Tax INFORM

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DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Lintas India Private Limited [TS-44-HC-2022(BOM)]

High Court quashes re-assessment notice issued on the basis of material already available on record during the course of original assessment proceedings.

Facts: Lintas India Private limited, the petitioner/assessee, received a notice u/s 148 of the Income Tax Act 1961 ('the Act'), w.r.t re-assessment proceedings for the assessment year ('AY') 2012-13. The assessment proceedings were re-opened based on material already available on record with the Revenue authorities, the respondent and the said fact was also reiterated by the Revenue authorities by way of an affidavit. Based on the available material, it was observed that on reconciliation of the 26AS statement, the petitioner did not offer certain income to tax, which resulted in excess TDS credit.

The petitioner claimed that this being the case of re-assessment, the onus of proof was on the Revenue authorities to show that there was a failure on the part of the petitioner to fully and truly disclose all material facts that were required for assessment. The petitioner claimed that there was no basis for the Revenue authorities to re-open the assessment, as the relevant records were already disclosed and concluded upon during the original assessment. Aggrieved by the said notice, the petitioner had approached the Bombay High Court.

Issue before the High Court (HC): Whether the re-assessment proceedings u/s 148 of the Act can be initiated on the basis of facts already dwelled upon during the course of the original assessment.

High Court's Observations: The High The HC found that during the assessment proceedings, the assessee had made specific responses to the queries in relation to pending details of reconciliation of information regarding AIR/CIB/26AS. This also indicated that there was no failure on the part of the petitioner to disclose relevant information and the entire re-opening was on the basis of a mere change of opinion.

The Bombay HC, by placing reliance on the Madras HC ruling, in Aroni Commercials Ltd. vs. Deputy Commissioner of Income-tax 2(1) observed that it is a settled law that once a query is raised during the assessment proceedings and is replied to by the Assessee, it follows that the query raised was a subject of consideration for the Revenue while completing the assessment.

The HC has further referred to the SC ruling in Indian and Eastern Newspaper Society , wherein it has been held that "even if it is an error that the Assessing Officer discovered, still an error discovered on a re-consideration of the same material, does not give him power to re-open".

Based on the above facts and judicial precedents, the HC concluded that it is settled law that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment and that a change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.

The HC has ruled in favour of the assessee and has quashed the re-opening proceedings.

M/s. Majestic Infracon Pvt. Ltd. [TS-54-ITAT-2022(Mum)]

Expenses incurred to defend promoters of a company against criminal prosecution, in which the assessee has huge financial investment, allowed u/s 37(1) of the Act.

Facts: M/s. Majestic Infracon Pvt. Ltd, the assessee is a company in engaged in the civil construction industry. Along with being engaged in construction activity, the assessee has also invested INR 563 Crores in Swan Telecom (now known as Etisalat DB Telecom Pvt. Ltd ('EDB')), which was allotted a 2G spectrum license. However, the said investment was jeopardised due to various criminal and general allegations made against EDB and its promoters, who were also the promotors of the assessee company. To protect its investment and its common promoters, the assessee incurred legal and professional fees to defend the promoters and their close relatives.

During the course of the scrutiny assessment, the assessing officer ('AO') disallowed legal and professional fees and various other expenses, viz traveling and accommodation expenses etc, which were incurred to defend the promoters and their close relatives in matters/cases alleging criminal conspiracy, in obtaining of 2G Spectrum license for EDB. The AO disallowed the said expenses on the following grounds:

- The said expenses were not incurred wholly and exclusively for the purpose of its own business and as such cannot be allowed under section 37 of the Act;
- The investment in EDB was shown under the head "non-current investments" in the balance sheet and the company had not started its business operations. Hence it had not earned any income/revenue. As such, the expenses were undisputedly capital in nature and should be disallowed.

Aggrieved by the decision, the assessee preferred an appeal before the Commissioner Income Tax (Appeals) ('CIT(A)'); the CIT(A) confirmed the decision of the AO. The assessee wasthus in appeal before the Tribunal claiming an error on the part of the AO and the CIT(A), who had treated the aforesaid expenses as capital and personal in nature.

Issue before the Delhi Tribunal: Whether Whether the expenses incurred by the assessee towards legal and other ancillary charges to defend promoters of the company against criminal

charges, would be allowed as a business expense, as the same were incurred to protect its business interest.

Tribunal's Ruling: The Tribunal observed that the assessee has undisputedly, huge business interest, to the extent of INR 593 Crores in the other entity, even though the business of that entity was not similar to that of the assessee's business of construction. Under these circumstances, if the directors/their relatives are not defended, it may be put the assessee to huge financial and commercial losses. Accordingly, the Tribunal believed that the contention of the AO/CIT(A) that the expenses not being incurred wholly and exclusively for the purpose of business and capital in nature, is incorrect. The Tribunal remarked that the expenses incurred even for defending the directors and their relatives in criminal litigations, are admissible expenses, provided they are incurred to protect the business interest of the assessee.

The Tribunal relied on the decision of the Gujarat High Court in the case of CIT vs. Ahmedabad Controlled Iron and Steel Reg. Stockholders Association Pvt. Ltd , wherein it was held that the money spent in defending the managing director of the assessee company in a criminal prosecution under Essential Commodities Act, is an expenditure wholly and exclusively for the purpose of business of the assessee. Similarly, the Apex Court in the case of Dhanrajgiriji Raju Narasingiriji,has held that business expenditure incurred by the assessee in connection with criminal litigation for the purpose of his business, was deductible.

The Tribunal has further remarkeds that it is not open to the Revenue authorities to dictate what expenditure the assessee should incur and under what circumstances. Accordingly, it has ruled in favour of the assessee.

Mphasis Ltd [TS-37-ITAT-2022(Bang)]

Holds that TDS proceedings u/s 201(1) and 201(1A) for payments made to non-residents need to be made in a reasonable period of time. Proceedings beyond period of 4 years from the end of the AY, to be deemed as 'time barred'.

Facts: M/s. Mphasis Ltd, the assessee, is an Indian company engaged in the business of providing information technology solutions and services, specifically tailored to meet the requirements of industries for customers in and outside India on contract basis. For rendering services outside India, the assessee utilised the services of overseas group companies, by way of onsite software development services, who in turn, billed the assessee monthly, based on the master service agreement entered by them with the assessee. During the financial years 2005-06 to 2007-08, the assessee made certain payments to the tune of Rs 617 Crores to overseas group companies, without deduction of tax, on the pretext that the payments so made, were not chargeable to tax under the Act as well as the relevant double taxation avoidance agreements.

However, according to the Revenue authorities, the payments in question were in the nature of "fees for technical services", within the meaning of the Act and therefore chargeable to tax in India. Accordingly, there ought to have been tax deducted at source, u/s 195 of the Act. The

AO accordingly passed orders under section 201(1) and 201(IA) dated 29.07.2013 [for FY 2005-06, FY 2006-07 & 2007-08], treating the assessee to be an ''assessee in default'' and raised a demand of Rs 163 Crores.

Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) for the above-mentioned years, in which, along with other contentions based on merit, the assessee also raised a contention about the order, passed under sections 201(1) and 201(1A) of the Act, being barred by limitation. On the matter of limitation, the CIT(A), relying on the Kolkata High Court decision in the case of Bhura Exports Vs ITO , held that there is no period of limitation for passing an order under sections 201(1) and 201(1A) of the Act and accordingly, rejected the plea of the assessee in this regard.

Issue before the Bengaluru Tribunal: The primary issue before the Tribunal was whether the order passed u/s 201(1)/201(1A) of the Act is barred by limitation.

Tribunal's Ruling: The The Tribunal observed that for the financial years under question there is no prescribed time limit for completion of assessment under sections 201(1)/201(1A) and the amended provisions prescribing a time limit, were notified only by the Finance Act ('FA') 2009.

The Tribunal relied on the Special Bench ruling in the case of Mahindra and Mahindra Ltd , wherein it was held that though section 201(1) does not impose any time limit for the initiation of proceedings or of passing of an order, a reasonable time limit would have to be read in, as otherwise the Revenue authorities would have an indefinite period to take action and the sword of uncertainty would hang forever over an assessee.

Further, in the case of CIT vs. NHK the Delhi High Court made a similar observation and held that a period of 4 years could be construed as a reasonable period for initiation of proceedings under section 201of the Act.

The Tribunal further observed that "the amendment to Sec.201(3) of the Act, (prescribing the time limit), inserted by the Finance Act, 2009, Finance Act, 2012 and Finance Act, 2014, does not deal with the payments made to non-residents and therefore the aforesaid judicial precedents still continue to apply.

Based on the above judicial precedents, the Tribunal noted that the order passed under section 201(1)/201(1A) of the Act is clearly barred by limitation as the order has been passed much after the expiry of period of limitation of 4 years from the end of the relevant AY.

The Tribunal in its concluding remarks noted the Hon'ble Delhi High Court's judgment in case of Bharti Airtel Ltd. & Ors. Vs UOI , wherein it was held that the said limitation period even in respect of non-residents, can be read into the provisions of Section 201(3) of the Act.

As a result, the assessee's appeals for AYs 2006-07 to 2008-09 were allowed on the ground of limitation.

II. International Tax Rulings

Transocean Offshore International Ventures Ltd [TS-56-ITAT-2022(DEL)]

Interest on income tax refund taxable at concessional rate as per treaty and not as business income, presence of PE for taxation of interest income as business income is irrelevant.

Facts: Transocean Offshore International Ventures Ltd, the assessee, a foreign company and a tax resident of the United States of America, received interest income on income tax refund for the AY 2013-14. The assessee offered the said income at the rate of 15%, as per Article 11 of the Indo-US DTAA (treaty), being more beneficial, as compared to the domestic rate of 40%, as applicable to foreign companies. The assessee contended that the said income was to be taxed under the residuary head and not as a business income and that the benefits as available under the provisions of section 90(2) of the Act, which say that an assessee should be taxed as per the rates mentioned in the treaty , if the said are more beneficial to him, should be applicable in the said case. In view thereof, it was contended that since the domestic law was equally applicable to the assessee, therefore, it cannot be said, that the indebtedness was connected with the PE of the assessee. However, the Revenue authorities argued that the interest income has a direct nexus with the business of the assessee and that it was received in the course of the business of the PE.

Issue before the Tribunal: Whether interest on income tax refund would be taxed as business income or income from other sources, if the assessee has a PE in India.

Tribunal's Ruling: The Tribunal, referring to the provisions of Sec 90(2), held that in a case where the provisions of the treaty apply to an assessee, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. The Tribunal elaborated that application of the provision can be ascertained only after comparing (i) tax payable by the assessee under the treaty , and (ii) tax payable by the assessee under the Act. If the tax payable under the Act is lesser than the tax payable under the treaty, it can be concluded that the provisions of the Act are more beneficial to the assessee. However, if the tax payable by the assessee under the treaty is lesser than the tax payable under the Act, the assessee shall have the benefit of the treaty.

In the instant case, if the income of the assessee is computed under the head "other sources", the net income by way of interest will be taxed at the rate applicable to a foreign company, which is more than 15%. Therefore, on making the assessment of tax under the treaty and the under the Act, it is found that tax payable under the Act is more than the tax payable under the treaty. Accordingly, the aforesaid provision will come to the aid of the assessee and the assessee should get the benefit under the treaty. No other consideration is material for this purpose, as ultimately what is to be seen is whether the provisions of the Act are more beneficial to the assessee or not. Accordingly, it can be held that the assessee is entitled to the benefit under the treaty.

Rejecting the revenue authorities' contention that interest income is effectively connected to PE and thus taxable as business income, the Tribunal has held that by applying the 'asset-test' or 'activity test' it can be concluded that interest on income tax refund is not effectively connected with the PE. Hence, the said interest is taxable as per the provisions of Article 11 of India-US DTAA at the rate of 15%.

Google Asia Pacific Pte Ltd [TS-57-HC-2022(DEL)]

Delhi HC, as an interim measure, permits withholding tax at 8% instead of 10%, till the resolution of dispute over interplay of Equalisation Levy (EL) & Royalty/FTS.

Facts: The Google Asia Pacific Pte Lt, the assessee-petitioner, is a Singapore based company, who had filed a writ petition before the Delhi High Court. The assessee filed the writ petition challenging the certificate dated 20th December 2021, issued under section 195(2) of the Act, directing Google Cloud India Pvt Ltd ('GCI') to deduct tax at source at the rate of 10%, being the rate appliable as per the tax treaty at the time of making payment to the assessee.

The assessee placing reliance on the decision in the case of Epcos Electronic Components S.A. v. UOI, (2020) and also the Frequently Asked Questions on (FAQs) issued by the Directorate of Income Tax dated 19th July, 2013, contented that the rate of 10% as per the tax treaty is inclusive of any surcharge and cess, and that the same is a settled position in law. The assessee further submitted that since the assessee had already subjected itself to EL of 2% on the payments under consideration, the withholding certificate creates a double jeopardy (i.e. by asking GCI to withhold tax @ 10%).

Issue before the High Court (HC): To Whether withholding tax would be applicable on payments made for Fees for Technical Service/Royalty to foreign residents if the same transaction is subject to Equalisation Levy at 2%.

High Court's Observations: The High Court noted that the payment under consideration is liable for a withholding tax at the rate of 10% in accordance with section 115A of the Act, read with the tax treaty . Further, the HC took cognisance of the decision of this Court in Epcos Electronic (Supra) as well as the FAQs issued by the CBDT, wherein it has been held that no additional surcharge and cess is to be applied over the 10% rate as prescribed under the tax treaty.
Accordingly, as an interim measure, the HC has ruled that the assessee petitioner would be entitled to receive its payment from GCI, subject to a deduction of 8% to be paid progressively. Further, the HC has directed that the deposit of 8% should not be treated as any non-compliance of the impugned order.

GRI Renewable Industries S.L [TS-79-ITAT-2022(PUN)]

CBDT Circular on MFN clause transgresses Section 90(1) and is not binding on Tribunal/ Assessee.

Facts: The GRI Renewable Industries S.L, the Assessee, is a foreign company incorporated in Spain. For the AY 2016-17, it declared income in the nature of 'fees for technical services' and 'royalty', by claiming the said receipts to be covered under Article 13 of the India-Spain tax treaty. The asssessee claimed the benefit of a lower tax rate of 10% (as against 20% in India-Spain tax treaty), as provided in Article 12 of the tax treaty entered into between India and Portugal (Portuguese tax treaty) by relying on the MFN clause under the Protocol to the India-Spain tax treaty, which provides for extending the similar benefit of a lower tax rate given by India to a third country under another tax treaty.
The AO disputed that the tax rate of 10% applied by the assessee under India-Portuguese tax treaty could not be applied because section 90(1) of the Act specifically requires the issuance of necessary notification by the Government of India to import an MFN clause from another tax treaty. In the absence of any such notification, the 'fees for technical services' and 'royalty' were chargeable to tax at the rate of 10%, plus applicable surcharge and education Cess, in terms of section 115A of the Act, which was more beneficial vis-à-vis 20% rate of tax provided under the India-Spain DTAA.
As no relief was provided by the Dispute Resolution Panel (DRP), the assessee challenged the order of the AO before the Tribunal. During proceedings before the Tribunal, the Revenue Authorities further relied on the CBDT Circular, dated 3rd Feb 2022, which provides for a specific requirement of a separate notification for importing of benefits from another treaty in consonance with the requirements of section 90(1) of the Act.

Issue before the Tribunal: It The question before the Tribunal was whether the assessee would be eligible for importing beneficial rate of tax from another tax treaty (i.e. the India-Portuguese tax treaty) based on the MFN Clause present under the India-Spain tax treaty, in the absence of any notification.

Tribunal's Ruling: The Tribunal observed that there is no dispute regarding the quantum, nature or taxability of the amount of 'fees for technical services' or 'royalty' of the assessee. The core controversy relates only to the rate of tax to be applied on such income. The Tribunal held that as per Section 90 of the Act, if the provisions of the concerned tax treaty are more beneficial to the assessee, vis-a-vis their counterparts under the Act, then the assessee can choose to be governed by the beneficial provisions contained in such tax treaty.

The Tribunal further ruled that once the tax treaty between India and Spain was notified on 21-04-1995, the Protocol, which is an integral part of the Agreement, also gets automatically notified along with the treaty. In such a scenario, it is difficult to comprehend the need for any separate notification for the import of the MFN clause.

The Tribunal opined that the recent CBDT Circular dt. 03-02-2022 [discussed in 'Circulars' section below] specifying the need for a separate notification for importing the beneficial treatment from another tax treatyt as a corollary of section 90(1) of the Act, overlooks the plain language of the section and is contrary to the language of the Protocol, which treats the MFN clause as an integral part of the tax treaty.

The Tribunal further ruled that the Circular issued by the CBDT is binding on the AO and not on the assessee or the Tribunal or other appellate authorities. The Tribunal relied on the Supreme Court decisions in the cases of CIT Vs. Hero Cycles Pvt. Ltd. (1997) 228 ITR 463 (SC) and CCE Vs. M/s. Ratan Melting and Wire Industries (2008) 220 CTR 98 (SC). The Tribunal held that the Circular transgressed the boundaries of section 90 (1) of the Act and was not binding on the Tribunal.

Further, the Tribunal held that the requirement of a separate notification for implementing the MFN clause, as per the recent CBDT Circular dt. 03-02-2022, cannot be invoked for the year under consideration, which is much prior to the CBDT Circular of the year 2022.

B. Notifications/Circulars

Circular No. 3/2022, dated 3rd February 2022

CBDT issues clarification regarding MFN Clause.

The CBDT vide Circular No. 3/2022, dated 3rd February 2022 has clarified that the benefit of lower rate and restricted scope under MFN clause will be extended only when all the below conditions are satisfied cumulatively:

- India's tax treaty with the country which has beneficial lower rate or restricted scope (referred as the third State) is entered into after the signature/entry into force, depending on language of MFN Clause, of India's tax treaty.
- The third State has to be an OECD member at the time of signing its treaty with India.
- India limits its taxing rights in relation to rate or scope of taxation in its treaty with the third State.
- India issues a separate notification under the Income Tax Laws (ITL) for importing the favorable benefits of third State treaty into the original treaty.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Adiraj Manpower Services Pvt. Ltd. Vs. Commissioner of Central Excise Pune II [TS-63-SC-2022-ST]

Supreme Court denies Assessee's claim for exemption of contract labour as job-work.

In this case, the Revenue investigated and had observed that the Appellant had failed to discharge the service tax liability on the supply of manpower. The Revenue had passed an order levying tax and penalty on the Appellant. The Appellant preferred an appeal before the Tribunal and the Tribunal upheld the order passed by the Revenue stating that the activity of provision of manpower services was in the nature of contract labour and not job-work. Aggrieved with the order passed by the Tribunal, the Appellant preferred an appeal before the Supreme Court (hereinafter referred to as "SC"), the SC observed that Notification No.25/2012 -Service Tax dated 20 June 2012 provided an exemption to a person who was carrying out an intermediate production process as job worker and the duty was payable by the principal manufacturer. Further, the SC held that there is a complete absence in the agreement of the nature of work carried out, provisions for maintaining the quality of work, delivery schedule or specifications with regard to the work to be performed, consequences in case of a breach which was the requirement as per the Notification to be termed as a job-worker. Therefore, the SC held that the contract was for the provision of labour and cannot be termed as job work. Therefore, the benefit of the aforesaid Notification was denied to the Appellant.

FSM Education Pvt. Ltd. vs. UOI [TS-35-HC(BOM)-2022-GST]

High Court quashes summons issued because allegation of 'co-operative behavior' was absent.

In this case, the Petitioner had received summons to submit documents without any details of inquiry that were duly attended to. Further, a summons was again issued to the director. The Appellant filed a writ petition before the Honorable Bombay High Court (hereinafter referred to as "HC") to direct Revenue to conduct an enquiry without initiating summons and interrogation unless extremely necessary and only by due adherence to the law. Summons can be issued only as a last resort and cannot be issued to coerce or pressurize. The HC ordered that the Revenue was to obtain the requisite documents through a letter. If the Revenue decides to call the director despite the submission of the requisite documents and if it is deemed necessary

to issue summons , then it is vital that the purpose of issuing such summons is indicated therein.

Taghar Vasudeva Ambrish vs. AAAR [TS-39-HC(KAR)-2022-GST]

High Court widens the scope of exemption of residential premises; shall include leasing of premises used as "hostel".

In this case, the Appellant leased out as a "hostel' for providing long term accommodation to students and working professionals. The Appellant filed an application before the Karnataka Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether the services provided were eligible for an exemption under Entry No.12 of Notification No.12/2017, relating to renting of residential dwelling for use as a residence. The AAR ruled against the Assessee. The Appellant had preferred an appeal with the Karnataka Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR") on the grounds that the hostel building is more akin to a sociable accommodation. The AAAR held that the benefit of the exemption is available only if the residential accommodation is used as a residence by the person who has taken the same on rent/lease. The Appellant aggrieved by the order filed a writ petition before the Honorable Karnataka High Court (hereinafter referred to as "HC") on the grounds that the hostel was for residential purposes and there was no condition mentioned in the exemption notification that the tenant must occupy the building. The Revenue contended that the Appellant was in the business of leasing out of premises and the term "residential dwelling" cannot be construed as "residence". The High Court concluded that "residence" and "dwelling" had the same meaning and hostel can be termed as "residential dwelling", since the residential dwelling was used for residence, the benefit of the exemption notification cannot be denied.

Syngenta Biosciences Pvt Ltd. [TS-1256-AAAR(GOA)-2020-GST]

AAAR held that "export "does not include sharing of the report of Technical Testing Services performed in India for overseas customers.

In this case, the Appellant had filed an application before the Goa Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether the activity of technical testing services for overseas customers carried out can be treated as "zero-rated supply". The AAR held that the said service is not a "zero-rated supply", and the appellant was liable to pay tax on the aforesaid supply. The Appellant preferred an appeal with the Goa Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The Appellant receives samples from overseas companies, carries out research and sends the report to overseas customers. The Appellant contended that the place of supply of service was the location of the recipient and hence, to be treated as "zero-rated supply". The AAAR held that as per Section 13(3) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) the place of supply of service is the

place where the services are actually performed, i.e., Goa. In this case, the services were performed in Goa i.e., India. Hence, the AAAR held that the activity carried out by the company is not an "export of services" and was liable to CGST and SGST. The appeal filed by the Appellant was rejected.

Shantilal Real Estate Services [TS-748-AAR(GOA)-2021-GST]

Goa AAR held that sub-dividing land into smaller plots for sale is not a "supply".

In this case, the Applicant was a real estate developer with an established business of construction of residential apartments, shops, and development of plots. The Applicant had acquired certain parcels of land and was undertaking certain schemes to convert the entire parcel of land into smaller parts. A petition was filed before the Goa Authority for Advance Ruling (hereinafter referred to as AAR) to obtain a ruling on whether plotting schemes on parcels of lands and sale of such plots is a supply; whether it is a supply of goods or services; valuation; and if rate of tax applicable on such supply. The Applicant had 2 projects, out of which the first had an existing road, drainage and electricity lines that were to be marginally improved. However, in the second project, new roads and drains would be constructed based on the approved plan. The AAR held that as per the provisions of Schedule III of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as CGST Act, 2017) the sale of land is an activity that is neither a supply of goods nor a supply of services. Thus, the land is excluded in its entirety. Since, it was concluded that the sale of plots was not a supply, accordingly, the other contentions in the application were not further deliberated upon.

Syngenta India Ltd. [TS-12-AAR(MAH)-2022-GST]

AAR held that GST is not applicable on money recovered from employees towards Notice Pay and Parental Insurance.

In this case, the Applicant offers various incentives to its employees as a part of its employment policy, for instance, a group insurance policy, Parental Insurance policy etc., The premium of group insurance policy was borne by the employee and the parental insurance premium was recovered from the salary of the employee who agreed to it. The Applicant was entitled to monetary compensation, referred to as "notice pay recovery" from the employee's salary payment in case the employee did not serve the mandated notice period. The Applicant filed an application before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether GST would be payable on recoveries made from employees towards providing parental insurance and/or on account of not serving the full notice period. The AAR held that recovery of parental health insurance expense was not a supply as the principal business of the company was not to provide insurance services and hence the question of time and value of supply does not arise and was not liable to GST. The AAR further held that recovery of notice pay from the employee does not satisfy the conditions mentioned under Section 7(1A) and Schedule II of the Central Goods and Services Tax Act, 2017(hereinafter referred to as "CGST Act"), relating to the scope of supply.

The Poona Club Ltd. [TS-23-AAR(MAH)-2022-GST]

AAR held that fees collected by clubs are liable to GST.

In this case, the Applicant collected membership fees, annual subscription fees and annual games fees. This application was filed before the Maharashtra Authority for Advance Ruling (AAR) to decide whether the fees collected from the members at the time of membership, and annual subscription and annual games fees collected were liable to tax. The Applicant in its application had stated that the principle of mutuality is applicable, and its members had the same identity. The AAR in its ruling held that in the amended Section 7 of the Central Goods and Services Tax Act, 2017 the members and the club shall be deemed to be two separate entities and the principles of mutuality will not apply. Therefore, the payment of membership fees, annual subscription & annual games fees by the member to the club will be treated as a supply between two distinct persons and the applicant was liable to GST.

Maanicare System India Pvt. Ltd. [TS-26-AAR(MAH)-2022-GST]

AAR held that GST paid on RCM for hiring bus for employee transportation is eligible for ITC for a manpower service-provider.

In this case, the Applicant was a company engaged in the business of providing manpower services. The Applicant had hired a bus service to transport its employees to the customer's premises and was liable to discharge tax on a reverse charge basis. The said application was filed before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether it was eligible to take Input Tax Credit (ITC) on the taxes paid under reverse charge for hiring a bus to transport its employees. As per Notification No.29/2019 – Central Tax, the service recipient was liable to discharge GST under reverse charge on renting of vehicle designed to carry passengers. The AAR held that the services received by the Applicant were used in the course or furtherance of their business and the restriction provisions of Section 17(5) of the Central Goods and Services Tax Act, 2017 for availing ITC on renting of the vehicle was applicable only up to 01.02.2019. Hence, the Applicant was eligible to claim ITC.

International Inspection Services Pvt Ltd [TS-755-AAR(TEL)-2021-GST]

AAR held that "export of services" does not include inspection service performed on goods that are sold to a foreign buyer.

In this case, the Applicant was in the business of inspection and expediting services during the manufacture and packing of equipment/material in India and also abroad. The Applicant receives foreign currency, performs an inspection on goods that are meant to be exported and hence, submitted before the Telangana Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling regarding the liability of their supplies to tax. The Applicant in its application questioned whether services rendered for foreign companies in India could be considered as "export of services". The AAR upon considering the application of the Applicant observed that the recipient of services was a foreign buyer, however, the place of supply as per Section 13 of the Integrated Goods and Services Tax Act, 2017 states that the place of supply was India as the Applicant performs the services on goods in India. Accordingly, the AAR passed a ruling stating that the place of supply provided by the Applicant would be within the country and would not be treated as export.

Sagar Steel Pvt Ltd vs Commissioner of Central Excise (Appeals-II) [TS-70-CESTAT-2022-EXC]

Tribunal held that taxes wrongly paid due to misconception of law shall to be refunded to the Assessee.

In this case, the Appellant had entered into a works contract with the Karnataka Power Transmission Corporation Limited and had paid taxes under the category "Erection, Commissioning or Installation Service". However, the Appellant subsequently realized that the activity was a works contract, and not an activity of "Erection, Commissioning or Installation Service". Taxes were not leviable at that time on the works contract and hence, the Appellant

claimed a refund of the taxes paid. The Assessing Officer (AO) rejected the refund on the basis that Assessee was providing service under "Erection, Commissioning or Installation Service" and had accordingly paid taxes. The order was upheld by the Commissioner (Appeals). Aggrieved with the order passed, the Appellant preferred an appeal with the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"). The CESTAT observed that taxes wrongly paid under a heading for a service that was not taxable, would not make the service taxable. Therefore, the CESTAT held that the Appellants were not required to pay any taxes and the taxes wrongly paid under a different heading were to be refunded.

BA Continnum India Pvt. Ltd vs. Commissioner of Service Tax [TS-68-CESTAT-2022-ST]

Tribunal quashed Revenue's demand for reversal of CENVAT credit wrongfully availed.

In this case, the Appellant was primarily engaged in rendering information technology-related services to the group of entities located outside India and accordingly, claimed Central Value Added Tax (hereinafter referred to as "CENVAT") Credit of the input services. Appellant had inadvertently claimed CENVAT credit, due to an error in the accounting software. Upon discovery of the error, the CENVAT credit was reversed, the returns were revised and a letter to the Department was issued, intimating the reversal of CENVAT credit. Subsequently, an audit was conducted on the Assessee's records and the audit authorities observed that interest on the wrongfully claimed CENVAT credit was not paid. The Appellant contended that the said CENVAT credit was only availed but not utilized. A notice of demand of interest and penalty was issued on the Appellant for non-payment of interest on the wrongful availment of CENVAT credit. Aggrieved with the order passed, the Appellant preferred an appeal with the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"). The CESTAT upon considering the facts of the case and analyzing the provisions of the law held that availment of CENVAT credit that is subsequently suo-moto reversed without utilization amounts to credit not taken. The CESTAT held that interest can be levied only if the credit was utilized. The CESTAT set aside the impugned order and granted relief to the Appellant.

B. Excise

Numaligarh Refinery Ltd. vs. Commissioner of Central Excise [TS-38-CESTAT-2022-EXC]

Tribunal held that a mutually beneficial agreement cannot make parties related.

In this case, the Appellant was a Public Sector Undertaking and a subsidiary of Bharat Petroleum Corporation Limited (BPCL), engaged in the production and sale of petroleum

products. The Appellant sold its products through a Memorandum of Understanding (hereinafter referred to as “MoU”) to various Oil companies including its holding company. Assessee discharged its excise duty liability for supplies made to its holding company by complying with the provisions of Rule 9 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 which provides for valuation of goods in case of entities being related to each other. The excise duty for supplies made to other entities was discharged at the transaction value. The Department accepted the valuation for goods supplied to BPCL but challenged the valuation of goods supplied to other oil companies alleging that the Appellant and other entities were mutually interested in each other due to the MoU. Aggrieved by the order passed by the Department, an appeal was preferred before the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as “CESTAT”) on the grounds that the MoU was entered into with the objective of ensuring a steady supply of petroleum products. The CESTAT observed that merely entering into an MoU cannot make the parties related and further observed that the transaction price entered into was scientifically arrived at and a commercial value for sustaining the operations of the entities. Thus, the CESTAT held that the Appellant had correctly valued the goods and quashed the orders passed by the Revenue.

C. Customs

LSML Pvt. Ltd. vs. Pr. Commissioner of Customs [TS-71-CESTAT-2022-CUST]

Tribunal upholds levying Anti-Dumping Duty on imports notified before clearance from the warehouse.

In this case, the Appellant was a manufacturer of wind turbines in their factory and had imported steel plates for its factory by paying appropriate import duty. A demand was raised on the Appellant for levy of anti-dumping duty, interest on goods, fine, and penalty and confiscation of goods which was unknowingly escaped during the assessment. Aggrieved by the order passed, the Appellant preferred an appeal before the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"). The CESTAT observed that in view of Section 3 of Customs Tariff Act, 1975, Antidumping duty was to be construed as Customs Duty and all the applicable provisions were squarely applicable. Further, the provisions of confiscation and imposition of fine and penalty are not warranted as the Appellant have not consciously suppressed or misrepresented and if the Anti-Dumping Duty escaped assessment then the Department is free to demand the same, however, goods cannot be confiscated and penalty cannot be imposed. Therefore, CESTAT partially allowed the appeal of the Appellant and upheld duty demand and interest. The CESTAT also set-aside confiscation, fine and penalties.

D. Circulars

Circular No.3/2022

The Central Government vide Circular No.3/2022 has clarified that where the customs duty payable on import of goods is zero then the Social Welfare Surcharge (SWS) is calculated at 10% of the customs duty payable which amount to "Nil". The law does not require SWS to be calculated on a notional customs duty.

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