Newsletter - April 2023

Vishnu Daya & Co. LLP

Chartered Accountants

Contents

Direct Tax – Circular & Notifications

A. Circulars issued by CBDT in the month of March 2023

1. CBDT issues Circular specifying Jul 1, 2023 for consequences of non-linking PAN & Aadhar.

Circular no. 3 / 2023, dated 28th March 2023

CBDT specifies in the circular that the consequences of PAN becoming inoperative as per the amended Rule 114AAA shall take effect from Jul 1, 2023 and continue till the PAN becomes operative. The Circular is issued in supersession of Circular No. 7/2022 dt. Mar 30, 2022 wherein it was provided that consequences of non-intimation of Aadhaar shall come into effect on Apr 1, 2023.

Click here to read /download the circular.

B. Notifications issued by CBDT in the month of March 2023

1. CBDT extends PAN-Aadhaar linking deadline to Jun 30.

Press Release dated 28th March 2023
Notification no. 15 / 2023, dated 28th March 2023

CBDT extends the last date for linking PAN and Aadhaar to Jun 30, 2023. The CBDT Press Release states that from Jul 1, 2023 onwards, the PAN of taxpayers who have failed to intimate their Aadhaar, as required, shall become inoperative. In addition to the consequences under the Act for not furnishing, intimating or quoting PAN, the person, whose PAN has become inoperative, shall be liable to following further consequences: (i) no refund shall be made against such PANs, (ii) interest shall not be payable on such refund for the period during which PAN remains inoperative, and (iii) TDS and TCS shall be deducted /collected at higher rate. CBDT also apprises that PAN can be made operative again in 30 days, upon intimation of Aadhaar to the prescribed authority after payment of fee of Rs.1,000. It is noteworthy that the persons who have been exempted from PAN-Aadhaar linking will not be liable to the aforementioned consequences and this category includes: (i) those residing in specified States, (ii) a non-resident as per the Act, (iii) an individual who is not a citizen of India or (iv) individuals of the age of eighty years or more at any time during the previous year.

Click here to read /download the Press Release.

Click here to read /download the notification.

2. Form 10F e-filing exemption for NRs without PAN, extended to Sep 30

Notification dated 28th March 2023

Directorate of Income Tax (Systems) extends the exemption to non-resident taxpayers, who are not having PAN and not required to have PAN as per the law, from mandatory e-filing of Form 10F to Sep 30, 2023. Reiterates that such persons may make statutory compliance of filing Form 10F in manual form.

Click here to read /download the notification.

3. **Directorate (Systems) prescribes e-procedure for Sec.195(3) 'Nil TDS' certificate.**

   Notification no. 1 / 2023, dated 29th March 2023

   Directorate of Income Tax (Systems) prescribes procedure, format and standards for electronic filing of application in Form 15C and Form 15D for tax non-deduction certificate under Section 195(3) through TRACES, under digital signature or through electronic verification code. Specifies that the new procedure shall be applicable with effect from Apr 1, 2023. States that upon approval from CIT, the certificate shall be available for download to the applicant on their TRACES login.

   Click here to read /download the notification.

Direct Tax – Legal Rulings

1. **ITAT: TDS cannot legalise 'consultancy' payments to Doctors where Apex Labs ruling contravened.**

   Boston Scientific India Pvt. Ltd [TS-111-ITAT-2023(DEL)]

   Delhi ITAT upholds disallowance of expenditure incurred in respect of doctors/ medical practitioners, holds that "*The deduction of TDS doesn't give any credence or legalize the payments which are in contravention with the law laid down by the Hon'ble Apex Court.*", relying on SC ruling in *Apex Laboratories*. ITAT examines the invoice-cum-report of various doctors, opines that the consulting expenses paid, travelling, boarding & lodging expenses, reimbursement to doctors are indirect way of gifting the doctors to promote the products.

   Remarks that "*The agreement and deduction of TDS cannot give credence that the incentives received by the doctors is in fact a deductible expense in the hands of the assessee.*", holds that the payments made by the Assessee to the Doctors in a different form as training and consultancy is another form devised to camouflage the real purpose which has been rightly disallowed by Revenue.

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

2. **ITAT: House gifted to father 'colourable device'. Denies Sec.54F benefit.**

   Rachit V Shah [TS-127-ITAT-2023(HYD)]

   Hyderabad ITAT dismisses Assessee's appeal, holds that gift of house to father just prior to sale of land was a camouflage to claim Section 54F deduction as the Assessee owned two house properties. Remarks that "*Though, gift deed, on a standalone basis seems to be a natural act on the part of son to gift home to his father, but when the gift deed is to be examined in the light of the prior and subsequent acts and prevailing circumstances, then it is clear that the real intention of the assessee, was to claim the deduction u/s. 54F*" and upholds CIT(A) order disallowing deduction of Rs. 2.63 Cr.

   For AY 2015-16, Assessee-Individual claimed deduction under Section 54F against capital gains arising on sale of land for a consideration of Rs.4.41 Cr. Revenue observed that the Assessee gifted his self-occupied house to his father and within a gap of 7 days sold the land, thus, held that the gift was a colourable device to ensure that the Assessee had only one house property in his books to claim Section 54F benefit. CIT(A) opined that the gift was a colourable device since designed in a manner to avail the benefit of exemption under Section 54F while not parting with the property, thus upheld the denial of Section 54F deduction.

   ITAT opines that the gift deed was "*merely a paper gift deed as it was not covered with the transfer of possession and it was not executed on account of love and affection but was executed only for the purpose of taking undue benefit of the provision of law*", as even after executing the gift deed, the Assessee continued to live on the same property with his father. Notes that Assessee had two house properties – one self-occupied and one let-out property and the self-occupied property was gifted just prior to signing the sale agreement, after investing the proceeds from sale in buying new residential house property. Accordingly, upholds CIT(A) order denying Section 54F deduction.

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

3. **SC: CIT(E) & ITAT orders bereft of facts. Spiritual body's Sec.80G approval warrants fresh consideration.**

Sant Girdhar Anand Parmhans Sant Ashram [TS-87-SC-2023]

SC allows Revenue's appeal, sets aside Punjab & Haryana HC ruling upholding ITAT order granting approval to Assessee under Section 80G. Holds that the CIT(E)'s order as well as ITAT's order are bereft of any factual details and thus, requires fresh consideration.

Assessee-Trust's application for grant of approval under Section 80G(5)(vi) was denied by CIT(E) on the ground that the Assessee was spending more than 5% of total receipts for religious purposes as pooja expenses and telecast expenses. On appeal, ITAT held that since the Assessee was already granted exemption under Section 12AA, which was still in existence and if there would be any violation, that would be subject to variation/withdrawal by the CIT(E), there was no logic in denying approval under Section 80G5(vi). HC upheld ITAT's order as Revenue failed to controvert the findings recorded by the ITAT.

SC observes that although the approval under Section 80G was denied on the ground that Assessee was spending more than 5% of receipts for religious purposes, neither the order of refusal of the certificate under Section 80G (5B) nor the subsequent order of the ITAT dealt with essential facts as to the quantum of receipts and the expenditure incurred. States that while there can be no dispute that the Assessee asserts that it continues to hold exemption under Section 12AA, nevertheless, for the benefit under Section 80G (5B), the requirements of that provision have to be satisfied separately.

Clarifies that it is open for the Assessee to present its contention that it is recipient of benefit under Section 80G (5B) for a subsequent period (AY 2022-23 to 2026-27), before the CIT(E), when the matter is examined afresh.

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

4. **ITAT: CIT(E) not empowered to condone delay in filing application for Sec.10(23C)(vi) approval.**

Manav Rachana Education Society [TS-137-ITAT-2023(RAI)]

Raipur ITAT holds that CIT(E) is not vested with any power to condone delay in filing application for grant of approval under section 10(23C)(vi), accepts Assessee's alternate plea to consider the filed application as filed for immediately succeeding year i.e. AY 2019-20 and remands the matter to CIT(E).

Assessee filed an application for claiming exemption under Section 10(23C)(vi) in Form No. 56D on Apr 25, 2019 for AY 2018-19 with CIT(E), which was rejected on the ground that the said application seeking approval under Section 10(23C)(vi) was filed beyond the prescribed period stipulated in 'sixteenth proviso' to Section 10(23C) i.e., Sep 30, 2018. ITAT notes Assessee's double facet claim, viz. (i) that the delay in filing of the application for AY 2018-19 be condoned. or (ii) that the application in hand be considered as an application for the next year i.e AY 2019-20 and onwards. Rejects Assessee's contention for condonation of delay for AY 2018-19, observing that the same is not as per the mandate of law. The impugned application was filed on Apr 25, 2019. Remands the matter to CIT(E) with a direction to consider the present application filed by the assessee for approval under Section 10(23C)(vi) as that filed for the immediate succeeding year i.e. AY 2019-20 and onwards.

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

MCA Updates & Legal Rulings

1. **MCA: Releases FAQs on association of Digital Signature Certificate on V3 Portal. (Mar 23,2023)**

   MCA issues FAQs on association of Digital Signature Certificate (DSC) on the V3 Portal, inter alia clarifies that only business users can register their DSC on V3 Portal and that registered users are not allowed to associate their DSC on V3 Portal; In respect of the question as to whether it is mandatory to associate DSC on V3 Portal, MCA specifies that any person who is signing any form and filing on MCA portal, is required to associate his/her DSC on V3 Portal first, and that any person who had earlier associated the DSC on V2 Portal, is required to re-associate his/her DSC on V3 Portal for filing any form on MCA; Laying down the complete process of associating DSC on the MCA Portal, the Ministry outlines that if the screen freezes while the user clicks on 'Associate DSC' and no message is showing up, then, the user has to follow these steps, – (i) change the PIN of user's DSC token and retry after refreshing the screen, while ensuring that emsigner and embridge are installed and running in the system, (ii) if the issue does not get resolved by Step (i), the user has to go to Profile Upgrade page and change their Hint Question and retry after refreshing the screen; Further, enumerating the type of technical errors that may occur, MCA also delineates their significance and apprises that before retrying the process to associate DSC, browser cache needs to be cleared; Lastly, underscoring that DSCs are not required to be associated again once the profile upgrade is done by the user, MCA states that DSC, once linked, with the Membership Number, will automatically be linked with the Certificate of Practice (CoP) Number, if any and that such users are required to register themselves in Professional User Role under Business User category and associate their DSCs on the portal

2. **Companies (Indian Accounting Standards) Amendment Rules, 2023. (March 31, 2023)**

   The Ministry of Corporate Affairs (MCA) has notified the Companies (Indian Accounting Standards) Amendment Rules, 2023. As per the amended rules, various changes are made to the Indian Accounting Standards.

3. **Commerce Ministry: Rs. 945 cr. sanctioned under Startup India Seed Fund Scheme. MCA related compliances for April 2023. (Mar 31, 2023)**

   Union Minister of State for Commerce and Industry, Shri. Som Parkash, in a written reply to Lok Sabha, apprises about the details of programs implemented by Govt. to support startups in the country across various sectors including emerging technologies; States that the Govt. has established Fund of Funds for Startups Scheme with corpus of Rs. 10,000 cr. to meet the funding needs of startups and Rs. 945 cr. has been sanctioned under the Startup India Seed Fund Scheme, which aims to provide financial assistance to startups, for a period of 4 years starting from 2021-22; Highlighting a key objective under the Startup India initiative which is to help connect Indian startup ecosystem to global startup ecosystems through various engagement models, the Minister underscores that this has been done though international Govt. to Govt. partnerships, participation in international forums and hosting of global events; Shri. Parkash also mentions about the States' Startup Ranking Framework which is a

unique initiative to harness strength of competitive federalism and create a flourishing startup ecosystem in the country, and explains that the major objectives of the ranking exercise are facilitating states to identify, learn and replace good practices, highlighting the policy intervention by states for promoting startup ecosystem and fostering competitiveness among states; Lastly, the Minister apprises that Ministry of Electronics and Information Technology ('MeitY') has launched the 'Start-up Accelerator Programme of MeitY for Product Innovation, Development and Growth (SAMRIDH)' with an aim to support existing and upcoming Accelerators to further select and accelerate potential software product based startups to scale: Ministry of Commerce & Industry.

4. **Govt. establishes Centre for Processing Accelerated Corporate Exit w.e.f. April 1.**

Central Govt. establishes a Centre for Processing Accelerated Corporate Exit ('C-PACE') with a view to facilitate and speed up the voluntary winding-up of companies; Specifies that the C-PACE shall be located at the Indian Institute of Corporate Affairs, Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon, Haryana; Lastly, states that this notification shall come into force w.e.f. April 1, 2023.

Some recent Caselaws under Companies Act, 2013 :

1) **ROC (NCT of Delhi & Haryana): Penalizes Co., Directors for using online-platform for raising securities on private-placement basis.**

ROC (NCT of Delhi & Haryana) imposes a total penalty of Rs. 4 lakhs on a small Company and its 2 Directors for using the website "https://www.tykeinvest.com" ('Tyke', a technology-based platform / network, including *inter alia* individuals from the business industry, professionals who are part of the Startup ecosystem) for raising funds viz. securities, thereby violating Sec. 42(7) of the Companies Act; Registrar notes that – (i) Company issued its compulsorily Convertible Debentures ('CCDs') through the Tyke platform, (ii) the Board of Directors passed a resolution to issue 1,25,000 CCDs of the Company having face value of Rs. 10 each at par for a total consideration of Rs. 12.5 lakh on Private Placement basis and Preferential basis to 28 members of the Tyke platform; Observing that the Tyke website had been used by the company as a media / marketing / distribution channel / agent to inform the public at large about the issue of securities, Registrar highlights that "*Tyke has collected its fees/commission at various stages from the company, like providing onboarding services to charging a commission/fees at the time the amount was deposited by the investor in the virtual escrow account of the company.*"; Adverting to Sec. 42(7) of the Act which provides that no company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue, ROC points out that the Company violated this provision by using the Tyke platform for raising securities; Consequently, holding that the Company and its Directors are liable for penalty for violating Sec. 42(7) of the Act, ROC imposes a penalty of Rs. 2 lakh on the Company and Rs. 1 lakh on each of the 2 Directors for the default in terms of Sec. 42(10) r.w.s. 446B. This is in the matter of Anbronica Technologies Pvt. Ltd.

2) **ROC (Tamil Nadu): Rs. 15 lakh penalty for failure to carry out actuarial valuation for gratuity, leave encashment.**

ROC (Tamil Nadu) imposes a total penalty of Rs. 15 lakh on a Nidhi Company and its 4 directors for failure in carrying out the

actuarial valuation for gratuity and leave encashment for the FYs 2017-20, in violation of Sec. 134(3)(f) of the Companies Act; Notes that during inspection of the Company u/s 206(5) of the Act, it was observed that in the Independent Auditor's Report, the auditor has reported that the company has not complied with Accounting Standard 15 specified u/s 133 of the Act r.w. Rule 7 of the Companies (Accounts) Rules, where no actuarial valuation was done for gratuity and leave encashment for the FYs 2017-18, 2018-19 and 2019-20; Registrar highlights that Sec.134(3)(f) of the Act lays down that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made - (i) by the auditor in his report; and (ii) by the company secretary in practice in his secretarial audit report; Accordingly, asserting that "*Hence the company has not complied with section 134(3) (f) of the Companies Act, 2013. Therefore the company and every Officer who is in default are liable for penal action under Section 134(8) of the Companies Act, 2013.*", Registrar imposes a penalty of Rs. 9 lakh on the Company and Rs. 6 lakh on the Directors in terms of Sec. 134(8) of the Act. This is in the matter of TBF Nidhi (Kumbakonam) Ltd.

3) RoC (Tamil Nadu): Penalises Nidhi Co. for non-disclosure of compliance with POSH Act in Board Report.

RoC (Tamil Nadu) imposes a total penalty of Rs. 3.5 lakh on a Nidhi Company and its Director for not making a statement of compliance with Prevention of Sexual Harassment Act ('POSH Act') in the Board's report, in contravention of Sec. 134(3)(q) of the Companies Act; Notes that pursuant to inspection of the Company u/s 206(5) of the Act, the Inspecting Officer observed that as per MCA Notification, the Companies (Accounts) Rules was amended to include inter alia a statement in the Board's Report on compliance under the POSH Act; Registrar highlights that as per Rule 8 and Rule 8A of the Rules, a company (other than 1 person Company or small company) shall give a statement that the company has complied with the provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, w.e.f. July 31, 2018; Perusing Sec. 134(3)(q) of the Act, which provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include such other matters as may be prescribed, ROC observes from the Board's Report that the company has not made disclosures on the same in the Financial Statements for the years 2019-2020; Accordingly, in light of the violation of Sec. 134(3)(q) of the Act, ROC imposes a penalty of Rs. 3 lakh on the Company and Rs. 50,000 on the Director in terms of Sec. 134(8) of the Act. This is in the matter of Kandhan Mutual Benefit Saswatha Nidhi Ltd.

4) ROC (Tamil Nadu): Rs. 3.3 lakh-penalty for offering shares to employees without shareholder approval.

ROC (Tamil Nadu) imposes a total penalty of Rs. 3.3 lakh on a Company and its 2 Directors for grant of stock options to its employees without obtaining approval from its shareholders, in contravention of Sec. 62(1)(b) of the Companies Act; Registrar notes that – (i) Company in its Board Meeting in April 5, 2021 accorded its approval for grant of 327 options to employees, which exceeded 1% of the issued capital of the company, hence, the approval of shareholders by way of separate resolution should have been obtained by the company at the time of grant of 327 employee stock options as required under Rule 12(4)(b)

of the Companies (Share Capital and Debentures) Rules; However, observing that the Company failed to convene a shareholder meeting for obtaining the approval from its shareholders, ROC highlights Sec. 62(1)(b) of the Act which provides that where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to employees under a scheme of employees stock option, subject to special resolution passed by company and subject to such condition as may be prescribed; ROC also highlights Rule 12(4)(b) of the Rules which lays down that the approval of shareholders by way of separate resolution shall be obtained by the company in case of grant of option to identified employees, during any 1 year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option; Accordingly, observing that the Company's Extra Ordinary General meeting convened on September 9, 2022, and Company's shareholders accorded their approval by way of special resolution, ROC imposes a penalty of Rs. 2.1 lakh on the Company and Rs. 60,000 on each of the 2 Directors in terms of Sec. 450 of the Act for the default of 522 days. This is in the matter of Guvi Geek Network Pvt. Ltd.

5) **RoC (NCT of Delhi & Haryana): Penalizes Indiabulls Housing Finance for not taking note of incoming Directors in meeting-minutes.**

RoC (NCT of Delhi & Haryana) imposes a total penalty of Rs. 1.15 lakh on Indiabulls Housing Finance Ltd. and 7 of its Directors for default in respect of not taking note of form MBP-1 (Notice of interest by director) of incoming Independent Directors in the minutes of board meetings, in violation of the Secretarial Standard ('SS-1') r.w.s. 118(10) of the Companies Act; Company submitted that the incoming Independent Directors had duly declared their interest in other entities in MBP-1 before the Board, however, inadvertently, these declarations could not be taken note of, in the minutes; Registrar highlights that Sec. 118(10) mandates that every company shall observe secretarial standards w.r.t. general and Board meetings specified by the ICSI and approved as such by the Central Govt.; Further, ROC emphasizes that para 7.3.1. of SS-1 issued by ICSI stipulates that minutes shall contain a fair and correct summary of the proceedings of the meeting; Accordingly, Registrar imposes a penalty of Rs. 50,000 on the Company, Rs. 10,000 each on 6 Directors and Rs. 10,000 on 1 Director for the violation, in terms of Sec. 118(11) of the Act. This is in the matter of Indiabulls Housing Finance Ltd.

6) **ROC (NCT of Delhi & Haryana): Rs. 3 lakh penalty for default in issuing securities on private placement basis.**

ROC (NCT of Delhi & Haryana) imposes a penalty of Rs. 3 lakhs on a small Company and 2 of its Directors for use of a website https://www.tykeinvest.com ('Tyke', a technology-based community platform) for raising securities, in violation of Sec. 42(7) of the Companies Act; Registrar observes that the Company issued its compulsorily Convertible Debentures ('CCDs') using Tyke, wherein, the Board of Directors passed a resolution to issue 3,251 CCDs of the Company having face value of Rs. 1,000 each at par for a total consideration of Rs. 32.51 lakh on Private Placement basis and Preferential basis to 196 members of the Tyke platform; Moreover, ROC highlights that "…the website of Tyke has been clearly used by the company as a media/marketing/distribution channel/agent to inform the public at large about the issue of securities. Tyke has collected its fees/commission at various stages from the company, like providing

onboarding services to charging a commission/fees at the time the amount was deposited by the investor in the virtual escrow account of the company."; Registrar further states that Sec. 42(7) of the Act provides that no company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue; Accordingly, holding that the Company and its Directors are liable for penalty for violation of Sec. 42(7) of the Act, ROC imposes a penalty of Rs. 2 lakh on the Company and Rs. 1 lakh on each of the 2 Directors for the default in terms of Sec. 42(10) r.w.s. 446B. This is in the matter of Septanove Technologies Pvt. Ltd.

7) ROC (Chhattisgarh): Imposes Rs. 1.6-lakh penalty on Co., Directors for delay in filing form CAA-8.

ROC (Chhattisgarh) imposes a total penalty of Rs. 1.61 lakh on a Company and its 2 Directors for delay in filing Form CAA-8 (Statement to be filed by Register of Companies), resulting in the non-compliance of Sec. 232(7) of the Companies Act; Registrar notes that during the examination of form GNL-2, under an attachment of the form, a statement in Form No. CAA-8 was filed with the ROC office along with an order passed by the NCLT stating that CAA-8 should be filed within 210 days from the end of each financial year, hence CAA-8 was due to be filed on October 27, 2022, however, the Company filed the same on December 19, 2022, i.e. with a delay of 52 days; Observing Company's reply to Registrar's show cause notice as well as Company's oral submissions, Registrar remarks that "…company itself admitted the violation of Sec. 232(7) of the Companies Act, 2013. Also, it is evident from the record that, there is a delay in filing of Form CAA-8."; Accordingly, in light of the delay of 52 days in filing form CAA-8, ROC imposes a penalty of Rs. 61,000 on the Company and Rs. 50,000 on its 2 Directors u/s 450 of the Act. This is in the matter of Abis Agrotech Pvt. Ltd.

8) ROC (NCT of Delhi & Haryana): Levies fine on Company, Directors for incomplete minutes of board meeting.

ROC (NCT of Delhi & Haryana) imposes a total penalty of Rs. 55,000 on a public Company and its 6 directors for incomplete minutes of board meeting, in violation of Sec. 118(1) of the Companies Act read with Secretarial Standard ('SS-1'); Registrar notes that during inspection of the minutes for FY 2016-17, the resolutions placed before the Board during the aforesaid FY for the purpose of bank signatory did not contain the specimen signatures of the authorized signatories and as such were also not contained in the Minutes book which indicated that minutes of the board meetings were incomplete; ROC peruses the provisions of Sec. 118(1) which lay down that every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered; Registrar highlights that para 7.2.2.2 of the SS-1 mandates that apart from the resolution or the decision, minutes shall mention the brief background of all proposals and summaries the deliberation thereof, in case of major decisions the rationale thereof shall also be mentioned, moreover, para 7.3.1. stipulates that minutes shall contain a fair and correct summary of the proceedings of the Meeting; Accordingly, in view of the violation

of Sec. 118(1) r.w. SS-1, ROC imposes a penalty of Rs. 25,000 on the Company and Rs. 5,000 on each of the 6 Directors in terms of Sec. 118(11) of the Act. This is in the matter of Lava International Ltd.

9) RoC (Gujarat): Penalizes Adani Transmission Step-One, Directors for delay in filing e-form MGT-14.

RoC (Gujarat) imposes a total penalty of Rs. 68,400 on Adani Transmission Step-One Ltd. and 3 of its Directors for delay in filing e-form MGT-14, in violation of Sec. 117(1) of the Companies Act; Notes that the Company filed e-form MGT-14 u/s 62(1)(c) of the Act to consider and approve issue and allotment of 25 cr. Compulsorily Convertible Debentures of Rs. 100 each to Adani Transmission Ltd. by way of meeting of members held on September 27, 2022, thereafter, the resolution was filed with the ROC office on January 5, 2023, with a delay of 71 days; ROC highlights that Sec. 117(1) of the Act provides that a copy of every resolution or any agreement in respect of matters specified in sub section (3) together with explanatory statement as per Sec. 102 shall be filed with the Registrar within 30 days of the passing or making thereof; Accordingly, in light of the violation of Sec. 117(1) of the Act, Registrar imposes a penalty of Rs. 17,100 each on the Company and 3 of its Directors in terms of Sec. 117(3) of the Act.

10) ROC (NCT of Delhi & Haryana): Rs. 2-lakh penalty on Riot Games' Indian-subsidiary for delay in conducting board-meeting.

ROC (NCT of Delhi & Haryana) levies a total penalty of Rs. 2.14 lakh on Riot Games Pvt. Ltd. (a subsidiary of its foreign holding company, Riot Games Ltd.) and 3 of its Directors for default in conducting its board meeting with a delay of 54 days, thereby violating Sec. 173 of the Companies Act; Registrar notes that the Company filed a suo-moto application for adjudication of penalty inter alia stating that the Company was in the process of appointing new directors on board therefore the existing the Board of Directors were not available due to certain decision pending at senior level; Perusing Sec. 173 of the Act, ROC highlights the provisions which lay down that every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation and thereafter hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that not more than 120 shall intervene between 2 consecutive meetings of the Board; Accordingly, Registrar imposes a penalty of Rs. 64,000 on the Company and Rs. 50,000 on each of the 3 Directors in terms of Sec. 450 of the Act. This is in the matter of Riot Games Pvt. Ltd.

11) ROC (Patna): Imposes penalty on Co., MD for failure to file proceedings of AGM.

ROC (Patna) imposes a penalty of Rs. 6.9 lakh on a producer Company and its MD for not filing its proceedings of annual general meeting ('AGM') along with the report of the Board of Directors, the audited balance sheet and profit and loss for the FYs 2015-16 till date as per the MCA portal, basis failure in compliance of Sec. 378ZA(10) of the Companies Act; Registrar highlights that the provisions of Sec. 378ZA(10) of the Act mandate that the proceedings of every AGM along with the report of the Board of Directors, the audited balance-sheet and profit and loss account shall be filed with the Registrar within 60 days of the date on which the AGM is held, with an annual return along with the filing fees as applicable under the Act; Further, ROC observes that the provisions of Sec. 446B of the Act states that if penalty is payable for non-compliance of the provisions of this Act by a One Person

Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than 1-half of the penalty specified in such provisions; Accordingly, in light of the applicability of Sec. 446B on the producer Company and its MD, ROC imposes a penalty of Rs. 5.16 lakh on the producer Company and Rs. 1.75 lakh on the MD u/s 450 r.w.s. 446B of the Act. This is in the matter of Krishicom MSMPCPPPS Producer Company Ltd.

12) **ROC (NCT of Delhi & Haryana): Penalizes Company for not observing secretarial standards w.r.t. board meetings.**

ROC (NCT of Delhi & Haryana) imposes a penalty of Rs. 40,000 on Riot Games Pvt. Ltd. (a subsidiary of its foreign holding company, Riot Games Ltd.) and 3 of its Directors for non-maintenance of secretarial standard issued by ICSI r.w. Sec. 118(10) of the Companies Act in conducting its board meeting with a delay of 54 days; Registrar highlights that Sec. 118(10) provides that every company shall observe secretarial standards with respect to general and Board meetings specified by the ICSI, and approved as such by the Central Govt.; ROC further emphasizes that Clause 2.1 of the Secretarial Standard ('SS-1') issued by ICSI stipulates that the company shall hold at least 4 meetings of its Board in each Calendar Year with a maximum interval of 120 between any 2 consecutive Meeting; Accordingly, ROC imposes a penalty of Rs. 25,000 on the Company and Rs. 5,000 on each of the 3 Directors u/s 118(11) of the Act, for violation of Clause 2.1 of SS-1 issued by the ICSI r.w.s. 118(10) of the Companies Act. This is in the matter of Riot Games Pvt. Ltd.

Indirect Tax – Legal Rulings

1. 2023-TIOL-160-CESTAT-KOL

Bengal Ambuja Housing Development Ltd Vs CCGST & CE

ST - Appellant is engaged in construction of commercial properties - After completing construction, some portion of commercial property is sold and balance portion is retained by them for leasing out to various lessees - A SCN was issued to them by invoking extended period provisions demanding reversal of Cenvat Credit - Appellant has taken Cenvat Credit of Rs. 2,29,99,232/- during period under consideration - When they are not eligible for Cenvat Credit on account of constructed property which is sold, they have been regularly reversing the Cenvat Credit - In respect of constructed portion which is leased out by them, there is no dispute that Service Tax is being paid on the lease amount received by them - On similar/identical issues, Tribunals and High Courts have been consistently holding that inputs used for construction of immovable property is eligible for Cenvat Credit when Service Tax is paid on service provided - As per factual evidence reproduced by appellant in form of ST-Returns and letters filed with Department from time to time with regard to Cenvat Credit taken and reversed by them in course of their business, Department has not made out any case against appellant towards suppression - Therefore, demand for the extended period is required to be set aside on account of time bar: CESTAT

- Appeal allowed: KOLKATA CESTAT

2. 2023-TIOL-167-CESTAT-KOL

Nakshatra Impex Vs CC

Cus - The importers, imported Mosquito swatter/bat stuffed in three containers at a declared unit price of USD 0.34 per piece which works out to Rs. 25.41 per piece - Goods were shipped on 26.04.2021 against three different Bills of Lading from China - Three Bills of Entry were filed for clearance of mosquito swatter/bat UTH (HS code) 85167920 claiming clearance under Open General License (OGL) since mosquito swatter/bat was freely importable as per Foreign Trade Policy in force - Director General of Foreign Trade (DGFT) issued vide Notification No. 02/2015-20, amended import policy and incorporated a policy condition under HS code 85167920 and 85167990 of chapter-85 of ITC (HS) 2017, schedule-I (Import Policy) - Effect of notification was, mosquito killer racket in import policy was revised from free to prohibited, if CIF value is below Rs. 121/- per racket - Both the Adjudicating authority and Commissioner (A) are of opinion that, prohibited goods cannot be redeemed which is contrary to decision of Supreme Court, wherein it was held that absolute confiscation should be an exception rather than a Rule - Without exploring any other alternative, it has been held that goods are liable for confiscation - So far as items peas and pulses are concerned, order of Supreme Court is a Landmark decision of judicial pronouncements - But nowhere the Supreme Court observed in that order that prohibited goods cannot be redeemed - In case of Har Govind Das K. Joshi, Supreme Court held that absolute confiscation of goods by Collector without question of redemption on payment of fine although having discretion but omitted to consider such a discretion available with him and remanded the matter to Collector for consideration of an exercise of discretion for

imposition of Redemption fine - Besides, since the policy was amended when shipment was in process their mala fide intention cannot be proved without any additional evidence to invoke penal clause under section 112 of Customs Act, 1962 - Appellant produced documents and photographs stating that goods are suffering huge demurrage and partly some imported items stuffed in container are damaged which were required to be verified maintaining principles of natural justice - Impugned orders cannot be sustained and are accordingly set aside: CESTAT

- Matter remanded: KOLKATA CESTAT

3. 2023-TIOL-179-CESTAT-AHM

Dishman Pharmaceuticals And Chemicals Ltd Vs CST

ST – Assessee is in appeal against demand of service tax under category of Banking and other Financial Services on charges paid by them in respect of their foreign currency transaction on reverse charge basis – Issue under examination is if appellant is required to pay service tax on reverse charge basis for charges paid by them in respect of foreign currency transaction between their local foreign banks engaged in facilitating the transfer of foreign exchange – Matter has been examined in detail in case of Raj Petro Specialties Pvt Ltd 2019-TIOL-442-CESTAT-AHM – There are no allegation that any payment has been made directly by appellant to foreign bank – In this circumstances, no service tax can be demanded from appellant – Demand cannot be sustained and same is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

4. 2023-TIOL-301-HC-DEL-CUS

CC Vs R P Cargo Handling Services

Cus – Revenue is in appeal against order of CESTAT – Question is whether Tribunal was correct in holding that a show cause notice under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 (CBLR) is required to be received by the customs broker within a period of ninety days of the receipt of the offence report and it is not sufficient that the notice is sent within the said period of ninety days. Held: Tribunal in a latter decision in D.S. Cargo Agency = 2019-TIOL-1551-CESTAT-DEL has taken a view which is contrary to the impugned order – There is a distinction between issuance of notice and service of notice and the words 'issue' and 'serve' are not synonymous – The said words may be construed as interchangeable only if the context of the statute makes'it ne'essar' to do so – Tribunal has erred in holding that the Commissioner was required to serve a notice to the respondent within a period of ninety days from the date of receipt of the offence report – The Commissioner was required to issue a notice within the period of ninety days and there is no dispute that it had done so – Question is answered in the favour of the Revenue against the respondent – The appeal is allowed - The impugned order is set aside and the matter is remanded: High Court [para 23, 25, 26, 27]

- Matter remanded: DELHI HIGH COURT

5. 2023-TIOL-329-HC-AHM-GST

Trafigura India Pvt Ltd Vs UoI

GST - Petitioner sought a direction to respondent authorities to refund IGST paid on Ocean Freight claimed vide refund applications alongwith interest @ 18% p.a. respectively - The Notfn Nos. 8 of 2017 and 10 of 2017 read with corrigendum came up for consideration for their validity before this court - This court in Mohit Minerals Pvt. Ltd. 2020-TIOL-164-HC-AHM-GST held the said notifications to be unconstitutional and ultra vires the statute - Similar issue came up for consideration before co-ordinate Bench in ADI Enterprises 2022-TIOL-857-HC-AHM-GST , wherein the question was about refund of IGST paid pursuant to aforementioned Notfns - The court directed respondents to refund the amount of IGST already paid by

applicants pursuant to Entry no 10 of Notfn 10 of 2017 - In view of decision in Mohit Minerals Pvt. Ltd. , since the impugned Notifications have already been declared as ultra vires, present petition deserves to be allowed - Resultantly, claim for refund of petitioner towards IGST is liable to be favourably considered - The competent authority of respondents shall verify amount of refund and grant such refund of amount of IGST paid by petitioner pursuant to Entry No.10 of notification within eight weeks along with the statutory rate of interest: HC

- Petition allowed: GUJARAT HIGH COURT

6. 2023-TIOL-327-HC-ORISSA-GST

IN THE HIGH COURT OF ORISSA

AT CUTTACK

WP(C) No. 18216 of 2017

M/s SHIVA JYOTI CONSTRUCTION

Vs

THE CHAIRPERSON
CENTRAL BOARD OF EXCISE AND CUSTOMS AND OTHERS

Dr S Muralidhar, CJ & M S Raman, J

Dated: January 12, 2023

Petitioner Rep. by: Mr Jagamohan Pattanaik, Adv.
Respondent Rep. by: Mr Subash Chandra Mohanty, Senior Standing Counsel

GST - The Petitioner sought a permission to rectify GST Return filed in Form-B2B instead of B2C as was wrongly filed under GSTR-1 in order to get Input Tax Credit (ITC) benefit by principal contractor - The stand taken by Opposite Parties is that once the deadline for rectification of Forms was crossed, then no further indulgence could be granted to petitioner - Fact remains that by permitting petitioner to rectify said error, there will be no loss whatsoever caused to Opposite Parties - It is not as if that there will be any escapement of tax - This is only about ITC benefit which in any event has to be given to petitioner - Madras High Court in *M/s. SUN DYE CHEM* ***2020-TIOL-1858-HC-MAD-GST*** directed that petitioner in that case should be permitted to file corrected form - Court permits the petitioner to resubmit corrected Form-B2B under GSTR-1 and to enable the petitioner to do so a direction is issued to Opposite Parties to receive it manually: HC

Writ petition disposed of

Case law cited:

M/s. SUN DYE CHEM v. The Assistant Commissioner ST - 2020-TIOL-1858-HC-MAD-GST... Para 6...referred

JUDGEMENT

1. The Petitioner before this Court seeks a direction to the Opposite Parties to permit the Petitioner to rectify the GST Return filed for the period September, 2017 and March 2018 in Form-B2B instead of B2C as was wrongly filed under GSTR-1 in order to get the Input Tax Credit (ITC) benefit by M/s. Odisha Construction Corporation Limited (OCCL), the principal contractor.

2. Admittedly, the last date of filing the return was 31st March, 2019 and the date by which the rectification should have been carried out was 13th April, 2019.

3. It is the case of the Petitioner that the error came to be noticed after the OCCL held up the legitimate running bill amount of the Petitioner by informing it about the above error on 21st January, 2020. It is the case of the Petitioner that thereafter it has been making requests to the Opposite Parties to permit it to correct the GSTR-1 Forms but to no avail.

4. The stand taken by the Opposite Parties is that once the deadline for rectification of the Forms was crossed, then no further indulgence could be granted to the Petitioner.

5. The fact remains that by permitting the Petitioner to rectify the above error, there will be no loss whatsoever caused to the Opposite Parties. It is not as if that there will be any escapement of tax. This is only about the ITC benefit which in any event has to be given to the Petitioner. On the contrary, if it is not

permitted, then the Petitioner will unnecessarily be prejudiced.

6. In similar circumstances, the Madras High Court in its *order dated 6th October, 2020 in Writ Petition No.29676 of 2019 (M/s. SUN DYE CHEM v. The Assistant Commissioner ST)* = ***2020-TIOL-1858-HC-MAD-GST***accepted the plea of the Petitioner and directed that the Petitioner in that case should be permitted to file the corrected form.

7. For the aforementioned reasons, the letters of rejection dated 19th June and 23rd September, 2020 are hereby set aside. The Court permits the Petitioner to resubmit the corrected Form-B2B under GSTR-1 for the aforementioned periods September, 2017 and March, 2018 and to enable the Petitioner to do so a direction is issued to the Opposite Parties to receive it manually. Once the corrected Forms are received manually, the Department will facilitate the uploading of those details in the web portal. The directions be carried out within a period of four weeks.

8. The writ petition is disposed of with the above directions.

9. An urgent certified copy of this order be issued as per rules.

7. 2023-TIOL-244-CESTAT-MAD

CC Vs Kaveri Seed Company Ltd

Cus - Though the department has denied classification adopted by assessee (CTH 8437), as rightly discussed by Commissioner (A), it is not stated either in SCN or in O-I-O as to what would be the correct classification if goods are not to be classified under CTH 8437 - Demand has been raised by denying classification to under CTH 8437 - The other allegation raised by department is that the assessee has not followed procedure laid down in Public Notice No. 91/87 - The proforma invoice shows the import of composite unit comprising of two seed processing lines - Order placed for supply would be complete only by including goods imported vide both Bills of Entry - Merely because some parts were imported separately and cleared under a separate Bill of Entry, department cannot contend that goods cannot be classified under CTH 8437 - No reasons found to interfere with decision arrived at by Commissioner (A): CESTAT

- Appeal dismissed: CHENNAI CESTAT

8. 2023-TIOL-375-HC-DEL-CX

Bal Pharma Ltd Vs Pr.Commissioner & Addl. Secretary Govt. of India

CX - Petition filed impugning the order passed by the revisionary authority - The principal controversy involved is whether the petitioner can claim rebate under Rule 18 of the CE Rules - In the first batch of cases, the Adjudicating Authority rejected the petitioner's application for refund under Rule 5 of the CCR without considering the question whether the petitioner was entitled to rebate under Rule 18 of the CE Rules - The petitioner claims that it had, in its appeal, specifically urged that it was entitled to rebate under Rule 18 of the CE Rules but the same was not considered by the Appellate Authority - Further, the Central Government had also not considered the same on the ground that it had no jurisdiction in matters of refund under Rule 5 of the CCR.

Held: Appeal preferred by the petitioner was dismissed solely relying upon the judgment passed by the Madhya Pradesh High Court in M/s CIL Textiles Pvt. Ltd. without considering other aspects - Bench, therefore, considers it apposite to set aside the impugned orders dated 06.08.2018 as well as the orders passed by the Appellate Authority and remand the matter to the Appellate Authority to consider afresh in the light of the observations made in this order - Appellate Authority shall examine whether there is material on record to clearly establish the petitioner's claim for rebate of duty paid on excisable material used for manufacture and packing of goods exported by the petitioner - Petition is disposed of [para 24, 25]

- Petition disposed of: DELHI HIGH COURT

9. 2023-TIOL-242-CESTAT-MAD

National Institute Of Ocean Technology Vs CC

Cus - The issues involved is, whether assessee is eligible for exemption from payment of SAD in terms of Notfn 51/96-Cus for import of various scientific and technical instruments during June, 2011 to August 2011 and whether any excess duties paid are refundable without challenging self-assessment or order of assessment of bills of entry - Issue is covered in assessee's own case vide Tribunal's Final Order dated 23.12.2013 - Apex Court in case of ITC Ltd. 2019-TIOL-418-SC-CUS-LB has held that assessment order including self-assessment needs to be challenged to become eligible for refund - In this case, assessee when applied for refund, the refund sanctioning authority has communicated vide their letter, that the order of assessment cannot be reviewed or modified in terms of Apex Court decision in case of M/s. Priya Blue Industries 2004-TIOL-78-SC-CUS - Refund would arise only if order is reviewed, modified or revised - In view of decision of Apex Court, Tribunal do not find any need to decide about eligibility of assessee for SAD exemption under Notfn 51/1996 was issued on 23.07.1996 - Further, the facts in this appeal clearly indicate that assessee have not challenged the order of assessment, as such, assessee is not eligible for refund - The order of rejection of refund by refund sanctioning authority is upheld: CESTAT

- Appeal dismissed: CHENNAI CESTAT

10. 2023-TIOL-240-CESTAT-AHM

Welspun Corp Ltd Vs CCE & ST

ST - Demand was confirmed only for the reason that appellant at their Anjar unit had not paid service tax on services received from abroad on reverse charge basis - However, there is no dispute as the same was admitted in SCN as well as in impugned order that service tax was deposited by appellant's head office at Mumbai under different registration number of input service distributor - Appellant's Anjar unit is not a separate entity as same is part of a single entity i.e. Welspun Gujarat Stahi Rohren Ltd which is now known as Welspun Corp Ltd. - Therefore, payment made by head office under different registration number cannot be demanded from appellant's Anjar Unit and if at all there is discrepancy of different registration of head office, department could have adjusted service tax paid by head office against service tax due of appellant's Anjar unit - From the Circular 58/7/2003 it is clear that discrepancy such as payment of service tax under wrong registration can be adjusted against correct registration for which service tax is actually due - In present case even though the service tax was paid under registration of head office Mumbai but appellant's Anjar unit as well as their Mumbai head office is one single entity - Accordingly, in the light of said circular, department could have made necessary adjustment instead of raising demand twice on the appellant - Merely because the service tax paid under different registration but by same company, cannot be tantamount to non-payment of service tax - Hence, demand of service tax which was already paid cannot be made twice - Accordingly, demand of service tax is not sustainable: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

11. 2023-TIOL-239-CESTAT-AHM

Chowgule Brothers Pvt Ltd Vs CCE

ST - Issue involved is that whether refund of appellant is hit by mischief of unjust-enrichment as per Section 11 B (1) of Central Excise Act, 1944 - Limited issue to decide is that in spite of issuing credit note by appellant to their customers towards service tax which was initially charged whether unjust-enrichment exists or otherwise - There is no dispute that appellant have initially charged service tax to customer - Subsequently, same was reversed by issuing credit note to customers, therefore, incidence of service tax paid by appellant was not passed on - Unjust-enrichment does not exist in case where

appellant initially charged duty / service tax and subsequently issued credit note for the same - Appellant's refund claim does not fall under clutch of unjust-enrichment - Accordingly, appellant is entitled for refund claim, hence, impugned order is set aside: CESTAT

- Appeal allowed: AHMEDABAD CESTAT

12. 2023-TIOL-238-CESTAT-DEL

Prem Motors Pvt Ltd Vs CCE & CGST

ST - Assessee is in appeal against impugned order challenging levy of service tax for incentives granted by manufacturer to them - Tribunal examined the dealership agreement entered between MSIL and the assessee and it is found that MSIL is engaged in manufacturing, marketing and selling of motor vehicles and assessee purchases the vehicles from manufacturer as their authorised dealer on principal to principal basis - The activity undertaken by assessee is for sale and purchase of vehicle and incentives are in nature of trade discounts - The incentives, therefore form part of sale price of vehicles and have no correlation with services to be rendered by assessee - That in terms of dealership agreement, assessee purchases the vehicles from MSIL and sells the same to its end customers - The activity of promoting sale is with respect to vehicles owned by assessee which incidentally is in interest of both the parties - Reliance is placed on the observations referred in case of Kafila Hospitality and Travels Pvt Ltd. 2021-TIOL-159-CESTAT-DEL-LB - Assessee is engaged in onward sale of vehicles which involves merely transfer of property in goods which is excluded from definition of 'service' - That section 66D of Finance Act, 1994 contains the negative list of services under various clauses and clause (e) provides for 'trading of goods' - On this ground also, it is found that incentives which are part of sale activity are not exigible to service tax - The amount of incentives and discounts cannot be treated as consideration for any service and therefore no Service Tax is leviable thereon - Having decided the issue on merits in favour of assessee, it is no longer required to go into the question of limitation raised by assessee - Impugned order is therefore, set aside: CESTAT

13. **2023-TIOL-236-CESTAT-MAD**

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH, CHENNAI COURT NO. III

Customs Appeal No. 40787 of 2013

Arising out of Order-in-Appeal C.Cus.No.468/2012, Dated: 17.12.2012 Passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600001

Date of Hearing: 15.03.2023
Date of Decision: 15.03.2023

M/s ABB LTD
PLOT NO.1, KASTURI INDUSTRIAL ESTATE,
PONNIAMMAN NAGAR,
AIYANAMBAKKAM
CHENNAI - 600102.

Vs

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

Appellant Rep by: Mr Rohan Muralidharan, Adv.
Respondent Rep by: Mr S Balakumar, AC (AR)

CORAM: Sulekha Beevi C S, Member (J)
M Ajit Kumar, Member (T)

Cus - Appellant filed refund claim in terms of Notfn 102/2007-Cus. as amended - Said claim was for refund of 4% of Special Additional Duty (SAD) paid by them at the time of import of goods - Same was partly rejected observing that appellant has not satisfied the requirement as stipulated in para 2 (b) of notification - It is not disputed that appellant-importer is a trader - The trader-importer would be eligible for refund even though the requirement under para 2(b) of Notfn 102/2007-Cus. is not satisfied -

Rejection of refund cannot be justified - Impugned order is set aside: CESTAT

Appeal allowed

Case laws cited:

Chowgule & Company Pvt. Ltd. Vs CCE – 2014-TIOL-1191-CESTAT-MUM-LB*... Para 3...followed*

Mennekes Electric India P. Ltd. Vs CC 2017 (348) elt 537 (Tri.-Chennai)... Para 3 ...followed

Nagarjuna Fertilizers & Chemicals Ltd. Vs CC 2017 (12) TMI 1606 – CESTAT CHENNAI... Para 3...followed

STP Ltd. Vs CC - ***2018-TIOL-2502-CESTAT-MAD*** *... Para 3 ...followed*

FINAL ORDER NO. 40156/2023

Per: Sulekha Beevi C S:

Brief facts of the case are that the appellant filed refund claim in terms of Notification No.102/2007-Cus. dated 14.09.2007 as amended. The refund claim was for refund of 4% of Special Additional Duty (SAD) paid by them at the time of import of the goods. The refund sanctioning authority sanctioned part of the refund but however, rejected some amount observing that appellant has not satisfied the requirement as stipulated in para 2 (b) of the notification. Aggrieved by the rejection of part of the refund claim the appellant is now before the Tribunal.

2. Ld. Counsel Mr. Rohan Muralidharan appeared and argued the matter. He submitted that the appellant is a trader and has paid VAT while selling the imported goods. By inadvertent omission, they had not made the endorsement as required under para 2(b) of the notification. The said condition reads as under :

"2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :

… …. ….

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

… …. ….."

3. In some of the commercial invoices the appellant had handwritten that 'credit is not admissible on SAD' so as to comply with the requirement under para 2(b). The department has denied the refund on all the invoices which were handwritten as well as which did not bear the endorsement. It is argued by the Ld. Counsel that the issue stands covered by the decision of the Larger Bench of the Tribunal in the case of *Chowgule & Company Pvt. Ltd. Vs CCE – 2014 (306) ELT 326 (Tri.-LB)* = ***2014-TIOL-1191-CESTAT-MUM-LB***. The said decision has been followed by the Tribunal in various other cases as below :

(i) Mennekes Electric India P. Ltd. Vs CC 2017 (348) elt 537 (Tri.-Chennai)

(ii) Nagarjuna Fertilizers & Chemicals Ltd. Vs CC 2017 (12) TMI 1606 – CESTAT CHENNAI

(iii) STP Ltd. Vs CC - 2019 (370) ELT 672 (Tri.-Chennai) = ***2018-TIOL-2502-CESTAT-MAD***
Ld. Counsel prayed that appeal may be allowed.

4. Ld. A.R Shri S. Balakumar supported the findings in the impugned order.

5. Heard both sides.

6. The issue to be analysed is whether the appellant is eligible for refund even though the requirement under condition 2(b) of the Notification No.102/2007-Cus. dated 14.09.2007 has not been complied. It is not disputed that the appellant-importer is a trader. In Chowgule & Company Pvt. Ltd. Vs CCE (supra), the Larger Bench has decided the issue as under :

"5.4 In view of the factual and legal analysis as above, we answer the reference made to us as follows. A trader-importer, who paid SAD on the imported .good and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus., notwithstanding the fact that he made no endorsement that "credit of duty is not admissible" on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein. The above decision is rendered only in the facts of the case before us and shall not be interpreted to mean that conditions of an

exemption notification are not required to be fulfilled for availing the exemption."

7. In the other decisions relied by the Ld. Counsel for appellant the Tribunal has held that the trader-importer would be eligible for refund even though the requirement under para 2(b) of the Notification No.102/2007-Cus. is not satisfied.

8. After appreciating the facts, evidence and following the decisions of the Tribunal, we find that the rejection of refund cannot be justified. We hold that the appellant is eligible for refund. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(dictated and pronounced in the open court)

14. 2023-TIOL-355-HC-AHM-CUS

Raghav International Vs UoI

Cus - The petitioners are engaged in business of export of ready-made garments falling under the Headings 61 and 62 of Customs Tariff Act, 1975. The petitioners are mainly exporting the goods to UAE and Africa - The petitioners had exported various goods through various shipping bills during the period of 2011-2015 - Such shipping bills were assessed finally by the proper officer and the said assessment had attained finality - Accordingly, the benefit of duty drawback pursuant to such assessment was given to the petitioners - The Revenue sought recovery of excess of the duty drawback so paid, during the year 2014-2015 under the provisions of Rule 16 of Duty Drawback Rules, 1995 - The petitioners challenged such notice on various grounds, including the ground that the Show Cause Notice under Rule 16 cannot be issued beyond a period of 3 years being reasonable period of limitation, since no limitation is provided for under the Act or the Rules - During the pendency of this petition, the Revenue issued SCNs dated 01.04.2021, 06.04.2021 and 20.05.2021, for the same assessment period from 2011 to 2015 and for the same shipping bills - These notices are also under challenge by the petitioners on the same grounds by appropriate draft amendment. Held - This Court need to travel beyond the main issue as to whether the Revenue Authority can issue SCN after a period of six/ten years for assessment/export - When the issue is covered as per the decision of this Court as noted above in the case of M/s. S J S International , wherein it was held that as the show cause notice essentially cannot be issued beyond the period of three years of payment of the duty drawback, and that being a settled legal position, if not regarded, this Court needs to interfere - Again, the proper officer who assesses the shipping bills will be in a position to reopen the same provided that there is such a stage of reopening the shipping bill filed once are self assessed, that would attain finality upon the proper officer clearing the same - Had there been any discrepancy, the proper officer would not consider the self assessment final and would obviously assess the shipping bill before finalizing - Following such judgment, all the petitions are allowed & the SCNs in question are set aside which are admittedly beyond the period of three years - Since the SCNs are quashed by this Court, the consequent action of the Revenue authorities qua those SCNs are also quashed: HC

- Writ petitions allowed: GUJARAT HIGH COURT

About Us:

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

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

For more information, please visit www.vishnudaya.com

In case of any clarification please reach us:

Name	Particulars	Mail ID	Mobile Number
Vishnu Moorthi H	Managing Partner	vishnu@vishnudaya.com	+91 9880 715 961
Dayananda K	Indirect Taxes / DGFT	daya@vishnudaya.com	+91 9845 025 682
Vinayak Hegde	Indirect Taxes	vinayaka@vishnudaya.com	+91 9902 586 492
Shankar D	Direct Taxes	shankar@vishnudaya.com	+91 9880 715 963
Anju Eldhose	Direct Taxes	anju.eldhose@vishnudaya.com	+91 9496 148 918
Manjula A	Direct Taxes	manjula@vishnudaya.com	+91 9740 854 009
Rakesh K	FEMA	rakesh@vishnudaya.com	+91 9008 047 675

Our Offices

Bangalore	Chennai
GF No. 7 & 3rd Floor, Karuna Complex, No. 337 Sampige Road, Malleshwaram Bangalore – 560 003 Tel +91 80 2331 2779 Fax +91 80 2331 3725	No. 3A, 3rd Floor Amber Crest Apartment (Next to Egmore Ashoka Hotel) Pantheon Road, Egmore Chennai – 600 008 Tel +91 44 2855 4447 Fax +91 44 2855 3521