Newsletter - April 2024

Vishnu Daya & Co. LLP

Chartered Accountants

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Direct Tax – Circulars and Notifications

Circulars issued by CBDT in the month of March 2024

1. **CBDT clarifies on trusts' exemption eligibility on inter-trust donations**

   Circular no. 3 / 2024, dated 6th March 2024

   CBDT clarifies that eligible donations made by a trust / institution to another trust / institution under any of the two regimes (Sec.10(23C) or Sec.12AA/12AB) shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. Also clarifies that 15% of such donations by the donor trust / institution shall not be required to be invested in specified modes under section 11(5) as the entire amount has been donated to the other trust / institution and is accordingly eligible for exemption under the first or second regime.

   Click here to read /download the circular.

2. **CBDT waives late fee & interest on delayed Form 26QE filing for Jul'22-Feb'23 upto May'23**

   Circular no. 4/ 2024, dated 7th March 2024

   CBDT grants ex post facto extension of due-date for filing of Form No. 26QE upto May 30, 2023 for TDS under Section 194S (Payments on VDA transfer) pertaining to Jul 1, 2022 to Feb 28, 2023. CBDT takes cognizance of: (i) the fact that due to unavailability of Form No. 26QE, tax deductors under Section 194S could not file Form No.26QE for the period Jul 1, 2022 to Jan 31, 2023 and pay corresponding TDS on or before the due date, (ii) consequential levy of fee under section 234E and Section 201(1A)(ii) interest, (iii) insufficient time for TDS payment and Form No. 26QE filing pertaining to Feb 1, 2023 to Feb 28, 2023. Thus, decides to extend the due date of filing of Form No. 26QE to May 30, 2023 for those who deducted tax at source under Section 194S for the period Jul 1, 2022 to Feb 28, 2023 but failed to file Form No. 26QE. Waives fee under Section 234E and interest charged under Section 201(1A)(ii) for the period upto May 30, 2023.

   Click here to read /download the circular.

3. **CBDT Circular expands avenues for Revenue's appeal-filing but retains monetary limits**

   Circular no. 5/ 2024, dated 15th March 2024

   CBDT issues Circular for administering filing of appeals by the Revenue before ITAT, High Courts and Supreme Court. CBDT retains the monetary limits at Rs.50 lacs, Rs.1 Cr and Rs.2 Cr for filing appeals before ITAT, HC and SC respectively. Supersedes Circular No.3 / 2018 as amended by Circular 17 / 2019 and CBDT's Letter dt. Aug 20, 2018 and expands the scope of filing of appeals by the Revenue with regard to cases involving TDS, international tax, information received from other government agencies, penny stock, accommodation entries, among others. The Circular comes into effect from the date of its issuance and shall apply only in respect of appeals to be filed henceforth.

   Click here to read /download the circular.

Notifications issued by CBDT in the month of March 2024

1. **CBDT notifies ITR-7 for AY 2024-25**

   Notification no. 24 / 2024, dated 1st March 2024

   CBDT, vide Notification No. 24/2024 dated Mar 1, 2024 notifies ITR-7 for AY 2024-25.

   Click here to read /download the notification.

2. CBDT notifies amendments in tax audit report & tonnage tax application

Notification no. 27 / 2024, dated 5th March 2024

CBDT, notifies amendments to Forms 3CD and 65. In Form 3CD, among amendments in other clauses, in clause 21 - nature of expenditure - disclosure is now required for: (a) "Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)", (b) "Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India", and (c) "Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person", (vi) Further in clause 21 - Details of payment where tax deducted but not paid by Section 139(1) due date - name and address of the 'payee' is required to be disclosed, (vii) clause 26 - Section 43B(h) is inserted.

Click here to read /download the notification.

3. Govt. invokes MFN Clause, notifies lower Royalty & FTS tax-rate in India-Spain DTAA.

Notification no. 33 / 2024, dated 19th March 2024

The Ministry of Finance, notifies amendment in Article 13 that deals with Royalty and FTS, w.e.f. AY 2024-25. The notification substitutes Article 13(2) to read as follows: "However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed ten per cent of the gross amount of royalties or fees for technical services". The Finance Ministry notifies this amendment in the light of India-Germany DTAA read with the paragraph 7 of the Protocol to India-Spain DTAA which contains the MFN clause with respect to OECD member entering into a treaty with India and limiting source based taxation of royalties or FTS to a rate lower than the rate provided in India - Spain DTAA.

Click here to read /download the notification.

4. CBDT notifies ITR Verification & Acknowledgment forms for AY 2024-25

Notification no. 37/ 2024, dated 27th March 2024
Notification no. 2 / 2024, dated 31st March 2024

CBDT, notifies forms for verification and acknowledgment of ITRs for AY 2024-25. ITR Verification form i.e. ITR-V provides that date of filing ITR shall be construed as under - Where ITR data is electronically transmitted and ITR-V is submitted within 30 days of transmission of data then the date of transmitting the data electronically shall be considered as the date of furnishing ITR. If the return of income isn't verified within 30 days from the date of uploading or until the due date for furnishing the return of income as per the Income-tax Act, 1961 – whichever is later – it will be considered invalid due to non-verification.

Click here to read /download the **Notification no. 37/ 2024, dated 27th March 2024**

Click here to read /download the **Notification no. 2 / 2024, dated 31st March 2024**

Direct Tax – Legal Rulings

Tax Rulings in the month of March 2024

1. **HC: Upholds reassessment since no variation in foundational material behind reasons recorded & supplied**

   Seema Gupta [TS-207-HC-2024(DEL)]

   Delhi HC dismisses Assessee's writ petition challenging reassessment proceedings on the ground that there is distinction between the reasons supplied to the Assessee from the reasons as existing on the record of the Revenue.

   Revenue having reason to believe that income of the Assessee had escaped assessment. Thus, holds, *"aforesaid minor difference would in our considered opinion consequently have no conceivable impact on the validity of the proceedings"*. Finds that in the reasons recorded by the Revenue there is a clear and unequivocal expression of opinion of the Revenue with respect to the material on the basis of which reassessment was sought to be commenced. Holds *"There is thus no variation or difference in the foundational material on the basis of which the AO came to form the opinion that income has likely to have escaped assessment"*.

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

2. **HC: Upholds constitutionality of distinction between Govt. & other employees for leave encashment exemption**

   Purnendu Shekhar [TS-146-HC-2024 (PAT)]

   Patna HC rejects constitutional challenge to Section10(10AA) by holding that differentiation made between the Government employees and the other employees for leave encashment exemption is neither discriminating nor violative of the Article 14 of the Constitution. Holds that a retired SBI employee (Assessee) cannot claim parity with Government employees. Held that the employees of PSUs and Nationalized Banks are not at par with Government employees, cannot claim the same legal rights as latter. Dismisses Assessee's writ petition.

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

3. **HC: Upholds prosecution for non-filing ITR as trial underway, directs completion within 3 months**

   Vinayagam Sabarisanthanakrishnan [TS-167-HC-2024(MAD)]

   Madras HC upholds prosecution initiated under Section 276CC for wilful failure to file return of income within due date where trial already commenced. Allows Assessee to raise all grounds before the Trial Court and directs the Court to complete the proceedings within a period of 3 months.

   Assessee-Individual failed to file his return for AY 2014-15 within due date despite having earned substantial income and pleaded that delay was due to his ill health whereas the Revenue contended that the delay was wilful. HC observes that the only criterion for initiation of prosecution is that there must be a wilful failure to furnish returns under Section 139(1) and once that requisite is fulfilled, the statutory presumption under Section 278E starts operating. HC observes, "*it is not as if the petitioner has paid the tax and there was only a delay in filing the returns. The petitioner cannot assume that TDS will cover the entire tax liability for the AY even without filing his returns and declaring his total income*".

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

4. **HC: Confirms attachment of property for tax recovery. Explains third party's right**

K N Subramaniam [TS-183-HC-2024(MAD)]

Madras HC upholds the order of tax recovery officer (TRO) directing the registration authorities to restore the ownership of property to the Assessee in default and further confirming the attachment of property by the Revenue for recovery of tax from the Assessee.

Holds that Petitioner (the buyer of property) can claim right over subject property only by instituting a suit in a civil court as stipulated in Rule 11(6) of the Second Schedule of the Act. In the instant case, the sale of the subject property to the Petitioner was followed by an order of attachment by the Revenue. Thus, dismisses the writ petition directing Petitioner to institute a suit in a civil court to establish the right which he claims over the property in dispute.

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

5. **ITAT: Holds issuance of letters of comfort/support as international-transaction. Distinguishes from earlier order.**

Asian Paints Ltd [TS-81-ITAT-2024(Mum) - TP]

Mumbai ITAT rules on TP adjustment made on account of non-recovery of charges for providing the letter of comfort/support for Asian Paints Ltd (engaged in manufacturing paints and enamels) for AY 2012-13. Notes that the Assessee issued letters of comfort/support to the banks on behalf of some of its AEs (i.e. Asian Paints (Bangladesh) Ltd. and Berger International Ltd, Singapore) who availed loans of Rs.123.46 crore from banks outside India and reported it as its contingent liability in Note-25 of the Notes to Financial Statements.

Noting that the Assessee issued letters of comfort on behalf of its AEs outside India, ITAT states that first condition for being an international transaction as per Sec.92B is satisfied. Further, notes that "*the Assessee has not only considered the corporate guarantees issued to certain banks on behalf of its subsidiaries as its contingent liability but has also considered the letters of comfort/support to banks on behalf of some of its subsidiaries as its contingent liability*". Additionally, notes that the Assessee already accepted corporate guarantee to be an international transaction. Thus, ITAT holds that letters of comfort issued by the Assessee which has been admitted to be a liability by the Assessee and thus have a bearing on the assets, constitutes an international transaction within Sec.92B.

Distinguishes the Assessee's reliance on ruling in *Assessee's own case for AY 2009-10* wherein issuance of a letter of comfort/support was held as not being an international transaction, notes that in given case, Assessee, vide letters of comfort, not only undertook to use its best endeavour to see that obligations of the subsidiary are met as and when they fall due but also treated the liability as a contingent liability in its financial statement. However, ITAT confirms CIT(A)'s computation of ALP of the letter of comfort to be @0.04% concurring with the Assessee that corporate guarantee issued by the Assessee cannot be compared with the letters of comfort.

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

Indirect Tax Updates

CUSTOMS UPDATES

Tariff Notifications:

1. **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 entries shall 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";

Notification No. 13/2024-Customs

2. **The government has amended specific tariff items in Chapter 90 of the 1st schedule of Customs Tariff Act, 1975 vide Notification No.15/2024-Customs.**

3. **The government has amended Notification No. 50/2017-Customs dated 30.06.2017 so as to change the applicable BCD rate on specified parts of medical X-ray machines.**

- ✓ against S. No. 563A, in column (3), in entry (ii), for item (e), the following item shall besubstituted, namely: -

  "(e) High Frequency X-Ray Generator (>25KHz) (9022 14 10);"

- ✓ after S. No. 563A, the following S. Nos. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
"563B	9022 14 10	High Frequency X-Ray Generator (>25KHz, >=500mA) for use in manufacture of X-ray machines for medical, surgical, dental or veterinary use (9022 14 20 or 9022 14 90)	10%	-	9
563C	9022 90 90	The following goods for use in manufacture of X-ray machines for medical, surgical, dental or veterinary use (9022 14 20 or 9022 14 90), namely: - (i) Vertical Bucky; (ii) X-Ray Tube Suspension; (iii) X-Ray Grid;	10%	-	9
563D	9022 29 00 or 9022 90 90	Multi Leaf Collimator/ Iris for use in manufacture of X-ray machines for medical, surgical, dental or veterinary use (9022 14 20 or 9022 14 90)	10%	-	9";

- ✓ against S. No. 564, in column (3), for item (e), the following item shall be substituted, namely: -

  "(e) High Frequency X-Ray Generator (>25KHz) (9022 14 10);".

Notification No. 16/2024-Customs

4. **The government has amended notification No. 57/2017-Customs dated 30.06.2017 so as to modify BCD rates on certain smart wearable devices.**

   ✓ against S. No. 20, in column (3), in item (a), for the symbols and words "(commonly known as smart watches);", the symbols and words "(commonly known as smart watches) and other smart wearable de-vices including smart rings, shoulder bands, neck bands or ankle bands;" shall be substituted.

   Notification No. 17/2024-Customs

5. **The government has amended notification No. 25/2021- Customs dated 31.03.2021, in order to notify fourth tranche of India-Mauritius CECPA vide Notification No. 18/2024-Customs**

6. **The government has amended No. 50/2017-Customs, dated the 30th June, 2017 to give concession to EVs imported under of the Ministry of Heavy Industries' Scheme to promote manufacturing of electric passenger cars in India.**

   ✓ in the Table, for S. No. 526A and the entries relating thereto, the following S. No. and entries shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
"526A.	8703	Electrically operated vehicles, if imported: - (1) incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, including battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor, whether or not individually pre-assembled, with – (a) none of the above components, parts or sub-assemblies inter-connected with each other and not mounted on a chassis	15%	-	-
		(b) any of the above components, parts or sub-assemblies inter-connected with each other but not mounted on a chassis	35%	-	-
		(2) in a form other than (1) above, - (a) with a CIF value more than US $40,000	100%	-	-
		(b) other than (a) above	70%	-	-
		(c) with a minimum CIF value of US $35,000 imported in terms of provisions of the 'Scheme to promote manufacturing of electric passenger cars in India' notified *vide* S.O. No. 1363 (E) dated 15th March, 2024, by the Ministry of Heavy Industries: Provided that nothing contained in item (2)(c) in this S. No. shall have effect after the 31st March, 2031.	15%	-	117";
		Explanation. – For the removal of doubts, the exemption contained in items (1)(a) and (1)(b) of this entry shall be available, even if one or more of the components, parts or sub-assemblies required for assembling a complete vehicle are not imported in the kit, provided that the kit as presented, is classifiable under the heading 8703 of the Customs Tariff Act, 1975 as per the general rules of interpretation.			

   ✓ in the Annexure, after condition number 116 and the entry relating thereto, the following condition number and entry shall be inserted, namely: -

(1)	(2)
"117.	If the importer, at the time of import, furnishes a certificate from an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Heavy Industries (MHI) to the effect that,- (i) the importer holds a valid Approval Letter issued by the Ministry of Heavy Industries under the 'Scheme to promote manufacturing of electric passenger cars in India' notified *vide* S.O. No. 1363 (E) dated 15th March, 2024, by the Ministry of Heavy Industries; (ii) the importer satisfies the conditions of the aforesaid scheme and the quantity of the vehicles being imported is within the limits prescribed in Para. 1.3.5 and para. 1.3.6 of the aforesaid scheme; and (iii) the importer is eligible for grant of this exemption in respect of the goods being imported.".

Notification No. 19/2024-Customs

7. **The government has amended No. 11/2018-Customs, dated the 2nd February, 2018, to exempt SWS on EVs imported under of the Ministry of Heavy Industries' Scheme to promote manufacturing of electric passenger cars in India.**

- ✓ In the Table, for S. No. 526A and the entries relating thereto, the following S. No. and entries shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
"526A.	8703	Electrically operated vehicles, if imported,-			
		(1) incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, including battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor, whether or not individually pre-assembled, with –			
		(a) none of the above components, parts or sub-assemblies inter-connected with each other and not mounted on a chassis	15%	-	-
		(b) any of the above components, parts or sub-assemblies inter-connected with each other but not mounted on a chassis	35%	-	-
		(2) in a form other than (1) above, -			
		(a) with a CIF value more than US $40,000	100%	-	-
		(b) other than (a) above	70%	-	-
		(c) with a minimum CIF value of US $35,000 imported in terms of provisions of the 'Scheme to promote manufacturing of electric passenger cars in India' notified *vide* S.O. No. 1363 (E) dated 15th March, 2024, by the Ministry of Heavy Industries: Provided that nothing contained in item (2)(c) in this S. No. shall have effect after the 31st March, 2031.	15%	-	117";
		Explanation. – For the removal of doubts, the exemption contained in items (1)(a) and (1)(b) of this entry shall be available, even if one or more of the components, parts or sub-assemblies required for assembling a complete vehicle are not imported in the kit, provided that the kit as presented, is classifiable under the heading 8703 of the Customs Tariff Act, 1975 as per the general rules of interpretation.			

- ✓ in the Annexure, after condition number 116 and the entry relating thereto, the followingcondition number and entry shall be inserted, namely:

(1)	(2)
"117.	If the importer, at the time of import, furnishes a certificate from an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Heavy Industries (MHI) to the effect that,- (i) the importer holds a valid Approval Letter issued by the Ministry of Heavy Industries under the 'Scheme to promote manufacturing of electric passenger cars in India' notified *vide* S.O. No. 1363 (E) dated 15th March, 2024, by the Ministry of Heavy Industries; (ii) the importer satisfies the conditions of the aforesaid scheme and the quantity of the vehicles being imported is within the limits prescribed in Para. 1.3.5 and para. 1.3.6 of the aforesaid scheme; and (iii) the importer is eligible for grant of this exemption in respect of the goods being imported.".

Notification No. 20/2024-Customs

8. **The government has amended notification No. 22/2022- Customs dated 30.04.2022, in order to notify third tranche of India-UAE CEPA vide Notification No. 21/2024-Customs.**

9. Government has exempted the goods of the description specified in column (3) of the Table below, falling within the tariff item of the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), specified in the corresponding entry in column (2) of the said Table, when exported out of India, from so much of the duty of customs leviable thereon under the said Second Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table, subject to the conditions specified in the corresponding entry in column (5) of the said Table, namely: –

Sl. No.	Tariff item	Description of goods	Rate	Conditions
(1)	(2)	(3)	(4)	(5)
1.	1006 30 90	Kala namak rice	Nil	If, a. Goods are exported through the customs stations, namely, Varanasi Air Cargo, JNCH, CH Kandla, LCS Nepalgunj Road, LCS Sonauli or LCS Barhni; b. the total quantity of such goods exported through the afore-mentioned customs stations taken collectively, shall not exceed one thousand metric tonnes; and c. the exporter furnishes a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from the Director, Agriculture Marketing & Foreign Trade, Lucknow, Uttar Pradesh, certifying the item and quantity of Kala namak rice to be exported.

Notification No. 22/2024-Customs

10. **Government has amended Notification No. 64/2023-Customs, dated the 7th December 2023 in order to allow duty free imports of yellow peas with bill of lading issued on or before 30.06.2024**

Notification No. 23/2024-Customs

Non-Tariff Notifications:

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

✓ 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(i.e., no change)
2	1511 90 10	RBD Palm Oil	902 (i.e., no change)
3	1511 90 90	Others – Palm Oil	897 (i.e., no change)
4	1511 10 00	Crude Palmolein	907 (i.e., no change)
5	1511 90 20	RBD Palmolein	910 (i.e., no change)
6	1511 90 90	Others – Palmolein	909 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	903 (i.e., no change)
8	7404 00 22	Brass Scrap (all grades)	4937 (i.e., no change)

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	687 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 (i.e., no change)

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 (i.e., no change)
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.	687 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)"

Notification No. 17/2024-Customs (NT)

2. **The government has Amended Notification No. 61/94-Customs (N.T.) dated 21.11.1994 - Notification of Bhopal Airport as Customs Airport**

- ✓ The Central Board of Indirect Taxes and Customs hereby makes the following further amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue)
- ✓ In the said notification, in the Table, against serial number 10relating to the State of Madhya Pradesh, in column (3),after the entry at (b)and corresponding entry in column (4), the following item and entries shall be inserted, namely:—

Sl. No.	State/Union Territory	Airport	Purpose
(1)	(2)	(3)	(4)
		"(c) Bhopal	Unloading of baggage and loading of baggage.".

Notification No.19/2024-Customs

3. **The government has amended to Notification No. 24/2023-Customs (N.T.) dated 01.04.2023 - Extension of RODTEP support to exports by AA/EOU.**

- ✓ in clause 2, (a) in sub-clause (1), for item (b), the following shall be substituted, namely:- "(b) against export of goods notified in Appendix 4R of the Foreign Trade Policy or against export of goods under Advance Authorisation (except Deemed Exports) as notified in Appendix 4RE of the Foreign Trade Policy or export of goods manufactured by or exported by Export Orient Unit as notified in the said Appendix 4RE, at the respective rate and cap notified under the Appendix 4R or Appendix 4RE, as applicable: Provided that the value of the said goods for calculation of duty credit to be allowed under the Scheme shall be the declared export FOB value of the said goods or, up to 1.5 times the market price of the said goods, whichever is less

Notification No. 20/2024 –Customs

4. The government has amended notification No. 12/97-Customs (N.T.) dated 02.04.1997 - Notification of ICD Bihta.

✓ In the said notification, in the Table, after serial number 2 and the entries relating thereto, the following serialnumber and entries shall be inserted, namely:

S.No.	State/Union Territory	Place	Purpose
(1)	(2)	(3)	(4)
"2A.	Bihar	Bihta	Unloading of imported goods and loading of export goods"."

Notification No. 21/2024-Customs

5. Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver

✓ 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	902
2	1511 90 10	RBD Palm Oil	912
3	1511 90 90	Others – Palm Oil	907
4	1511 10 00	Crude Palmolein	917
5	1511 90 20	RBD Palmolein	920
6	1511 90 90	Others – Palmolein	919
7	1507 10 00	Crude Soya bean Oil	933
8	7404 00 22	Brass Scrap (all grades)	4867

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	696 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	809 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.	809 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.	696 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)"

Notification No. 22/2024-Customs

6. **The government has amended Notification No. 58/2021-Customs (N.T.), dated the 01.07.2021 under sub-section (2) of Section 151B of the Customs Act, 1962 to notify Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs Matter of India and with other Countries.**

✓ In the said notification, in the TABLE, after S. No. 16 and the entries relating thereto, the following S. No. and entries shall be inserted, namely:

S.No.	Name of contracting State	Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters
(1)	(2)	(3)
"16A	Republic of Armenia	Agreement between the Government of the Republic of India and the Government of the Republic of Armenia on co-operation and mutual assistance in Customs matters.".

Notification No. 23/2024 – Customs

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

✓ 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	929
2	1511 90 10	RBD Palm Oil	939
3	1511 90 90	Others – Palm Oil	934
4	1511 10 00	Crude Palmolein	944
5	1511 90 20	RBD Palmolein	947
6	1511 90 90	Others – Palmolein	946
7	1507 10 00	Crude Soya bean Oil	938
8	7404 00 22	Brass Scrap (all grades)	5033

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	706 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	794 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.	794 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.	706 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)"

Notification No. 25/2024-Customs

8. **The government has amended Sea Cargo Manifest and Transhipment Regulations 2018**

- ✓ Short title and commencement. - (1) These regulations may be called the Sea Cargo Manifest and Transhipment (First Amendment) Regulations, 2024
- ✓ They shall come into force on the date of their publication in the Official Gazette
- ✓ In the said regulations, in regulation 15,-a.in sub-regulation (2), for the words, figures and letters, "till 31st March 2024", the words, figures and letters, "till 30th June 2024" shall be substituted

Notification No. 26/2024-Customs

Anti-Dumping Duty

1. **The government has amended to impose ADD on Printed Circuit Boards (PCB) imported from China PR and Hong Kong for 5 years pursuant to final findings of DGTR**

- ✓ The subject goods have been exported to India from the subject countries below normal values.
- ✓ The domestic industry has suffered material injury on account of subject imports from subject countries
- ✓ The material injury has been caused by the dumped imports of subject goods from the subject countries.

Notification No. 03/2024-Customs (ADD)

2. **The government has amended to levy of anti-dumping duty on 'Para-Tertiary Butyl Phenol (PTBP)' imported from Korea RP, Singapore and United States of America for 5 years pursuant to Final Findings issued by DGTR.**

- ✓ The product under consideration has been exported to India at a price below normal value, thus resulting in dumping.
- ✓ The dumping of the subject goods has materially retarded the establishment of domestic industry in India.
- ✓ The landed price of imports is below the level of selling price of the domestic industry and is undercutting the prices of the domestic industry.

TABLE

Sl. No.	Tariff item	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	2907 19 40	Para-Tertiary Butyl Phenol (PTBP)	Korea RP	Any country, including Korea RP	SI Group Korea Ltd.	208	MT	USD
2	-do-	-do-	Korea RP	Any country including Korea RP	Any producer other than	357	-do-	-do-

					(1)			
3	-do-	-do	Any country other than Korea RP, USA and Singapore	Korea RP	Any	357	-do-	-do
4	-do-	-do-	USA	Any country including USA	SI Group Inc.	790	-do-	-do-
5.	-do-	-do-	USA	Any country including USA	Any producer other than (4)	881	-do-	-do-
6.	-do-	-do	Any country other than Korea RP, USA and Singapore	USA	Any	881	-do-	-do-
7.	-do-	-do	Singapore	Any country including Singapore	Any	349	-do-	-do-
8.	-do-	-do	Any country other than Korea RP, USA and Singapore	Singapore	Any	349	-do-	-do

Notification No. 04/2024-Customs (ADD)

3. **The government has amended continue levy of anti-dumping duty on 'Ethylene Vinyl Acetate (EVA) Sheets for Solar Module' imported from China PR for 5 years pursuant to Sunset Review Final Findings issued by DGTR**

- ✓ The subject goods continue to be exported to India at prices below the normal value, resulting into dumping of the subject goods
- ✓ Dumped imports from subject country are causing injury to the domestic industry

- ✓ There is likelihood of not only continuation but also intensification of dumping and consequent injury to the Indian industry in the event of cessation of the existing anti-dumping duties at this stage.

TABLE

S. No.	Tariff Item(s)	Description of goods	Country of origin/ Country of Export	Producer	Amount	Currency	Unit of Measurement
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	3920 10 11, 3920 10 19, 3920 10 99, 3920 61 90, 3920 62 90, 3920 99 19, 3920 99 39, 3920 99 99	Ethylene Vinyl Acetate (EVA) Sheet for Solar Module	China PR	Changzhou Sveck Photovoltaic New Materials Co., Ltd.	590	USD	MT
2.			China PR	Any others	897	USD	MT

Notification No. 05/2024-Customs (ADD)

4. **The government has amended levy of anti-dumping duty on 'Self-Adhesive Vinyl (SAV)' imported from China PR for 3 years pursuant to Final Findings issued by DGTR.**

- ✓ The product under consideration that has been exported to India from the subject country at dumped prices.
- ✓ The domestic industry has suffered material injury.
- ✓ material injury has been caused by the dumped imports of the subject goods from the subjectcountry.

Notification No. 06/2024-Customs (ADD)

Anti-dumping duty:

1. **The government has amended to extend ADD on Aluminium Road Wheels imported from China PR.**

- ✓ The subject goods continue to be exported to India at prices below the normal value, resulting intodumping of the subject goods.
- ✓ Dumped imports from subject country are causing injury to the domestic industry.

TABLE

Sr. No.	Sub-heading	Description of goods	Country of origin	Country of export	Producer	Amount	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	870870	Cast Aluminium Alloy Wheels or Alloy Road Wheels*	China PR	Any country including China PR	Zhejiang Jinfei Kaida Wheels Co., Ltd.	0.52	USD/KG
2	870870	Cast Aluminium Alloy Wheels or Alloy Road Wheels*	China PR	Any country including China PR	Zhejiang Shuguang Aluminium Industry Co., Ltd.	0.23	USD/KG
3	870870	Cast Aluminium Alloy Wheels or Alloy Road Wheels*	China PR	Any country including China PR	Shandong Shuangwang Aluminium Industry Co., Ltd.	0.63	USD/KG
4	870870	Cast Aluminium Alloy Wheels or Alloy Road Wheels*	China PR	Any country including China PR	Any producer other than at serial no. 1, 2 and 3 above.	1.71	USD/KG
5	870870	Cast Aluminium Alloy Wheels or Alloy Road Wheels*	Any other country	China PR	Any	1.71	USD/KG

✓ There is likelihood of continuation of dumping and consequent injury to the Indian industry in the eventof cessation of the existing anti-dumping duties at this stage.

Notification No. 07/2024-Customs (ADD)

CVD Notifications:

1. **The government has amended No. 1/2019-Customs (CVD) in order to extend the levy on Pneumatic radial tyres from China PR up to 23rd July 2024 vide Notification No. 01/2024-Customs (CVD)**

Instruction/Guidelines

1. **Product Designation for Commercial Import of Premium Frozen Duck Meat into India -Reg.**

   Instruction No.04/2024-Customs

2. **Prohibition for import of ferocious breeds of dog -reg.**

   Instruction No.05/2024-Customs

Exemption for import of High End and High Value used Medical Equipment other than critical care medical equipment Hazardous and Other under Wastes (Management and Transboundary Movement) Second Amendment Rules, 2022 dt 23rd December, 2022 vide Instruction No.08/2024-Customs.

Indirect Tax – Legal Rulings

1. **2024-TIOL-357-HC-MAD-GST**

Sri Shanmuga Hardwares Electricals Vs State Tax Officer

GST - Petitioner had not claimed ITC in the GSTR-3B returns - However, petitioner states that he is eligible for Input Tax Credit (ITC) in each of the referred assessment periods and that this is duly reflected in the GSTR-2A returns - Consequently, the petitioner states that GSTR-9 (annual) returns were filed duly reflecting the ITC claims of the petitioner - By rejecting such claim, the orders impugned herein were issued - Petitioner assails the assessment orders.

Held : When the registered person asserts that he is eligible for ITC by referring to GSTR-2A and GSTR-9 returns, the assessing officer should examine whether the ITC claim is valid by examining all relevant documents, including by calling upon the registered person to provide such documents - In this case, it appears that the claim was rejected entirely on the ground that the GSTR-3B returns did not reflect the ITC claim - Therefore, interference is warranted with the orders impugned herein - Orders impugned herein are quashed and these matters are remanded for reconsideration - Fresh orders are to be issued within two months - Petitions disposed of: High Court [para 6, 7]

- Petitions disposed of: MADRAS HIGH COURT

2. **2024-TIOL-369-HC-AHM-GST**

Jupiter Comtex Pvt Ltd Vs UoI

GST - IGST on ocean freight - Petitioner prays for a direction to the respondent authorities to grant refund of the amount of GST to the tune of Rs.03,39,169/- plus interest thereon amounting to Rs.01,51,305/- and penalty amounting to Rs.50,875/-, which was paid by the petitioner in view of Entry No.10 of the Notification No.10 of 2017 dated 28th June, 2017 - It was also prayed to set aside the order dated 25th September, 2023 rejecting the refund claim of the petitioner.

Held : It is trite law that once the Apex Court declares a Notification being ultra vires and unconstitutional, such law becomes the law of land and is liable to be followed by the respondent authorities without raising any objection - The respondent No.2 could not have rejected the claim of the petitioner for refund of ocean freight - The reasons given by the respondent No.2 in the impugned order for rejection of the refund claim of the petitioner on the ground that the claim has been filed based upon the judgment of the Apex Court in the matter of ocean freight declaring levy of GST on ocean freight as unconstitutional would not fall under any category of refund prescribed under Section 54 of the CGST Act, 2017 and such claim would be outside the scope of and purview of such Section and petitioner can claim refund by way of suit or by way of a writ petition, would not sustain - Such a stand of the respondent is deprecated as the respondent is bound by the law declared by the Supreme Court and the same is required to be implemented in letter and spirit - Petitioner has also placed on record a certificate of Chartered Accountant that the petitioner has not passed on the tax burden and, therefore, refund also cannot be denied to the petitioner on the principle of unjust enrichment - Refund to be made within eight weeks with statutory interest - Petition allowed: High Court [para 6, 6.1, 8]

- Petition allowed: GUJARAT HIGH COURT

3. **(2024) 16 Centax 114 (A.A.R. - GST - A.P.)**

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, ANDHRA PRADESH

K. RAVI SANKAR AND B. LAKSHMI NARAYANA, MEMBER

IN RE : SOUTH INDIA KRISHNA OIL & FATS PVT. LTD.

AAR No. 12/AP/GST/2023, decided on 21-12-2023

GST : Where activity of collection of compensation, for liquidated damages from customers to applicant-assessee for non-performance of contract, constitutes supply of service and compensation amounts such as liquidity damages are eligible to tax under CGST at 9% and SGST at 9% each under Heading No. 9997 at Serial No. 35 of Notification No.11/2017- Central tax (rate) dated 28-6-2017.

GST : Where GST is leviable activity of collection of compensation, for liquidated damages from customers to applicant-assessee for non-performance of contract, therefore, question of restriction of input tax credit of common services under Rule 42 and Rule 43 of CGST Rules,2017/APGST Rules, 2017 does not arise.

Compensation for liquidated damages - Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified) - Heading No. 9997 – Classification – Supply – Applicant-assessee is engaged in manufacturing of edible oils and has its state-of-art facility – Applicant made an agreement with its customers for supply of specified quantity of edible oils at specific rate to be delivered within a particular date – Further, when customer fails to lift material as agreed, applicant collects compensation amounts such as Liquidated damages/ Trade settlement from customer for breach/non-performing of the contract - Applicant seeks advance ruling on whether GST is leviable on compensation amounts such as liquidated damages/trade settlement/damages collected from customers for non-performing of contractual obligations or breach of contract? - If GST is leviable on said activity, what is HSN Code applicable and rate of GST applicable for said activity? – Held: As per definition of 'consideration', it includes any payment made or to be made, whether in money or otherwise, in respect of, in response to and for inducement of supply of goods or services - In present case, customers are paying certain amount to applicant as compensation for non-performance of contract and amount so paid is neither ad-hoc, unconditional nor at whims of any customer nor appellant - Therefore, in light of section 7 read with definition of consideration u/s 2(31), compensation amounts paid by defaulting party to non-defaulting party for tolerating act of non-performance or breach of contract have to be treated as consideration for tolerating of an act or a situation under an agreement - Hence, such an activity constitutes supply of service and compensation amounts such as liquidity damages are eligible to tax under CGST at 9% and SGST at 9% each under chapter Heading No. 9997 at Serial No. 35 of Notification No.11/2017- Central tax (rate) dated 28-6-2017 [Section 7 read with Section 2(31) of Central Goods and Services Tax Act, 2017/ Andhra Pradesh Goods and Services Tax Act, 2017]*[Para 7]*

4. 2024-TIOL-396-HC-AP-GST

SRK Enterprises Vs Asstt. CST

GST - Petitioner challenges order dated 28.02.2023 passed u/s 73(9) of the Act, 2017 - Two grounds are raised viz. that the impugned order is unsigned and is no order in the eyes of law inasmuch as it cannot be enforced; that the order has been passed on the ground that upon verification of the bank statement it was found that they received payment of Rs.93,62,630/- from AP Mineral Development Corporation Ltd. in FY 2020-2021 but the same was not reflected in their GSTR-3B return; however, the said ground is not mentioned in the SCN.

Held: Section 160 [Assessment proceedings, etc. not to be invalid on certain grounds] of CGST Act, 2017 is not attracted - An unsigned order cannot be covered under "any mistake, defect or omission therein" as used in Section 160 - These expressions would not cover omission to sign the order - Unsigned order is no order in the eyes of law - Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in view of the Bench, not cure the defect which goes to the very root of the matter i.e. validity of the order - Section 169 [Service of notice in certain circumstances] of CGST Act 2017 is also not attracted - A Co-ordinate Bench of this Court [in the case of A. V. Bhanoji Row vs. Assistant Commissioner (ST) in W.P. No. 2830 of 2023 decided on 14.02.2023] has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue - Writ petition deserves to be allowed on the first ground itself - The impugned order is set aside with direction to the Competent Authority to pass fresh order in accordance with law considering the petitioner's reply already filed as also the additional reply, if so filed - The entire exercise is to be completed preferably within a period of six weeks - Writ petition is allowed in part: High Court [para 7, 8, 9, 13]

- Petition partly allowed: ANDHRA PRADESH HIGH COURT

5. 2024-TIOL-231-CESTAT-ALL

Raj Kumar Swarnkar Vs CC

Cus - The issue arises is that whether the appeal filed by appellant was filed within prescribed period of limitation specified under Section 128 of Customs Act, 1962 - The period of limitation provided under said Section is 'sixty days from date of communication of decision or order' - On one hand, appellant claims that O-I-O was communicated to him for very first time only on 05.05.2022 when copy of said order was made available to him on request being made whereas on the other hand impugned order records that said order was dispatched by speed post vide letter dated 06.07.2018 - Since it was specific case of appellant before Commissioner (A) that speed post was not delivered to him, hence it was incumbent upon revenue to bring on record the date of speed post and 'acknowledgement' of such speed post - However, despite such an specific assertion being made, impugned order neither records the date on which speed post was sent/dispatched nor the date of acknowledgment of speed post - In absence of date of dispatch by speed post and date of acknowledgement, revenue has clearly failed to discharge initial onus and therefore it cannot be said that order dated 06.07.2018 was communicated to the appellant at any time on or around 06.07.2018 - Following the binding decision in Indo Rama Synthetics India Ltd. 2020-TIOL-383-CESTAT-MUM ,
Tribunal have no option but to hold that compliance of Section 153 was not made by revenue - Further, when appellant changed its address on account of closure of business, he had no means to be aware of order and has nothing to gain by not filing the appeal timely - Date of communication of order is to be considered as 05.05.2022, when the copy of order dated 06.07.2018 was provided on request made by appellant - The order impugned is set-aside and matter is remanded back to Commissioner (A) to decide the matter on merits after giving personal hearing to appellant: CESTAT

- Matter remanded: ALLAHABAD CESTAT

6. 2024-TIOL-390-HC-MAD-GST

Afortune Trading Research Lab LLP Vs Addl.Commissioner (Appeals-I)

GST - Petitioner is engaged in the business of providing opinions on equity and futures market, trading stocks, options based on stock and share markets - The petitioner has remitted Goods and Service Tax for the services rendered to its clients/customers - According to the petitioner, predominantly all the clients/customers of the petitioners are from the U.S and the neighbouring countries - Under these circumstances, the petitioner has treated the above supply of services rendered

to its clients/customers as "export of service" within the meaning of Section 2(6) of the IGST Act, 2017 - It is further submitted that the export of service effected by the petitioner also qualifies as "zero rated supply" within the meaning of Section 16 of the IGST Act, 2017 and, therefore, the petitioner filed application under Section 54 of the IGST Act read with Rule 89(2) of the Central Good and Services Tax Rules, 2017 for refund but the same was rejected - Aggrieved, petitioner is before the High Court as there is no appellate Tribunal to file appeal against the Impugned Order - Counsel for the respondents would submit that the assessee did not provided proof to establish that the amount received in Indian Rupees is through freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan; that the petitioner has not furnished necessary supporting documents to evidence proof of receipt of export proceeds in convertible foreign exchange and not furnished details of export invoices and hence, all the refund claims were ineligible and were rejected.

Held : There is no dispute that the petitioner is providing services of its clients through its online portal to customers/client - The payments for the services provided by the petitioner are routed through an intermediary namely Paypal with whom the petitioner has an arrangement - As an intermediary, Paypal directly credits the amounts received in Indian currency directly into the petitioner's account - As far as export proceeds, the amounts are received in convertible foreign exchange by the said intermediary namely Paypal - The amounts are first credited into its account with CITI Bank of the said intermediary namely Paypal - Thereafter, amounts in Indian currency are transferred from the intermediaries CITI Bank account to the petitioner's account with HDFC Bank after deduction of its service charges - The routing of the payment by the intermediary viz., Paypal from its account in CITI Bank to the petitioner's own account with HDFC Bank in Indian Rupees is in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 as notified by Notification No: FEMA 14(R)/2016-RB dated 02.05.2016 - Merely because the receipts are routed through the intermediary and received in Indian currency ipso facto would not mean that the petitioner has not exported services within the meaning of Section 2(6) of the IGST Act, 2017 - Receipt of payment by an intermediary for and on behalf of its client like the petitioner will qualify as payment received by the client - As the only requirement is with the payments received is freely convertible foreign exchange has to be directly remitted into the authorized dealers account as otherwise an intermediary will be violating the requirements of the foreign exchange - Without doubt, the petitioner is entitled for refund - Reference to Circular No.88/07/2019-GST dated 01.02.2019 to conclude that the petitioner has not realized the amount in freely convertible foreign exchange therefore cannot be countenanced - Petition allowed: High Court [para 34 to 36, 41, 43, 45]

- Petition allowed: MADRAS HIGH COURT

7. 2024-TIOL-441-HC-KERALA-GST

Adam Traders Vs Deputy Commissioner

GST - 1st respondent passed order after hearing the appellant under Section 73 of the Act demanding a sum of Rs.1,03,63,247/- being the input credit availed and utilised wrongly for the period from July 2017 to March 2018 along with interest and penalty - Appellant challenged this order by filing writ petition but Single Judge dismissed it, relegating the appellant to the statutory appellate remedy - Aggrieved, the present appeal.

Held : 1st respondent passed Ext.P5 order after complying with all the statutory formalities - Even though the appellant sought time to produce their books of accounts and sufficient time was given to produce the same, the appellant failed to produce the books of accounts - After hearing the appellant and perusing the available documents, the 1st respondent found that the appellant had wrongly availed input tax credit - Appellant challenges the said factual finding in the writ petition - The jurisdiction

under Article 226 of the Constitution of India cannot be invoked to adjudicate factual disputes - The Single Judge has rightly found that the remedy open to the appellant is to prefer a statutory appeal - Writ appeal fails and is accordingly dismissed: High Court [para 3]

- Appeal dismissed: KERALA HIGH COURT

8. 2024-TIOL-440-HC-JHARKHAND-GST

Vivek Narsaria Vs State of Jharkhand

GST - The Petitioner is the proprietor of M/s. Manish Trading Company, Lalgutwa, Ranchi, having GSTIN No. 20AHUPN9856C2ZZ and is carrying on the business of trading of Iron & Steels and Cements, since 2017-18. As per the averments made in the writ petition, the purchases and sales are duly reflected in the GST returns furnished by the Petitioner and the outward tax liability is adjusted against the Input Tax Credit available to the Petitioner - On 16.03.2023, an inspection was carried out by the Intelligence Bureau of the State Goods & Service Tax, and in terms thereof GST INS-01 has been issued and after the inspection is concluded, the GST Officers fixed the date for furnishing books of accounts - As per the Petitioner an amount of Rs.34.00 lakhs from the Cash ledger of the Petitioner and Rs.06.00 lakhs from the proprietorship firm of his wife were made to deposit - The present petition was filed seeking issuance of an appropriate writ, order or direction, holding and declaring that in terms of Section 6 of the Central Goods and Services Tax Act, 2017 read with Section 6 of the Jharkhand State Goods and Services Tax Act, 2017 as also the provision of Integrated Goods and Services Act, 2017 , read with clarifications issued from time to time, the authority once initiated the proceedings commencing from enquiry/ search and seizure, is empowered to complete the entire process of investigation and complete the modalities, in the case in hand State Goods and Services Tax and not by the Preventive Wing of Central Goods & Services Tax or by the Directorate General of Goods & Services Tax Intelligence.

Held - Bare perusal of section 6 of the Act, especially Section 6(2)(b), when read with the Clarification dated 05.10.2018, further read with Clarification dated 22.06.2020, when read together, it clearly denotes and implies that it is a chain of a particular event happening under the Act and every & any enquiry/investigation carried out at the behest of any of the Department are interrelated - Even if, we accept the submission of the Respondent No. 5 that the proceedings initiated by the Respondent No. 5 is on the basis of an information received from Noida; in that event also, we are at loss to say that the DGGI is raising a question about credibility and competence of the State GST Authorities, in carrying out the investigation concerning wrong/inadmissible availment of Input Tax Credit, inasmuch as, the officers of the DGGI does not enjoy any special power or privilege in comparison with the officers of the State GST Authorities - We are little hesitant to accept such argument, inasmuch as, the State Authorities has also initiated the same very proceeding for wrong/illegal availment of Input Tax Credit - Undeniably, the proceedings at the instance of State Authorities or the Preventive Wing or the DGGI is at initial stage and the proceedings on the basis of 'Search & Seizure' by the State Authorities, is prior in point of time - Hence, Section 6(2)(b) read with clarification dated 05.10.2018, adds to the issues raised by the petitioner herein and manifestly crystalizes that since all the proceedings are interrelated, the State Authorities should continue with the proceedings - The issue since has also been raised with attachment of bank account, which we failed to understand as to what had become so emergent that prior to any determination or finding of any irregular/inadmissible/wrong availment of Input Tax Credit, the bank account had to be attached, which appears to be an 'arm twisting method' to make the petitioner succumb to the particular authority, which cannot be the dictum of the Act and we deprecate the same.

Therefore, the Preventive Wing of the CGST and DGGI Wing of the CGST, shall forward all their investigation carried out as against the petitioner and inter-related transaction to the State Authorities, who shall continue with the

proceedings from the same stage - The attachment over the bank accounts of the petitioner be lifted: CESTAT

- Appeal allowed: JHARKHAND HIGH COURT

9. 2024-TIOL-272-CESTAT-MAD

Krah Woory India Pvt Ltd Vs CGST & CE

CX - The Assessee imported capital goods under the EPCG scheme vide Notification No. 97/2004-Cus dated 17.9.2004 - They were not able to fulfill the export obligation under the said Notification - Therefore, they paid import duty including CVD and SAD on the said imports and claimed refund of the CVD and SAD refund of CENVAT Credit of Rs. 2,78,703/- vide letter dated 23.8.21 and Rs. 6,80,807/- vide letter dated 23.8.21 as they could not be taken as credit in the GST regime - The refund sanctioning authority rejected the refund claim on the ground that the import conditions were not fulfilled - Aggrieved against the said order, the Assessee preferred appeals before Commissioner (Appeals) who vide the impugned orders upheld the order passed by the refund sanctioning authority and rejected the refund on the ground that refund is available to only goods used as inputs and not as capital goods - Hence the present appeals.

Held - CENVAT Credit Rules 2004 includes capital goods in the definition of 'inputs' - The reason and legal provisions why the Commissioner (Appeals) came to the conclusion that duty paid on excisable goods which are inputs alone are eligible and duty paid on capital goods cannot be refunded, is not discussed and is hence not clear - It is also noted that the Original Authority had not disputed the eligibility to CENVAT credit for the capital goods under CCR, 2004 - The impugned order is hence based on a new ground - A rounded examination of the issue has not been done - The reasons given by the Original Authority and the judgment of M/s Servo Packaging ltd do not form a part of the impugned order into which the OIO has merged - Hence while brevity is the ingredient of a good judgment the greatest hallmark is clarity and the citing of legal provisions which led to the decision - There are no legal grounds in the impugned order to have rejected the claim for refund - The Assessee on the other hand has made out a strong case in their favour as per their averments stated: CESTAT

- Appeal allowed: CHENNAI CESTAT

10. 2024-TIOL-260-CESTAT-CHD

NTF India Pvt Ltd Vs CCE

CX - The Assessee is engaged in the manufacture of auto parts falling under Chapter No. 8708.00 of the First Schedule to the Central Excise Tariff Act, 1985 and sell them to M/s Maruti Udyog Ltd. (MUL) & others - Due to revision of prices the Assessee raised the supplementary invoices and paid the excise duty of differential amount - Two Show Cause Notices dated 26.10.2004 demanding interest of Rs. 38,07,947/- covering the period 1999 to 2004 and another Show Cause Notice dated 09.02.2007 demanding interest amounting to Rs. 81,131/- for the period March, 2005 to November, 2006 were issued and after following the due process, the adjudicating authority confirmed the demand of Rs. 38,89,078/- as interest on delayed payment under Section 11AB read with Section 11A of the Central Excise Act, 1944 - Aggrieved by the said order, the Assessee filed appeal before the Commissioner (Appeals) who rejected the appeal and upheld the Order-in-original. Held - The only issue is involved in the present appeal is demand of interest on supplementary invoices by invoking the extended period of limitation - It is also found that the Assessee deposited the duty on supplementary invoices as and when the supplementary invoices were issued - It is also found that the Assessee has deposited the interest under protest and has submitted that in the present case invoking the extended period of limitation to demand the interest alleging suppression is not sustainable because during the relevant period there were divergent views on the issue of liability of

interest on payment of central excise duty while issuing supplementary invoices under the Central Excise Act, 1944 - The Apex Court finally settled the issue of interest on supplementary invoices on 08.05.2019 - The Tribunal in the case of Super Threading India Pvt. Ltd. and KEC International Ltd. cited (Supra) had held that extended period of limitation cannot be invoked as there is no fraud/mis-statement with intent to evade payment of duty - Also, the decision of the Punjab and Haryana High Court in the case of Neel Metal Products Ltd. is taken note of - By following the ratio of the decision of the Punjab and Haryana High Court cited (Supra), it is held that invoking the extending period of limitation is not sustainable and the demand of interest by invoking the extended period of limitation is not justified & so the matter is remanded to the Original authority to requantify the demand only for the normal period and any amount deposited over and above the normal period of one year should be returned back to the Assessee as he has paid the entire disputed demand of interest under protest: CESTAT

- Case remanded: CHANDIGARH CESTAT

11. 2024-TIOL-304-CESTAT-KOL

Nalco Water India Ltd Vs CCGST & Excise

CX - CENVAT - Appellants submits that the ISD issued invoices in the name of Head Office and the Head Office distributed the cenvat credit to the units - It is his submission that the eligibility of input service i.e. where the input service is covered by the definition of "input service" is to be seen by ISD only and the appellant have no role as they are receiving invoices issued by ISD showing their proportionate cenvat credit eligible for cenvat credit issued by ISD - It is further submitted that the jurisdictional authority is only to say whether the documents on the basis that the appellant has taken the cenvat credit is correct or proper - The adjudicating authority has no jurisdiction and decide that the credit issued by ISD is incorrect and not eligible - Therefore, the observations of the adjudicating authority in the impugned order are beyond the jurisdiction where the service on which ISD taken the credit is eligible for cenvat credit is not correct in the jurisdiction of ISD - In the alternative, it is his submission that the services for which the appellants are used in relation to manufacture of clearance of final product, hence the same is covered by the definition of input, therefore, the appellants have correctly taken the cenvat credit.

Held: As the Head Office of the appellant is registered as ISD and distributed the cenvat credit in proportionate to the appellant i.e. 54.51% is valid documents to avail the cenvat credit in terms of Rule 9 of the Cenvat Credit Rules, 2004 - If the Revenue wants to deny the availment of cenvat credit i.e to be only to the Head Office, who is registered as ISD - As no investigation has been done at the end of the ISD for distributing ineligible cenvat credit to the appellant, the cenvat credit cannot be recovered from the appellants - As it has not been questioned that ISD has taken inadmissible cenvat credit, in that circumstances, the cenvat credit cannot be recovered from the appellants holding that the appellant has availed inadmissible cenvat credit - Orders set aside and Appeals allowed with consequential relief: CESTAT [para 7, 12]

- Appeals allowed: KOLKATA CESTAT

12. 2024-TIOL-422-HC-DEL-GST

Sri Radha Krishna International Vs UoI

GST - Petitioner impugns order dated 27.12.2023 whereby demand of Rs. 22,10,220.00 including penalty has been raised - Alleged demand was created on account of claim of Input Tax Credit from a dealer whose registration had been cancelled and no details were furnished by the petitioner to substantiate that there were underlying supplies made with regard to invoices based on which ITC had been claimed - Petitioner submits that impugned order does not take into consideration the reply submitted by the petitioner and is a cryptic order. Held : The impugned order records that the reply uploaded by the taxpayer is not satisfactory - Observation in the impugned order is not

sustainable for the reasons that the reply filed by the petitioner is a detailed reply - Proper officer had to at least consider the reply on merits and then form an opinion whether the reply was vague or failed to counter the demands made - He merely held that the reply is vague which ex-facie shows that proper officer has not applied his mind to the reply submitted by the petitioner - If the Proper Officer was of the view that reply was vague and further details were required, the same could have been specifically sought from the petitioner - Order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication - Petition disposed of: High Court [para 6, 7, 8, 9]

- Petition disposed of: DELHI HIGH COURT

13. 2024-TIOL-468-HC-ALL-GST

Samsung India Electronics Pvt Ltd Vs State of UP

GST - Petitioner is engaged in the export of Information Technology design and software development services pertaining to mobile devices ("IT Services") to its overseas holding company, namely, M/s Samsung Electronics Company Limited, Korea - Petitioner had filed a refund claim of unutilised ITC of CGST, SGST, and IGST paid on various inputs and input services for the period of April 2019 to June 2019 - Refund claim amounting to Rs.6,36,69,447/- was sanctioned by the Department - Only a small amount of Rs.7,500/- was rejected on the ground of invoices missing in the GSTR-2A returns - Petitioner then filed for the refund of the unutilised ITC of CGST, SGST, and IGST paid on various inputs and input services, for the period of July - September, 2019 amounting to Rs.7,46,52,231/- and October - December, 2019 amounting to Rs.8,20,59,875/- - Petitioner filed a reply to the show cause notices and attended personal hearing, after which the Department partially allowed the refund and rejected a portion of the demand on the ground that the specific goods are capital goods, and not inputs - Appeals were rejected, therefore, the present petitions.

Held : While the principle of res judicata does not apply to taxation matters, it is incumbent upon authorities to take a consistent approach when dealing with similar factual and legal circumstances - The principle of consistency states that when faced with analogous factual and legal circumstances, the treatment should remain uniform - Taxpayers have a legitimate expectation that similar factual and legal circumstances will be met with uniform treatment, and any deviations from this principle undermine the credibility and legitimacy of the actions taken by tax authorities - When facts and circumstances in a subsequent assessment year are the same, no authority, whether quasi-judicial or judicial can generally be allowed to take a contrary view - The arbitrary withholding of refund claims for specific periods, despite past precedents and the absence of any material change in circumstances, is contrary to the principles of fairness and equity - Capital goods are intended for long-term use and are typically subject to capitalization - However, inputs, are goods used in the day-to-day operations of the business and are not subject to capitalization - While issuing a Show Cause Notice, it is incumbent upon the Department to clearly outline the specific allegations or concerns against the recipient - In no case, the Department can be allowed to traverse beyond the confines of the Show Cause Notice, since the same will trample upon the recipient's right to defend itself - Any attempt by the issuing authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the show cause notice would constitute a violation of the principles of natural justice - Such actions would not only undermine the recipient's right to a fair hearing but also erode trust in the integrity and impartiality of the adjudicatory process - Any action taken beyond the confines of the Show Cause Notice, is void ab initio and cannot be sustained - Impugned orders dated October 25, 2021 and February 24, 2023 are palpably erroneous, and cannot be sustained - Writ petitions allowed, consequential reliefs to follow: High Court [para 21, 22]

- Petitions allowed: ALLAHABAD HIGH COURT

14. 2024-TIOL-464-HC-DEL-GST

Raghav Ventures Vs Commissioner of Delhi GST

GST - Writ Petition has been filed, seeking direction to the respondent to grant the total IGST refund of Rs. 2,44,75,410/- for the tax period December 2022, February 2023, March 2023 and May 2023 with interest - Pending this petition, IGST refund for the tax period December 2022, February 2023, March 2023 and May 2023 has been sanctioned, but without interest - Petitioner claims that the said refund was credited into his account and he gave an application dated 06.12.2023 to the proper officer praying for the grant of interest at the rate of 6% from the date of filing of refund applications - Counsel for respondent Revenue raised objection to the grant of interest, arguing that vide FORM-GST-RFD-01, petitioner has only claimed the integrated tax and not the interest on the same and therefore he is not entitled for the same.

Held: It is manifest that interest under Section 56 of the Act becomes payable, if on the expiry of the period of 60 days from the date of receipt of the application for refund, the amount claimed is still not refunded - Payment of interest under Section 56 of the Act being statutory is automatically payable without any claim, in case the refund is not made within 60 days from the date of receipt of the application - Payment of interest does not depend on the claim made by petitioner and, therefore, cannot be denied on the ground of waiver on the claim of interest in FORM GST-RFD-01 - Moreover, the question of payment of grant of interest arises only if the refund is not granted within 60 days from the date of receipt of application - No justification has been shown by the respondent for delay in payment of refund within the stipulated period - Thus, even though, the petitioner may not have claimed interest in his refund applications, his claim of interest cannot be denied under Section 56 of the Act as the same is mandatory and payable automatically in terms of the provisions of the Act - Petitioner is entitled to statutory interest at the rate of 6% - Respondent is accordingly directed to process the refund of interest and credit the same into the account of the petitioner within four weeks - Petition disposed of: High Court [para 11, 12]

- Petition disposed of: DELHI HIGH COURT

15. 2024-TIOL-455-HC-MUM-GST

Bharat Parihar Vs State of Maharashtra

GST - Petitioner challenges provisional attachment of bank account made under s.83 of the Act - Petition is filed after the objections of the Petitioner to provisional attachment were disposed of under Rule 159(5) of the CGST Rules by the Respondents - Respondents have raised a preliminary ground that the order disposing off objections under Rule 159(5) of CGST Rules attaching the bank account provisionally is an appealable order and, therefore, this Court should not entertain the petition.

Held: Supreme Court in paragraphs 63 to 66 [Radha Krishan Industries = **2021-TIOL-179-SC-GST**] has held that order disposing the objections to provisional attachment of bank account is not an appealable order and the only remedy that is available is in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution of India - In the instant case, the provisional attachment order was made on 21st April 2022 and period of one year from the said date expired on 21st April 2023 - Therefore, the provisional attachment order dated 21st April 2022 ceases to have effect by operation of law and cannot continue to operate after 21st April 2023 - Bench does not find any fresh order having being passed by the Respondents to attach the bank account on 19th April 2023 - In any view of the matter, mere notings in the file of the Officer concerned cannot constitute an order without a formal order as the law may mandate being passed and most importantly such order being communicated to the affected person, whose bank account is attached - The Respondents have not shown that such order was passed and served on the Petitioner, much less prior to the provisional attachment order ceasing to operate by virtue of the provisions of Section 83(2) and/or the communication dated on 19th April 2023 - In any case, the Respondents have also not disputed that letter of 19th April 2023 is only

a communication to the bank, to retain provisional attachment of the account - Thus, it can never be a fresh order under Section 83(1) provisionally attaching the Petitioner's bank account - In these circumstances, it is clear that after 21st April 2023 there is no provisional attachment of the Petitioner's bank account, looked from any angle - Communication dated 21st April 2022 provisionally attaching the Petitioner's bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act - The extension of the provisional attachment by communication dated 19th April 2023 is hereby quashed and set aside - Petition is allowed: High Court [para 3, 8, 10, 11]

GST - Jurisdiction - S.83 of the Act, 2017 - Insofar as the jurisdiction of the Commissioner to exercise powers under Section 83 is concerned, Bench observes that the provisions of Section 83, which are to be read with Section 122(1-A), would be required to be read in the context of the legislation itself namely the CGST Act - As Section 1(2) would mandate, the CGST Act is operational throughout the country - A cumulative reading of the provisions of Section 83(1) read with Section 122(1-A) of the Act makes it manifest that the Commissioner, for the purposes of exercising power under Section 83 read with Section 122(1-A) of the CGST Act, would have a power to take action against "any person" as Section 122(1-A) mandates, even if such a person is outside his jurisdiction - Section 122(1-A), refers to "any person", who has retained benefit of a transaction and in whose instance transaction is conducted - It does not contemplate of a situation where the person should be located within the State in which the transaction is carried out - Therefore, the Respondents have the jurisdiction to resort to the provisions of Section 83 of the Act with respect to the Petitioner located in Chennai - If the contention as canvassed by the Petitioner is accepted then it would lead to a situation where a person who stays outside the State and who is a beneficiary/ part of any transaction involving tax evasion or violation of the Act would have total immunity in as much as in such a situation, such person would never be examined nor any proceedings could be taken by the State in which the transaction is executed and the State in which he is located would also not take any action since the transaction has not happened in the State where he is located - A contrary reading of the said provisions would defeat the legislative intention: High Court [para 5, 6]

- Petitions allowed: BOMBAY HIGH COURT

16. 2024-TIOL-518-HC-MUM-GST

Shantanu Sanjay Hundekari Vs UoI

GST - Petitioners, employees of a shipping company, along with other noticees are called upon to show cause as to why penalty equivalent to the tax alleged to be evaded by M/s. Maersk amounting to Rs.3731,00,38,326/- as detailed in paragraph 5.19.1 of the said notice, be not imposed upon the petitioners inter alia applying the provisions of section 122(1A) and Section 137 of the Act, 2017 - Petitioner in his capacity as a Taxation Manager rendered assistance to Maersk in its compliances with taxation laws including the GST - Petitioner has categorically contended that there was no question of the petitioner personally availing the benefit of any ITC, nor does the show cause notice allege that any personal benefit is achieved by the petitioner; that the said provisions of the CGST Act, as invoked, per se do not apply to the petitioner, absent a suggestion that any personal benefit was availed by the petitioner - Counsel for respondent Revenue would submit that the petitioner needs to respond to the show cause notice by raising all such contentions; Hence, the show cause notice needs to be taken forward and adjudicated - For such reason, the writ petition is not maintainable and would deserve rejection.

Held : Question before the Court is whether the invocation of the provisions of Section 122(1-A) of the CGST Act as also Section 137(1) and 137(2) would stand attracted in their applicability to the petitioner, so as to confer jurisdiction on respondent no. 3, to issue the impugned show cause notice against

the petitioner, who is merely an employee of MLIPL and a power of attorney of Maersk - A person who would fall within the purview of sub-section(1-A) of Section 122 is necessarily a taxable person as defined under section 2(107) of the CGST Act read with the provisions of section 2(94) of the CGST Act and a person who retains the benefits of transactions covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) of Section 122 - Section 122(1-A) also cannot be attracted qua the person, in a situation when any person does not retain the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and/or it is applicable at whose instance such transactions are conducted, could be the only person, who shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit, wrongly availed of or passed on - In the absence of these basic elements being present, any show cause notice of the nature as issued, would be rendered illegal, for want of jurisdiction as also would stand vitiated by patent non-application of mind - Hence, there was no question of respondent no. 3 invoking section 122(1-A) against the petitioner - As to how Section 137 can form part of any invocation against the petitioner that too along with the provision of Section 122(1-A), qua the petitioner cannot be comprehended - It is highly unconscionable and disproportionate for the concerned officer of the Revenue to demand from the petitioner an amount of Rs.3731 crores, which, in fact, is clearly alleged to be the liability of Maersk, as the contents of the show cause notice itself would demonstrate - The petitioner would not be incorrect in contending that the purpose of issuing the show cause notice to the petitioner who is merely an employee, was designed to threaten and pressurize the petitioner - Petition accordingly succeeds: High Court [para 24, 26, 27, 28, 30, 33, 35]

- Petition allowed: BOMBAY HIGH COURT

17. 2024-TIOL-515-HC-DEL-GST

Knowledge Infrastructure Systems Pvt Ltd Vs UoI

GST - Petitioner impugns order confirming a demand of Rs 2,72,81,448.00 including penalty - Petitioner submits that a detailed reply was filed to the Show Cause Notice, however, the impugned order does not take into consideration the reply submitted and is a cryptic order.

Held: Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was unsatisfactory - He merely held that the reply is incomplete, not duly supported by adequate documents and is not clear and unsatisfactory which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner - If the Proper Officer was of the view that reply is unsatisfactory, incomplete and not duly supported by adequate documents, and if any further details were required, the same could have been specifically sought for - However, the record does not reflect that any such opportunity was given - Order is set aside and matter is remitted to the Proper Officer for re-adjudication - Petition disposed of: High Court [para 5, 6, 7]

- Petition disposed of: DELHI HIGH COURT

18. 2024-TIOL-505-HC-MAD-GST

Tvl Vardhan Infraastructure Vs Special Secretary

GST - Common issue arises for consideration as to whether the petitioners who are assigned to either the Central Tax Authorities or the State Tax Authorities under respective CGST Act, 2017 and/or TNGST Act, 2017 can be subjected to investigation and further proceeding by the counterparts under the respective GST Enactments.

Held: Section 6(1) of the respective GST Enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment - However,

no notification has been issued except under Section 6(1) of the respective GST Enactments for the purpose of refund although officers from the Central GST and State GST are proper officers under the respective GST Enactments - Since, no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax under Chapter-XI of the respective GST Enactments r/w Chapter X of the respective GST Rules, impugned proceedings are to be held without jurisdiction - Consequently, the impugned proceedings are liable to be interfered - Thus, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments - Similarly, if an assessee has been assigned to the State Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the officers of the Central GST cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules by an assessee - Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction - Officers under the State or Central Tax Administration, as the case may be, cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them - There shall be a direction to the Central Authority/State Authority, as the case may be, to whom the respective petitioners have been assigned for administrative purpose to initiate appropriate proceedings afresh against them strictly in accordance with the provisions of the respective GST Enactments and GST Enactments Rules and Circular issued thereunder - The time between the initiation of the proceedings impugned in these writ petitions and time during the pendency of the present writ petitions till the date of receipt of this order shall stand excluded for the purpose of computation of limitation - Writ petitions are disposed of: High Court [para 61 to 65, 68]

- Petitions disposed of: MADRAS HIGH COURT

19. **COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS**
CENTRAL GOODS AND SERVICE TAX, JAIPUR-I
NCR BUILDING, STATUTE CIRCLE, C-SCHEME-302005
Vs

M/s CENTURY METAL RECYCLING PVT LTD
TATANAGAR BHAGOLA ROAD, VILLAGE TATARPUR POST ASAWATI, PALWAL - 121102

Appellant Rep by: Shri S. K. Rahman, AR
Respondent Rep by: Shri Krishnamohan K. Menon & Ms. Parul Sachdeva, Advs.

CORAM: Rachna Gupta, Member (J) Hemambika R. Priya, Member (T)

Cus - Revenue is in appeal against order passed by Commissioner (A) - Respondent-Assessee has raised the objection that the amount involved (in the present appeal), is below the threshold limit required for filing appeals as per CBIC Instruction F. No. 390 dated 17.08.2011 amended on 30.12.2016 according to which the department is restrained to file any appeal involving an amount of less than Rs. 50.00 Lakhs, before CESTAT.

Held**:** The circular was for department to follow and not for the assessee to rely upon, especially when the self-assessment of assessee is under shadow of doubt, more so when the department is being denied the proper opportunity to defend its stance - Above all, there cannot be any intention of the Department to issue any instruction which is detrimental to its own interest - As observed, the only intention of the impugned instruction for fixing monetary limit is to reduce the Department litigation - The instruction cannot be enforced at the cost of prejudice to the issuing authority itself - Rule of law requires a

fair opportunity of being heard even to Government Authorities/Department herein - Instead of counting each Bill of Entry for the purpose of calculating threshold monetary limit for filing appeal, it may be seen that all the 30 Bills of Entry pertain to one importer, namely Century Metal Recycling Private Limited for the same commodity i.e. aluminium scrap imported during more or less same period/time - Further, the Commissioner (Appeals) has passed one Order-in-Appeal for all the 57 Bills of Entry though numbered as 59-115/2019 - Against the said OIA, this appeal is filed before this Tribunal (CESTAT) - In view of Rule 6A of CESTAT Procedure Rules, 1982, Bench holds that the present case to be a fit case for this bench to exercise its power to not accept the CBIC instructions in this particular appeal and hold that CBIC Instruction F. No. 390 dated 17.08.2011 prescribing monetary limit for filing appeals before this Tribunal is not mandatory in view of the facts and circumstances of the present case - Consequently, Bench holds that the Departmental Appeals shall be heard on merits: CESTAT [para 14, 15, 16]

Matter listed

20. 2024-TIOL-257-CESTAT-DEL

R N Metals Vs Commissioner Office, CCE & CGST

CX - The Cenvat credit sought to be denied on the basis of audit conducted for impugned period wherein objections were raised about admissibility of Cenvat credit on invoices issued by M/s A.K. Sons and M/s Tirupati Associates to appellant on the strength of which appellant has availed the credit, as manufacturers are not existent during course of investigation - It is also fact on record that since January 2013, the manufacturer has not paid duty - As appellant has received goods from first stage dealer/ second stage dealer on payment of duty and have produced transport receipt evidencing transportation of goods from first stage dealer/second stage dealer to their factory, appellant has complied with conditions to Rule 9 of CCR, 2004 which enables appellant to take Cenvat credit on strength of invoices which mentions duty has been paid on goods in question - No investigation was conducted at the stage of first stage dealer/second stage dealer by Revenue - Moreover, only it is coming out from investigation that since January 2013 manufacturer has not paid duty, but it is not a fact on record when the manufacturer stopped manufacturing and since when manufacturer is non-existent - As investigation to this question with regard to this extent is silent, benefit of doubt goes in favour of appellant - Revenue has failed to establish if appellant has not received goods against the invoices, in that circumstances, from where the appellant has procured inputs which has been used in manufacturing of final products on which duty has been paid by appellant - Therefore, appellant is entitled to take Cenvat credit on invoices issued by first stage dealer/second stage dealer which showing the details of manufacturer of goods and payment of duty - Therefore, impugned order deserves no merits, accordingly, same is set aside: CESTAT

- Appeal allowed: DELHI CESTAT

21. 2024-TIOL-255-CESTAT-MAD

Thirumal Facade Solutions Vs CGST & CE

ST - The Assessee is registered with the Service Tax Department under the category of civil construction and works contract service - The Assessee filed refund claim for Rs. 4,32,566/- in respect of service tax paid on the amounts received as advances before 30.6.2017 - They were paying service tax on the amounts received as advances and were subsequently adjusted with the corresponding sales invoice raised - The Service Tax paid on advances for these contracts were shown as prepaid taxes in their books of accounts - On introduction of GST they took the prepaid service tax to GST TRAN-1 - On being pointed out by the Department about having wrongly carried forward the prepaid service tax to TRAN-1, they reversed the same - Consequent to reversal, they filed refund claim on 12.3.2019

for the refund of prepaid service tax - A Show Cause Notice dated 1.9.2020 was issued proposing to reject the claim and to produce all the evidences. The original authority rejected the claim on observing that the ST-3 return filed by the Assessee during the specified period showed that the amount of tax paid by the Assessee is only on the net taxable value and as such there is no excess payment - Further while the last return filed by them was on 13.8.2017 and last challan on which service tax was paid by them was on 6.7.2017 the refund claim was filed on 12.03.2019 - He rejected the refund claim as time-barred - The Commissioner (Appeals) vide the impugned order has rejected their appeal against the Order-in-Original - Hence the present appeal. Held - The Assessee is involved in civil construction and works contract service and the completion of a project is spread over a period of time - They have filed a TRAN-1 declaration for the Service Tax paid on advances after the introduction of GST on 01/07/2017 - On being pointed out by the Department about having wrongly carried forward the prepaid service tax to TRAN-1, they reversed the same in the GST return filed in the month of January 2019 - Consequent to reversal, they filed refund claim on 12.3.2019 for the refund of prepaid Service Tax - The cause of action took place only after the introduction of GST due to which they had to pay duty once again under the GST regime for part taxes paid under Service tax for their projects - The matter is hence not time barred - The factual question is whether tax has been discharged twice for the same activity - The transition from one tax regime to another has its own challenges for tax payers and an overtly legalistic view is not called for in this difficult period - The Assessee made available documents that would facilitate the verification of double taxation as claimed - Since the Department has asked the Assessee to reverse the prepaid service tax claimed as per GST TRAN - 1, and if the facts on verification are found in order then the amount has to be refunded in cash to the Assessee - The ends of justice would be met if Revenue verifies the facts of the activity being taxed twice and decides on the refund application accordingly: CESTAT

- Case remanded: CHENNAI CESTAT

22. 2024-TIOL-214-CESTAT-MAD

Indian Oil Corporation Ltd Vs CC

Cus - It is the case of the Assessee that for the period between 23.06.2010 and 06.08.2011, for the goods exported, it had filed shipping bills under Advance Authorization scheme - On withdrawal of customs duty on crude oil with effect from 25.06.2011, it could not utilise the benefits under Advance Authorization scheme, which prompted the Assessee to seek for conversion to Duty Drawback scheme for realisation of export benefits - Accordingly, a request for the above conversion was made before the authority - the Commissioner of Customs, sought to deny the above request on the ground that the said application was filed after nearly 8 months and that the appellant had effected exports under Advance Authorisation scheme during the period for which they were not expected to export their goods under the said scheme - The Assessee participated in the personal hearing granted by the Commissioner, during which time it relied on various judicial precedents in support of its case that there was no time-limitation prescribed under Section 149 of the Customs Act and therefore its request for conversion was required to be allowed - The Commissioner, after considering the decisions relied upon by the importer, proceeded to pass the adjudication order, whereby he has distinguished the case-laws relied upon and further held that the time-limit has been prescribed by the Board Circular No. 36/2010 , dated 23.09.2010 which is binding on him, thereby denying the request for conversion. Held - The Gujarat High Court has considered Section 149 *in extenso* and therefore, the Tribunal, as a lower authority, is bound by the said decision since the very Circular, which has been relied upon by the original authority even in the case on hand, has been clearly struck down by the High Court as ultra vires - Hence, we do not subscribe to the views expressed by the original authority for denying the conversion request of the Assessee - The impugned order is set aside and the appeal is allowed: CESTAT

- Appeal allowed: CHENNAI CESTAT

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:

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