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LEGAL ZINE

Summary of major Indirect Tax Case Laws - **Jan-Feb 2020**
Volume-2

This document will cover recent major Judgements of Indirect Tax.

Case Laws

This month we have seen various case laws impacting interpretation of GST and other indirect tax. This document is an attempt to cover critical judgments in a simplified manner.

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"It is not wisdom but the Authority that makes a law"
— Thomas Hobbes

GST

A. GST: Refund claim on export of goods during 01.07.2017 to 30.09.2017 allowed even though drawback availed.

The revenue rejected refund of IGST paid on export of goods on ground of simultaneous availment of duty drawback of custom portion. The HC noted that during the transitional period, the petitioners have inadvertently claimed benefit of duty drawback, since there was lack of clarity with respect to the refund of IGST. The HC also observed that

- Taxpayers have faced difficulties in understanding the complexity of GST procedures.
- Inefficient implementation of the law has had adverse fallout on the taxpayer.
- Government need to embrace initiatives that would help the taxpayers in the transformation to the new regime which would require understanding the difficulties faced by the industry.
- Petitioners have been victim of technical glitches on account of confusion during transitional phase.
- The taxpayers like the Petitioners should not be denied the substantive benefit of the IGST paid by them on exports.

[M/s TMA International Ltd, 2020-VIL-02- DEL]

B. GST: Credit available when consideration is paid by book adjustment.

The question before AAAR was whether credit is available for IGST paid on inter-state movement of cranes from HO to branches. The AAAR reversed the decision of AAR and ruled that the HO has adopted a value agreed under the 'Pricing' clause of the MOU and paid the tax on the value declared in the Invoice and there is no reason to restrict the ITC of the tax paid by the HO, as it has been substantially brought out that the 'consideration' stands paid to the HO either by the customer of the Appellant or by setting off against the payables of the appellant to HO, in respect of lease/hire of Cranes, etc which is as per the established accounting principles. The appellant is eligible to avail full ITC subject to other conditions.

[M/s Sanghvi Movers Ltd., 2020-VIL-88-AAAR]

C. GST: Proviso to Rule 28 can be opted in case of supply to distinct person.

The AAAR held that when the supply is to the distinct person of the appellant and the recipient is eligible for full ITC, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. Also, the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply' only. Therefore, the appellants may adopt the value for supply to distinct person as provided under Proviso 2 to Rule 28 of the CGST Rules, 2017. The AAAR set aside the ruling of AAR.

[M/s Specsmakers Opticians Pvt. Ltd., 2020-VIL-87-AAAR]

D. GST: Paper-based gift vouchers taxable at 12% and Gift cards taxable at 18%.

The AAR held that Own closed Pre-paid Instruments (PPIs) issued by the Applicant are 'vouchers' and are a supply of goods under CGST Act. The time of supply of such gift vouchers / gift cards shall be the date of issue of vouchers if the vouchers are specific to any particular goods specified against the voucher. If the gift vouchers/gift cards are redeemable against any goods bought, the time of supply is the date of redemption of voucher. In the case of paper-based gift vouchers classifiable under CTH 4911 the applicable rate is 12% as per Sl. No. 132 of Schedule II of the Notification No. 1/2017-C.T.(Rate). In the case of gift cards classifiable under CTH 8523 the applicable rate is 9% CGST as per Sl. No. 382 of Schedule III of the said Notification.

[M/s Kalyan Jewellers India Ltd,, 2019-VIL-480-AAR]

E. GST: ITC is not available for construction of marriage hall.

The AAR held that the input tax paid on the goods/services received for construction of an immovable property 'on one's own account' is unavailable. Reading section 16(1) of the CGST Act shows a Legislative intent that ITC may not always be allowed partially or fully. No ITC is available against any goods or services received by the applicant for construction of the Marriage Hall on his own account even if used in course or furtherance of his business of renting the place. *[M/s Sree Varalakshmi Mahaal LLP, 2019-VIL-481-AAR]*

F. GST: ITC for motor vehicle used for demonstration purposes is eligible.

The AAR held that demo cars used for demonstration purposes fulfill the definition of capital goods as they are received under a Tax Invoice and are used or intended to be used in the course or furtherance of business i.e. sale of motor

vehicles. Since the applicant will be making further supplies of the Demo vehicles, and there is no time limit prescribed in the GST Act for making such further supplies, the applicant is eligible to avail ITC on capital goods. The applicant shall pay an amount equal to the Input Tax Credit taken on the said Demo Vehicles reduced by such percentage points as may be prescribed or the tax on the transaction value of such Demo Vehicles, whichever is higher.

[M/s Chowgule Industries Private Limited, 2020-VIL-06-AAR]

G. GST: Handling activity of imported agriculture produce is not exempted.

The AAAR held that imported raw whole yellow peas are agricultural produce, however consignment of raw whole yellow peas was harvested in foreign land and the concerned primary market is located in that foreign land. From a combined reading of entry no. 54(e) of 12/2017-CTR and definition 2(d) of the exemption notification, all services and processes are excluded beyond the primary market. The spirit of the legislature was intended to boost the agricultural sector of the home country and not that of a foreign land. Accordingly, exemption is not applicable.

[M/s T.P. Roy Chowdhury & Company Pvt Ltd., 2020-VIL- 01-AAAR]

H. GST: Advertisement carrying specific messages where the content is exclusive property of recipient, supplier can be said to be providing supply of printing services.

Appellant was engaged in the business of printing of trade advertisement material using printing ink and base material and the content of which is provided by the recipient. The AAAR observed that the PVC sheet does not have any other usage other than displaying the advertisement content and the advertisement materials carry specific messages meant for customers and the contents are very specific to the product for which the advertisements are made. For example, advertisement meant for Hyundai cannot be used by Hero or any other company, therefore, the content is exclusively the property of the client who entrusts the job to the appellant and the usage right of the content remains with the client of the appellant. It held that the supply is a composite supply, supply of service being predominant. *[M/s Macro Media Digital Imaging Pvt Ltd, 2020-VIL-02-AAAR]*

I. GST: Benefit of reduced rate of 12% is available to contractor constructing units having carpet area upto 60 sq. mtrs.

The Maharashtra AAR held that benefit of reduced rate of 12% would be available to contractor for supply against construction of the units having carpet area upto 60 sq. mtrs. in the "Affordable housing project" and tax for units above the carpet area 60 sq. mtrs. would be payable at normal rate of 18%. Further, benefit of reduced rate would be available for common areas and amenities on pro rata basis. Also, building completion and finishing services forming part of the construction services would also be eligible for reduced rate.

[M/s Shapoorji Pallonji and company Private Limited GST – Maharashtra AAR]

I. GST: Commissioner cannot delegate the powers of provisional attachment u/s 83 to the assistant commissioner

Held that the power conferred to the commissioner under section 83 of CGST Act for provisional attachment should not be delegated to assistant commissioner, hence the order of provisional attachment of property by the assistant commissioner was declared unsustainable.

[GUJ ENPROCON ENTERPRISE LTD Vs THE ASSISTANT COMMISSIONER OF STATE TAX GST]

J. GST: Directed state government to alter/reframe incentive schemes in consonance with the provisions of GST.

The Hon'ble High Court directed the government of west bengal to alter/reframe the incentive schemes which were made during the old taxation regime in consonance with the provisions of the GST Act. As without the alterations in those schemes, the benefits provided by the schemes are infructuous.

[CAL EMAMI AGROTECH LTD Vs THE STATE OF WEST BENGAL GST]

J. GST: Consideration paid for vacating the claim by parties of setting the SEZ units is supply of service and is taxable under GST.

The GOA AAR ruled on the application of a government of Goa undertaking that compensation paid for vacating the claim by parties to construct a SEZ is supply of service. In the instant case, deposits were taken from the parties for leasing land for development of SEZ which were later on refunded with the compensation as the project did not materialize. Authority ruled that original amount paid back along with compensation is supply of service under clause 5(e) of schedule II of GST act.

[AAR M/s GOA INDUSTRIAL DEVELOPMENT CORPORATION GST]

K. GST: Service of lodging and boarding along with commercial coaching is a composite supply.

Held that the supply of service of boarding and lodging along with commercial coaching is composite supply and is liable to taxed at the rate applicable to the principal supply i.e. commercial coaching. Also, the threshold turnover for registration under GST regime would be considered taking into consideration charges for boarding and lodging along with charges of commercial coaching.

[M/s DOCTORS ACADEMY OF EDUCATIONAL SOCIETY GST – Andhra Pradesh Appellate Authority]

L. GST: Life of order of provisional attachment under section 83 is one year and it stands removed after that period

Hon'ble High court held that the life of an order of provisional attachment under Section 83 is one year and after the expiry of validity period, the provisional attachment stands removed automatically. In the instant case, two bank accounts were provisionally attached u/s 83 due to nonpayment of compensation cess. Further, ordered the petitioner to maintain a stock worth Rs. 4 Cr. at all times, till the final disposal of adjudication proceedings

[GUJ MONO STEEL (INDIA) LTD Vs STATE OF GUJARAT GST]

M. GST: "Pre sale and marketing services" provided for the products of overseas client are 'intermediary service' as defined under section 2(13) of CGST Act.

The Karnataka AAAR held that "pre sale and marketing services" provided for the sale of product of overseas client is in the nature of facilitating the supply of products of the overseas client and is correctly classified as 'intermediary service'. In the instant case, appellant argued that the pre-sales promotion and marketing services are supplied to the Principal on their own account and hence excluded from the definition of intermediary service but such contention was not accepted by the AAR.

[M/s INFINERA INDIA PVT LTD GST – Karnataka AAAR]

N. GST: Powers of the authorized officer under section 67(2) is to search the premises and seize the documents, goods, articles, and things related to proceedings but not search for a taxable person.

In the instant case, the authorized officer under the search and seizure proceedings under section 67(3) converted the proceedings into a search for taxable person and search party camped into the residential premises for 8 days and kept the family members under surveillance. Held that powers in the law are only confined to the search of premises and seizure of documents, goods, articles, or things, which are useful for proceedings and any search for taxable person and keeping family members under surveillance, are not allowed by the law.

[37-GUJ PARESH NATHALAL CHAUHAN Vs STATE OF GUJARAT GST – Section 67(2)]

O. GST: Powers of provisionally attaching the property or bank accounts under section 83 does not provide for automatic extension to any other taxable person from any enquiry specifically launched against any other taxable person

In the instant case, the attachments under section 83 were extended to the taxable person other than the taxable person against whom it was originally made. Held that, an opinion has to be formed that to protect the interest of Revenue an order of provisional attachment is necessary or not, this power is to be used in limited circumstances where there is direct nexus between the taxable person against whom attachment is extended and against whom it was originally made. Merely on the basis of summons issued against the person provisions of section 83 can't be extended.

[BOM KAISH IMPEX PRIVATE LIMITED Vs THE UNION OF INDIA]

P. GST: Services of leasing of goods transport vehicle without operators to GTA are not exempt.

The West Bengal AAR held that services by way of giving on lease any goods transport vehicle without operators is classifiable under SAC 997311 and is taxable. Further, held that input tax paid on purchase of such goods transport vehicle can be claimed as ITC and there is not prohibition under section 17(5) to claim ITC on goods transport vehicle.

[ISHAN RESINS & PAINTS LIMITED GST – West Bengal AAR]

Q. GST: Refund of IGST paid on export of services is not allowed without submission of Bank realization certificate (BRC) or foreign inward remittance certificate (FIRC) against the invoices issued for the services provided.

In the instant case, refund of IGST was claimed for the IGST paid on export of software consultancy service and submitted the unsigned inward payment customer advice issued by bank but not submitted the BRC or FIRC related to payment of those services. Held that any inward payment customer advice cannot be accepted in place of BRC or FIRC and hence refund claim cannot be accepted

[M/s LOGIN RADIUS LLP. 2020-VIL-04]

R. GST: Attachment under section 83 cannot be done without initiating proceedings by issuing show cause notice.

In the instant case, bank accounts were attached by the additional director general of goods and service tax intelligence on the ground that proceedings had been initiated in terms of Section 67(2) of the CGST Act, 2017 to determine the tax or any other amount that may be due from it. Held that the attachment under section 83 can only be done during the pendency of proceedings initiated u/s 62, 63, 64, 67, 73 or 74 and action in any section has been contemplated by issuance of show cause notice. Hence, any attachment without initiation of proceedings by issuance of show cause notice is not valid.

[M/s PRIME GOLD INTERNATIONAL LIMITED Vs THE ADDITIONAL DIRECTOR GENERAL GST 2020-VIL-23-MAD]

S. GST: Amount wrongly paid under the CGST head instead of IGST is refundable and no interest is payable for delay in depositing IGST.

In the instant case, the amount under CGST head was deposited in place of IGST bona fidely without concealing the transactions. Hon'ble high court held that refund is admissible for the CGST amount and IGST amount can be paid without interest liability as per the provisions of section 77(1) of CGST and section 19(2) of IGST as there is no evidence to prove that the transaction was not bona fide. *[SHREE NANAK FERRO ALLOYS PVT LTD Vs THE UNION OF INDIA GST 2020-VIL-30-JHR]*

T. GST: Classification of goods in the HSN for determining the rate of tax is done in the specific entry instead of general entry.

Hon'ble high court held that the product in question is covered by a specific description of products in the HSN table and any other classification in general entry of "others" is

clearly misconceived. In the instant case, petitioner contended that the product "odomos" is medicine under head 3004 and falls in "others" category of medicine but AAAR contended that the product is mosquito repellant covered under heading 38089191. High court directed that more specific classification would be regarded for the purpose of classification and hence it would be classified under the heading 38089191.

[M/s DABUR INDIA LTD Vs COMMISSIONER OF CGST, GHAZIABAD 2020-VIL-28-ALH]

U. GST: Bus body building activity on the chassis provided by the principal is supply of Service

Held that the body building activity of bus on the chassis provided by the principal is supply of service and current contention of treating the same as goods is not correct. Hence, the supply is taxable at a rate of 18% instead of 28%

[M/s SLN TECH-FABS (BENGALURU) PVT LTD GST 2020-VIL-10-AAR]

V. GST: Recovery from employees against medical insurance of his parents not taxable

AAR held that where amount has been recovered from employee for medical insurance of his parents is not a supply in the course or furtherance of business of appellant engaged in software development. Hence, GST in not leviable on such recovery. Also, ITC of GST charged by insurance company would not be available.

[Uttar Pradesh AAR, Applicant: ION Trading India Pvt. Ltd.]

W. GST: Applicability of Circular No.125/44/2019 and 37/11/2018 has been stayed to the extent it restricts clubbing of tax periods across different financial years for claiming refund

High court has stayed applicability of Para no.8 of Circular no. 125/44/2019 & Para 11 of Circular no.37/11/2018 which restricts that refund application cannot cover multiple tax periods which falls across different financial years. Also, interim relief allowed to appellant

[M/s. Pitambra Books Pvt. Ltd. Vs. Union of India & Ors, 2020-VIL-45-DEL]

X. GST: Interest on delayed payment of tax is an automatic liability

Madras High court held that interest on delayed payment of tax is an automatic liability fastened on the assesse, however, quantification of such liability cannot be determined by way of an unilateral action but it needs an arithmetic exercise

[M/s. Daejung Moparts Pvt. Ltd., 2020-VIL-67-MAD]

Y. GST: ITC availability on hiring of buses, cars for transportation of employees?

It was held that prior to 30.08.2018 (date of amendment in negative list of ITC), ITC shall not be available in respect of bus or cars hired for transportation of employees. Also, it provided that hiring of buses is squarely covered under phrase "rent-a-cab" in negative list. However, post 30.08.2018, ITC shall be available in respect of hiring of buses but ITC in respect of cars would continue to be ineligible.

[M/s. YKK India Private Limited, 2020-VIL-09-AAAR]

Z. GST: No exemption available if contribution from a member to RWA exceeds 7500/- per month per member and therefore, whole contribution is taxable.

It was held that contribution from a member to RWA is taxable under GST and it cannot remain untaxed on account of principle of mutuality as decided by the Hon'able Supreme court during erstwhile indirect tax regime. Further, it held that where amount of contribution exceed 7500/- per member per month, it would not find exemption and complete contribution is taxable

[M/s Vaishnavi Splendour Homeowners Welfare Association, 2020-VIL-07-AAAR]

AA. GST: "Pre-sale and marketing support services by the appellant for overseas customer" amounts to intermediary services

AAAR held that pre-sale promotion and marketing services undertaken by the appellant is squarely covered under phrase "arranging or facilitating the supply of goods or services or both between two or more persons" as provided under definition of 'intermediary'. Hence, services by appellant would qualify intermediary services

[M/s. Infinera India Pvt. Ltd., 2020-VIL-06-AAAR]

BB. GST: Circular which clarified that chilling and packing services of milk are taxable at 5% instead of nil rate quashed by Court

The Hon'able Gujarat High court held that chilling and packing services of raw milk constitutes "support services to agriculture, forestry, fishing, animal husbandry" which is taxable at nil rate and circular providing otherwise is, therefore, set aside

[M/s. Gujarat Co-operative Milk Marketing Federation Limited vs. Union of India, 2020-VIL-94-GUJ]

CC. AAR: Leasing of motor vehicle to GTA constitutes "transfer of right to use goods" and it is taxable under SI.No.17 (iii) of rate Notification

The Appellant is leasing out goods transportation vehicles to GTA. The exemption notification under GST includes "services by way of giving on hire a means of transportation of goods to a GTA". AAR held that transfer of right to use goods is taxable under rate Notification which, therefore, in turn restricts the term 'hire' in exemption entry to cover only those cases wherein transfer of right to use is not involved. Since, instant case involves transfer of right to use goods, it is taxable by virtue of rate notification.

[M/s. Ishan Resins & Paints Limited, 2020-VIL-12-AAR]

DD. GST: Court held that prolonged stay of departmental officers for 8 days at the premises of taxpayer during search is invalid

In the facts of case, department commenced search of the premises on 11.10.2019 and it was completed on first day itself. However, officers stayed at the residential premises of taxpayer for 8 days and converted the search of goods liable to confiscation, documents, books etc. to a search of taxpayer. The court held that such a prolonged stay of departmental officer at residential premises of taxpayer is infringement of the Right to privacy of the taxpayer. It further said that Section 157 of the CGST Act which provides immune to officer of GST from any suit, prosecution or other legal proceedings against anything done or intended to be done in good faith may unleash a regime of terror in so far as the taxable persons are concerned

[Paresh Nathalal Chauhan vs. State of Gujarat, 2020-VIL-37-Guj]

E-WAY BILL (EWB), DETENTION AND CONFISCATION OF GOODS ISSUES

A. GST: Mistake while entering distance in E-way bill is typographical error

Appellate authority held that mistake while entering distance in E-way bill is a typographical error and may be treated as a minor one. Respondents directed to refund the amount of Rs.154798/- already deposited by appellant

[M/s. Godrej Consumer Products Ltd., 2020-VIL-07-GSTAA]

B. GST: Goods released after furnishing of bond by appellant

Supplier mentioned CGST and SGST over tax invoice whereas IGST over E-way bill. Goods were seized by authorities contending evasion of taxes. High court remanded back the matter for adjudication and ordered for release of goods after furnishing of bond by appellant instead of bank guarantee

[M/s. Umiya Enterprsie vs. 1. Assistant state tax officer 2. State tax officer, 2020-VIL-50-KER]

C. GST: Tax cannot be levied on mere generation of multiple EWB by mistake.

The GSTAA held that selling dealer has erroneously generated way bills five times for the same supply invoice due to mistake and the supplier has uploaded the sales in GSTR-1/GSTR-3B forms only for one invoice/consignment, which suggest that the waybills were generated by mistake. Mere way-bill generation shall not be a basis to treat the reflected turnover as supply. Tax levied on such EWB is annulled.

[M/s Sri Bhagawathi Chemical, 2020-VIL-01-GSTAA]

D. Order under section 129(3) without opportunity of being head is not valid:

The HC held that Section 129(4) provides that no tax, interest or penalty shall be determined under sub-section 3 without giving a person concerned an opportunity of being heard. The opportunity which the statute is talking about has to be meaningful opportunity and not just an eye wash. The matter is remitted to the respondent for the purpose of giving an opportunity of hearing.

[M/s Meghmani Organics Ltd.., 2020-VIL-11-GUJ]

ANTI-PROFITEERING

A. NAA: Writ petitions in various High courts transferred to Delhi High Court

Writ petitions in various High courts challenging the provisions of Section 171 of CGST Act and rules made thereunder have been transferred to High Court of Delhi

[The National Anti-Profiteering Authority vs. Hardcastle Restaurant Private Limited & Ors., 2020-VIL-09-SC]

B. NAA: Authority observed that respondents have not profiteered either on account of reduction in tax rate or benefit of ITC

Authority observed that percentage of Cenvat credit availability in relation to turnover during pre-GST regime (i.e., 0.94%) has been reduced when compared to corresponding ITC availability in GST regime (i.e., 0.39%). Also, tax rate had gone up from 5.5% during pre-GST regime to 12% in GST regime. Therefore, it held that respondents have not profiteered as envisaged under Section 171 of CGST Act

[1. Shree Paramjeet Rathee 2. DGAP, Indirect taxes & customs, New Delhi vs. M/s. Supertech Limited, 2020-VIL-17-NAA]

TRANSITIONAL ISSUES

A. GST: Opening of GST portal or manual filing of GST TRAN-1 not allowed

High Court held that where assesse could not submit any evidence with respect to technical glitches and errors on GSTN portal which is pre-requisite of Circular no.39/13/2018 then opening of GSTN portal or manual filing of TRAN-1 cannot be allowed

[M/s. Jagadamba Hardware Stores vs. Union of India, 2020-VIL-51-CHG]

B. GST: Dismissal of review petition of revenue filed against previous decision allowing transitional credit to original petitioners

The Revenue filed review petition, on the grounds of "per incuriam", against earlier decision which allowed transitional credit dismissed by the Hon'able Gujarat High Court

[The Nodal Officer vs. The Goods and Service Tax Council, 2020-VIL-95-Guj]

C. HC allowed filing of Tran-2 even when relevant Tran-1 table was not filled:

The petitioner grievance is with respect to inability to fill Tran-2 and claim ITC since it did not fill column table 7B in Tran-1 on the assumption that table 7B was not required to be filled by them due to confusion created by misleading language. is annulled. The HC held that relief has been given taking into consideration human errors and the mistakes made by them either in filing up of the form GST TRAN-1 or for not having been able to file the same within the stipulated deadline on account of the technical glitches faced on the portal or for such similar reasons, where credit was irretrievable. The revenue is directed to either open the online portal so as to enable the

respective petitioners to file the TRAN-1 and TRAN-2 electronically, or to accept the same manually.
[M/s Gillette India Ltd., 2020-VIL-01-DEL]

D. HC allowed filing of Tran-1 even when no proof for inability to upload due to system error:

The mere fact that the petitioner cannot establish that the inability to upload the required details or revise the same was on account of a system error that was occasioned by the respondents, cannot be a reason for denying him the substantive benefit of carrying forward the credit earned by him under the erstwhile regime. The revenue is directed to allow revise his TRAN-1. *[M/s Kalpaka Distributors Pvt. Ltd., 2019-VIL- 630-KER]*

E. GST: Madras High court one member bench which allowed EC, SHEC & KKC to be carried forward to GST regime stayed

Judgment of one member bench of Madras High court which had allowed Education cess(EC), Secondary Higher Education cess (SHEC), Krishi Kalyan Cess (KKC) to be carried forward to GST regime has been stayed *[Assistant Commissioner of CGST and Central Excise Vs. M/s. Sutherland Global Services Pvt. Ltd., 2020-VIL-44-MAD]*

F. TGST: Respondents directed to allow GST portal for filing of TRAN-1 or accept it manually

The Delhi High court held that the assesse can't be denied the opportunity to file Form GST TRAN-1 even if he has failed to preserve any evidence of "technical glitches" faced by him. The Hon'able Court also held that credit standing in favour of an assessee is "property" in terms of Article 300A of the Constitution of India and the assessee could not be deprived of the said property save by authority of law
[M/s. A.B. Pal Electricals Pvt. Ltd., 2020-VIL-06-DEL]

G. GST: Revenue special leave petition challenging order of P&H High Court in respect of filing of TRAN-1 dismissed

The Hon'able Apex court turned down the special leave petition of Revenue challenging the decision of P&H High court in which it was directed to permit the migrated taxpayers to file or revise TRAN-1 either electronically or manually if such taxpayers could not complete so till 27.12.2017
[Union of India & Ors. Vs. Adfert Technologies Pvt. Ltd., 2020-VIL-10-SC]

CUSTOMS

A. Custom: Social Welfare Surcharge (SWS) cannot be collected from value of Scrips along with custom duty.

The HC held that the SWS is not in the nature of duty of customs and on the other hand, it is an independent levy, imposed and collected under a different enactment. Revenue are not empowered to make the debit of Social Welfare Surcharge, from and out of the value of the scrips. Assuming the subject exemption notifications grant exemption in respect of the customs duty, the petitioner is not justified in contending that the other duties or levy payable under different enactment are also exempted. The SWS being a levy imposed under the Finance Act, 2018 and an independent levy, the petitioner is bound to pay the same. The petitioner is liable to pay the appropriate SWS even when BCD is NIL. However, recovery of such SWS cannot be done by making debit from the value of the scrips produced by the petitioner.
[M/s Gemini Edibles and Fats India Pvt. Ltd.., 2020-VIL- 05-MAD-CU]

EXCISE

A. Excise: Cenvat credit not required to be reversed for exempted waste product.

Appellant was manufacturing taxable goods and there were exempted waste products. The Tribunal held that Rule 6 is applicable only in the case of two final products being manufactured by the assessee and not in the case of one final product and another waste product or the by-product being produced. By amendment in Rule 6 non-excisable goods cleared for a consideration from the factory may

have the effect of treating byproduct or waste to be an exempted good but cannot result in the same to be called as a manufactured goods, and therefore despite the amendment, the petitioner cannot be saddled with the liability of reversal of CENVAT credit. The demand of reversal under Rule 6 of CCR is an act of judicial indiscipline on the part of adjudicating authorities.

[M/s Shivani Detergent Pvt. Ltd., 2020-VIL-02-CESTAT-DEL-CE]

B. Excise: Endorsed Invoices is valid document for availing cenvat.

The Tribunal held that when the inputs/ capital goods/ raw-material has been transferred from one unit to another by making endorsement on the invoices and these transferred goods are used by recipient unit in manufacture of final product then such invoices can be taken as a valid document by said recipient unit for taking the Cenvat Credit irrespective of the fact that the invoice was issued in the name of transferring unit but has been endorsed in the name of recipient unit who is appellant in the present case. The endorsed invoice otherwise qualify the intent of the legislature in terms of proviso to Rule 9 (2) of CCR.

[M/s Genus Power Infrastructure Ltd, 2019-VIL-20- CESTAT-DEL-CE]

SERVICE TAX

A. ST: Profit/Surplus earned by Brand owner is not chargeable to service tax.

The revenue demanded service tax on the amount of profit/surplus earned by the appellant under the arrangement with the contract bottling units (CBUs). The Tribunal held that as per CBEC Circular No. 332/17/2009 dated 30.10.2009, the appellant being brand owner and earned the profit/surplus, the same being in nature of business profit and the same is not chargeable to service tax. The said circular has not been withdrawn by the CBEC yet. Moreover, the CBUs are paying service tax which means the appellant is not a service provider but is a service recipient.

[M/s Pernod Ricard India (P) Ltd, 2019-VIL-773-CESTAT-CHD-ST]

B. ST: No provision to recover credit from ISD under Rule 14 of Cenvat Credit Rules.

The Tribunal held that service tax paid on arrangement fees even though loan was cancelled later on will be eligible as credit. Further, it said that appellant is an ISD and there is no legal provision in Rule 14 of the CCR to recover credit from an ISD, it stipulate recovery only from the manufacturer and the service provider. Therefore, duty demand consequent to denial of credit cannot be raised from an ISD.

[M/s Himadri Speciality Chemicals and Industries Limited, 2020-VIL-11-CESTAT-KOL-ST]

C. ST: Period of limitation for claiming refund of service tax deposited under a mistake of law cannot be barred by limitation.

The Tribunal observed in case of deposition of service tax or excise tax under mistake of law by the assessee is not the amount of service tax or excise tax and section 11B of central excise act, 1944 for period of limitation for claim of refund is not applicable. In the instant case, CESTAT held that amount deposited by the appellant by mistake of law should be refunded even after the expiry of period for claiming refund under section 11B of central excise act, 1944.

[M/s ASL BUILDERS PRIVATE LIMITED Vs COMMISSIONER OF CENTRAL GST & CX, JAMSHEDPUR Service Tax]

D. ST: Sale of software after importing it on his own account by the service provider is not 'intermediary services'.

In the instant case, the revenue denied the refund claim of CENVAT credit for the taxes paid under RCM on purchase of software from the Microsoft and same was sold after customizing or in same condition outside India. Held that, these are not intermediary services as provisioning of services are on his own account by the service provider, there is no relationship of principal and agent with Microsoft and also service provider was free to determine the price of software. Hence the place of provision of service would be the place of recipient of service as per Rule 3, not the place of service provider according to Rule 9(c) for intermediary services. Accordingly, provisioning of services

was held to be export of services and claim of refund of CENVAT credit was held valid.

[CESTAT-DEL-ST PRINCIPAL COMMISSIONER, CGST DELHI SOUTH COMMISSIONERATE Vs M/s COMPAREX INDIA PVT LTD]

E. ST: Same date of outward tax invoice and input invoice does not mean input services have not been used in provision of outward services.

In the instant case, appellant contracted with overseas customer to provide scientific and technical consultancy service. On the other hand, it subcontracted these services to two entities in India, however, with a right to supervise and monitor services from two entities. Inward invoice from subcontractor and outward invoice to overseas customer bears same date and therefore, revenue contented inward services have not been used in provision of outward services and accordingly, Cenvat credit is not available. However, Tribunal held that appellant was doing continuous supervision and monitoring of services from subcontractors. Same date over output and input invoice does not mean non-utilisation of input services in provision of output services. Hence, Cenvat credit available. *[Pushpendra Kumar Jain Vs CCE & ST-Vadodara-II, 2020-VIL-55-CESTAT-AHM-ST]*

F. ST: Appellant not eligible to refund of service tax if it was paid correctly in terms of law

Appellant paid service tax on business and consultancy services during Apr 2017 to Jun 2017 (pre-GST regime) and issued tax invoice to customer. Customer did not accepted tax invoice, therefore, appellant issued credit note in GST regime and issued GST invoice to him. Also, GST was paid to government on the basis of such GST invoice. Appellant sought refund of service tax in respect of credit note issued. Tribunal held that no refund can be allowed since service tax paid by the appellant is in order and correct and there are NO provisions under Section 11B of the Central Excise Act for the refund of the duty that was liable to be paid legitimately.

[M/s. TPI Advisory Services India Pvt. Ltd. Vs. Commissioner of Central Tax, 2020-VIL-57-Cestat-BLR-ST]

G. ST: Right to collect parking fees given by mall owners would constitute consideration against "management maintenance and repair" service from appellant operating parking space

Appellant contended that it is not receiving any consideration from mall owners against provision of "management maintenance and repair" services provided to them. Tribunal held that mall owners have provided appellant right to collect parking charges and same is to be treated as consideration in this respect. Further, Service tax would be levied over parking charges collected from individual customers.

[M/s. MGF Event Management vs. Commissioner of Central Excise, Delhi, 2020-VIL-69-CESTAT-DEL-ST]

H. CESTAT: No condition in law that capital goods should be in perpetual operation to entitle the assesse for cenvat credit

Appellant removed the "set-top boxes" and "control instrument" to customer premises for providing direct to home television services. The services were discontinued by its customers but set-top boxes and control instrument continued to situate at the premises of such customers. Department sought reversal of cenvat credit from the appellant in terms of Rule 3 of Cenvat Credit Rules. However, tribunal pronounced its decision in the favor of appellant

[M/s. Videocon D2H Limited vs. Commissioner of Central Excise, Customs & Service Tax, Aurangabad, 2020-VIL-113-CESTAT-MUM-CE]

I. CESTAT: Cash refund of unutilized cenvat credit of EC, SHEC & KKC denied

The provision of Section 11B of Central Excise Act allows refund of duty paid and not of cenvat credit. Further, provisions which allow refund of cenvat credit to exporters are not applicable in present case. Therefore, the Tribunal held that cash refund of unutilized cenvat credit of EC, SHEC & KKC cannot be allowed to appellant in the absence of any specific provision

under law

[M/s. Bharat Heavy Electricals Limited vs. Commissioner of Central Excise-Secunderabad-GST, 2019-VIL-766-CESTAT-HYD-ST]

J. MADRAS HC: Notice pay recovery from employee is not leviable to service tax

The Hon'able court held that while making notice pay recovery, the employer has not tolerated any act of employee but has permitted a sudden exit upon being compensated by the employee. The notice pay recovery does not give rise to rendition of services either by the employer or the employee

[M/s. GE T & D India Limited vs. Deputy Commissioner of Central Excise, Large Taxpayer Unit, Chennai, 2020-VIL-39-MAD-ST]

K. CESTAT: Deputation of employee by foreign company to Indian Joint venture is not a rendition of service by way of manpower supply

In the facts of case, foreign company deputed its employee to Indian company. The Indian Company was obliged to provide remuneration to the employee so deputed and also to account for the expenses borne by foreign company in respect of such deputed employee. The tribunal held that it is not Manpower Recruitment and Supply agency service and hence, not taxable. Further, reimbursement to foreign company in respect of "computer network services" is also not taxable under service tax

[M/s. NSK-ABC Bearings Limited vs. The Commissioner of Central Excise, Chennai, 2020-VIL-78-CESTAT-CHE-ST]

VAT

A. VAT: ITC cannot be denied to purchaser for non-payment of tax by seller in the absence of any machinery.

The HC noted that the petitioner firm had acted absolutely in a bona fide manner and had discharged its tax liability by paying the VAT amount to the selling dealer and had filed its return within time and claimed ITC. It held that the intent of the Legislature cannot be to punish the dealer acting in bona fide manner. The petitioner had discharged its liability under the VAT Act, and there being no mechanism under the JVAT Act, by which, the petitioner could compel the seller also to discharge their duty, it was not within the competency of the petitioner to compel the selling dealer to file the return within the stipulated time, and deposit the tax collected from the petitioner in the Government.

[M/s Tarapore & Company, Jamshedpur, 2019-VIL-629-JHR]

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