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Arrest of perpetrators for fraudulent passing and availing ITC in GST – Some issues

By **Atul Gupta**

Under the Cenvat and Modvat regime as well as under various incentive schemes under the Customs law/FTDRA, there were unscrupulous persons, who created various firms/companies in the name of other individuals, existing or non-existing, for the purposes of undertaking fraudulent paper transactions. Such firms/companies may be termed as dummy firms/companies. Under the Cenvat and Modvat schemes, invoices were issued in the name of such companies to pass on credit of duties and taxes without payment of corresponding duties and taxes to the Government. In fact, no goods or services were supplied in respect of which invoices were issued.

The individuals who were employees, partners, shareholders or directors of such firms/companies were held responsible, if any of such fraudulent transactions were unearthed. The persons, who created such firms/companies did not hold any position as an employee, partner, shareholder or director in such firms/companies.

The same practice seems to be continuing under the GST regime. From the investigations under the GST as reported in media or from many of such cases in which various decisions have been passed by the High Courts in writ petitions or on applications seeking anticipatory or regular bail, it may be inferred that the allegations in many of such cases are that unscrupulous persons have created various dummy firms/companies in the name of other individuals, existing or non-existing, for the purposes of undertaking fraudulent paper transactions to pass on input tax credit without supply of goods or services and without payment of any GST in respect of such supplies [2020 (32) G.S.T.L. 516 (P&H), 2020 (35) G.S.T.L. 32 (Cal.)]. Though such proceedings have not attained finality but allegation of the department is that dummy firms/companies are created by some individuals for the purpose of paper transactions. Such invoices are issued from such dummy firms/companies. Further, such firms/companies were also availing input tax credit without receipt of any invoice or credit of tax paid on reverse charge basis [though no such tax is paid], so that such fraudulently availed credit may be passed on. This mayhem was required to be checked by deterrent action. The amendment by the Finance Act, 2020 in the CGST Act, 2017 is relevant in this regard.

The offences and punishment are provided under Section 132 of the CGST Act as well as SGST/UTGST Acts. The following clauses from the unamended CGST Act, 2017 are relevant:

'Section 132. Punishment for certain offences. —

(1) Whoever commits any of the following offences, namely:—

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or

utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);'

From the above, it may be noted that the offender was 'whoever commit' the offences listed under Section 132(1). Further, clause (l) of Section 132(1) lists whoever 'attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section' as an offence.

The plain reading of the above provision makes it clear that the above referred dummy firms/companies or the employees/directors/shareholders/partners of such firms/companies, from which such fraudulent invoices were issued, may fall under the clause 'whoever commits' in respect of the offences listed under clause (b) or clause (c). However, the real perpetrators, who created such dummy firms/companies from behind the curtain as explained above, of such offences, might not be covered under clause 'whoever commits' in respect of offences under clause (b) or clause (c) before amendment.

This interpretation is further supported by the fact that the Finance Act, 2020 amended the provisions of Section 132(1) and now the amended provision has also expanded the scope to include whoever…*causes to commit and retains the benefits arising out of* any of the following offences. Further, the Finance Act, 2020 also amended clause (e) by removing clause 'fraudulently avails input tax credit' and amended clause (c) by inserting clause 'fraudulently avails input tax credit without any invoice or bill'.

The visible effect of the above amendment are as follows:

a. Under main body in sub-section, the actual perpetrators of offences, if the department proves that the benefits received for such invoices is retained by them, are included. However, in cases, if the amount received as consideration against the invoice is retained in the accounts of the firms/companies from which invoices were issued, then, the offence is not complete under this entry.

b. Fraudulent availing of input tax credit without any invoice or bill is now covered under Section 132.

Even such actual perpetrators may not be penalised for commission of such acts prior to insertion of Sub-section (1A) in Section 122 of the GST Acts.

The GST Act classifies some offences as cognizable and non-bailable and other offences as non-cognizable and bailable. According to Section 132(5), offences specified in clause (a) or clause (b) or clause (c) or clause (d) of Section 132(1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable. Cognizable and non-bailable offences are where arrest can be made without warrant and in terms of Section 69(1) arrest can be made on authorisation from the Commissioner for such offences mentioned in Section 132(5).

Before the amendment by the Finance Act, 2020 in Section 132(1), as explained above, such perpetrators might not be liable to be arrested without warrant. Such perpetrators may be considered to have committed offence as abetter under clause (*l*) of Section 132, but they may not be alleged to be the offender in respect of any of the offences which are cognizable and non-bailable.

At the same time, a question may arise as to whether the clause 'and retain the benefits arising out of' is also applicable to 'whoever commits', then the amendment may now restrict the scope of Section 132(1). However, the way the amendment has been made and structured, 'whoever commits the offence' will be covered separately. However, the courts will decide this issue in time to come when this issue is argued specifically.

As the amended provision cannot be applied retrospectively, therefore, a question arises about validity of the continued custody of such persons arrested under Section 69(1) before the amendment in Section 132 and also about the bail terms, wherever those persons were set free on furnishing of bail.

We have to wait for the Court's decision about whether the offences committed earlier by such persons were covered as cognizable and non-bailable.

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Goods and Services Tax (GST)

Notifications and Circulars

47th GST Council Meeting – Clarifications: The Central Board of Indirect Taxes and Customs (CBIC) has, in line with the recommendations of the 47th GST Council Meeting, issued number of clarifications on various procedures and compliances under GST as highlighted below. Circulars Nos. 170 to 176/2022-GST, all dated 6 July 2022 have been issued for the purpose.

- Registered persons making inter-State supplies to the unregistered persons or to the registered persons paying tax under Section 10 and to UIN holders, shall also report the details of such supplies, place of supply-wise, in Table 3.2 of Form GSTR-3B.
- Reversal of ITC of ineligible credit under Section 17(5) or any other provisions is required to be made under Table 4(B) and not under Table 4(D) of Form GSTR-3B.
- ITC not available, on account of limitation of time period or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported Table 4D(2).
- Registered person issuing invoice without any underlying supply is liable for penal action under Section 122(1)(ii) and not under Sections 73 and 74 of the CGST Act, 2017.
- Registered person availing and utilising fraudulent ITC is liable for demand and recovery of ITC along with penal action under Section 74 and not under Section 122 of CGST Act, 2017.
- Deemed exports - ITC availed by the recipient of deemed export supplies is not to be subjected to provisions of Section 17

and not to be included in the 'Net ITC' for computation of refund of unutilised ITC.

- ITC where employer obligated to provide certain goods or services - Proviso after sub-clause (iii) of clause (b) of Section 17(5) is applicable to the whole of clause (b).
- ITC is not barred under Section 17(5)(b)(i) in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.
- Perquisites provided by the employer to the employee in terms of contractual agreement, are not liable to GST.
- Any payment towards output tax, whether self-assessed or payable because of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger.
- Electronic credit ledger cannot be used for payment of interest, penalty, fees or any other amount. Similarly, it cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
- Refund due to inverted structure available even when input and output goods are same but the output goods are supplied under some concessional rate notification.
- Re-credit of amount in the electronic credit ledger on deposit of erroneous refund – Categories and procedure specified.
- Electricity exports – Manner of filing refund of unutilized ITC prescribed.

47th GST Council Meeting – Changes in law and procedure and in respect of specified goods and services: The 47th GST Council Meeting held on 28 and 29 June 2022 recommended number of measures in respect of GST law and procedures, and many changes in the GST rates for various specified goods and services. Important changes related to law and procedures are available here while highlights of changes in respect of services are available here. GST rate changes in respect of specified goods are available here.

Ratio decidendi

Interest component of EMI of the loan granted on credit card is liable to GST: The Calcutta High Court has held that interest component of the EMI of the loan granted by the bank on the credit card is not exempt and is liable to GST. The Court in this regard noted that the loan was restricted to a particular category of persons holding the Bank's credit card and that the criteria for processing the loan, the manner in which the EMI of loan was reflected in the credit card statements and the charging of interest in case there is a shortfall in the payment of the amount due as well as the mode of payment, all proved that the service rendered by the Bank was a service pertaining to the said credit card. The Court was hence of the view that interest component of EMI of the said loan was nothing, but interest involved in credit card services which is not exempted by Notification No. 9/2017-Integrated Tax (Rate). [*Ramesh Kumar Patodia* v. *Citi Bank NA* – 2022 TIOL 917 HC KOL GST]

Refund due to inverted duty structure – Same input and output supplies – CBIC Circular dated 31 March 2020 is conflicting to parent legislation: The Rajasthan High Court has set aside CBIC Circular dated 31 March 2020 which had stipulated that refund under the inverted duty structure in terms of Section 54(3)(ii) of the CGST Act would not be available where the input and output supplies are the same. The Court opined that the circular, being a subordinate legislation, was repugnant and conflicting to the parent legislation i.e. Section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the assessee-

petitioner. Holding rejection of refund as invalid, the Court also noted that the claim for refund of ITC was for a period prior to issuance of the circular. [*Baker Hughes Asia Pacific Limited* v. *Union of India* – 2022 VIL 449 RAJ]

Non-submission of certified copy of order at the time of filing of appeal when merely a technical defect: The Orissa High Court has allowed a writ petition in a case where the Joint Commissioner of State Tax (Appeal) had rejected the appeal on the ground of non-submission of certified copy of order passed by the CT&GST Officer. The Court in this regard observed that the requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as a procedural requirement. It was of the view that on the altar of default in compliance of such a procedural requirement, merit of the matter in appeal should not have been sacrificed. Further, noting that the assessee-petitioner had enclosed the copy of impugned order as made available to it in the GST portal while filing the Memo of Appeal, the Court held that non-submission of certified copy is to be treated as mere technical defect. [*Atlas PVC Pipes Limited* v. *State of Odisha* – 2022 VIL 451 ORI]

Service of international inbound roaming is exports: In a case involving provision of international Inbound Roaming Services (IIR) and International Long Distance (ILD) Services by the Indian telecom service provider, the Bombay High Court has held that the service was export of service. The Court noted that the foreign telecom service provider and not its subscriber was the recipient of the services of the assessee (Indian service provider). It also observed that the consideration for the service was paid by the foreign company and the Indian company was contractually obligated only to the foreign company and not to the latter's subscribers. Holding that Section 13(2) and not Section 13(3)(b) of the IGST Act, 2017 was applicable in the case, the Court observed that the service was not provided to an individual and hence the location of the service recipient of service was the place of supply of service. The Court in this regard also noted that the subscriber of the foreign company was not a representative or agent of the Foreign telecom company. [*Vodafone Idea Ltd.* v. *Union of India* – 2022 TIOL 997 HC MUM GST]

Show-cause notice is mandatory – Summary of SCN is not enough even if assessee files concise reply: The Jharkhand High Court has set aside the summary of show-cause notices issued in Form GST DRC-01, the orders issued under Section 74(9) of JGST Act, 2017 and also the final orders passed after rectification in a case where show cause notices were not issued. The Court in this regard dismissed the plea of the Revenue Department that the petitioner had filed the concise reply and hence SCNs were proved to have been issued. It observed that there is no estoppel against statute and that a *bona fide* mistake or consent by the assessee cannot confer any jurisdiction upon the proper officer. Supreme Court decision in the case of *Madhumilan Syntex Pvt. Ltd.*, relating to Section 11A of the Central Excise Act, 1944 wherein the Court had held that power under the statute cannot be taken away by consent of the parties, was relied by the Court here. The Court noted that Section 11A of the Central Excise Act, 1944 was *pari materia* to Section 74 of the JGST Act. [*Juhi Industries Pvt. Ltd.* v. *State of Jharkhand* – 2022 TIOL 958 HC JHARKHAND GST]

Registration application – Reasons mandatorily to be given for rejection: The Madras High Court has set aside the order rejecting the application for registration under the provisions of the Central Goods and Services Tax Act, 2017, in a case where the GST registration application was rejected by a

monosyllabic order, simply 'rejected', without assigning any reasons or explanation for rejection thereof. The Court rejected the plea that Rule 9(4) of the Central Goods and Services Tax Act, 2017 uses the word 'may', hence there is discretion available to the concerned officer. According to the Court, the word 'may' only refers to the discretion to reject and not to blatantly violate the principles of natural justice. The High Court stated that if the assessing authority is inclined to reject the application, he must assign reasons for such objection and adhere to proper procedure, including due process. [*B C Mohankumar* v. *Superintendent* – 2022 TIOL 987 HC MAD GST]

Annuity (deferred payments) towards construction of roads is exempt from GST: The Karnataka High Court has set aside the CBIC Circular dated 17 June 2021 which had clarified that annuity paid as deferred payment for construction of roads/highways was not exempted from GST as the tolls or annuity in lieu of tolls are. The Court noted that as per the deliberations of GST Council in its meeting held on 6 October 2017 (22nd Meeting) and the notifications issued pursuant thereto, the entire annuity being paid to the petitioners-assessee towards construction and maintenance of roads was exempt. The High Court was of the view that the impugned circular had the effect of overriding the Notifications Nos. 32 and 33/2017-Central Tax (Rate), both dated 13 October 2017 and hence must be held as bad in law. [*DPJ Bidar - Chincholi (Annuity) Road Project Private Limited* v. *Union of India* – 2022 VIL 500 KAR]

Demo vehicles purchased for test drives are eligible for Input Tax Credit: The West Bengal AAR has held that purchase of demo vehicles and further supply of the same satisfies the condition laid down in Section 17(5)(a)(A) of the Central Goods and Services Tax Act, 2017, and hence eligible for Input Tax Credit. The AAR in this regard observed that such input tax credit cannot be denied merely on the ground of capitalization of the vehicles in the books of accounts and because the outward supply is made at a price lower than the procurement value of the vehicle. It also noted that restriction imposed under Section 17(5)(a)(A) should not be applied on the ground that the supplies have been made after a certain period of time. The AAR observed that the vehicle was purchased for further supply though after certain time. [In RE: *Toplink Motorcar Private Limited* – 2022 VIL 176 AAR]

No GST on reimbursements received from industry partners for stipends paid to trainees: The Maharashtra Authority for Advance Ruling recently dealt with an applicant working under the National Employability Enhancement Mission (NEEM) who inquired about the taxability of the collected stipend. It held that since the monthly stipend is paid to the trainees by the Industry Partners through the Applicant, the applicant is merely an intermediary which collectes the stipend from the industry partners and disburses the same to the trainees. As the applicant indulges in the disbursement without retaining any amount, the amount is not taxable at the hands of the applicant. [In RE: *2COMS Foundation* - 2022 (6) TMI 1285]

Service received from overseas commission agent is not import of service: The Uttarakhand Authority for Advance Ruling has held that overseas commission agent is covered within the definition of the term 'intermediary' as provided under Section 2(13) of the IGST Act, 2017. The Authority was hence of the view that services received by the applicant (Indian company) from such overseas commission agent do not fall within the meaning of the term 'import of services' and hence applicant is not required to

pay GST on Reverse Charge Basis. The AAR in this regard took noted of the legal provisions, agreement between the parties and other records submitted by the applicant to hold that the overseas commission agent fell within the definition of 'intermediary'. [In RE: *Dry Blend Foods Pvt. Ltd.* – 2022 VIL 167 AAR]

Service of legacy waste through bio mining process, maintaining of micro compost centers and processing wet waste, removal of wet waste and bulk waste etc. would qualify as 'pure services': The Tamil Nadu Authority for Advance Ruling has held that the service of legacy waste through bio mining process, maintaining of micro compost centres and processing wet waste, labour-contract-collection, removal of wet waste and bulk waste rendered by the Applicant would qualify as 'pure services'. However, the service of conversion of wet waste to BIO-CNG gas, being a composite supply would not qualify as a 'pure service'. The authority observed that when the service recipients are Municipal Corporations, they can be considered as local authorities as per the definition provided under Section 2(69) of the CGST Act, 2017. Additionally, it was observed that the said activity was a function entrusted to a municipality under Article 243W of the Constitution. Therefore, the Applicant was held to be eligible for exemption under the S. No. 3 of Notification 12/2017-C.T. (Rate) [In RE: *S. Srinivas Waste Management Services Private Limited* – 2022 (7) TMI 404]

Vessel support services provided to group company outside India when is 'export of service': In a case involving vessel support services by the Indian entity to its group company situated outside India, the Tamil Nadu Authority of Advance Ruling has held that in cases where the vessels do not enter any location in the taxable territory and the entire services relating to water transport of the vessels are extended outside the taxable territory, the services extended are 'Export of Services' and the place of service is outside India. But, if such vessels are calling at the port in India, then the place of supply in respect of that vessel is in India as per Section 13(6) of the IGST Act, 2017 and the services rendered to that vessel is not an export of service. [In RE: *NSK Ship Management Private Limited* – 2022 (7) TMI 407]

Complimentary ticket to unrelated person is not liable to GST: The Punjab Appellate AAR has held that supply of complimentary tickets for cricket match on account of courtesy/ public relationship/ promotion of business, to unrelated persons, is not liable to GST as is without any consideration. The AAR in its impugned order had held that the assessee-applicant was displaying an act of forbearance by tolerating persons who were receiving the services provided by the applicant without paying any money, which other persons not receiving such complimentary tickets would have to pay for. The Appellate AAR noted that even if any activity or transaction was mentioned in Schedule II, the same must still fulfil the two key parameters i.e. 'consideration' and 'furtherance of business' for it to be treated as 'supply'. It also observed that even for the consideration in the form of payment in kind, it should not be vague or illusory and there should be an element of reciprocity. However, the AAAR was of the view that where such complimentary tickets are provided to related person or to distinct person, the same would fall within the ambit of supply even if there is no consideration. [In RE: *K.P.H. Dream Cricket Private Limited* – 2022 VIL 62 AAAR]

Administering Covid-19 vaccine is composite supply: The Andhra Pradesh AAR has held that administering Covid-19 vaccine is a composite supply, wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine'. The Authority was hence of the view that the total transaction is taxable at the rate of principal supply i.e., 5%. It also held that administering of the vaccine by clinical establishments (Hospitals) does not qualify as 'Health care services' under Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017 and hence is not exempt from GST. [In RE: *Krishna Institute of Medical Sciences Limited* – 2022 VIL 207 AAR]

Customs

Notifications and Circulars

IGST exemption for imports under Advance authorisation and EPCG schemes, and by an EOU – Sunset date for exemption omitted: In line with the recommendations of the GST Council, the Central Government has omitted the reference to any end-date in respect of exemption from IGST in case of imports under Advance Authorisations, by an EOU or under EPCG scheme. It may be noted that the exemption was first introduced in October 2017 and was since then extended number of times – last being till 30 June 2022. Now, the provision containing end-date for such exemption from IGST, has been omitted. Notifications Nos. 16/2015-Cus., 18/2015-Cus., 20/2015-Cus., 22/2015-Cus., 45/2016-Cus. and 52/2003-Cus. have been amended for this purpose by Notification No. 37/2022-Cus., dated 30 June 2022. DGFT has also revised Paras 4.14, 5.01(a) and 6.01(d)(ii) of the Foreign Trade Policy 2015-20 for this purpose by Notification No. 16/2015-20, dated 1 July 2022.

IGST exemption withdrawn on imports by Research Institutions, Government departments, Laboratories, IIT and Regional Cancer Institutes: The Ministry of Finance has withdrawn exemption from IGST on imports of specified goods by Research Institutions, Government departments, Laboratories, IIT and Regional Cancer Institutes. Imports of scientific and technical instruments, apparatus, equipment including computers, accessories, computer software, etc., are liable to IGST with effect from 18 July 2022. Notification No. 42/2022-Cus., dated 13 July 2022 amends Notification No. 5 1/96-Cus., for this purpose.

Defence imports – Exemption extended to imports by 'any entity': Exemption to import of specified defence equipment for the defence forces has been extended to imports by any other entity. Henceforth, the exemption was available only in respect of imports by Ministry of Defence or the Defence forces, or the Defence Public

Sector Units or other Public Sector Unit. The change is effective from 18 July 2022. Notification No. 19/2019-Cus., has been amended by Notification No. 41/2022-Cus., dated 13 July 2022 for this purpose.

E-commerce export of jewellery made from precious metals – SOP notified: The Central Board of Indirect Taxes and Customs (CBIC) has notified the Standard Operating Procedures for e-commerce export of jewellery made of precious metals falling under Heading 7113 (excluding parts) of the Customs Tariff Act, 1975. Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 has been amended by Notification No. 57/2022-Cus. (N.T.), dated 30 June 2022. The SOP includes, electronic declaration on ECCS and uploading of documents, producing the goods at the ICT for exports, Customs assessment and examination, clearance for export, procedure for re-import of returned jewellery items, and provision of infrastructure at ICT for secure handling. It may be noted as per Circular No. 9/2022-Cus., dated 30 June 2022, the SOP will initially apply on ECCS at ICT Mumbai, Delhi and Bengaluru from the 31st day after issuance of the SOP.

Open Cells for use in manufacture of LCD and LED TV panels – Exemption during 1 January 2022 till 12 July 2022 clarified: The CBIC has clarified that the benefit of concessional rate of 5% BCD available under Sl. No. 515A of Notification No. 50/2017-Cus. is not to be denied during the period 1 January 2022 till 12 July 2022, to Open Cells for use in manufacture of LCD and LED TV panels. Instruction No. 15/2022-Cus., dated 20 July 2022 issued for the purpose notes that while as per the HSN effective from 1 January 2022, the classification should be Heading 8524, the notification carried the Heading 8529 though the description was correct.

Paper Import Monitoring System (PIMS) clarified: The DGFT has clarified that registration under PIMS is not required in case of DTA clearance of paper from SEZ or EOU provided no processing has taken place of paper that was already registered at the time of import by SEZ/EOU. DGFT Policy Circular No. 41/2015-20, dated 5 July 2022 also states that in case of processing at SEZ/EOU leading to change in the HS Code at 8-digit level, then the DTA importer will be required to register under PIMS if the new item is covered under the new system.

Steel Import Monitoring System (SIMS) – Advance registration abolished: The DGFT has abolished the requirement of advance registration, under SIMS, of minimum 15 days from the expected date of arrival of import consignment of specified products of steel. The revised Policy Condition now only specifies that importer can apply for registration not earlier than 60 days before the expected date. Words 'and not later than 15 days' have been omitted by Notification No. 19/2015-20, dated 7 July 2022.

Shri V. Lakshmikumaran, Founder and Managing Partner, L&S nominated as non-official member in Board of Trade: Shri V. Lakshmikumaran, Founder and Managing Partner, Lakshmikumaran & Sridharan has been nominated as non-official member to the Board of Trade constituted by the Ministry of Commerce. Shri Lakshmikumaran is one amongst the 29 members nominated from multiple backgrounds, by Notification No. 21/201-20, dated 8 July 2022 by the DGFT.

Ratio decidendi

No time limit for amendment of shipping bill – Time limit laid by Circular No. 36/2010-Cus. is illegal: Observing that no time limit has been prescribed in Section 149 of the Customs Act, 1962 for amendment of shipping bill, the Bombay

High Court has held that the time limit of three months laid down *vide* paragraph no. 3(a) of Circular No. 36/2010-Cus., dated 23 September 2010 is illegal and without jurisdiction. The Court observed that where the legislature wanted to prescribe any time limit for taking action, like Sections 128, 129 and 130 etc., such time limit was specifically laid down in the relevant provisions of the Act. It was hence of the view that legislature had not thought fit to restrict the scope of Section 149, for amendment of the documents, in terms of the time limit for making a formal request for such amendment. [*Pinnacle Life Science Pvt. Ltd.* v. *Union of India* – 2022 VIL 504 BOM CU]

Settlement of case – Application by person who has not filed Bill of Entry, maintainable: The Bombay High Court has reiterated that the term 'any other person' appearing in Section 127-B of the Customs Act, 1962 would mean any other person to whom show cause notice has been issued charging him with duty and that such any other person can file an application. The Court was also of the view that use of the words 'filed bill of entry' would not mean that a bill of entry in the case must necessarily be filed by him. According to the Court, the only requirement was that there must be a case properly relating to applicant with reference to a bill of entry filed. Directing the Settlement Commission to examine the application, the Court held that a person who may not be an importer or exporter, can still file an application under said provision before the Settlement Commission if he is served with a show cause notice charging him with duty. [*Halliburton Offshore Services Inc.* v. *Union of India* – Judgement dated 9 June 2022 in Writ Petition No. 2778 of 2001, Bombay High Court]

Vehicle-mounted computers, tablet computers and mobile computers are classifiable under Heading 8471: The Customs AAR has held that vehicle-mounted computers, tablet computers and mobile computers with the principal function of barcode scanning and data processing for monitoring deliveries, tracking assets and managing inventory, are classifiable under Heading 8471 and not under Heading 8517 of the Customs Tariff Act, 1975. The Authority in this regard observed that other functionalities of said machines (communication capabilities) were not different from auxiliary functions that could be seen on any computer, such as desktop or laptop computers. A classification opinion of the 68th session of the Harmonized System Committee of the WCO, which held to the contrary, was also distinguished by the AAR for this purpose. [In RE: *Brightpoint India Pvt. Ltd.* – 2022 VIL 56 AAR CU]

Populated Printed Circuit Boards for DWDM Equipment-Photonic Service Switch – Classification under TI 8517 70 10: The CESTAT Mumbai has held that Populated Printed Circuit Boards for DWDM Equipment-Photonic Service Switch is classifiable under Tariff Item 8517 70 10 of the Customs Tariff Act, 1975 as part of machine and not under Tariff Item 8517 62 90 as contended by the revenue department. The department had contended that the goods were having independent function and hence need to be classified along with the main machine under TI 8517 62 70. Considering the product literature, terms of the headings of the Customs Tariff, description of the product given in the bills of entry and the ratio of the judgment in the case of *Modicom Network Pvt. Ltd.* [2005 (185) ELT 333 (Tri-Bang)], the Tribunal was of the view that the goods cannot be held to have independent function themselves. [*Commissioner* v. *Reliance Jio Infocomm Ltd.* – 2022 VIL 457 CESTAT MUM CU]

Standardised vanilla extract classifiable under Heading 1302 and not as extracted oleoresins under Heading 3301: The Court of Justice of the European Union has held that a product consisting of approximately 85% ethanol, 10% water, 4.8% dry residue and having an average vanilla content of 0.5%, which is obtained by diluting in water and ethanol an intermediate product itself extracted from vanilla bean using ethanol, is classifiable under 1302 19 05 of the European Union's Customs Nomenclature. Rejecting classification under Heading 3301 or 3302, the Court noted that the goods were obtained by technological extraction process and differ from extracted oleoresins (of Heading 3301) as contain ordinarily a far higher portion of other plant substances. The Court in this regard also observed that a diluted vegetable extract can still be classifiable under Heading 1302 as neither the CN/HS nor the Explanatory Notes set a maximum limit on quantities of other products which can be used to standardise the vegetable extract. [*Y GmbH* v. *Hauptzollamt* – Judgement dated 7 April 2022 in C-668/20, Court of Justice of the European Union]

Central Excise, Service Tax and VAT

Ratio decidendi

Consulting Engineer – Body Corporate covered during period prior to amendments in 2005: Observing that intention of the legislature was not to create two separate classes providing the same services of consulting engineer, the Supreme Court of India has held that the 'body corporate' is not excluded from the definition of 'consulting engineer' during the period prior to amendments in 2005. The Court noted that if the submission on behalf of the assessee is accepted, it would remove all companies providing technical services, advice or consultancy to their clients from the service tax net, while any such services rendered by an individual or a partnership firm would continue to remain taxable. Further, observing that the Legislature had used the word 'person' in many places in the Finance Act, 1994, which includes any company or association or body of individuals, whether incorporated or not, the Court held that there is no logic and/or reason to exclude a 'body corporate' from the definition of 'consulting engineer' and to exclude the services of a consulting engineer rendered by a body corporate to exclude and/or exempt from the service tax net. Words 'body corporate' were included in the provisions by an amendment in 2005. [*Commissioner* v. *Sepco Electric Power Construction Corporation* – 2022 VIL 37 SC ST]

Sabka Vishwas (LDR) Scheme – Delay in payment of amount under Scheme when condonable: In a case involving non-payment of amount under the Sabka Vishwas (Legacy Dispute Resolution) Scheme due to closure of the scheme, the Karnataka High Court has directed the Revenue Department to accept the payment now and pass necessary orders. The Court in this regard observed that the petitioner was willing to pay the amount under the Scheme however there was delay on the part of the Revenue department in communicating that the assessee cannot make the payment through Cenvat credit. [*Decisive Analytical Systems Pvt. Ltd.* v. *Designated Committee* – Order dated 12 July 2022 in WP No. 12834 of 2022 (T-RES), Karnataka High Court]

Remission of duty when goods kept in Customs warehouse after Let Export Order destroyed by fire: The Bombay High Court has granted remission of duty in a case where the goods were destroyed in fire in CFS, CWC warehouse where they were permitted to be deposited without payment of duty, after Customs inspection and after Let Export Order. The High Court was of the view that CWS CFS was a warehouse or place permitted under Section 4(3)(c)(ii) of the Central Excise Act, 1944 and hence the goods were destroyed before removal. Observing that the condition of the general bond stated that the exporter shall ensure that the goods arrived at the place of export, the Court was of the view that CWC CFS should also be the 'warehouse' as prescribed under the Central Excise Rules, 2001. It also noted that the goods were accounted for since there are certificates issued by CWC, CFS, the police as well as fire brigade that the goods covered under the ARE-1s and shipping bills were destroyed by fire. [*Peekay International Pvt. Ltd.* v. *Union of India* – 2022 TIOL 944 HC MUM CX]

Refund – Unjust enrichment – Amount shown as expenditure does not automatically gets credited in income side: Observing that there is no authority that would show that any amount being shown as expenditure would automatically get credited in the income side as if it is realised from a third party/person, the CESTAT Mumbai has allowed assessee's appeal. The Revenue Department had denied refund of pre-deposit alleging unjust enrichment. The Tribunal in this regard also observed that payment made by the Appellant towards discharge of duty confirmed alongwith interest and penalty was in the form of pre-deposit as the according to the assessee's letter, payment made as full settlement of the amount demanded was without prejudice to the appeal to be filed. It was hence held that Circular Nos. 1053/2/2017-CX, 984/8/2014-CX and 275/37/2k-CX.8A were applicable. [*Chowgule Industries Pvt. Ltd.* v. *Commissioner* – 2022 VIL 448 CESTAT MUM ST]

Valuation – Tax collected at source (TCS) is not additional consideration flowing from buyer: The CESTAT Ahmedabad has held that amount of TCS cannot be considered as additional consideration flowing from the buyer to the seller and hence same is not includable in assessable value of the goods for charging central excise duty. The Tribunal in this regard noted that TCS collected by the assessee from the buyer of scrap was deposited to the income tax department in terms of Section 206C of the Income Tax Act, 1961 and was not retained by it. It observed that the amount had nothing to do with the price of the goods but it was a tax in terms of Section 4 of the Central Excise Act, 1944, and was hence not includible in the value of the goods. [*Yashraj Containers* v. *Commissioner* – Final Order No. A/10664/2022, dated 7 June 2022]

SEZ – Cenvat credit available to SEZ unit even when exemption option available before July 2013: The CESTAT Prayagraj has allowed the appeal in a case where the Department had rejected the utilisation of Cenvat credit by the assessee (a SEZ unit) on service tax paid on input services only on the ground that the assessee should have claimed exemption of the service tax amount by way of refund for the period prior to 10 July 2013. It noted that exemption notifications dated 1 March 2011 and 30 June 2012 granted only conditional exemption from payment of service tax and hence the assessee could forego such exemption and claim benefit of Cenvat credit on the same amount of service tax paid on input services as would have been available as refund to the SEZ Unit. The Tribunal went on to also hold that notification dated 10 July 2013 merely clarifies the position and would, therefore, be applicable retrospectively. [*Global Logic India Limited* v. *Commissioner* – 2022 VIL 491 CESTAT ALH ST]

SEZ – Refund not deniable merely because the service not included in approved list: The CESTAT Ahmedabad has held that refund of service tax to the SEZ unit under Notification No. 12/2013-S.T. cannot be denied merely because the service was not included in the approved list of activities by the approval committee for the Special Economic Zone. Observing that invoices were for the services of Business Support Service, and that classification cannot be disputed at the end of the appellant-recipient, the Tribunal held that even if it is assumed that the service fell under marketing service and same is not included in the approval list, even then, for this being a procedure lapse refund cannot be denied. [*Tega Industries Ltd.* v. *Commissioner* – 2022 TIOL 636 CESTAT AHM]

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