Newsletter - March 2024

Vishnu Daya & Co. LLP

Chartered Accountants

Contents

Direct Tax – Legal Rulings

1. **HC: No difference in ESI/PF contribution disallowance in ITR-processing vis-à-vis assessment. Follows Checkmate Services**

   Rohan Korgaonkar [TS-85-HC-2024(BOM)]

   Bombay HC upholds disallowance of employees' ESI/PF contribution made beyond due date prescribed under ESI/PF Act, by relying on SC judgment in *Checkmate Services*.

   HC observes that in Checkmate Services, SC held, "*deductions can be claimed or adjustments can be made under Section 143(1)(a)(iv) read with Section 36(1)(va) only when the employer deposits the contribution in the employees' accounts on or before the due date prescribed under the Employees Provident Fund /Employees State Insurance Act.*". HC remarks that admittedly, in the present case, the contributions were deposited in the employee's accounts beyond the due date and "*circumstance that the assessment order was made under Section 143(1)(a) of the IT Act can make no difference*".

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

2. **ITAT: Shares worth Rs.144 Cr. against right to use land 'revenue receipt', basis third party transaction**

   Fertilizer Corporation of India Ltd [TS-125-ITAT-2024(DEL)]

   Delhi ITAT holds that the shares of Rs.144.49 Cr. received or receivable by Fertilizer Corporation of India Ltd. (Assessee) from Ramagundam Fertilizers and Chemicals Ltd. (RFCL) in lieu of right to exploit Assessee's land shall be considered as revenue receipt, taxable in the year of quantification.

   Assessee granted lease of its property for 99 years to RFCL under a concession agreement against which RFCL issued 11% of the total capital expenditure of the said property as equity shares to the Assessee valuing at Rs.144.49 Cr.. Assessee submitted that the shares issued to the Assessee by RFCL in tranches lay in the capital field vis-a-vis the Assessee and were not intended to be the income of Assessee in the light of the proposal worked out by the Cabinet Committee of Economic Affairs of the Government of India for the Assessee's revival. Therefore, Assessee submitted that the proper entry would be a credit to capital reserve account with a debit to current investments instead of treating it as income.

   ITAT observes that the Assessee claimed Rs.144.49 Cr. as expenditure as an exceptional item which was not based on any prudent accounting principles. Opines that in normal circumstances, a third party would have to pay Rs.144.49 Cr to acquire those shares. However, notes Assessee's alternative contention that out of Rs.144.49 Cr received as shares, an amount of Rs.51.98 Cr was not relatable to relevant AY and was shown as receivable in the balance sheet. Directs the Revenue to verify the said receivables if offered to tax in subsequent AY in order to avoid double taxation. Also rejects Assessee's ground of non-receipt of notice for assessment on registered e-mail id since the change of e-mail id was not brought to the notice of the Revenue. Thus, dismisses Assessee's appeal.

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

3. **HC: Sec.194C-TDS applicable on EDC, privity of contract between real estate developers & development authority no prerequisite**

Puri Constructions Pvt. Ltd. & Others [TS-92-HC-2024(DEL)]

Delhi HC holds real estate developers (Assessees) to be liable for TDS under Section 194C on the External Development Charges (EDC) paid to Haryana Shahari Vikas Pradhikaran (HSVP). Rejects Assessee's argument of absence of privity of contract with HSVP while observing that payments were made to HSVP albeit under the directive of the Director General, Department of Town and Country Planning (DTCP) which was directed towards subserving an arrangement between HSVP and the Government of Haryana for external development work being carried out by the HSVP.

Relies on SC judgment in *Shree Chaudhary Transport* to observe that underlying contract could otherwise be discerned from the arrangement between parties and their conduct would be sufficient even though it may not have been reduced in writing. HC reads the provision of Section 194C and observes, "*The existence of a contract which is spoken of in Section 194C is between the contractor and a specified person. The provision thus does not construct a contractual relationship between the person responsible for paying the sum and deducting tax with the contractor as a precondition. This is clearly not a prerequisite for Section 194C being attracted. For the purposes of Section 194C, all that is required is a payment being effected to a contractor who has a contractual relationship with a specified person*". Notes that not only the provisions of the Haryana Development and Regulation of Urban Areas Act (HDRUA) but also the forms and bilateral agreements executed by the applicants, mandated that all payments of EDC were to be drawn in favour of HSVP although they were routed through DTCP.

Reads Section 195 vis-a-vis Section 194C and observes that Section 194C does not provide any discretion to the person making the payment to examine whether the sum is chargeable under the provision of the Act. Relies on SC judgment in Associated Cement to observe, "*Section 194C of the Act vests no discretion in the payer to examine or contemplate chargeability of that payment to tax"*. Also remarks that HSVP had obtained no certification as contemplated in terms of the Section 197 provisions nor had it obtained a declaration that moneys received by it were exempt from tax. Thus, holds that the Assessees were obligated to deduct tax on EDC payments made to HSVP.

Click here to read / download the copy of the ruling

MCA Updates & Legal Rulings

ORDERS PASSED BY ADJUDICATING AUTHORITIES

A) REGISTRAR OF COMPANIES:

VIOLATION OF SECTION	VIOLATION (OR) NON - COMPLIANCE	PENALTY IMPOSED	COMPANY NAME	ROC	Date
Section 92	Failure in filing Annual return on time – As per Section 92 of the Companies Act, 2013 r/w Rule 12 of the Companies (Management and Administration) Rules, 2014 - Every Company shall prepare and file Annual Return of the Company (Form MGT 7 / MGT 7A) within 60 days from the date on which the Annual General Meeting (AGM) is held or is supposed to be held.	**On Company**: Rs. **82400/-** **On Directors:** Rs. **82400/- on each director**	M/S Neo Corp International Limited	Roc-Mumbai	03/01/2024
Section 12	The company did not have a proper registered office. As per section 12, Every newly incorporated Company should within 30 days and thereafter have a Registered office capable of receiving & acknowledging communications and notices.	**On Company**: Rs. **67000/-** **On Directors:** (Rs.67000*3Directors) - Rs. **201000/-**	M/S International Association of Software and Services Companies	Roc Gwalior	09/01/2024

Section 137	Failure in filing Financial Statements on time – As per Section 137, Every Company shall prepare and file Financial statements, including consolidated financial statement, if any of the Company (Form AOC 4/AOC 4 CFS/AOC 4 XBRL) within 30 days from the date on which the Annual General Meeting (AGM) is held or is supposed to be held.	**On Company**: Rs. 354300/- **On Directors** (Rs.100000/- On first default (+)354*100 on default continues * 1 Whole Time Director) - Rs. 135400/-	M/S Mynk1906 Industries India Limited	Roc-Mumbai	03/01/2024
Section 89(1) MGT-4,5 & 6 and Rule 9 Companies (Management and Administration) Rules, 2014	The company has beneficial owners as shareholders of the company. Since the incorporation, company did not file forms containing the declaration by the person as per section 89 of the Companies Act, 2013.	On Company: {975x1000=9,75,000 Subject to maximum 5,00,000}- 5,00,000 And {On Director: 975x1000=9,75,000 Subject to maximum 2,00,000} - 2,00,000	M/s Mynd Fintech Private Limited	Roc-Delhi	10/01/2024
Section 118(1)	On the examination of minutes book of company, it was found that some of the important transactions have not been incorporated (minutes book not serially numbered, purchase of vehicle by company not recorded, loans given to group parties not recorded, etc.)	On Company: 25000*42=1,0,50,000 =1050000 On director: 5000*7=35,000=3500 0 (on 7 meeting)	M/S ESSAR SHIPPING LIMITED	Roc-Ahmedabad	11/01/ 2024

Section 100	Requisition for calling EGM was given by members. Company gave notice which was not within 21 days and called the meeting on a later date which was not within 45 days.	On Company: First default (In Rs): 10000(+) Default continues (In Rs):4000=14000 on director: First default (In Rs): 10000(+) Default continues (In Rs):4000=14000	Ahmed Nagar Club Limited	Roc-pune	14/01/ 2024
Section 117	The company delayed the filing of MGT-14 by 1,981 days. The company made a suo motto adjudication application.	**2018-19:** On company: (1571+10000*100)= 167100. On director: (1571+10000*100) or 50000 max*3 director= 150000. **2019-20:** On company: (1110+10000*100)= 121000. On director: (1571+10000*100) or 50000 max*3 director= 150000.	M/s. Social Growth Nidhi Limited	Roc-Pune	17/01/ 2024
Section 42	It was observed that the Company has utilized the money without making the allotment and filing PAS-3. Further the company has failed to maintain a Separate Bank account in Scheduled bank for the monies received on Private Placement.	**On Company**: 2,00,000 **On Director:** 1,00,000*2director = 2,00,000	M/s Tridib Industries Limited	Roc-Chandigarh	30/01/ 2024

Section 39(1)	The company has allotted the shares without receiving the share subscription money. But the company was small company and the mistake happened inadvertently.	**On Company**: 10000+1000/day = 12000. On Directors: 10000+1000/day =12000*2 Directors =24000	M/s Tridib Industries Limited	Roc-Chandigarh	30/01/ 2024

MCA Deploys Change Request Form (CRF) in MCA-21

The Ministry of Corporate Affairs (MCA) vide its General Circular No. 02 / 2024 dated 19/02/2024 has deployed the Change Request Form (CRF) and its usage on MCA – 21.

Major highlights of the update are as under:

- Change Request Form should be used only under exceptional circumstances, such as for making a Request to Registrar of Companies (ROCs), for the purposes which cannot be catered through any existing Form or Services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (ROCs).
- The primary intention for deployment of Change Request Form is for purposes of Master Data Correction and to comply with certain directions of Courts / Tribunals, which ordinarily cannot be complied with through existing functionality of Forms or Services on MCA-21 System.
- Change Request Form is not to be used as a substitute to any Reporting, Application and Registry requirements as per Companies Act, 2013, and LLP Act, 2008.
- Further, Change Request Form is not to be used as a substitute for any Approval related and Registration related Queries for which existing Tickets and Help Desk Facilities must be used.
- ROCs are expected to process CRF within Three (3) Days of its filing, after which it will be forwarded to Joint Director (e-Governance Cell), who will process and decide the matter within a maximum time of Seven (7) Days.

Weblink of MCA Update:

https://www.mca.gov.in/content/dam/mca/pdf/document-82-new-20240219.pdf

MCA grants relaxation of additional fees and extension of last date for filing of some LLP Forms

The Ministry of Corporate Affairs (MCA) vide its General Circular No. 01/2024 dated 07/02/2024 has granted Relaxation of Additional Fees and Extension of Last Date Filing of Form No. LLP BEN – 2 and LLP Form No. 4D under the Limited Liability Partnership Act (LLP), 2008.

In view of transition of MCA-21 from V2 to V3 thereby promoting Compliance on part of Reporting LLPs, it is informed that LLPs may file Form LLP BEN – 2 and LLP Form No. 4D, within 15th May, 2024, without payment of any Additional Fees.

Note: MCA declares that both the Forms will be made available in V3 portal w.e.f 15/04/2024 and it should be filed within 30 days from 15/04/2024, to avoid additional fee.

Weblink of MCA Update:

https://www.mca.gov.in/bin/dms/getdocument?mds=ui4J8CwvqBhepbNiu3putw%253D%253D&type=open#:~:text=In%20view%20of%20transition%20of,2024.

MCA notifies the Establishment of Central Processing Centre (CPC)

The Ministry of Corporate Affairs (MCA) vide its Notification dated 02/02/2024 notifies the establishment of Central Processing Centre at Indian Institute of Corporate Affairs, Plot No. 6,7,8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050 having Territorial Jurisdiction all over India w.e.f. 6th February, 2024.

Overview of the Notification:

- The CPC shall process and dispose-off e-Forms filed as provided in the Companies (Registration of Offices and Fees) Rules, 2014.
- The ROC within whose jurisdiction Company's Registered Office is situated, shall continue to have jurisdiction over the Companies, whereas the e-Forms of those Companies shall be processed by the Registrar of the CPC.

Further on 14th February 2024, MCA has amended The Companies (Registration Offices and Fees) Rules, 2014 by inserting New Rule 10A in relation to Central Processing Centre, thereby notifying types of applications/forms that will be examined by CPC within 30 days of its filing.

Weblink of MCA Update:

1. https://www.mca.gov.in/bin/dms/getdocument?mds=FrgS%252FjRXtmK%252BHpwLl3BHRQ%253D%253D&type=open

2. https://www.mca.gov.in/bin/dms/getdocument?mds=TC5IiKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open

Indirect Tax Updates

GST Updates

Notifications:

1. **The government has notified that "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017.**

- Council hereby notifies "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent.

- For the purpose of this notification, "Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023.

- Developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

06/2024-Central Tax dated 22-02-2024.

Customs Updates

Tariff:

1. **The government has amended Notification 11/2021-Cus dated 01.02.2021 in order to exempt AIDC on goods falling under tariff item 5201 00 25.**

- ✓ In the said notification, in the Table, for serial number14 and the entries relating thereto, the following S. No. and entries shall be substituted, namely:

(1)	(2)	(3)	(4)
"14.	5201 (Other than 5201 0025)	All goods (Other than goods of staple length exceeding 32.0mm)	5%".

11/2024-Customs

2. The government has amended notification No. 55/2022 - Customs, dated 31.10.2022 and notification No. 64/2023 - Customs, dated 07.12.2023, in order to remove end date on export duty on Parboiled Rice and to prescribe specified condition on imports of Yellow Peas.

Table

<table>
<tr><th>S. No.</th><th>Notification No. and Date</th><th>Amendments</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td></tr>
<tr><td>1.</td><td>55/2022-Customs, dated the 31st October, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 796(E)., dated the 31st October, 2022</td><td>In the said notification, -
(i) in the Table, S. No. 2A and the entries relating thereto shall be omitted;
(ii) in the Annexure, condition number 5 shall be omitted.</td></tr>
<tr><td>2.</td><td>64/2023-Customs, dated the 07th December, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 884(E)., dated the 07th December, 2023</td><td>In the said notification,
(i) in the opening paragraph, for the words and figures “leviable thereon under the said section of the Finance Act, 2021 (13 of 2021), namely:-”, the words and figures “leviable thereon under the said section of the Finance Act, 2021 (13 of 2021), subject to the condition as specified in column (4) of the said Table, namely:-” shall be substituted;
(ii) for the Table and paragraph 2, the following Table shall be substituted, namely:-
“Table
<table>
<tr><th>Sl. No.</th><th>Tariff Item</th><th>Description of goods</th><th>Condition</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td><td>(4)</td></tr>
<tr><td>1.</td><td>0713 10 10</td><td>Yellow Peas</td><td>In respect of the said goods, the Bill of Lading is issued on or before 30th day of April, 2024.”.</td></tr>
</table></td></tr>
</table>

3. The government has amended notification No. 50/2017- Customs dated 30.06.2017, in order to reduce the BCD on imports of meat and edible offal, of ducks, frozen, subject to the prescribed conditions, with effect from 07.03.2024.

- ✓ in the Table, after S. No. 3AA and the entries relating thereto, the following S. No. and entriesshall be inserted, namely:

(1)	(2)	(3)	(4)	(5)	(6)
“3AB.	0207 42 00; 0207 45 00	Meat and edible offal, of ducks, frozen	5%	-	116”;

- ✓ in the Annexure, after condition number 115 and the entries relating thereto, the followingcondition number and entries shall be inserted, namely: -

(1)	(2)
"116.	If, at the time of import, - (a) the importer furnishes a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from the designated officer in terms of O.M. No. L-110109(3)/1/2016-Trade (E-2625), dated 22nd February, 2024, issued by the Department of Animal Husbandry and Dairying, that the imported goods are meat and edible offal, of ducks, frozen (other than backs of ducks, frozen), satisfying the parameters specified in the Annex to the said O.M.; and (b) the importer furnishes to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, - i. a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Tourism recommending that the importer is a 3-Star and above operational hotel as per notification issued by Ministry of Tourism, Government of India, as amended, or ii. a valid restricted import authorisation issued under DGFT notification No. 66/2023, dated 06th March, 2024, as amended";

12/2024-Customs

4. <u>The government has amended notification No. 50/2017- Customs dated 30.06.2017.</u>

- ✓ after S. No. 3 and the entries relating thereto, the following S. No. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)	(6)
"3AA.	0207 25 00; 0207 27 00	Meat and edible offal, of turkeys, frozen	5%	-	-";

- ✓ after S. No. 32A and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)	(6)
"32AA.	0810 40 00	Cranberries, fresh; Blueberries, fresh	10%	-	-
32AB.	0811 90	Cranberries, frozen; Blueberries, frozen	10%	-	-
32AC.	0813 40 90	Cranberries, dried; Blueberries, dried	10%	-	-";

- ✓ after S. No. 90 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)	(6)
"90A.	2008 93 00	Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	5%	-	-
90B.	2008 99	Blueberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	10%	-	-";

- ✓ against S. No. 100, in column (2), for the entry, the entry "2202 99" shall be substituted;
- ✓ after S. No. 304A and the entries relating thereto, the following S. No. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)	(6)
"304B.	5201 00 25	Other: of staple length exceeding 32.0 mm	Nil	-	-".

10/2024-Customs

Non-Tariff:

1. Government has notified Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg

- ✓ Hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance

- ✓ In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely:

"TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	890
2	1511 90 10	RBD Palm Oil	901
3	1511 90 90	Others – Palm Oil	896
4	1511 10 00	Crude Palmolein	907
5	1511 90 20	RBD Palmolein	910
6	1511 90 90	Others – Palmolein	909
7	1507 10 00	Crude Soya bean Oil	903
8	7404 00 22	Brass Scrap (all grades)	4859

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	639 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	716 per kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	716 per kilogram
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	639 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6259"

12/2024-Customs (NT)

2. Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg

- ✓ Hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance
- ✓ In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the followingTables shall be substituted, namely:

TABLE 1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	891
2	1511 90 10	RBD Palm Oil	902
3	1511 90 90	Others – Palm Oil	897
4	1511 10 00	Crude Palmolein	907
5	1511 90 20	RBD Palmolein	910
6	1511 90 90	Others – Palmolein	909
7	1507 10 00	Crude Soya bean Oil	903
8	7404 00 22	Brass Scrap (all grades)	4937

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	654 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	724 per kilogram

3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	724 per kilogram
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	654 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6259 (i.e., no change)"

16/2024-Customs (NT)

Circulars

1. **Authorization of Booking Post Offices and their corresponding Foreign Post Offices in terms of the Postal Export (Electronic Declaration and Processing) Regulations, 2022 - Reg.**

01/2024

Instruction/Guidelines

1. **Arrest Report and Incident Report (where arrest not made) – revised guidelines and formats.**

- The Intimation of arrest shall continue to be send by the director general.
- Through Email within 24 hours of arrest of an individual

- The Commissioner/ADG shall immediately Email annexure-II to the required addresses in case of specified incidents

02/2024-Customs

2. <u>Compliance of imported consignments of Boric Acid (Technical Grade) with notified Bureau of India Standards (Standards for Boric Acid) Order, 2019- reg</u>

- It was requested that necessary action may be taken to sensitize officers under your jurisdiction to undertake checking of all imported consignments of Boric Acid to ensure strict compliance with the specifications prescribed in IS 10116:2015 (Reaffirmed in 2020) for Boric Acid (Technical Grade).

03/2024-Customs

Indirect Tax – Legal Rulings

1. **2024-TIOL-270-HC-MUM-GST**

NRB Bearings Ltd Vs Commissioner of State Tax

GST - Case of the petitioner is that they approached the jurisdictional officer/respondent no. 2 to allow them to alter/amend the invoice details pertaining to F.Y. 2017-18 in GSTR-1 for the month of December, 2019 - As nothing was forthcoming from the respondent on the subject request, the present petition - Petitioner inter alia also prays that the Court be pleased to declare that respondent no. 4 is eligible to avail ITC to the extent of Rs. 64,36,188/- denied to them due to clerical error by petitioner - The contention of the petitioner is that there is no provision either under the CGST Act or under the CGST Rules for rectification of bonafide errors made in GSTR-1; that there is also no revenue implication in that regard. Held: Court [in M/s. Star Engineers (I) Pvt. Ltd. vs. Union of India & Ors. dated 14 December, 2023 - 2024-TIOL-03-HC-MUM-GST] considering the provisions of the CGST Act had observed that in cases where there was a bonafide error in filing of the return and when there was no loss of revenue caused to the Government/exchequer, the technicalities on any legitimate rectification ought not to come in the way of the assessee, so as to suffer an inadvertent error, which would have a cascading effect - In the opinion of the Bench, the present situation as brought before the Court is certainly covered as discussed by the Court in Star Engineers (I) Pvt. Ltd. (supra) - Petition is allowed by permitting the petitioner to rectify the GSTR-1 for the period 2017-18 - Insofar as prayer clause (b) is concerned, all contentions of the parties are expressly kept open: High Court [para 7, 8, 9]

- Petition disposed of: BOMBAY HIGH COURT

2. **2024-TIOL-269-HC-DEL-GST**

Aras Enterprises Vs UoI

GST - Petitioner impugns order confirming the demand of tax along with imposition of penalty - Petitioner submits that the impugned order does not take into consideration the reply submitted by the petitioner and is a cryptic order which merely records that reply was found not satisfactory. Held : The Proper Officer has opined that reply is not clear and unsatisfactory - In case the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details - Order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication - Proper Officer shall re-adjudicate the show cause notice within a period of two weeks - Petition disposed of: High Court [para 6, 7, 9]

- Petition disposed of: DELHI HIGH COURT

3. **2024-TIOL-191-CESTAT-MUM**
IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, MUMBAI
COURT NO. I

Service Tax Appeal No. 85204 of 2020

[Arising out of Order-in-Original No. SM/248 & 249/APPEALS-II/ME/2019 dated 30.09.2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai]

WITH

Service Tax Appeal No. 85369 of 2020

[Arising out of Order-in-Original No. SM/248 & 249/APPEALS-II/ME/2019 dated 30.09.2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai]

Date of Hearing: 01.02.2024
Date of Decision: 01.02.2024

M/s CONFIRMATION.COM INDIA PVT LTD
719, C-WING, 215, ATRIUM, NEAR COURTYARD MARRIOTT,
ANDHERI-KURLA ROAD, ANDHERI (E), MUMBAI-400093

Vs

COMMISSIONER OF CGST AND CENTRAL EXCISE,
MUMBAI EAST 3RD FLOOR, CGST BHAVAN, PLOT NO. C-24, SECTOR-E, BANDRA KURLA COMPLEX, BANDRA (E), MUMBAI-400051

Appellant Rep by: Shri Sunil Ghosh, CA
Respondent Rep by: Shri S B P Sinha, AR

CORAM: M M Parthiban, Member (T)

ST - The issue in the dispute has been decided in the impugned order dated 30.09.2010, i.e. order passed in an appeal filed before the Commissioner of CGST and Central Excise (Appeals-II), Mumbai only on the basis of time limit in respect of refunds claim filed before the original authority, by holding that the appeal has been filed belatedly beyond the prescribed period of 60 days in terms of Section 85(3A) of Finance Act, 1994 - The Assessee submitted that the Order-in-Original issued by the Assistant/Deputy Commissioner has been received by them only on 23.01.2019 - Accordingly, they have preferred the appeal before the Commissioner (Appeals) within prescribed period of 60 days i.e. within 57 days of receipt of the original order by them.

Held - The case needs to be examined in a narrow compass as to whether the appeal has been filed in time as per Section 85(3A) of the Finance Act, 1994 - On factual matrix of the case, there is no specific date mentioned either in the face of the order or the date of the order in the preamble - Further, there is no evidence on record before me to state that the Assessee received the original order in time and there was delay in filing the appeal beyond the prescribed 60 days time - In the absence of any evidence or documents produced by the Department for dispatch of the original order and its receipt by the Assessee; or by any independent evidence, such as records of the postal authorities to support the same, the stand cannot be accepted that the original order was sent in time and the delay in filing appeal is on account of the Assessee - In the above circumstances, the claim made by the Assessee that they had received the original order on 26.11.2018 appears to be acceptable particularly in view of the judgment of the High Court of Madras in the case of *G. Muthukumar* - By taking note of the claim of the Assessee that the said original order was received on 26.11.2018, it is found that the appeal before the Commissioner (Appeals) had been filed on 23.01.2019 i.e. within 57 days - Thus, appeal filed by the Assessee is eligible to be considered under Section 85(3A) of the Finance Act, 1994: CESTAT

Matter remanded

Case law cited:

G Muthukumar Vs. CESTAT, Chennai reported in (2015) 55 Taxmann.com 525 (Madras)... Para 5

FINAL ORDER NOS. A/85063-85064/2019

Per: M M Parthiban:

The issue in the dispute has been decided in the impugned order dated 30.09.2010, i.e. order passed in an appeal filed before the Commissioner of CGST and Central Excise (Appeals-II), Mumbai only on the basis of time limit in respect of refunds claim filed before the original authority, by holding that the appeal has been filed belatedly beyond the prescribed period of 60 days in terms of Section 85(3A) of Finance Act, 1994. The appellant has submitted that the Order-in-Original issued by the Assistant/Deputy Commissioner has been received by them only on 23.01.2019. Accordingly, they have preferred the appeal before the Commissioner (Appeals) within prescribed period of 60 days i.e. within 57 days of receipt of the original order by them.

2. When the matter was heard, the learned AR representing the Department was specifically asked to state whether there is any evidence of the service of the original order indicating the date of dispatch/receipt of said original order by the appellant, to which the AR could not produce any documents or other evidence.

3. Heard both sides and perused the records of the case.

4. I find that the impugned order dated 30.09.2019 deals with the Order-in-Original No. ME/REF/DC/RY/666-667/2017-18 rejecting the two refund claims filed by the appellant and the

same was signed by the Deputy Commissioner (Refund) indicating the date of his signature as 28th February. On the face of the said Order-in-Original at the preamble page in the entry against "the date of order"; and "the date of issue" nothing has been mentioned. Thus, it could be reasonably presumed that the said Order-in-Original signed on 28.02.2018 and subsequently the same was dispatched to the appellant. I also find that the address of the appellant indicated in the original order and the impugned order of the Commissioner (Appeals) are one and the same. Even though the present address of the appellant is different, there is no case of mistaken address in dispatch of the Order-in-Original. Even in the office copy of the Order-in- Original, there is no indication of the said order having been dispatched or any other records of the department or postal authorities to show that the said original order was dispatched and was received by the appellant and the delay in filing the appeal before the Commissioner (Appeals) is factual on account of the failure on the part of the appellant.

5. The learned Advocate appearing for the appellants had relied upon the judgment of the Hon'ble High Court of Madras in the case of *G Muthukumar Vs. CESTAT, Chennai reported in (2015) 55 Taxmann.com 525 (Madras),* to support his contention that in the absence of any evidence of receipt of the communication from the Department on specific date, the claim of delayed receipt by the respondent was accepted and the delay was condoned.

6. In the present case before me, when the merits of the case have not been discussed and the impugned order had only decided the issue of time limit in submission of appeal, I feel that the case needs to be examined in a narrow compass as to whether the appeal has been filed in time as per Section 85(3A) of the Finance Act, 1994. On factual matrix of the case, there is no specific date mentioned either in the face of the order or the date of the order in the preamble. Further, there is no evidence on record before me to state that the appellant had received the original order in time and there was delay in filing the appeal beyond the prescribed 60 days time. In the absence of any evidence or documents produced by the Department for dispatch of the original order and its receipt by the appellant; or by any independent evidence, such as records of the postal authorities to support the same, I am unable to accept the stand taken in the impugned order that the original order was sent in time and the delay in filing appeal is on account of the appellant. In the above circumstances, the claim made by the appellant that they had received the original order on 26.11.2018 appears to be acceptable particularly in view of the judgment of the Hon'ble High Court of Madras in the case of G. Muthukumar (supra). By taking note of the claim of the appellant that the said original order was received on 26.11.2018, I find that the appeal before the Commissioner (Appeals) had been filed on 23.01.2019 i.e. within 57 days. Thus, appeal filed by the appellant is eligible to be considered under Section 85(3A) of the Finance Act, 1994.

7. In view of the above discussions, the impugned order dated 30.09.2019 is set aside and the appeal is allowed by of remand to the Commissioner (Appeals) for fresh decision on merits.

(Order pronounced and dictated in open court)

4. 2024-TIOL-255-HC-DEL-GST

Gac Shipping India Pvt Ltd Vs Sales Tax Officer Class-II

GST - Petitioner impugns order dated 30.12.2023 wherein demand of Rs. 29,44,686/- has been confirmed - Petitioner submits that no intimation of hearing was given and the order is a very cryptic and does not give any reasons and merely states that "the reply submitted by the taxpayer was not found to be satisfactory and that the taxpayer has not been able to submit substantial proof in support of his reply" .

Held: Proper Officer has opined that the reply is unsatisfactory and taxpayer failed to appear for personal hearing despite being given repeated opportunities - In case the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details - Order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication - Order passed accordingly: High Court [para 6, 7, 9]

- Petition disposed of: DELHI HIGH COURT

5. 2024-TIOL-253-HC-MAD-GST

Engineering Tools Corporation Vs Asstt.Commissioner of Service Tax

GST - Petitioner assails an assessment order dated 30.12.2023 by which the Input Tax Credit (ITC) availed of by the petitioner was reversed on the ground that the GST registration of the relevant supplier M/s Shikhar Technologies was cancelled with retrospective effect.

Held: It is abundantly clear that the contentions of the petitioner were rejected entirely on the ground that the petitioner should have proved the existence of M/s. Shikhar Technologies - Petitioner purchased goods in 2017-2018 and, at the highest, the petitioner may be called upon to produce evidence of the existence of the supplier at the relevant point of time - In the case at hand, it appears that the petitioner submitted such documents but these documents were disregarded - Impugned assessment order is quashed and the matter is remanded for reconsideration - The ITC claim shall not be rejected upon such reconsideration solely on the ground that the supplier's GST registration was cancelled with retrospective effect and a fresh assessment order shall be issued upon reconsideration, after providing a reasonable opportunity to the petitioner, within a maximum period of two months - Petition disposed of: High Court [para 5, 6]

- Petition disposed of: MADRAS HIGH COURT

6. 2024-TIOL-242-HC-DEL-GST

K M Food Infrastructure Pvt Ltd Vs Director General DGGI

GST - Petitioners pray for issuance of directions declaring resumption of currency as recorded vide Panchnama dated 04.10.2021 as illegal, arbitrary and contrary to the provisions of law and for further directions to the respondents to return the resumed currency to the petitioners.

Held: Issue for determination is whether the Officers of the respondents had any power to seize the cash under Section 67 of the Act - Expression 'goods' is defined in Sub-section (52) of Section 2 of the Act - Cash is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act - Bench is in agreement with the view taken by the Co-ordinate Bench [Deepak Khandelwal Vs. Commissioner of CGST Delhi West] that the word "things" appearing in Section 67 of the CGST Act, 2017 does not include "money" and, therefore, that being so, action on the part of the Officers of the respondents seizing/resuming the cash was illegal and arbitrary - Even otherwise, in accordance with sub section (7) of Section 67 thereof, when no notice in respect thereof is given within six months of seizure of the goods, the goods shall be returned to the person from whose possession they were seized - On this ground also, petitioners are entitled for the return of resumed cash - Undisputedly, petitioners had not handed over the cash to the concerned Officers voluntarily - The action taken by the Officers was therefore a coercive action - CGST Act does not support such an action of forcibly taking over the possession of the currency from the premises of any person - No justification for the resumption of the cash and its continued retention by the respondents - Petitions are, therefore, allowed with directions to the respondents to forthwith remit the proceeds of the fixed deposit (along with interest) to the bank account of the entities/person from whose possession the same was resumed during search conducted on 04.10.2021: High Court [para 17, 19, 24, 26, 28, 30]

- Petitions allowed: DELHI HIGH COURT

7. 2024-TIOL-240-HC-AP-GST

Penna Cement Industries Ltd Vs State of Andhra Pradesh

GST - Order in FORM DRC-07 under section 73 (9) of APGST / CST Act 2017 was passed on 1-11-2023 against the petitioner confirming the following liability of the petitioner for taxes/interest/penalty, in total for an amount of Rs. 2,53,69,897/- - Petitioner submits inter alia that since the period of limitation has not expired, the impugned notice could not be issued keeping deadline of 7 days for compliance.

Held : In view of Section 78 of the Act, the petitioner has three months' time, which has yet not expired, for making payment under the impugned order - Consequently, the impugned notice could not be issued or even if it has been issued, it cannot be implemented within the statutory period to make the payment - In view of the fact that the petitioner wants to file appeal with respect to the liability/the amount under Sl.No.1, let the petitioner file appeal within the statutory period after complying with the legal provisions to that extent - Insofar as the amount under Sl.No.2 is concerned, since the petitioner is ready to make the payment of the amount thereunder, in instalments and Section 80 of the Act provides for the authority to fix instalments for payment, to that extent, the petitioner shall approach the authority by filing appropriate application, manually, as it is submitted that the same is not being accepted electronically [such grievance may be attended and appropriately resolved for future], under section 80 of the Act, in the prescribed format, within a period of one week - The authority shall thereafter consider the petitioner's request for fixing the instalments for payment as per law - Writ petition is disposed of: High Court [para 11, 12, 14, 16]

- Petition disposed of: ANDHRA PRADESH HIGH COURT

8. 2024-TIOL-239-HC-KAR-ST

India Advantage Fund II Vs CCT

ST - Appeal is filed by assessee against order dated July 07, 2021 in Final Order No. 20372-20402/2021 passed by CESTAT - Revenue has raised an objection with regard to maintainability of this appeal contending inter alia that the assessee ought to have approached the Supreme Court u/s 35L of the CE Act; that it is settled that except an appeal involving the rate of duty, all other appeals are maintainable before the High Court - Revenue's specific case is that assessee is liable to pay the service tax whereas Assessee has denied the liability.

Held: In this case, there is no dispute with regard to rate of duty in this case - The question is whether assessee is liable to pay the duty - Therefore, in the considered view of the Bench, appeal is maintainable before the Court - The CESTAT has recorded in para 37.4 of the impugned order that, since the trust is treated as juridical person under SEBI, there is no reason why it should not be treated as a juridical person for taxation - This view of the CESTAT is untenable because, for the purpose of levy of tax, the entity has to be recognized under the said Act - Accordingly, Bench answers the first question as affirmative and in favour of the assessee - Assessee acts as a 'pass through', wherein funds from contributors are consolidated and invested by the investment manager - It acts as a trustee holding the money belonging to contributors to be invested as per the advice of the investment manager - It is not in dispute that contributors are institutional investors - Bench notes that doctrine of mutuality applies when commonality is established between the contributors and participators - In the instant case, the contributors and the trust cannot be dissected as two different entities because, it is an admitted fact that contributors investment is held in trust by the fund and it is invested as per the advice of investment manager - In substance, fund does not do an act, hence, there can be no service to self - Appeals are allowed: High Court [para 13, 16, 17, 21, 23]

- Appeals allowed: KARNATAKA HIGH COURT

9. 2024-TIOL-08-AAR-GST

Navya Nuchu

GST - Applicant have entered into agreement with the Scheduled Castes Development Department, Hyderabad District, Government Welfare Departmental Hostels, Government Social Welfare College Boys Hostel (Govt SWCBH) to rent out the property to run Social Welfare College Boys Hostel - Applicant seeks a ruling on the following question - Whether rent received from the Govt. SWCBH is taxable or not?

Held : There is no direct relation between the services provided by the applicant and the functions discharged by the GHMC under Article 243W read with schedule 12 to the Constitution of India - Therefore these services do not qualify for exemption under Notification No. 12/2017 - Application disposed of: AAR [para 7, 8]

- Application disposed of: AAR

10. 2024-TIOL-310-HC-PATNA-GST

Suman Devi Vs UoI

GST - Petitioner is aggrieved with the cancellation of registration. Held: Order impugned in the appeal was dated 28.01.2020 - An appeal was to be filed on or before 30.06.2022 as permitted by the Supreme Court [Cognizance For Extension of Limitation, In re - 2022-TIOL-04-SC-MISC-LB] and if necessary with a delay condonation application within one month thereafter - The appeal is said to have been filed only on 05.11.2023, after about one year five months from the date on which even the extended limitation period expired - Bench finds no reason to invoke the extraordinary jurisdiction under Article 226, especially since it is not a measure to be employed where there are alternate remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time - The law favours the diligent and not the indolent - Government had come out with an Amnesty Scheme by Circular No. 3 of 2023 but petitioner did not avail of such remedy also - Reason stated in the show-cause notice for cancellation of registration is that the petitioner has not filed returns for a continuous period of six months - The petitioner does not have a case that he had in fact filed a return in the continuous period of six months - No reason to invoke the extraordinary jurisdiction under Article 226 - Petition is, therefore, dismissed: High Court [para 3, 4, 5]

- Petition dismissed: PATNA HIGH COURT

11. 2024-TIOL-233-HC-MAD-GST

Supreme Paradise Vs Asstt.Commissioner

GST - Petitioner is engaged in retail sale of mobile phones - In the impugned orders, it has been concluded that discount on the value of supply can be allowed only in the cases specified in Section 15(3)(a) and (b) of the respective GST enactments - Counsel for Respondent revenue submits that the petitioner has an alternate remedy before the Appellate Commissioner and, therefore, the petitioner has to work out the remedy only before the Appellate Commissioner under Section 107 of the CGST/SGST Act on merits.

Held : As far as the petitioner is concerned, it is the "transaction value" that is relevant for payment of tax on the supplies effected by the petitioner - Where, the supplier offers discounts to buyer/recipient, such discount cannot form part of the "transaction value" of the buyer/recipient on further supply to his client or customer as the case may be - Thus, the discount offered to the petitioner can impact only the "transaction value" of the supplier of the petitioner - As far as the "transaction value" of the petitioner is concerned, it is the price which has been paid or actually payable for the supply of the goods - There is no scope for confusing the discount offered to the petitioner and the discounted price at which the petitioner effects further sale to its customers - They are two independent transactions and there is no scope for intermingling them for demanding tax from the petitioner - The discounted price at which the petitioner sells the goods is relevant only for determining the "transaction value" adopted by the petitioner - Unless, the discounted price itself was on account of the subsidy as a result of which while the supplier would have been compensated without including into the "transaction value" in the invoice, question of adding such value to the transaction value of the petitioner cannot be countenanced - Therefore, the impugned orders are quashed and the cases are remitted back to the respondent - The respondent is directed to pass order on merits in accordance with law, within a period of three (3) months - Writ petitions are allowed with the above observations: High Court [para 42, 44, 51, 52, 53, 54]

- Matter remanded: MADRAS HIGH COURT

12. 2024-TIOL-232-HC-MAD-GST

Sakthi Steel Trading Vs Asstt.Commissioner (ST)

GST - Specific case of the petitioner is that although the notice that preceded the impugned

order was sent by the respondent on the common portal and was received by the petitioner, the petitioner was unaware of the same and thus, the impugned order came to be passed without the petitioner giving a reply to the same.

Held: Rule 52 of the T.N. GST Rules, 1959 and Section 169 of the respective GST enactments are not exactly pari-materia with each other - Therefore, the decision decisions rendered in the context of Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 cannot be straight away applied to Section 169 of the respective GST Enactments - Section 169 of the respective GST enactments is a progressive provision intended to integrate technology with the assessment proceedings under the provisions of the respective GST Enactments - However, all men of commerce from the business community, particularly small traders, small service provider and small manufacturers may not be ready to receive and respond - They may be technologically challenged which may impair them to respond autonomously to emails sent to them - It would be incumbent on the part of the department to serve at least another notice once through any of the other modes of service of notice prescribed under Section 169(1) of the respective GST Enactments so as to ensure there communication and there is no violation of principles of natural justice - This will obviate recalcitrant and obstinate assessee's to scuttle the proceedings by stating that there is a violation of principles of natural justice - There has to be some amount of flexibility - Rigidity in the administration of tax in such matters may not serve the purpose and can be counterproductive - Impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits in accordance with law preferably within a period of 45 days - Writ petition stands allowed with the above observation: High Court [para 11, 12, 17, 18, 20, 21, 23, 24, 27]

- Petition allowed: MADRAS HIGH COURT

13. 2024-TIOL-230-HC-MAD-GST

Sri Ganesh Constructions Vs Asstt.Commissioner (ST)

GST - Impugned order has been passed cancelling petitioner's registration under the GST Act due to non-filing of the returns - Petition is filed against the impugned order.

Held: Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc. are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies - Though they are providing e-mail IDs at the time of Registration, the applications are prepared by some agents by creating an e-mail IDs, however, in reality most of the Traders are not accustomed with handling of e-mails - They are also not aware about the consequences of not filing the Returns in Time - The department shall workout the possibilities of issuing these notices in the respective regional languages and also by SMS and registered post - So that, the uneducated traders can also respond to these notices, to some extent, otherwise, these notices will be an empty formality and will not serve any purpose for which it has been issued - The object of any Government is to promote the trade and not to curtail the same - The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner - No useful purpose would be served by keeping the petitioners out of the Goods and Service Tax regime - Writ petition is allowed and the impugned order dated 03.02.2023 is set aside - The petitioner is directed to file returns within a period of six weeks: High Court [para 10, 11, 12]

- Petition disposed of: MADRAS HIGH COURT

14. 2024-TIOL-229-HC-P&H-GST

Global Health Ltd Vs UoI

GST - The precise grievance of the petitioner before this Court is that while filing form GSTR-3B for the month of September 2017, on 20.10.2017, the Petitioner had mistakenly paid liability of SGST under reverse charge mechanism amounting to Rs.17,48,958/- though the liability for same was Rs. 88,844/- only -

Refund claim has been rejected on the ground of the same being time barred - As the appellate authority has affirmed this order, the present petition.

Held: In the present case, the petitioner initially filed the form GSTR-3B for the month of September on 20.10.2017 - But since excess amount was paid by mistake, the petitioner filed refund application dated 18.10.2019 i.e. within a period of two years and on 01.11.2019, the deficiency memo was issued after two years of filing of the form GSTR-3B - Thus, keeping in view the fact that the petitioner has filed the refund application within a period of two years i.e. on 18.10.2019, his second application dated 05.11.2019 after removing the deficiency, could not have been rejected on the ground that it was time barred - Order are set aside and the matter is remanded to the adjudicating authority to consider afresh: High Court [para 13]

- Matter remanded: PUNJAB AND HARYANA HIGH COURT

15. 2024-TIOL-224-HC-KOL-GST

Fairdeal Metals Ltd Vs Asstt.Commissioner of Revenue State Tax

GST - Availing bogus ITC - Petitioner prays for cancellation of the detention order, the SCN and the subsequent impugned order - Allegation is that the supplier Company has been set up solely for the purpose of circulating bogus ITC.

Held: It appears that though there was an allegation of non-existence of the supplier Company leading to non-deposit of the input tax credit but later on 30.12.2023, that is prior to issuing of the show cause notice on 31.12.2023, the supplier Company already deposited the input tax - By way of payment of tax, the allegation of intention to evade tax falls flat - After registration has been issued and tax paid by the supplier Company, the allegation made against the supplier Company does not stand - The petitioner being no way connected with any of the allegations that has been levelled against the supplier Company, cannot be made liable to pay penalty as has been assessed - Order of detention and the subsequent order imposing penalty is quashed and set aside - Respondent no.1 is directed to forthwith take steps to release the vehicle and the goods in favour of the petitioner at the earliest, but positively within a period of 48 hours - Petition disposed of: High Court

- Petition disposed of: CALCUTTA HIGH COURT

16. 2024-TIOL-204-HC-KOL-GST

Mohammad Shamasher Vs State of West Bengal

GST - s.129 - The petitioner has been held liable for payment of penalty of a sum of Rs. 9,93,008/- for contravention of the provision of the Act and the Rules made thereunder - The petitioner has executed a bank guarantee for the above sum subject to which the JCB machine has been released provisionally - Specific case of the petitioner is that under the provision of Section 129 (3) of the Act, the respondent authority does not have the power to evaluate and adjudicate the quantum of tax.

Held: In the present case there was a valid e-way bill in support of the transportation - It is only because of non-production of the delivery challan that the penalty has been assessed and imposed - Though possession of all documents in support of transportation is the fundamental requirement of law, but as it appears that, the petitioner did not have the intention to evade tax, accordingly, imposition of penalty at the rate of 200% of the tax payable appears to be highly disproportionate and not in accordance with the provisions of law - Impugned order passed by the adjudicating authority affirmed by the appellate authority is liable to be set aside and is accordingly set aside - The adjudicating authority is directed to revisit the issue in line with the discussions made and pass a reasoned order - A decision shall be taken at the earliest but positively within a period of eight weeks: High Court [para 21, 22]

- Petition disposed of: CALCUTTA HIGH COURT

17. 2024-TIOL-149-HC-MAD-GST

ABT Ltd Vs Addl.CGST & CE

GST - Show cause notice under Section 74 of the CGST Act on 14.12.2023 in respect of about 5 audit observations was issued and this SCN is the subject of the present challenge - First ground of challenge is that the audit report did not record findings of fraud, wilful-misstatement or suppression of fact in respect of any of the observations made therein and, therefore, in the absence of such findings in the audit report, the proper officer does not have the jurisdiction to proceed under Section 74 - The second ground of challenge is that intimation in Form GST DRC-01A was not issued to the petitioner - Counsel for Revenue submits that Section 65 of the CGST Act does not prescribe that the audit report should contain findings that it is an appropriate case for action under Section 74 of the CGST Act and, therefore, the SCN is in accordance with law; that petitioner should respond to the SCN and raise objections; that, therefore, writ petition is liable to be dismissed.

Held: There is nothing in the language of Section 65 to indicate that the audit report should contain such findings of fraud or wilful-misstatement or suppression of facts - On the contrary, subject to the audit report disclosing the aforesaid, sub-section (7) of Section 65 prescribes that the proper officer may initiate action under Section 73 or 74 - Thus, the relevant provision indicates that the proper officer has the option - It is needless to say that the proper officer has to allege fraud, wilful-misstatement or suppression of fact, if he initiates action under Section 74 - It is not the petitioner's case that such assertions or allegations are not contained in the show cause notice - The show cause notice in Form GST DRC-01A was issued on 14.12.2023, which is subsequent to the date of amendment to Rule 142(1A) [replacing the word 'shall' with 'may'] - Therefore, even if the amendment is prospective, the amendment would apply with regard to the impugned show cause notice - No case is made out to interfere with the impugned show cause notice - Petition dismissed: High Court [para 6, 7, 8]

- Petition dismissed: MADRAS HIGH COURT

18. 2024-TIOL-141-CESTAT-MAD

Gold Quest International Pvt Ltd Vs CC

Cus - Pursuant to Tribunal's Final Order dated 4.11.2013 , the appellant herein, filed refund application dated 08/07/2015 for differential duty amount of Rs.25,27,89,159/- i.e. nearly 20 months after the date of the Tribunal final order - The amount was initially paid by the importer M/s. ICICI Bank 'under protest' vide letter dated 16-June-2008 on behalf of the appellant (buyer) towards 'gold and silver medallions' imported vide bill of entry dt. 03-July-2007 - After due process of law, the original authority rejected the refund claim on the ground of time-bar and on the ground of unjust enrichment - In appeal, the Commissioner (Appeals) upheld the adjudication order and rejected the appeal of the appellant on the ground of time bar - Hence, the present appeal. Held: The main issue that arises for resolution is whether the refund claim filed on the basis of CESTAT order dated 04/11/2013 is hit by limitation of time in spite of the importer having registered a 'Protest' at the time of making a deposit towards duty prior to adjudication - No further appeal has been filed against the said CESTAT order and hence the same has attained finality - An assessee can pay duty 'under protest' by either filing a letter of protest as provided by the Rules or by filing an appeal against the order on the basis of which the duty has been deposited or by taking both the actions - Consequent to a letter of protest being filed, the matter would come up for a decision before the appropriate forum and an order passed would automatically vacate the protest, whether the decision is in favour or against the assessee - If the order is in favour of the assessee he can file a refund claim within the statutory time period as per section 27(1B)(b) of the Customs Act or if it goes against him he may file a further appeal against the said order as provided in law till the matter attains finality - An order passed finalizing the lis which vacates the protest and a letter of protest / protest cannot co-exist - There cannot be more than one legal position which are contradictory in nature on the same issue at a given point of time, more so when the protest is vacated by way of an order - Hence, once an order is passed in a matter where a protest is vacated by the issue of an order by the proper officer, the second proviso to section 27(1) ceases to apply and section 27(1B)(b) takes over - Since the filing of the initial appeal

itself means the registration of a 'protest', holding that the 'protest' would survive for perpetuity till the person concerned seeks to enforce his right, cannot be the interpretation of section 27 - Such an interpretation would render section 27(1B)(b) otiose - Lower authority has taken a view which is reasonable, legal and proper and Bench is in agreement with it - Impugned order is upheld and appeal is rejected: CESTAT [para 4, 9, 10, 12, 13, 17]

- Appeal rejected: CHENNAI CESTAT

19. 2024-TIOL-137-CESTAT-MAD

CC Vs Michelin India Pvt Ltd

Cus - The Respondent-Importer requested for registration in Special Valuation Branch (SVB) for their imports from M/s. Manufacture Francaise Des Pneumatiques Mechelin (MFPM), France and its group companies and subsidiaries (herein after referred as supplier/foreign company) - Pursuant to this, order was passed on 31.12.2015 which was valid and operative for three years upto 28.12.2018 - In the said order dated 31.12.2015 it was held by the adjudicating authority that the royalty paid by Importer during 2014-2015 to the overseas supplier and also further royalty payments, whenever made, has to be included in the transaction value as per Rule 10 (1) (c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - Against this order directing to add the royalty payment in the assessable value, the Respondent-importer filed appeal before the Commissioner (Appeals) and vide order impugned herein, the Commissioner (Appeals) set aside the order of adjudicating authority to the extent of directing to add the royalty payment in the assessable value - Aggrieved by such order, the Department is now before the Tribunal. Held - It can be seen that Commissioner (Appeals) has thoroughly examined the Trademark and Technology License Agreement - The Article 3 of the Agreement provides for payment of royalty by the Respondent - The Agreement is executed by Respondent with two group entities; viz., M/s. CGEM and M/s. MRT - The Respondent has to pay 4% of net sale value of the licensed manufactured products - This royalty is to be divided in the ratio of 13/16 to M/s. CGEM and 3/16 to M/s. MRT - The counsel has asserted that these entities are not supplying any capital goods or raw materials to the Importer - The capital goods and raw materials are supplied by M/s. MFPM, France and its group companies - The capital goods procured from M/s. MFPM are not manufactured by M/s. MFPM itself - They procure it from other and after adding mark-up has supplied to the Appellant - Again, the royalty payments does not make it obligatory for the Appellant to purchase the capital goods / raw materials from one supplier only - TheAppellants are free to source these from any qualified / approved suppliers - In the present case, apart from contending that foreign entities are group companies, no evidence is adduced to establish that the relationship has influenced the price - Hence the order does not require any interference with: CESTAT

- Appeal dismissed: CHENNAI CESTAT

20. 2024-TIOL-34-SC-ST

CGST & CE Vs Ocean Interior Ltd

ST - Department was of the view that the appellants failed to include the value of materials consumed by them while providing the finishing services - Further, it was seen from the invoices raised by the assessee to their client that they were paying VAT on 79.85% of the value of invoices and Service Tax on 20.15% of the remaining value - The Department was of the view that the appellant has to pay Service Tax on the gross amount received for completion and finishing services - demand confirmed and penalty imposed, therefore, assessee in appeal before CESTAT, which held that Rule 2A continues after 2012 also and the Composition Scheme has been replaced and inbuilt in the Rules itself in a different form whereby the service portion in Works Contract is specified at a percentage of gross value based on the nature of activities on which normal Service Tax rate applies instead of a lower composition rate on the gross value under the erstwhile composition scheme - Thus, the principle of valuation of taxable service under the amended provisions also remains the same - The appellant has arrived at the value of service portion of Works Contract Service as per Rule 2A (i) whereas the

Department has proceeded to arrive at the value as per Rule 2A (ii) for the period after01.07.2012 and under the Composition Scheme for the period prior to 01.07.2012 - Rule 2A (ii) would apply only if the value is not determined under clause (i) - The appellant in the present case has arrived at the value and also paid VAT as per the VAT Law - The value of transfer of property in goods has to be arrived at on the basis of purchase price of various goods, apportionment of overheads and profit margin - The appellant, being an assessee under the VAT Law, has to abide by the state law for payment of VAT - Thus, he can only arrive at the value of goods used in the Works Contract by applying the VAT Law after deducting the value arrived for payment of VAT; the remaining portion has been subjected to payment of Service Tax - When VAT has already been paid on the value of goods, the same cannot be subjected to levy of Service Tax again - The Apex Court in the case of M/s. Safety Retreading Co. (P) Ltd. held that the assessee is liable to pay Service Tax only on the service component, which under the State Act was quantified at 30% - It was also held in that case that the assessee is not liable to pay Service Tax on the total amount for retreading including the value of materials/goods that have been used and sold in execution of the contract - Tribunal in M/s. Sobha Developers Ltd. held that the material value sought to be included on the ground that goods are consumed in provision of service and not sold, cannot sustain - Bench is, therefore, of the considered opinion that the appellant has correctly discharged Service Tax on the service portion - demands were quashed. Held - There are no grounds no interfere with the order passed by the CESTAT - Appeal dismissed along with pending applications: SC

- SLP dismissed: SUPREME COURT OF INDIA

21. 2024-TIOL-353-HC-MAD-CUS

Integra Garments And Textiles Ltd Vs UoI

Cus - Petitioner has challenged the impugned show cause notice dated 28.08.2019 issued by the third respondent seeking to recover Customs duty on the imports made by petitioner - Petitioner submits that the show cause notice is issued in the name of M/s. Fabritex Exports Pvt Ltd which has ceased to exist long before on account of mergers and de-mergers and, therefore, the SCN is liable to be quashed - It is the contention of the respondents that the importer has failed to fulfil the export obligations and produce Export Obligation Discharge Certificates (EODC) within the prescribed time/extended time prescribed and thereby has violated the conditions of the notifications under which the goods were imported without payment of duty.

Held: M/s Fabritex Export Pvt. Ltd., was issued the Advance Authorization using which in the month of December, 2005 and the said Fabritex Export Pvt.Ltd ., imported four consignment of materials and filed four Bills of Entry with Customs House, Chennai for the assessment of imported goods after which the Show Cause Notice dated 29.08.2019 was issued - Pursuant to the order passed by the High Court of Karnataka dated 11.12.2009, Fabritex Exports Pvt.Ltd ., was merged with one M/s. Integra Apparels and Textiles Ltd. [the petitioner] - There is no merit in these writ petitions challenging the impugned show cause notice - Merely because, the noticee company has been merged with the petitioner company ipso-facto would not mean the liability of the noticee company would stand extinguished on account of its merger with the petitioner company - Under the scheme of amalgamation sanctioned by the High Courts, transferee company like the petitioner herein would not only have taken over the assets but also liability of the transferor like the noticee company - In any event, the liability incurred by the noticee company which merged with the petitioner company cannot stand extinguished on account of its merger with the petitioner - Merger or amalgamation of companies is not a tool under law to either facilitate avoidance and evasion of tax liability already incurred by a transferor company like the Noticee - Show Cause Notice proceeding cannot be scuttled - Petitioner is directed to file reply to SCN within one month - Entire exercise shall be completed within a period of six months - respondents are directed to adjudicate the same and pass orders on merits within a period of three months thereafter - Petition dismissed: High Court [para 14, 21, 22, 23, 24, 27, 29]

- Petition dismissed: MADRAS HIGH COURT

22. 2024-TIOL-35-SC-ST

CST Vs Hindustan Construction Company Ltd

ST - The issue at hand relates to confirmation of duty demand under section 73(2) of Finance Act, 1994 along with statutory interest on confirmed amount as per provision of section 75 with equal penalty under Section 78 and additional penalty under Section 77 of said Act against appellant for providing 'corporate guarantee' to one M/s Lavasa Corporation Ltd against loan obtained from various financial institutions in exchange of 'credit protection fee' - When both corporate guarantee and bank guarantee are held to be akin to each other, the only inference that can be drawn is that incorporation of one of it would mean presence of other - Having said so, Tribunal have no second opinion on the issue that purpose of 'corporate guarantee' and 'bank guarantee' are one and same and while one is the species the other one is its genesis - Difference that is undisputedly there is that "bank guarantee" is open to all its consumers while corporate guarantee is confined to subsidiary or related units of company - On appeal, the CESTAT held that the contention of appellant that they being registered under Indian Companies Act, 1956 is not a 'body corporate' is unacceptable for the reason that Section 2(11) of Companies Act, 2013 defines 'body corporate' to include a private company, public company, personal company, small company, limited liability partnership and foreign company including a corporation incorporated under Companies Act, 1956 - The appellant having received consideration against providing guarantee to its related company M/s Lavasa Corporation Ltd in the form of 'corporate guarantee' and 'credit protection guarantee' service is liable to pay service tax and therefore, demand raised against appellant is justified except for extended period since the issue remained unsettled due to divergent opinion expressed by different judicial forums - The order passed by Commissioner was modified to the extent of setting aside the liabilities imposed on appellant for extended period.

Held - Notice issued to parties concerned: SC

- Case deferred: SUPREME COURT OF INDIA

23. 2024-TIOL-350-HC-KERALA-GST

Evershine Agro Spices Vs State Tax Officer

GST - 1st respondent blocked the Input Tax credit of the appellant invoking rule 86A of the Rules, 2017 - Such communication was challenged before Single Judge who dismissed the writ petition, hence the present appeal - It was found that the business establishment of the appellant was not functioning at the registered place, as he declared - Accordingly, input tax credit of the appellant was blocked based on the enquiry conducted by the Enforcement Officer, Enforcement Squad, Karukutty , as part of the anti-fake invoice drive of the CGST department.

Held : Appellant was given the opportunity to produce the documents, if any, to show that his business establishment was functioning at the registered place and that he was actually conducting business therein - Even though the appellant produced a few documents, none of them show that he is physically occupying the building or conducting any business there - The electricity bill produced by the appellant shows that the consumption of electricity for the last month was zero - In these circumstances, Bench does not find any reason to remit the matter to the respondents - The appeal fails, and accordingly, it is dismissed: High Court [para 3]

- Appeal dismissed: KERALA HIGH COURT

24. 2024-TIOL-210-CESTAT-DEL

CCE & ST Vs Oriental Insurance Company Ltd

ST - The Department filed the present appeal to assail order passed by the Adjudicating Authority, wherein demand was raised and penalty was imposed in respect of the relevant period - The demands had been dropped on the ground that they pertained to a period even beyond the extended period of limitation of 5 years as contemplated in Section 73 of the Finance Act, 1994 - The Department had also filed this appeal for imposition of penalty equal to 100% of the amount of service tax confirmed under section 78 for the period prior to April 08, 2011 instead of 50% by the Commissioner.

Held - The Tribunal held that the extended period of limitation could not have been invoked and therefore, it is immaterial whether the demand has been confirmed for the period which is within the period of five years or beyond the period of five years and as penalty under section 78 has also been set aside, it is also immaterial whether penalty equal to 50% of the amount of service tax or 100% should have been confirmed prior to April 08, 2011 - Hence the appeal lacks merit: CESTAT

- Appeal dismissed: DELHI CESTAT

25. 2024-TIOL-335-HC-DEL-CUS

Raj Kumar Batra Vs CC

Cus - Petitioner is seeking directions for refund of pre-deposit made as redemption fine and penalty along with interest in compliance to the final order passed by CESTAT.

Held: Section 27-A clearly provides for the payment of interest on the delayed refund on customs duty - It is manifest from the Section that deposit of penalty, redemption money or bank guarantee do not fall within the ambit of Section 27-A of the Act, not being custom duty - Thus, Section 27-A is not attracted in the facts and circumstances of the case - Section 129-EE provides for the payment of interest on delayed refund of the amount deposited under Section 129-E - Revenue cannot be permitted to enrich itself at the cost of the petitioner - It may have earned the interest on the redemption and the penalty amount deposited by the petitioner, which amount was ultimately found to be refundable - Respondent is under obligation to grant interest to the petitioner on the whole amount of Rs.9,30,000/- (redemption charges and penalty) and not just on the pre-deposit amount, which was the statutory requirement under Section 129E of the Customs Act, 1962 - Bench directs the respondent to refund Rs.9,30,000/- to the petitioner along with interest at the rate of 6% per annum from the date of the deposit till the date of refund - Petition disposed of: High Court [para 17, 20, 25, 27, 28]

- Petition disposed of: DELHI HIGH COURT

26. 2024-TIOL-331-HC-ALL-GST

Akhilesh Traders Vs State of UP

GST - Petitioner is aggrieved by the order imposing penalty u/s 129(3) of the Act, 2017 - Undisputed facts in the present case are that the goods were intercepted and upon interception, no E-Way Bill, invoice and Bilty were present in the vehicle carrying the goods - Subsequent to the interception, these documents were produced by the assessee - Petitioner relies on decisions of the Court and submits that the intention to evade tax must be present and it is the duty of the Department to indicate such intention to evade tax.

Held : In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill - Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government - It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods - No interference is required with regard to the impugned orders - Petition is dismissed: High Court [para 8, 9]

- Petition dismissed: ALLAHABAD HIGH COURT

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