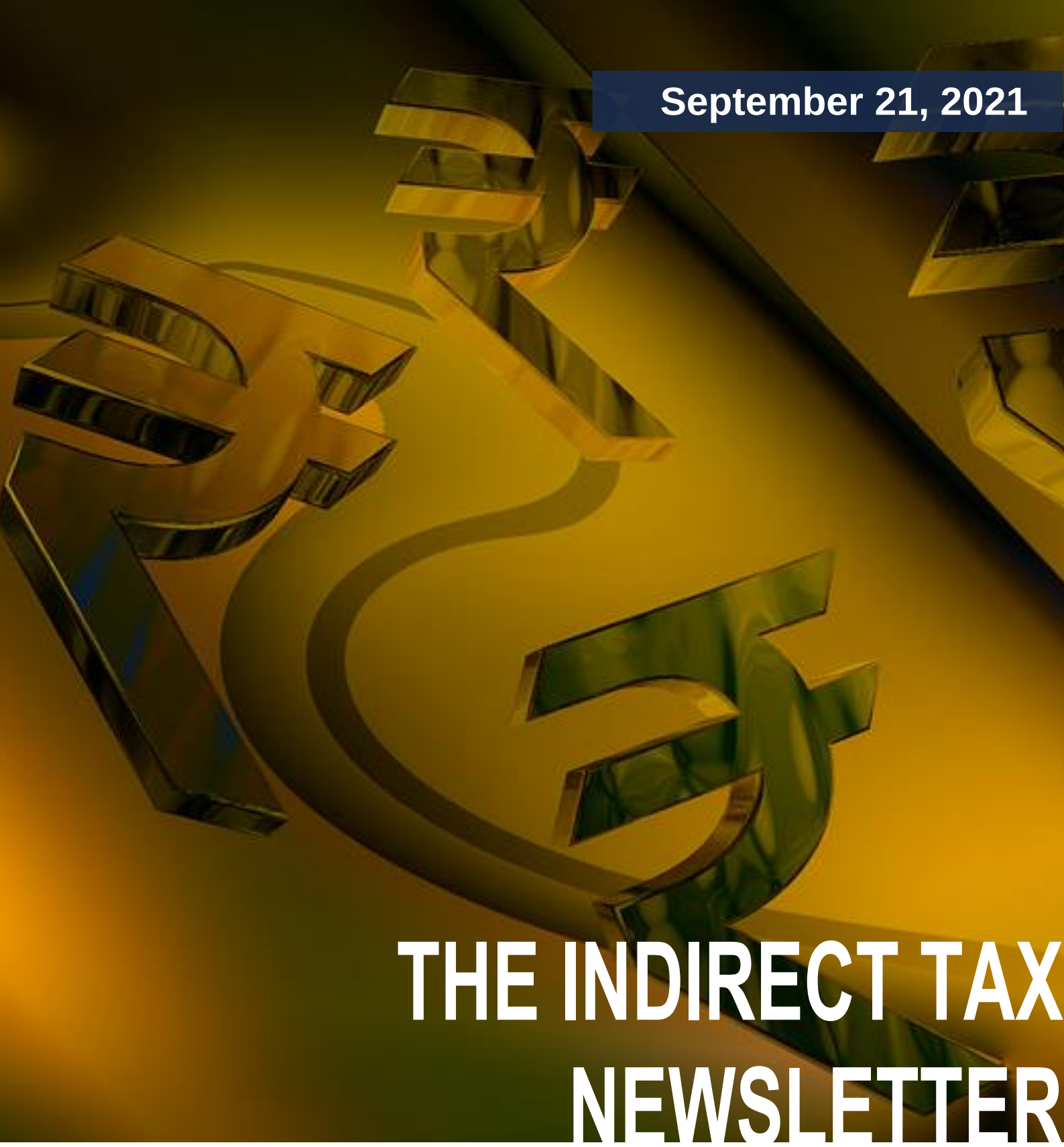

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Recent Case Laws

Goods and Services Tax (GST)

1. *VKC Footsteps India Private Limited* v. *Union of India*, [Civil Appeal No. 4810 of 2021 (Supreme Court), decided on September 13, 2021].

   Supreme Court upholds the validity of Rule 89(5) of the Central Goods and Services Tax Rules, 2017.

   Facts of the case:

   (a) The *vires* of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") were challenged, to the extent it did not allow refund of input services.

   (b) Earlier, the Gujarat High Court in the case of *VKC Footsteps India Private Limited* v. *Union of India*, [R/ Special Civil Application No. 2792 of 2019], had held that, Rule 89(5) of the CGST Rules is *ultra-vires* Section 54 of the CGST Rules, while the Madras High Court in the case of *Transtonnelstroy Afcons Joint Venture* v. *Union of India*, [WP No. 8596 of 2019], disallowed the refund of input services. The revenue authorities filed an appeal in the case of VKC Footsteps (*supra*) before the Apex Court.

   Judgment:

   (a) The Division Bench of the Supreme Court has upheld the validity of Rule 89(5) of the CGST Rules, thereby disallowing the refund of 'input services' under inverted duty structure. Consequently, the judgment of VKC Footsteps (*supra*) has been dis-approved and the ruling of Transtonnelstroy (*supra*) has been affirmed.

   (b) While enacting Section 54(3) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), the Parliament has envisaged a claim for the refund of unutilized input tax credit ("**ITC**") by a registered person at the end of the tax period. The first *proviso* thereto, which begins with the expression, "*no refund of unutilized ITC shall be allowed in cases other than*", operates as a limitation or restriction for the refund and not as a condition of eligibility for the refund.

   (c) The said *proviso* is followed by clauses (i) and (ii), which deals with zero-rated supplies made without payment of tax, and credit which has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, respectively. The legislative draftsperson has clearly distinguished the said clauses in as much as in the case of exports, dealing with clause (i) for zero-rated supplies, no distinction between input goods or input services has been made, whereas in case of domestic supplies, clause (ii) relates to credit accumulation on account of rate of tax on inputs being higher than rate of tax on output supplies and not input services.

   (d) When the first *proviso* to Section 54(3) of the CGST Act has provided for a restriction on the entitlement to refund only in case of 'inputs' in case of inverted duty structure, it is impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature

has provided. Accordingly, to construe 'inputs' so as to include both input goods and input services would do injustice to the provisions of Section 54(3) and would lead to recognizing an entitlement to refund, beyond what was contemplated by the Parliament.

(e) Refund is a matter of statutory prescription. When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated at par on a matter of refund of unutilized ITC cannot be accepted. Therefore, the validity of Section 54(3) of the CGST Act was upheld by the Apex Court.

(f) The use of the formula provided under Rule 89(5) of the CGST Rules for determining the refund on account of inverted duty structure is a familiar terrain in fiscal legislation including delegated legislation under parent norms and is neither untoward nor *ultra-vires*. While there are anomalies in the formula for determining the refund in case of inverted duty structure which excludes 'input services' from the scope of 'Net ITC', an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the delegated legislation.

(g) The formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely a case that the practical effect of the formula might result in certain inequities. The reading down of the formula by prescribing an order of utilisation would involve recrafting the formula and walking into the shoes of the executive or the legislature, which is impermissible. Accordingly, the Supreme Court refrained from replacing the wisdom of the legislature or its delegate with their own. However, given the anomalies, the GST Council was strongly urged to reconsider the formula and take a policy decision regarding the same.

2. *Messrs Micromax Informatics Limited* v. *Union of India*, [W.P.(C) 8026/2021 & CM 24992/2021 (Delhi High Court), decided on September 2, 2021].

Time limit for availing transitional credit by way of retrospective amendment will not affect the rights of the taxpayers.

Facts of the case:

(a) The Petitioner has challenged the retrospective amendment dated May 18, 2020, by which the time limit for claiming transitional ITC under Section 140 of the CGST Act has been prescribed.

Judgment:

(a) The Delhi High Court in the case of, *SKH Sheet Metals Components* v. *Union of India*, [2020 (38) GSTL 592], held that interpreting the procedural timelines to be mandatory would run counter to the intention of the legislature and defeat the purpose for which the transitionary provisions have been provided. Such timelines would have to be construed as directory and not mandatory. The said decision of SKH Sheet (*supra*) has been appealed before the Apex Court and is pending as on date.

(b) Based on the above observations, it was held that the amendment does not affect the right of the petitioner to claim transitional credit. The petitioner was at liberty to apply for the transitional credit before the department, which shall be dealt in accordance with law and subject to the further order of the Supreme Court in SKH Sheet *(supra)*.

3. *Messrs Mahavir Enterprise* v. *State of Gujarat*, [R/SCA No.9586 of 2020 (Gujarat High Court), decided on September 2, 2021].

No provisional attachment of property permissible after final order issued in Form DRC-07.

Facts of the case:

The short question for determination in this case was whether after passing an order in Form GST DRC-07 against an assessee, an order of provisional attachment of property under Section 83 of the CGST Act could be passed or not.

Judgment:

(a) While allowing the Petition, the Hon'ble High Court held that there was no question of invoking Section 83 of the Act for the purpose of provisional attachment once the final order in form GST DRC-07 is passed.

(b) The Court observed and held that Section 79(3) of the CGST Act indicates that if any amount of tax, interest, or penalty similar to the present case is payable by a person to the government, then such amount can be recovered by a proper officer, as if it were an arrear of State tax or the Union Territory tax. This provision can be understood as a recovery by way of revenue measures and is possible or permissible only after proper attachment of any property of the assessee. This attachment has nothing to do with the provisional attachment under Section 83 of the CGST Act and the impugned order was consequently set aside.

4. *Messrs BEML Limited*, [KAR/AAAR-08/2021, decided on September 3, 2021].

Clearly demarcated independent supplies merely undertaken through a single contract does not constitute a composite supply of goods and services

Facts of the case:

(a) Messrs BEML entered into a contract with Messrs BMRCL regarding supply of intermediate cars for the Bangalore Metro Rail Project, wherein it had created specialized Cost Centres (A-H), each with distinct responsibilities/ activity under the contract.

(b) Messrs BMRCL had disputed the practice of considering the supplies made by cost centres C, D, E and G, as independent supplies and an advance ruling was sought by Messrs BEML with regards to whether such supplies can be a composite supply with principal supply being that of intermediate cars, i.e., goods.

(c) The Authority of Advance Ruling ("**AAR**") held that the single contract entered into between the parties constituted a composite supply with the principal supply being that of goods i.e., intermediate cars.

(d) Being aggrieved by the said order, the Department preferred this appeal before the Appellate AAR ('**AAAR**').

Judgment:

(a) The AAAR while reversing the ruling of the lower authority, held that, in case of a composite supply, the constituent supplies should be naturally bundled in a way that one cannot be supplied in the ordinary course of business independent of the other, and that removal of one element shall affect the nature of the supply. Such a concept is absent in the instant case.

(b) In the instant case, although there is one contract, the different activities undertaken by each of the Cost Centres C, D, E and G are completely independent, distinguishable, and not associated with each other. The nature of supply by each cost centre is identifiable in the invoices raised and such clear-cut demarcation of activities evidences the independence of the cost centres.

(c) The mere fact of entrustment of tasks through a single contract would not make it a 'composite supply' under Section 2(30) of the CGST Act and nature/ substance of the contract must be considered. Therefore, the supplies made by the four cost centres are to be considered as independent supplies of goods and services, as determined for each in the ruling.

5. *Messrs Symmetric Infrastructure Private Limited*, [RAJ/AAR/2021-22/09, decided on September 2, 2021].

GST implications on coaching services provided along with supply of ancillary goods

Facts of the case:

(a) The applicant provides coaching services to its enrolled students through its network partners present in different cities/ towns. The applicant also provides study materials and student kits inclusive of test papers, uniforms, bags etc., for which it charges a lump sum consolidated consideration from the students. The said service is provided by the applicant under a business model through its network partner, which in turn provides the services to the students on behalf of the applicant.

(b) An application was filed before AAR seeking clarification on following:

i. Whether such supply shall be considered, a supply goods or a supply of services?
ii. Whether the supply is in the nature of a composite supply or not. If yes, what is the principal supply?

iii. In terms of the agreement between the applicant and the network partner, who is the supplier and recipient, what is the value of service?
iv. Whether both, applicant and network partner can avail eligible ITC for the respective supplies?

Judgment:

(a) AAR held that the provision of the coaching service to the enrolled students of the applicant for a lump sum consideration for both goods and services falls under the ambit of "supply of service".

(b) The primary supply by the applicant to its students is that of coaching services, along with ancillary supplies *viz.* materials, uniform, bags etc. As such, the supply shall be considered as a composite supply where the principal supply would be that of coaching services.

(c) Basis the applicant's business model, where the services are provided by the applicant to its students against a consideration, the students shall be the recipient and applicant shall be the supplier of the service. Concurrently, where a network partner is providing services against the agreement and receiving consideration thereof, then the network partner shall be treated as the service provider and the applicant shall be the recipient. The consolidated amount charged from the students (including the value of goods) shall be the taxable value of the service provided by the applicant.

(d) The applicant, being a registered person can avail ITC as per the provisions of the CGST Act.

6. *Messrs Adama India Private Limited*, [GUJ/GAAR/R/44/2021, decided on August 11, 2021].

*ITC is not available for corporate social responsibility ("**CSR**") activities undertaken by a company*

Facts of the case:

(a) The applicant is a supplier of insecticides, herbicides etc. and under Section 135 of the Companies Act, 2013 spends mandatory amount on CSR activities by way of donations to government relief funds, educational societies etc. The vendors of the applicant supplying goods/ services for such activities charge GST on their supplies.

(b) The question for determination before the advance ruling authorities was whether the ITC on such CSR activities was eligible to the applicant or not.

Judgment:

(a) The AAR while deciding against the applicant, observed that, Rule 4(1) of the Companies (CSR Policy) Rules, 2014 specifies that CSR activities undertaken by a company shall exclude activities that are undertaken in pursuance of its normal course of business. Additionally, Rule 2(d) of the Companies (CSR Policy) Amendment Rules, 2021 amended the definition of CSR itself to exclude activities undertaken in pursuance of normal course of business of a company.

(b) Under Section 16(1) of the CGST Act, ITC can be taken by a registered person only when the supply of goods/ services/ both are used or intended in the course or furtherance of his business. On a conjoint reading of the above provisions of the GST Laws and Companies (CSR Policy) Rules, 2014, CSR activities are excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act.

Service Tax

1. *Messrs Indore Treasure Market City Private Limited* v. *Commissioner of Central Goods and Services Tax & Central Excise*, [Final Order No. 51784/2021 (CESTAT Delhi), decided on September 1, 2021].

   Admissibility of credit of Excise duty/ CVD on inputs and capital goods and credit of Service tax on input services used for construction of mall, further used to provide taxable output service

   Facts of the case:

   (a) The appellant availed the credit on inputs like cement, steel, angles, channels etc., and input services like construction services, consultancy, architect, and allied services etc., used by them in the construction of "Malls". The demand in instant case pertains to the credit availed by the appellant before April 1, 2011.

   (b) The main objections of the revenue authorities were that the appellant registered itself for services provided by an architect, business auxiliary services, goods transport agency services, renting of immovable property services etc. and did not register for the services of construction of a commercial building or complex or for the works contract services and therefore, there was no nexus between the input services availed and the services provided. It was also held that the appellant had not submitted evidence to establish the eligibility of credit.

   Judgment:

   (a) On merits, relying on the decision of *Messrs DLF Promenande Limited* v. *Commissioner, Service Tax, Delhi*, [Service Tax Appeal No. 54213 of 2014, decided on January 29, 2020], it has been held that, the issue of nexus between input material/ services and the output services has been settled by the Tribunal in favour of the appellant for the period in dispute.

   (b) For the limited purpose of quantification of the admissible credit amount, the matter was remanded to the adjudicating authority.

2. *Messrs Direct Logistics India Private Limited* v. *Commissioner of Service Tax Bangalore*, [Final Order No. 20731-20735/2021 (CESTAT Bangalore), decided on September 1, 2021].

   Profit accrued during provision of services cannot be held to constitute part of taxable service

   Facts of the case:

(a) The appellant, providing transportation service of goods in course of import/ export is registered, *inter-alia*, under the category of 'clearing and forwarding agent service', 'business auxiliary service' etc. The revenue authorities alleged that the amounts collected towards 'ocean freight' from the customers were higher than the amount actually paid for freight to the shipping line and the difference between the same was liable to service tax under the head of 'clearing and forwarding agency service'.

(b) Another question for determination was whether the appellant is liable to discharge service tax on the amount received from shipping line agents for booking cargo under 'steamer agency service' category or not.

Judgment:

(a) The appellant is providing not only 'clearing and forwarding service', but also transportation on its own account by purchasing freight space from ships. No amount is received for such trading of cargo space and any difference in the purchase and sale of the same is the appellant's profit margin. There are also cases where the sale of such space has been made against a loss due to market conditions. Such profit gained by the appellant cannot be included within the ambit of 'clearing and forwarding agent service' by any stretch of imagination and is therefore, outside the scope of taxability.

(b) For the amount received from shipping line agents for booking cargos, service tax under Section 65(105)(i) of the Finance Act, 1994 is levied when service is rendered by a steamer agent to a shipping line. In the present case, the appellant is neither a steamer agent, nor has the service been provided to the shipping line, but to its broker. Hence, service tax on such transaction is also not sustainable.

3. *Messrs Goa Friends Engineering & Electricals Private Limited* v. *Commissioner of Customs & Central Excise, Panaji*, [Order No. A/86749/2021 (CESTAT, Mumbai), decided on September 9, 2021].

Inconsistency in approach by the authorities to deny refund on a transaction and simultaneously failure to institute proceedings for recovery of tax for the period for which tax has not been paid shows that the exemption has been denied solely to reject the refund

Facts of the case:

(a) The appellant had provided 'installation, testing and commissioning' service of electrical circuitry for structures erected by Goa State Infrastructure Development Corporation ("**GSIDC**") and 'maintenance of electrical sub-stations' services for Goa Medical College ("**GMC**"), which, prior to March 31, 2015, were exempt in terms of Serial no. 12 in notification no. 25/ 2012-ST dated June 20, 2012, ("**Mega-exemption notification**"). Subsequent to the withdrawal of the exemption, the appellant paid service tax under Section 66B of the Finance Act, 1994.

(b) Such exemption was restored, *vide* notification no. 9/ 2016-ST dated March 1, 2016, by inserting the same at Serial no. 12A in the original Mega-exemption notification, for contracts that subsisted prior to April 1, 2015. Thereafter, the

appellant applied for a refund of the service tax paid during the intervening period.

(c) The refund was rejected on the ground that the activity of the appellant could not be considered as 'civil work' or 'any other original works' as intended by rule 2A of Service Tax (Determination of Value) Rules, 2006 and that the contract involved shifting of high-tension lines which could not be described as 'civil construction'. Hence, the exemption would not be available to the appellant and the refund of the service tax discharged during the intervening period was not available thereto.

Judgment:

(a) While allowing the appeal, the Customs Excise and Service Tax Appellate Tribunal ("**CESTAT**") has held that, the denial of the refund claim has not been followed up with institution of proceedings for the recovery of unpaid tax. In fact, the authorities have contended that the ineligibility of the activity for exemption implied tax evasion on part of the appellant for the period prior to April 1, 2015. Such an inconsistent approach by the department proves that the ineligibility of exemption has been conceived solely to deny the refund.

(b) It was further held that the electrical works undertaken by the appellant cannot exist independent of a civil structure, and it is a critically indispensable part of such structure. To segregate one component out of the entirety of civil structure does not appear to be the intendment of law. The exemption applies to activities in connection with civil/ original structures and is not limited to erection of such structure, as determined by the departmental authorities. Therefore, the retrospective effect of the exemption is applicable to the electrical works executed, and the maintenance undertaken, by the appellant. Consequently, the refund was duly allowed.

Customs

1. *Messrs M.K. Saha and Company* v. *Union of India*, [W.P.O. No. 203 of 2021 I.A. No. GA/1/2021 (Calcutta High Court), decided on September 6, 2021].

Adjudicating Authorities cannot waive statutory requirement of one provision on the pretext of power conferred by another provision of the same legislation

Facts of the case:

(a) The petitioner in the present case is a partnership firm and a customs broker licensee. Proceedings were initiated against the petitioner under Regulation 17 of the Customs Broker Licensing Regulations 2018 ("**CBLR 2018**"), which culminated into an adjudication order seeking to forfeit the security deposit and impose penalty on the petitioner.

(b) Meanwhile, during processing a bill of entry at the Indian Customs EDI System, an 'Alert' was generated that the licence of the petitioner has been suspended. Against such arbitrary suspension, a writ petition was filed before the Court. During the pendency of the writ petition, an appeal was filed against the adjudication order before the Appellate authority by making a pre-deposit of 7.5% of the penalty.

(c) The petitioner has challenged the validity of respondents' action of displaying of 'Alert' in the 'Customs EDI System'. Another question which arose for determination was whether the term "security deposit" has the same nature and character legally as of "duty" and "Penalty" and whether by mere pre-deposit of 7.5% of the penalty amount imposed in the original adjudication order, in filing the appeal, would amount to automatic stay or revocation of the order of the forfeiture of security deposit passed in the original adjudication order against which appeal has been filed.

Judgment:

(a) The Calcutta High Court, while allowing the writ petition, held that, there has been no record of any formal order being passed on suspension of the petitioner's license. Further, no documentary evidence proved that the statutory criteria and formalities as required under Regulation 16 of the CBLR 2018, which prescribes for the suspension of license in appropriate cases have been fulfilled. In fact, the Regulation 18(3) relied upon by the authority for such action also does not confer any power upon the Commissioner to waive the requirements of Regulation 16 of the CBLR 2018.

(b) It was further held that, there is no provision for 'deemed' or 'automatic' suspension of a customs broker's license and an order to that effect is also not supported by any provision of law and has no legal sanction. The impugned action suspending customs broker licence of the petitioner deprives his livelihood and is without the authority of law.

(c) The nature of security deposit has also been a point of discussion by the Calcutta High Court in holding that 'security deposit' cannot be equated with 'penalty' or 'duty'. Security deposit does not arise out of any demand, and it is a condition precedent for granting of license. Merely by pre-depositing 7.5% of the penalty in filing an appeal against the impugned order, the order of forfeiture of security deposit will not automatically stand stayed/ revoked unless specific order to that effect is passed and in case of non-deposit of fresh security deposit in compliance of the adjudication order legal consequence will follow automatically.

2. *Messrs Indian Explosives Private Limited* v. *Commissioner of Customs, Vishakhapatnam,* [Final Order No. A/30254/2021, decided on September 3, 2021].

Duty collected in excess during pendency of finalization of provisional assessment has to be returned once books of accounts show such excess duty as receivable.

Facts of the case:

(a) The appellant imported aluminium nitrate, which was chargeable to Basic Customs Duty at the rate of 5% (five percent) in terms of notification No.46/2011 Entry No. 358(1). However, a provisional assessment was resorted to for want of certain documents and customs duty at the rate of 7.5% (seven and a half percent) was paid by the importer. At the time of final assessment, the benefit of notification was extended. Accordingly, the appellant was entitled for the refund of the duty paid to the extent of excess 2.5% (two and a half percent) thereof and filed an application thereto. The amount was shown as receivables in the books of accounts of the appellant.

However, the refund was denied on the ground of unjust enrichment and absence of supporting documents.

Judgment:

(b) The Tribunal while allowing the appeal held that it has been settled by a catena of judgments that, if an amount is still lying outstanding or is shown as receivables in the books of accounts, then it cannot be said that the assessee has received the amount from its buyers in that case. Hence, the question of attraction of provisions of unjust enrichment in the present case does not arise at all.

(c) Also, once it is an admitted fact that duty has been collected in excess from the appellant during pendency of finalization of provisional assessment, the same has to be returned to the assessee once his books of accounts are showing such an excess duty paid as receivable. The same is the sufficient evidence for the fact that incidence of duty has not been passed on by the assessee/manufacturer to the end customers of the product manufactured. Hence, the refund rejection order is liable to be set aside.

Central Excise, Sales Tax, VAT

1. *M/s. Maruti Suzuki India Limited* v. *Commissioner of Central Excise & Service Tax, Gurugram*, [Order No. 60893/2021 (CESTAT Delhi), decided on September 7, 2021].

Pujas conducted for the functioning and betterment of business pertains to manufacturing activity for the purpose of availing credit

Facts of the case:

(a) The dispute pertains to availing of central value added tax ("**CENVAT**") credit on event management services *viz.* skill competition and other business event services such as puja, production line inauguration etc. obtained by the appellant.

(b) The CENVAT credit was denied on the ground that such services do not pertain to manufacturing activity or sales promotion.

Judgment:

(a) The CESTAT while deciding in favour of the appellant held that the skill competition event exhibits sales skill of employees and dealers, along with their participation in enabling more production and increased sales. Therefore, the service of the appellant forms integral part of the manufacture as well as sale, thereby qualifying as input service and is eligible for CENVAT credit.

(b) Vishwakarma Puja is a big festival for the workers who work on machines, and they pray to the God for good running of their machines by doing Vishwakarma Puja. Such puja, including puja for inauguration of production line are also integral part of manufacturing activity. Therefore, the appellant is entitled for CENVAT credit.

2. *Messrs J.U. Pesticides & Chemicals Private Limited* v. *Commissioner of Central Excise, Chennai,* [Order No. 42293/2021 (CESTAT, Chennai), decided on September 3, 2021].

In absence of express mandate, legislative provisions cannot be read down to the advantage of revenue authorities.

Facts of the case:

The Appellant, engaged in the manufacture of insecticides and MS ingots, filed a refund claim for accumulated CENVAT credit which was lying unutilized in their CENVAT account, owing to closure of manufacturing operations. Such refund was denied, *inter-alia*, because the reason for claiming such refund was not covered under any provisions of Section 11B of the Central Excise Act, 1944 read with Rule 5 of the CENVAT Credit Rules 2004.

Judgment:

(a) Nothing can be read into the legislative provisions which have been drafted consciously. There is no stipulation of refund under Rule 5 in a situation where a manufacturing unit is closed down. At the same time, there is also no specific prohibition for any refund in a situation of such closure of unit.

(b) Legislative intention cannot be applied to the advantage of the revenue authorities, especially in a situation where the tax amount in the form of CENVAT credit is already lying with Revenue. When the constitutional mandate prescribes no collection of tax without authority of law, there also cannot be retention of tax by the Revenue without the authority of law. Hence, the refund claim was allowed.

3. *Messrs Star Audio* v. *Commercial Tax Officer*, [Order No. W.P.Nos.33462 of 2005, 13514 & 13515 of 2006 (Madras High Court), decided on September 6, 2021].

Nature of transactions are of paramount importance for the purpose of levying tax

Facts of the case:

(a) The petitioner, engaged in the business of marketing and selling of pre-recorded audio cassettes, purchases the same from registered suppliers in Tamil Nadu who charged sales tax under the Tamil Nadu General Sales Tax Act, 1959 ("**TNGST Act**"). The petitioner receives master copy of audio from producers and entrusts the same to cassette manufacturers. The manufacturers in turn purchase blank cassettes, record songs onto it and thereafter sell the pre-recorded cassettes to the petitioner.

(b) The petitioner contends that the sales, which are made by the petitioner, are therefore second sales of pre-recorded audio cassettes, which are exempt from payment of tax as pre-recorded audio cassettes are only subject to tax at the point of first sale. The contention of the respondents is that the transaction between the petitioner and the cassette manufacturers is a 'works contract' and cannot be construed as first sale. Therefore, the exemption is not available to the petitioner.

Judgment:

(a) The Madras High Court while dismissing the writ petition has observed that the cassette manufacturer is purchasing the master copy for execution of the recording of cassettes by purchasing/ manufacturing blank cassettes and handing over or selling the recorded cassettes to the petitioner. Therefore, the nature of the contract is 'works contract,' whose definition under Section 2(u) of the TNGST Act categorically enumerates that 'manufacture' and 'processing' through an agreement is a "works contract".

(b) Further, after recording, the cassette manufacturer is not permitted to sell the product in the open market, but to handover the recorded cassettes only to the petitioner, who in turn, reserve their rights to sell the product in the open market. Such sale by the petitioner in the open market cannot be construed as a second sale, but to be taken as the first sale for the purpose of levying tax.

(c) For the purpose of levying tax with reference to the provisions of the tax law, the nature of transactions is of paramount importance for forming an opinion, whether such transaction amounts to 'sale' or 'works contract' or otherwise. In the present case, there is no dispute with reference to the transaction between the petitioner and the cassette manufacturers for recording of blank audio cassettes and supply of the recorded cassettes to the petitioner.

(d) Therefore, the sale by the petitioner cannot be considered as a first sale but is to be considered as 'works contract' and the sale by the petitioner in the open market is to be taken as the first sale for the purpose of levy of tax. Hence, the petitioner is not entitled to the exemption as contended.

4. *Messrs Larsen & Toubro Limited* v. *State of Orissa*, [STREV No. 469 of 2008 (Orissa High Court), decided on September 1, 2021].

Merely because the component parts were brought from different places outside Orissa and assembled in Orissa, it cannot be said that it was an intra-State sale.

Facts of the case:

The petitioner has entered into three contracts with Tata Refractories Limited ("**TRL**") to (i) supply indigenous equipment and accessories for 100 TPD Rotary kiln; (ii) erection, testing and commissioning of the kiln; and (iii) system engineering and design of the kiln. The kiln would be set up in Orissa and equipment to be supplied would be bought from outside the state by way of transfer of title documents. The primary dispute pertains to whether components being despatched from out of the state and assembled in Orissa would be considered as an intra-state sale.

Judgment:

(a) The Orissa High Court while allowing the petition held that, merely because the component parts were brought from different places outside Orissa and assembled in Orissa, it cannot be said that it was an intra-State sale and that a colourable device was deployed to avoid paying sales tax under the OST Act.

(b) The components were either manufactured in petitioner's own facilities outside Orissa or brought from outside Orissa. Such movement of goods originated from outside the State and accordingly, cannot be an intra-state sale by any stretch of imagination.

Recent Circular

No.	Reference	Particulars
1.	Circular No. 158/14/2021-GST dated September 6, 2021.	• The Circular seeks to provide clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated August 29, 2021. Accordingly, it has been clarified that: i. The date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of CGST Act and where the due date of filing of application for revocation of cancellation of registration falls between March 1, 2021 to August 31, 2021, is extended to September 30, 2021. ii. The extended time limit covers even those cases where the application is pending with the proper officer or rejected; or pending with the appellate authority or rejected. Procedure with regards to such cases have been clarified vide the Circular. • *Proviso* to Section 30(1) of the CGST Act provides for extension of time for filing application for revocation of cancellation of registration by 30 (thirty) days, by the Additional/ Joint Commissioner and further 30 (thirty) days by the Commissioner. In this regard, the following has been clarified: i. Where the 30 (thirty) days' time limit ends between March 1, 2020 to December 31, 2020, the time limit stands extended up to September 30, 2021 only. ii. Where the 30 (thirty) days' time limit since cancellation of registration has not lapsed as on January 1, 2021 or where the registration has been cancelled on or after such date, the time limit extension for revocation application shall be:

		a) Where initial 30 (thirty) days, and further extension of 30+30 days since cancellation elapses by August 31, 2021– the time limit stands extended till September 30, 2021 without any further permissible extension. b) Where 60 (sixty) days since cancellation elapses by August 31, 2021– the time limit stands extended till September 30, 2021 with further extension of 30 (thirty) days by the Commissioner, subject to proviso to Section 30(1) of the CGST Act. c) Where 30 (thirty) days since cancellation elapses by August 31, 2021 – the time limit is extended till September 30, 2021 with further permitted extensions of 30 + 30 days by the Addl./Jt. Commissioner and Commissioner, subject to proviso to Section 30(1) of the CGST Act.

Recent Press Release

The Government vide its Press Release dated September 15, 2021 has approved a production linked incentive ("**PLI**") scheme for the 'Auto and Drone Industry'. Incentives worth Rs. 26,058 crore have been proposed to be provided to the industry over a period of five years and this scheme shall lay a robust foundation for adopting Electric Vehicles ("**EVs**") in the country.

The scheme incentivizes high value advanced automotive technology vehicles and products, encouraging investments for indigenous global supply towards that end. The new PLI scheme, collectively with the previously launched PLI scheme for Advanced Chemistry Cell ("**ACC**") and Faster Adaption of Manufacturing of Electric Vehicles ("**FAME**") shall enable India to rapidly transition from the traditional fossil fuel-based automobiles to a more sustainable and efficient form of EV system. It would result in an increase of sales, investment, and fresh employment opportunities.

Contributed by the Indirect Tax team

You can reach out to our team for any queries

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