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Improved system of e-way bill and its implications on the business

By **Brijesh Kothary**

Implementation of e-way bill system under the Goods and Services Tax regime has been an excruciating exercise for the Government as well as the taxpayers. While Government was initially grappling for timely enforcement of e-way bill system due to inherent constraints in the portal, the taxpayers were finding it difficult to cope up with the frequent amendments in the e-way bill related rules. This is evident from the fact that Chapter XVI of the Central Goods and Services Tax Rules, 2017 ('**CGST Rules**'), dealing with e-way bill provisions, has undergone amendments for over a dozen times in the past three years.

On one hand frequent amendments in the e-way bill related provisions indicate shortcomings on part of tax administration in framing laws, on the other hand, these changes also highlight their dynamism and determination to curb tax evasion and help the industry in the ease of doing business. For instance, the recent amendment[1] to Rule 138E of the CGST Rules restricts generation of e-way bills by a non-compliant taxpayer only with respect to his outward supplies. So, the amendment now allows a compliant taxpayer to generate e-way bill for inward supply from a registered person even if the supplier has not furnished his returns or forms (GSTR-3B or GSTR-1/IFF) for two consecutive tax periods.

The other significant development on this front is that the Government has recently integrated Radio-Frequency Identification Device ('**RFID**') with the e-way bill system. This integration helps the authorities with various real-time reports to check tax evasion. In this set-up, the details of the e-way bill generated for goods being transported in the vehicle is uploaded into the RFID. As the vehicle passes through the RFID tag reader, the details fed into the device gets mapped to the e-way bill portal. This information on the portal is used by the tax authorities to validate supplies. It may be noted that Uttar Pradesh had mandated vehicles operating in the State to integrate e-way bill into RFID tag with effect from 1 November 2018.

Currently four features are available in the newly introduced module for e-way bill and vehicle tracking:

- Vehicles passing through selected toll plazas, direction and time can be tracked in near real time.
- Information on last ten times a given vehicle passing through selected few toll plazas.
- E-way bills carried by a vehicle and its passage details at toll plazas for given period of time.
- E-way bill, vehicle details and their passage details for given e-way bill number.

With these analytics, the tax officers are in a position to identify and intercept only those vehicles which are moving without e-way bills. The authorities can also identify dummy e-way bills that are generated as a proof of supply, though no movement of goods take place,

[1] Notification No. 15/2021-CT, dated 18 May 2021

thereby detecting cases of bill trading and circular trading. The analytical reports on recycling of e-way bill for tax evasion prone commodities also help the authorities in identifying tax evaders.

The e-way bill system has also been integrated with *Vahan* system, a portal from the Ministry of Road Transport and Highways, which contains digitized data of registered vehicles. The vehicle numbers entered in e-way bill system are verified for its existence/correctness in *Vahan* database at the time of generation of e-way bill. The portal alerts the user on entry of incorrect vehicle numbers. This mitigates the risk of entering incorrect vehicle numbers and thereby reduces fraudulent transactions.

The National Informatics Centre, which specializes in implementing nationwide e-governance products and platforms, has developed the e-way bill as well as e-invoicing portal for GSTN. In April 2021, they released a report on the journey of e-way bill system on completion of three years. The report provides various statistical figures such as the number of e-way bills generated and verified year on year, top five States and sectors that generated maximum e-way bills, etc. The statistical data obtained from e-way bill system is one of the vital sources of information of economic activities in the country. It has recently been reported that the daily average e-way bill generation numbers have fallen to one-year low.

With the help of big data analytics, the tax authorities have charted about 10-15 Key Risk Indicators ('**KRIs**'). These KRIs help the field officers to identify high risk taxpayers who are likely to evade the tax or wrongfully claim input tax credits or refunds. If the field officers conduct inspection, then an option to provide feedback and to update the result of such inspection is available for building taxpayer's profile for future reference. These kind of MIS reports also help the Government in analysing the performance of the officers and assigning tasks to them.

For many years, the enforcement measure by tax authorities has been based on the trial and error approach, having low success rate. After implementation of GST, as the check posts at state borders were dismantled, there have been rampant cases of tax evasion. Implementation of e-way bill system did not immediately curb such malpractices, but it helped in identifying loopholes in the existing system. With technological enhancements, we have come a long way from check post inspection system to remote and real time vigilance of goods in transit. Therefore, the benefits arising out of the usage of technology in tax administration cannot be over emphasized.

At the time of implementation of electronic invoicing system in October 2020, the then Revenue Secretary indicated that e-invoices will eventually replace the e-way bill system. And for that to happen, all the taxpayers must be brought under the e-invoicing system, which is being executed in a phased manner. However, considering the efforts put in for ramping up the e-way bill system, it is very unlikely that the Government will phase it out in the near future.

E-way bill as a tool to curb tax evasion has been subjected to a lot of improvisation in terms of technological advancements and its results would be visible to us in the coming days. With these tools, the enforcement authorities will be able to pinpoint and target tax evaders. It would therefore be appreciated if the officers exercise restraint in going after genuine taxpayers who may have committed minor errors at the time of generation of e-way bills, with no intention to evade tax. This demand is justified considering the fact that tax paid goods are subjected to penalty as high as twice the amount of tax.

It is suggested that representations are made to the Government and GST Council for relaxation of penal provisions for genuine lapses relating to expiry of e-way bills. Further, internal instructions must be given to the field officers not to detain or seize goods on allegations of misclassification and undervaluation or payment of tax under the wrong head, as these cases can be investigated during the course of regular assessment. Implementation of some of these suggestions would go a long way as a confidence building measure and in enhancing the ease of doing business. These measures would also ease the burden on the judiciary as unlawful detention of goods by the authorities has become a fermenting ground for litigation in GST regime.

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Goods and Services Tax (GST)

Notifications and Circulars

CGST (Fourth Amendment) Rules, 2021 – Changes relating to GST refund, revocation of cancellation of registration and e-way bill restrictions: The Central Board of Indirect Taxes and Customs ('**CBIC**') has recently amended the Central Goods and Services Tax Rules, 2017 to make the following changes relating to refund, revocation of cancellation of registration and e-way bill restrictions.

- Refund applications can now be withdrawn by filing an application in Form GST RFD-01W before issuance of Forms GST RFD-04, 05, 06, 07 or 08.
- Time period from the date of filing of refund claim till the date of issuance of deficiency memo in Form GST RFD-03 shall not be counted for time limit of 2 years in respect of any fresh refund claim filed after rectification of the deficiencies.
- Order for adjustment of refund is no more required.
- Orders will be required for withholding and release of refund under Part A and B, respectively, of Form GST RFD-07.
- Additional Commissioner or the Joint Commissioner or the Commissioner can now extend the time period for submitting an application for revocation of cancellation of registration in specified cases. This is a consequential change after amendments were made effective in Section 30 of CGST Act, 2017.
- E-way bill restrictions now limited only to defaults by outward supplier.

Notification No. 15/2021-Central Tax, dated 18 May 2021 has been issued for this purpose.

Covid-19 – Relaxations and date extensions: The CBIC has issued number of notifications for providing relaxations for interest and late fee with respect to GSTR-3B, extension of due dates for GSTR-4, ITC-04, GSTR-1 and invoice furnishing facility. Likewise, notification has been issued for time limit extension for various compliances where the due date falls between 15 April 2021 to 30 May 2021. Detailed Update on these developments is available here.

Revocation of cancellation of GST registration – Guidelines for extension of time limit notified: The CBIC has laid down guidelines for extension of time limit in case of delayed filing of application of revocation of cancellation of GST registration. Accordingly, the proper officer shall forward the request to the jurisdictional Joint/Additional Commissioner (or Commissioner) who will grant a personal hearing in case he is not satisfied with the grounds on which an extension is sought. According to Circular No. 148/04/2021-GST, dated 18 May 2021 issued for this purpose, the guidelines will cease to have effect once the independent functionality for extension of time limit for applying in Form GST REG-21 is developed on the GSTN portal.

Ratio decidendi

IGST on oxygen concentrators – Exemption to imports through canalizing agencies while imposing 12% IGST on goods for personal use, arbitrary and unreasonable distinction: The Delhi High Court has held that condition in Notification No. 4/2021-Cus., dated 3 May 2021 under which exemption from IGST is available to import of oxygen concentrator, by the State Government or, any entity authorised by any State Government only, is manifestly arbitrary. According to the Court, the notification places unreasonable distinction between two identically circumstanced users (canalizing agencies and individuals) depending on how the oxygen concentrator has been imported. Finding no justification in excluding individuals from the purview of notification dated 3 May 2021, the Court noted that while it is permissible for the State to identify a class of persons for extending tax exemption, it is not permissible for the State to exclude a set of persons who would ordinarily fall within the exempted class by creating an artificial, unreasonable, and substantially unsustainable distinction. Notification No. 30/2021-Cus., dated 1 May 2021, granting exemption only to duty more than 12% IGST, on oxygen concentrators, was hence quashed. The Court observed that oxygen concentrator is a piece of medical equipment required for treatment, mitigation, and/or prevention of the disease [i.e. coronavirus] or disorder in human beings and would be eligible to exemption under Sl. No. 607A of Notification No. 50/2017-Cus., subject to conditions. [*Gurcharan Singh* v. *Ministry of Finance* – Order dated 21 May 2021 in W.P.(C) 5149/202, Delhi High Court]

Detention of goods – No rule that consignment intended for shorter distance should be offloaded first: Observing that there is no prohibition for a consignor to load the consignments intended for two different parties in two different States on a single conveyance and that there is no rule that consignments intended for a party at a shorter distance should be offloaded first, the Telangana High Court has set aside the Order detaining the goods and demanding GST and penalty. The transporter had for some operational convenience loaded the larger quantity meant for shorter distance below the smaller quantity which was supposed to be delivered to another consignee farther away and was on the way to deliver the smaller quantity when was intercepted by the department officers. The Court observed that the view that even if the goods meant to be delivered at farther distance

were loaded on top of the conveyance, the said goods should have been unloaded and then reloaded after unloading the goods intended for the smaller distance, was utterly perverse. The Court also termed the collection of GST and penalty from the assessee as 'economic duress'. [*Vijay Metal* v. *Deputy Commercial Tax Officer* – 2021 VIL 353 TEL]

Revocation of cancellation of registration – Authorities cannot embark upon assessment: The Madras High Court has held that in the guise of considering the application for revocation of cancellation of GST registration, the authorities cannot embark upon the process of assessment. The Court observed that the contention of the department that the revival of registration was conditional upon the assessee-petitioner satisfying tax dues and substantiating its claim of ITC, is misconceived and would amount to putting the cart before the horse. It noted that assessment would have to be made by the authority in terms of Section 73 or other applicable provisions. Further, noting that the assessee had filed its returns and remitted late fee for belated returns, it held that cancellation of registration must be revoked. [*Ramakrishnan Mahalingam* v. *State Tax Officer* – 2021 TIOL 1040 HC MAD GST]

GST payable on interest paid for delayed payment to foreign exporter – Rate to be same as that applicable on imported goods: The Gujarat Authority for Advance Ruling has held that payment of interest by the importer for delayed payment of value of goods to the foreign exporter will be covered under the supply of services under Entry No. 5(2)(e) of Schedule-II of the Central Goods and Services Tax Act, 2017 and is liable to GST according to Section 15(2)(d) of the said Act. Observing that such interest is included as a part of the value of the imported goods as per Section 15(2)(d), it concluded that the rate of GST payable will be the same as that of the IGST applicable on the imported goods. Further, noting that reimbursement amount paid to the foreign exporter in respect of the expenditure incurred by the latter on stamp duty/tax on behalf of the importer-applicant for the Corporate Guarantee, did not fulfil all the conditions laid down under Rule 33 of the Central Goods and Services Tax Rules, 2017, the AAR held that the same was not excludible from the value of supply. The amount was held to be covered under the term 'consideration' as had direct relation to the business connection. [In RE: *Enpay Transformers Components India Pvt. Ltd*. – 2021 TIOL 125 AAR GST]

No ITC available on goods and services used for laying pipeline for inward transmission: The Tamil Nadu AAR has held that input tax credit on goods and services used for laying transfer pipeline (for inward transmission) and its foundation / structural support, outside the registered premises, would not be available by the virtue of Section 17(5) of the CGST Act, 2017. The Authority rejected the plea that the provisions excluded only 'pipeline laid outside the factory premises and used for making *outward supply*'. Further, in respect of goods and services for construction of refrigerated storage tank, fire water reservoir and their foundations / structural supports, the authority was of the view that the ITC on tanks and reservoirs would be available only if they were capitalized in applicant's books of accounts as 'plant and machinery' and not as 'immovable property'. The applicant was also held not eligible for ITC on goods and services used for foundation. [In RE: *SHV Energy Private Limited* – 2021 VIL 218 AAR]

Catering to students of Industrial Training Institute exempted from GST: The Kerala AAR has held that supply of goods and services by way of catering i.e., boiled milk without sugar, fresh banana, bread and cooked egg with shell to the students of Government Industrial Training

Institute ('**ITI**') as per the Government Scheme is not liable to GST. the AAR noted that ITI was providing service by way of education up to higher secondary school or equivalent and hence was eligible for exemption under Notification No. Sl. No. 66 of 12/2017-Central Tax (Rate). The Authority also held that since the supply made by the applicant was exempted from GST, the applicant can claim refund of the excess balance in the Electronic Cash Ledger as per provisions of Section 54 of the CGST Act, 2017. [In RE: *Shri Hazrath Valiyaparambil Azeez* – 2021 VIL 223 AAR]

Membership fees collected by literary society not liable to GST till amendment in Section 7 not notified: The Karnataka AAR has held that a club is not liable to pay GST on subscription fees and infrastructure development fund collected from the members, till the amendment made by the Finance Act, 2021 in Section 7 of the CGST Act, 2017 is notified by Central Government. The Authority observed that the latest amendment brought by the Finance Act, 2021 has over ruled what the Courts have held till now and has countered the Principle of Mutuality by way of an Explanation which states that the members or constituents of the club and the club are two separate entities and persons for the purpose of Section 7 of CGST Act, 2017 which defines 'supply'. [In RE: *Bowring Institute* – 2021 TIOL 131 AAR GST]

No ITC available on promotional material provided to franchisees, distributors, etc. – AAAR holds such supply as non-taxable supply: The Karnataka Appellate AAR has held that the Input Tax Credit is not available on promotional items purchased by the appellant-manufacturer and provided to the exclusive brand operators/franchisees, distributors and retailers free of cost, for use in their showrooms for displaying their products. The AAAR was of the view that the said supply is a non-taxable supply. It noted that the provision of promotional materials is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under Schedule I of the said Act. ITC was also denied to the appellant on carry bags, calendars, diaries, pens, etc., embossed/engraved with the brand name, which are distributed to the EBOs/distributors/retailers for the purpose of giving away to the customers. Holding that this supply was also a non-taxable supply, the AAAR also observed that these give away promotional items, distributed at the sole discretion of the appellant without any contractual obligation or consideration, acquire the character of gifts and are barred from being eligible for ITC under Section 7(5)(h). [In RE: *Page Industries Ltd.* – 2021 TIOL 17 AAAR GST]

Grant of shared access to a pathway is an 'act of tolerating an act', liable to GST: The Tamil Nadu Appellate AAR has held that grant of shared-access to the pathway against payment of rentals, with no grant of right of occupation and possession is an 'act of agreeing to tolerate an act' classifiable under SAC 999794 under 'other miscellaneous services/agreeing to tolerate an act' and is liable to GST. The AAAR observed that the activity is in the genre of licence extended for a specific period against payment of rentals. It observed that the case did not involve renting or leasing as in that case the lessor will not have the right to use the land/pathway involved. It noted that 'renting/leasing' involves transfer of the right to enjoy the property to the lessee and the lessor does not retain right to enjoy the property during the lease period. [In RE: *Chennai Metro Rail Ltd.* – 2021 TIOL 16 AAAR GST]

EU VAT – No right to deduct input VAT when acquired goods part of tax fraud upstream in supply chain: The Court of Justice of the European Union has reiterated that the right to

deduct input VAT paid is to be refused to a taxable person who had acquired goods or services which were subject of the input VAT fraud committed upstream in the supply chain, even when the tax payer did not actively participated in that fraud, though he knew or should have known of it. The EU Court was of the view that it is not necessary to establish the bad faith of the taxable person and that mere acquisition of said goods/services was sufficient to consider that the taxable person participated in the fraud. It also noted that for assessing as to whether the taxable person participated in fraud, it is immaterial whether the transaction conferred a tax or economic advantage on him/her. [*HR* v. *Finanzamt Wilmersdorf* – Judgement dated 14 April 2021 in Case C-108/20, CJEU]

EU VAT – Place of supply in case of roaming services of telecom: The Court of Justice of the European Union has held that roaming services supplied by a mobile phone operator established in a third country to its customers who are also established in that country, allowing them to use national mobile communications network of the EU's Member State in which they are temporarily staying, must be considered to be effectively used and enjoyed within the territory of that EU Member State. It held that the Member State may consider the place of supply of those roaming services to be situated within its territory regardless of the tax treatment the said services meet in the third country. [*SK Telecom Co. Ltd.* v. *Finanzamt Graz-Stadt* – Decision dated 15 April 2021 in Case C-593/20, CJEU]

Customs

Notifications and Circulars

Covid-19 – Relaxations under Customs and Foreign Trade Policy: The CBIC and the DGFT have recently issued number of notifications, trade notices to provide exemption or reduced rate of duty to imports of various Covid-19 related medical items. Similarly, relaxations have been provided in respect of mandatory declaration under the Legal Metrology (Packaged commodities) Rules, 2011 and by the Central Drugs Standard Control Organisation in respect of deemed approval of licence for import / manufacture of specified medical devices. A detailed Update is available here.

Customs to accept undertaking in lieu of bond till 30 June 2021: The CBIC has restored the facility of acceptance of an undertaking in lieu of bond by the Customs formations. The relaxation is available from 8 May 2021 till 30 June 2021. Circular No. 9/2021-Cus., dated 8 May 2021, issued for the purpose, also states that importers and exporters availing this facility must ensure that the undertaking furnished in lieu of bond is duly replaced with a proper bond by 15 July 2021.

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 – Amendments effective 2 February 2021 explained: The CBIC has issued a detailed Circular to explain the amendments in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 which have come into effect from 2 February 2021. Circular No. 10/2021-Cus., dated 17 May 2021 while highlighting that now 100% outsourcing for manufacture of goods on job-work basis has been permitted for importers who do not have any manufacturing facility at all, also states that now option is available to the importers to import capital goods for a specified purpose and after use, clear the same on payment of the differential duty and interest, at a depreciated value. The Circular also elaborately lays down the procedure required to be followed by the importer, including for one-time prior intimation of intent, intimation before import, clearance from port of import, receipt of goods, sending and receiving goods to/from job worker, re-export or clearance for home consumption, quarterly return and maintenance of account.

Ratio decidendi

Confiscation under Section 111(d) – Import when not contrary to prohibition – Reasonable care by importer: The CESTAT Bengaluru has set aside the imposition of redemption fine and penalty in a case where the imported product failed in two out of eighteen quality and safety parameters and because of which NOC was not issued by the Food and Safety Standard Authority of India ('FSSAI'). Observing that importer's vendor had supplied the test certificate issued by the Ministry of Agriculture and Rural Development, Social Republic of Vietnam, certifying that the goods imported complied with FSSAI provisions, the Tribunal held that importer-appellant had taken reasonable care to ensure that the goods were imported in compliance with the provisions. Further, noting that the sample was drawn two weeks after the arrival of the goods and that it was possible that the contamination had occurred during the transit or subsequently, it held that it cannot be said that the import was contrary to the prohibition imposed under the Customs Act, 1962 or any other applicable law being in force, as required for confiscation under Section 111(d). [*Baby Marine Seafood Retail Pvt. Ltd.* v. *Commissioner* – 2021 TIOL 259 CESTAT BANG]

SAD refund claim – Limitation – Matter referred to Larger Bench of CESTAT: The Single-Member Bench of CESTAT Chandigarh has referred to the Larger Bench the question as to whether the time limit prescribed for filing refund claim of Special Additional Duty ('SAD') paid by the importer is one year in terms of Notification No. 93/2008-Cus., without selling the imported goods within one year of payment of SAD. The Tribunal observed that the issue that unless and until the goods are sold on payment of VAT/Sales tax, cause of action for refund of SAD does not arise, was not addressed by the Division Bench of the Tribunal in the case of *Aggarwal Trading Company.* It noted that the condition 2(c) of the Notification was against the intent of the Legislature to refund the SAD on payment of VAT/SalesTax. [*Ambey Sales* v. *Commissioner* – Order No. 60823/2021, dated 13 May 2021, CESTAT Chandigarh]

EOU – DTA clearance entitlement – Twisted yarn and ropes are similar goods: Observing that the twisted yarn and ropes are under the same category of goods under SION, the CESTAT Mumbai has held that the goods can be held to be 'similar' goods in the broader sense of the word. Allowing the plea that FOB value of ropes exported should be counted for the DTA entitlement of ropes or yarns, the Tribunal noted that the permission/ Green Card given by the Development Commissioner mentioned both the products HDPE/PP/nylon rope/yarn, twisted yarn

of HDPE/PP/nylon, i.e., the products exported were separated with the symbol '/ (or)'. The Revenue department had relied upon the definition of similar goods given in Para 3 of Circular 7/2006-Cus., dated 13 January 2006. Further, noting that EOU scheme relies on value of exports and not the quantities, the Tribunal held that when positive NFE was achieved, the assessee is within its rights to avail the facility of DTA clearance in terms of Para 6.8 of the Foreign Trade Policy. [*Axiom Cordages Ltd.* v. *Commissioner* – 2021 VIL 200 CESTAT MUM CE]

EPCG scheme – Non-mentioning of authorisation in case of third-party exports is not fatal: The Madras High Court has held that the requirement of mentioning EPCG licence of the manufacturer in the shipping bill, in case of third-party exports, though mandatory as per Para 5.7.1 of the Foreign Trade Policy, factum of export is capable of being satisfied constructively as well. Observing that such non-mention is not fatal to the claim of concessional rate of duty, the High Court also noted that the provisions of Section 149 of the Customs Act, 1962 provides a forum to the assessee-petitioner to establish this by way of contemporaneous records. The Court noted that this could be done by the assessee by any number of methods, including confirmations from third party, correspondences and other documents at its disposal, among others. [*YSI Automotive India Pvt. Ltd.* v. *Commissioner* – Order dated 29 April 2021 in W.P. Nos.3591 of 2019 & 9046 of 2020, Madras High Court]

SEIS – Service providers rendering services to telecom service providers, not excluded: Observing that exclusion of 'service providers in telecom sector', as per para 3.09(2)(i) of the Foreign Trade Policy 2009-14 read with S. No. 2(C) of Appendix-10, is of a service provider providing telecom services, the Delhi High Court has held that the exclusion is not of service providers who render services to such telecom service providers. The Court further held that there is no reason for a different interpretation to be placed to FTP 2015-20 for benefit of Service Exports from India Scheme ('**SEIS**'). Provisions of the Telecom Regulatory Authority of India Act, 1997 were also relied for this purpose by the Court here. Directing the authorities to consider the claim of the assessee afresh in respect of Engineering services and Managed services in the telecom sector, the Court also held that Instructions dated 22 May 2019, which sought to impose fresh restrictions on the eligibility of the service providers entitled to SEIS, was therefore *ultra vires* the Foreign Trade Policy. [*Ericsson India Global Services Pvt. Ltd.* v. *Union of India* – 2021 TIOL 998 HC DEL CUS]

Wooden boards – Classification under Heading 4407 and 4409: In a case involving interpretation of Tariff Headings 4407 and 4409 of the European Union's Combined Nomenclature, the Court of the Justice of the European Union has held that planed wooden boards, the four corners of which have been rounded over the entire length of the board, are not to be regarded as 'continuously shaped' and are accordingly classified under Heading 4407 and not under Heading 4409. The Court was of the view that the light rounding of the sides of the wooden boards results from planing; that the boards had not undergone any continuous shaping process facilitating their assembly or making it possible to obtain mouldings or beadings and hence are not to be classified under Heading 4409. [*Vogel Import Export NV* v. *Belgische Staat* – Decision dated 15 April 2021 in Case C-62/20, CJEU]

Valuation – Actual cost of transportation till place of import when not includible: The Court of Justice of the European Union has held that transaction value need not be adjusted to include all the costs 'actually' incurred by the exporter in

transportation till the place of import when the price paid by the importer correspond to the real value of goods even if that price was insufficient to cover all transportation costs. The CJEU in this regard was of the view that the fact that the cost of transporting the imported goods as incurred by the exporter/producer exceeded the price actually paid by the importer is not capable of altering that conclusion, provided the price reflects the real value of the goods. [*Lifosa UAB* v. *Muitines departamentas prie Lietuvos Respublikos Finansu Ministerijos* – Judgement dated 22 April 2021 in Case C-75/20, CJEU]

Central Excise, Service Tax and VAT

Ratio decidendi

Reduction of service tax dues under Sabka Vishwas (LDR) Scheme – Department duty bound to modify Garnishee Notice: In a case where the assessee could not pay the amount as per SVLDRS-3 as the Income-tax authorities had withheld the income-tax refund pursuant to a Garnishee Notice by the GST authorities, the Telangana High Court has directed the Revenue department to modify the Garnishee Notice accordingly. Noting that department's view that such notice cannot be amended was contrary to CBEC Circular No. 996/3/2015-CX, dated 28 February 2015. The Court was also of the view that the circumstance mentioned in the Circular under which the Garnishee Notice can be modified or withdrawn or amended cannot be taken as exhaustive and is merely illustrative. It held that if there is a reduction of liability of service tax dues determined under a scheme like Sabka Vikas (Legacy Dispute Resolution) Scheme, 2019, the authority issuing the Garnishee Notice not only has a power to withdraw or modify it, but it is his bounden duty to do so. [*SEW Infrastructure Limited* v. *Director General of GST Intelligence* – Decision dated 28 April 2021 in Writ Petition No.17002 of 2020, Telangana High Court]

Sabka Vishwas (LDR) Scheme – Case of erroneous refund excluded even if SCN for same culminating in demand order: Observing that as per Section 125(1)(d) of the Finance (No. 2) Act, 2019, a person who has been served with the notice to show cause under indirect tax enactment for an erroneous refund or refund shall be ineligible to make a declaration under the Sabka Vishwas Legacy Dispute Resolution Scheme, the Rajasthan High Court has held that it does not make any difference that the notice to show cause issued stood culminated in passing of the order creating the demand on amount of erroneous refund. The Court rejected the petitioner's plea that the refund amount claimed fell within the definition of 'amount in arrears' under clause (c) of Section 121 as it was not a case where a show cause notice for an erroneous refund or refund was issued. The petitioner has contended it was rather the case where an order in original was passed, although, the show cause notice issued was for recovery of

erroneous refund/refund. [*Saraswati Marble and Granite Industries Pvt. Ltd.* v. *Union of India* – 2021 TIOL 1056 HC RAJ CX]

No service tax on service provided by a partner to the partnership firm before 1 July 2012: In a case involving period before 1 July 2012, when the definition of 'person' was introduced in the Finance Act, 1994, the CESTAT Ahmedabad has set aside demand of service tax against the partner of the partnership firm, when the firm was the recipient of the services provided by the assessee-partner. The assessee had undertaken activities related to marketing and distribution of the products of the partnership firm. The Tribunal noted that the activities were not undertaken pursuant to a separate and independent contract for provision of services between the partner of the partnership firm but, were assigned to the assessee by the partnership firm in the capacity of the partner and that the remuneration received by the assessee was merely a special share of profits. Going through the definition of partnership in Partnership Act, 1944, the Tribunal observed that partners and partnership firm cannot be treated as two distinct persons. It also noted that before 1 July 2012, even if the definition of 'person' provided under General Clause Act is considered, it does not include partnership firm. Number of Supreme Court decisions pertaining to income-tax, as cited by the assessee, were relied upon by the Tribunal for this purpose. Regarding refund of amount already paid, the Tribunal held that the Supreme Court judgement in the case of *ITC* was not applicable as there was clear distinction between the assessment under Customs and Service tax. [*Cadila Healthcare Limited* v. *Commissioner* – 2021 VIL 169 CESTAT AHM ST]

Cenvat credit – No demand under Rule 6(3)(i) when Rule 6(3)(ii) complied with: The CESTAT Kolkata has reiterated that the adjudicating authority has no right or authority to require the assessee to make payment in terms of Rule 6(3)(i) of the Cenvat Credit Rules, 2014 in a case where the assessee had intimated the department about exercising of option under Rule 6(3)(ii) and had complied with the requirements laid down in Rule 6(3A)(c), (d) and (g). The Tribunal was of the view hence the question of whether the assessee was required to make payment of any higher amount as per Rule 6(3)(i) than that payable and paid in terms of Rule 6(A)(ii) was irrelevant. Telangana High Court's decision in the case of *Tiara Advertising* v. *Union of India* was relied upon. [*Steel Authority of India Limited* v. *Commissioner* – 2021 VIL 195 CESTAT KOL CE]

Cenvat credit restrictions due to Excise Rule 8(3A) – Rule not applicable to every case – Ratio of *Indsur* Global relevant even after stay by SC: The Telangana High Court has upheld the CESTAT Hyderabad decision that Rule 8(3A) of the Central Excise Rules, 2002 cannot apply to every case where in the department, during the scrutiny of returns, during audit or during investigation finds any additional amount payable as duty of excise. The Tribunal had held that such demands would be recoverable by issuing a notice under Section 11A of the Central Excise Act, 1944 and would be not covered under Rule 8(3A). Also noting that the assessee had already paid duty even before the audit declared the amounts as payable, the High Court upheld the finding that the Revenue department was not correct in denying utilization of Cenvat Credit by applying said rule. The Court also rejected department's plea that the CESTAT ignored the fact that Gujarat High Court decision in the case of *Indsur Global Ltd.* [quashing Rule 8(3A)] was stayed by the Supreme Court. The Telangana

High Court was of the view that merely because the Supreme Court has granted stay of the said order of the Gujarat High Court, it cannot be contended that the ratio of the Gujarat High Court decision ought not to be followed by this Court. [*Commissioner* v. *DRD Body Techs India Pvt. Ltd.* – Judgement dated 22 April 2021 in CEA No. 4 of 2021, Telangana High Court]

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