests with Central Government and it is the responsibility of officer, adjudging confiscation, to take and hold possession of confiscated goods - The officer cannot discharge his responsibility under section 126(2) ibid - Even for this reason,

confiscation under section 113 ibid and consequential penalty under section 114 ibid cannot be sustained - Impugned order cannot be sustained and same is set aside: CESTAT

- Appeal allowed: HYDERABAD CESTAT

13. 2022-TIOL-1184-HC-KAR-GST

Rajeev Traders Vs UoI

GST - Seven trucks were intercepted while they were in transit and transporting Areca nuts on behalf of the petitioner - It was stated that the E-Way bill had not been tendered for the goods in movement - On 14.09.2021, the physical verification of the goods and conveyance was conducted in the presence of the person in-charge of the goods vehicle and it was stated that the conveyance was carrying Areca nuts and there was a difference in the quantity mentioned in the invoice and the quantity found upon physical verification - An order of detention u/s 129 in Form GST MOV-06 was passed and on the following day, i.e., on 29.09.2021, the Deputy Director, DGGI, Zonal Unit, Belagavi, proceeded to issue a notice for confiscation of goods, conveyances and levy of penalty under Section 130 of the CGST Act, in Form GST MOV-10 - After granting personal hearing, Deputy Director proceeded to pass an order of confiscation under Section 130 of the CGST Act on 24.11.2021 by issuing Form GST MOV-11 - Being aggrieved, the petitioner preferred an appeal to the Joint Commissioner who concurred with the view taken by the Deputy Director and proceeded to dismiss the appeal - Since the Appellate Tribunal has not been constituted, the petitioner is before this Court - It is submitted that once proceedings for the detention of the goods was initiated u/s 129, the same could not be transformed into a proceeding u/s 130; that the power of detaining the goods u/s 129 is only for a limited period and if the owner of the goods or the person in-charge of the goods comes forward to pay the tax and penalty, the proper officer was bound to release the detained goods and conveyance.

Held:

+ The question that arises for consideration is:

"Whether the Proper officer, while detaining the goods which are in transit in the exercise of his power under Section 129 of the Act, possess the power to initiate proceedings to confiscate under Section 130 of the Act and thereafter conduct an enquiry and proceed to order confiscation of the goods?"

+ The owner of the goods or a person other than the owner gets a statutory right to obtain the release of the goods and conveyances detained under Section 129 if they comply with the conditions specified in clauses (a), (b) or (c) of Section 129(1). [para 78]

+ This indicates that the true intent to detain the goods or the conveyances is to ultimately facilitate the recovery of the applicable tax and if the same is paid along with the penalty, the goods and conveyances are bound to be released. [para 79, 80]

+ In fact, by virtue of sub-section (5) of Section 129, if the owner or any other person complies with the order passed by the officer by paying the applicable tax, interest and penalty, the entire detention and seizure proceedings are deemed to have been concluded. [para 81]

+ It is only if the order is not complied within 14 days, do the authorities secure a right to initiate confiscation proceedings under Section 130 of the Act. This once again establishes that the primary intent of the law is to recover the applicable tax and penalty and only if this is not achieved, the power of confiscation is required to come into play. [para 82]

+ Viewed from this background, it becomes clear that the power to confiscate is the ultimate penal measure provided under the Act and is, therefore, to be exercised with great care and caution and as a last measure. This is evident from Section 129 (6) which states that proceedings under Section 130 can be invoked only if the applicable tax and

penalty are not paid despite an order being passed in that regard.[para 96]

+ Thus, the procedure adopted by the proper officer, in this case, to embark on confiscation proceedings after invoking his power under Section 129 to detain and seize the goods is contrary to the statutory scheme. [para 97]

+ The instructions in the Circular 41/15/2018-GST [Instruction No.2(l) dated 13.04.2018] empowering the proper officer to invoke the power of confiscation under Section 130 of the Act after he has invoked the power of detention under Section 129 amounts to nullifying the right available to the owner of the goods or the owner of the conveyances to get the goods and conveyances released and such a power is not available to the Commissioner under Section 168. This power to issue instructions for the uniform implementation of the Act cannot vest the Commissioner to prescribe a set of instructions which go against the grain of the statutory provisions.[para 102]

+ The power to detain under Section 129 cannot be converted to a proceeding under Section 130 of the Act since both these provisions operate independently of each other and in completely different contexts. [para 103]

+ The goods were accompanied by a tax invoice, which indicated payment of tax but an E-way bill had not been generated. Thus, the proper officer could have only imposed a penalty of ten thousand rupees or the amount equivalent to the tax evaded. [para 117]

+ However, the proper officer, has proceeded to state that the goods appear to be undervalued and the weight of the goods were mis-declared and the grade and quality of the areca nuts were not mentioned. Rule 46 does not mandate the market value of the goods or a prescribed value of the goods is required to be mentioned in the Tax invoice and the Rule also does not state the grade or quality of the goods are required to be mentioned. [para 119]

+ It is to be kept in mind the predominant principle under the Act is to ensure that the registered person is given a chance to rectify his wrongdoing whenever the wrongdoing is noticed and pay the applicable tax and penalty or interest as the case may be. The proper officer cannot snatch away that right conferred on the registered person by invoking proceedings to confiscate the goods itself. It is to be noticed here that the statute consciously leans towards giving an opportunity to the wrongdoer to rectify his wrongs voluntarily. [para 122]

+ It is also to be stated here that in the notification which notified the rates of tax, the description of the goods was only stated as 'areca nuts'. The notification did not specify different rates of tax for different kinds of areca nuts and the Rules also did not require the grade or quality of the areca nuts to be mentioned in the invoice. [para 126]

+ Therefore, the entire basis that there was under-valuation was completely incorrect and the consequential conclusion that there was under-valuation with an intent to evade payment of tax, cannot also be accepted. [para 127]

+ The entire procedure adopted by the proper officer from converting the detention proceedings into a confiscatory proceeding, ultimately leading to the order of confiscation is wholly illegal and contrary to the statutory scheme of the Act.

+ The Appellate Authority has mechanically accepted the reasoning of the order of the proper officer and has dismissed the appeal without examining the statutory scheme of the Act. Impugned orders cannot be sustained and the same are quashed. The question that is framed is accordingly answered in the negative. [para 129]

+ Since the confiscated goods are already sold in a public auction, the respondents are directed to pay the petitioners the sale proceeds of the auction after deducting the penalty prescribed under Section 129(1)(a) of the Act, within a period of four weeks. As a consequence, the proper officer shall also

release the conveyance, if it is not already released. [para 130, 131]

- Petition allowed: KARNATAKA HIGH COURT

14. 2022-TIOL-836-CESTAT-AHM

Megamet Steels Pvt Ltd Vs CC

Cus - A ppellant have paid excess duty on excess quantity of goods not lifted from SEZ and subsequently, department has amended the bills of entry in respect of actual quantities lifted by appellant - Amendment was made under Section 149 of Customs Act - The refund arises only after amendment of bills of entry therefore, relevant period of one year should be reckoned from the date of amendment and not from the date of actual payment of duty - Similar issue has been considered by Tribunal in case of Keshari Steels 2003-TIOL-191-HC-MUM-CUS wherein, it was held that if refund is arising out of correction of clerical or arithmetical error under Section 154 of Customs Act, period of one year provided under Section 27 is not applicable to such case - Said judgment has been upheld by Supreme Court - Period of limitation should be reckoned from date of amendment in bills of entry - Since the appellant have filed refund claim within one year from date of amendment which is well within time accordingly, refund cannot be rejected on the ground of limitation - Impugned order is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

15. 2022-TIOL-828-CESTAT-KOL

Uniglobal Paper Pvt Ltd Vs CCGST & CE

CX - The only issue arises is, whether the Paper Cess is to be included in calculation of Education Cess and Secondary and Higher Education Cess - Department took a stand that Education Cess is levied on excise duty and Cess on paper is also a duty of excise, therefore, it should be included - Paper Cess is not levied by Department of Revenue, it is levied by Industrial Development, Ministry of Commerce and Industry - No doubt it is collected by Department of Revenue, but not levied by it - Hence Paper Cess is not includible - Lower authorities were proceeding on an erroneous premise when they considered the Paper Cess as a levy by Central Government in Ministry of Finance - They obviously lost sight of Circular 978/2/2014-CX where it has been clarified that the Education Cess and Secondary and Higher Education Cess are not to be calculated on cesses which are levied under Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue), but rather only collected by Department of Revenue in terms of those Acts - Facts of present case are similar to that of case in Joshi Technologies International 2016-TIOL-1240-HC-AHM-CX - Similar provisions as referred to in said case and Board's Circular have also been discussed by lower authorities - As High Court has already discussed at length there is no need to mention provisions separately - High Court after considering the decision of Supreme Court in case of Mafatlal Industries Ltd. 2002-TIOL-54-SC-CX-CB , allowed the refund claims in an identical situation - Accordingly, since Cess on Paper is not a duty of excise, provisions of Section 11B of Central Excise Act would not apply - Following the decisions of High Court, appeal filed by appellant is allowed: CESTAT

- Appeal allowed: KOLKATA 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.

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