Tax INFORM

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Contents

3 DIRECT TAX

Recent Case Laws

Notifications/Circulars

17 INDIRECT TAX

18 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

23 Service Tax

Recent Case Laws

25 Customs

Recent Case Laws

27 Excise

Recent Case Law

DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

M/s. Reliance Energy Limited (Civil Appeal No. 1327 of 2021) / [2021] 127 taxmann.com 69 (SC)

Deduction under section 80-IA of the Income-tax Act, 1961 (Act) should not be restricted against income from business but can be claimed up to the gross total income for the year.

The assessee was engaged in the business of generation and distribution of power and accordingly was eligible to claim deduction under section 80-IA of the Act with respect to its power generating unit (i.e. eligible business). During the year under consideration, the assessee' s gross total income comprised of income under the head "Profits and Gains from Business and Profession" (PGBP) and "Income from other sources". The assessee had claimed deduction under section 80-IA of the Act after aggregating both the heads of income and then restricting the deduction to the gross total income for the year. It may be noted that the net taxable profit derived by the assessee from the 'eligible business' was higher than the net taxable income under the head PGBP.

The Assessing Officer (AO) contended that the provisions of section 80AB of the Act contemplates that deduction from eligible business can be allowed only against income from 'business' and not against income from other sources. The AO further contended that the provisions of section 80-IA (5) of the Act determines the quantum of deduction by considering that the source of income from eligible business was the "only source of income", thus implying that the deduction should be allowed only against 'business income'. Accordingly, the AO held that the deduction under Section 80-IA of the Act will be restricted to the extent of assessee's 'business income' for the year only.

Pursuant to the matter being disposed at the appellate stages and High Court in favor of the assessee, the Revenue had brought up the matter before the Hon'ble Supreme Court vis-à-vis the issue whether the deduction claim available under section 80-IA of the Act ought to be limited to the extent of business income or to the extent of the gross total income, after including other heads of income thereon.

The Supreme Court observed that the provisions of section 80AB were inserted to override a judgement in the case of *Cloth Traders (P) Ltd.* (1979) 3 SCC 538), wherein it was held that the deduction in respect of certain intercorporate dividends was allowable on the gross amounts of

dividend. Further, the CBDT Circular dated 22 September 1980 provides the legislative intent for introduction of section 80AB, wherein it is provided that the deductions under Part C of Chapter VIA (which includes section 80-IA) is to be made on the net income of the eligible business and not on the gross profits from the eligible business. Accordingly, it was held that provisions of section 80AB deals only with respect to computation of deduction on the basis of 'net income' and cannot be read to be curtailing the width of section 80-IA.

Further, to interpret the provisions of section 80-IA (5), the Supreme Court referred to the judgement in the case of Synco Industries Ltd ([2008] 299 ITR 144 (SC)) and held that the scope of Section 80-IA(5) of the Act is only limited to determination of 'quantum of deduction' under Section 80-IA(1) of the Act, by treating 'eligible business' as the 'only source of income'. The same cannot be construed to put a limitation on the quantum of deduction under section 80-IA (1) only to 'business income'.

Considering the above, the Supreme Court has, while dismissing the Revenue's appeal, held that the scope of the section 80AB and section 80IA(5) of the Act, is limited only for the purpose of determination of profit from eligible business and it does not, in any manner, restrict the claim of the assessee only against the business income. It has thereby ruled that the assessee would be eligible to claim deduction under section 80-IA of the Act even against income computed under other heads of income, as limited, in aggregate, to the gross total income of the assessee for the year.

TATA Communications Ltd. (ITA no. 2577/Mum/2019) / [TS-292-ITAT-2021 (MUM)]

Minimum Alternate Tax (MAT) credit of amalgamating company allowed to be carried forward by amalgamated company.

The assessee was engaged in the business of providing international telecommunication services, national long-distance services within India, internet related services and other value-added services. The assessee, while filing its revised return of income, had claimed MAT credit under section 115JAA of the Act, pertaining to the amalgamating company, which merged with the assessee (i.e. the amalgamated company) in the earlier assessment year.

The issue that arose before the Tribunal was whether, upon the amalgamation, the assessee would be granted tax credit for the MAT paid under section 115JAA of the Act by the amalgamating company. In this regard, the Tribunal observed that the issue relating to non–grant of MAT credit is decided by a Co-ordinate bench in the case of *Ambuja Cements Ltd* (ITA no 3643/Mum/2018), wherein it was held that the provisions of section 115JAA, which deals with

allowability of MAT credit, does not impose any restriction with respect to allowance of MAT credit of an amalgamating company in the hands of an amalgamated company. Accordingly, it was held that the MAT credit of amalgamating company can be carried forward by the amalgamated company. A similar view was also adopted by Mumbai and Ahmedabad Tribunal in the case of Skol Breweries Ltd (ITA No. 2313 of 2017) and Adani Gas Ltd (ITA No. 2241 of 2011) respectively.

Accordingly, the Tribunal, in the instant case, granted the assessee' s claim to carry forward the MAT credit of the amalgamating company.

Magick Woods Exports Private Limited (W.P. No.10693 of 2021) / [TS-343-HC-2021(MAD)]

Madras High Court (HC) sets aside "faceless assessment order" on the ground that it was passed contrary to the principles of natural justice.

During the course of assessment proceedings, the AO had issued a show cause notice (SCN) along with the draft assessment order to the assessee. In response to the same, the assessee had sought an adjournment, for the purpose of collating the requisite materials necessary to substantiate its stands before the AO. However, the AO passed the assessment order without taking into consideration the assessee' s adjournment request. Further, the request for adjournment was neither rejected nor was the assessee intimated about the same. Aggrieved against this order, the assessee filed a miscellaneous writ petition before the High Court on the ground that the assessment order was passed contrary to the principles of natural justice.

The HC accepted the contentions of the assessee and set aside the AO's assessment order and directed the assessee to comply with the SCN directions within a period of three weeks from the order date. The HC further directed the AO to facilitate such a receipt of reply from the assessee by enabling the portal, to hear the assessee and complete the assessment in accordance with law.

II. International Tax Rulings

Goldman Sachs India Investments (Singapore) Pte Limited (ITA No. 6619/Mum/2016) / [TS-294-ITAT-2021(Mum)]

Short term Capital Loss (STCL) can be carried forward as per the beneficial provisions under the Act even if the capital gains are exempt under the tax treaty.

The assessee was a company incorporated in Singapore and registered as a Foreign Institutional Investor (FII) with the Securities and Exchange Board of India (SEBI). During the year under consideration, the Company has incurred STCL amounting to Rs. 20.59 crores. The said STCL was carried forward to the following eight assessment years as per the provisions of section 74 of the Act. However, the AO denied carrying forward of STCL on the premise that, since the capital gains earned by the assessee are exempt from tax under the India–Singapore Double Taxation Avoidance Agreement (DTAA), the capital losses need to be ignored.

As such, the issue which arose before the Tribunal was whether the assessee would be entitled to carry forward the STCL as per the provisions of section 74 of the Act by considering the same as more beneficial, even if the capital gains were exempt under the India-Singapore DTAA. In this regard, the Tribunal placed reliance on the ruling in the case of assessee' s sister concern Goldman Sachs Investments (Mauritius) Ltd ((2020) 120 taxmann.com 23 (Mum-Trib.)) and in the case of Patni Computer Systems Ltd ((2008) 114 ITD 159 (Pune)) and observed as under:

- If provisions of the Act are more beneficial as compared to the tax treaty, then the beneficial provisions of the Act would apply in determining the taxability of such income.

- Having regard to the provisions of section 90(2) of the Act and given that the provisions of section 74 of the Act permit the assessee to carry forward capital losses to subsequent assessment years, the provisions of the Act are more beneficial than the provisions of the India-Singapore DTAA.

- The provisions of the India-Singapore DTAA cannot be thrusted upon the assessee simply because the assessee is a tax resident of such country or on account of the mere perception of the AO that the assessee may claim benefits under the tax treaty in subsequent years.

Considering the above, the Tribunal held that capital losses incurred from transactions in the Indian capital markets should be construed as income accruing or arising from transactions undertaken in India falling within the scope of section 5 of the Act and therefore, the same should be eligible to be carried forward to subsequent years in accordance with the provisions of section 74 of the Act.

Ranjit Kumar Vuppu (ITA NO. 86 (HYD) OF 2021) / 127 taxmann.com 85 (Hyderabad – Trib.)

Submission of TRC not mandatory for claiming treaty benefits if sufficient circumstantial evidence is provided by the assessee.

The assessee was a non-resident in India and qualified as a tax resident of Belgium. During the year under consideration, the assessee had received salary income from IBM India (P) Ltd (Employer) aggregating to Rs. 31,11,185 and the employer had deducted tax at source (TDS) amounting to Rs 7,76,564 on the same, on a conservative basis. The assessee, while filing its return of income, had claimed relief under the beneficial provisions of the India- Belgium DTAA and thereby declared Nil taxable income and claimed a refund of Rs 7,66,567.

During the assessment proceedings, the AO, inter alia, asked the assessee to furnish tax residency certificate (TRC) in order to claim relief under section 90 of the Act for the salary received outside India with respect to the services rendered outside India. However, the assessee failed to submit the TRC. Therefore, the AO denied the treaty benefits primarily for the reason for non-submission of TRC.

In this regard, the Tribunal placed reliance on the decision of Coordinate Bench in the case of Sreenivasa Reddy Cheemalamarri (ITA No.1463/Hyd/2018), wherein it was held that "It is a herculean task to obtain certificates from alien countries for compliance of domestic statutory obligations. In such circumstances the taxpayer cannot be obligated to do impossible task and penalized for the same. If the assessee provides sufficient circumstantial evidence in such cases, the requirement of section 90(4) ought to be relaxed. Further, it is obvious that where there is a conflict between the Treaty and the Act, the Treaty shall overrule the Act. Similar decisions were also taken in the cases of Sunil Chitranjan Muncif (2013 58 SOT 356 - ITAT, Ahmedabad) and Prahlad Vijendra Rao (239 CTR 107) and also several other employees of the Employer.

Considering the above and similar view adopted in the case of other employees of the Employer, the Tribunal decided the matter in favour of the assessee.

Concentrix Services Netherlands B.V. [W.P.(C) 9051/2020] / [TS-286-HC-2021(DEL)]

Delhi High Court extends the benefit of Most Favored Nation (MFN) clause under India–Netherlands tax treaty and applies lower withholding tax rate of 5% on dividend income.

The assessee was a tax resident of Netherlands and had a wholly owned subsidiary in India. The

Indian subsidiary was required to remit dividend income to the assessee. Accordingly, the assessee applied for a lower withholding tax certificate under section 197 of the Act, that would authorize Indian subsidiary to deduct withholding tax at a lower rate of 5%, in consonance with the India-Netherlands DTAA, read with the MFN clause as provided in the Protocol appended thereto. It was contended that since India had entered into DTAAs with other countries (such as Slovenia, Lithuania and Columbia) which were the members of Organization for Economic Cooperation and Development (OECD), the lower rate (i.e. 5%) or the restricted scope in the DTAA executed between India and such a country would automatically apply to the India-Netherlands DTAA. This argument was advanced based on the provisions in the preface of the Protocol which inter alia stated that "the Protocol shall form an integral part of the Convention".

However, the Revenue authorities contended that the benefit of the lower rate of withholding tax or a scope more restricted would be available only if the country (i.e. Slovenia, Lithuania and Columbia) with which India had entered into a DTAA, was a member of the OECD at the time of the execution of the respective DTAAs. It was further observed that Slovenia, Lithuania and Columbia became members of OECD after the date when these DTAAs was executed with India. Accordingly, the Revenue authorities denied the benefit of MFN clause in the present case.

The Revenue authorities further contended that several amendments have been made to the India-Netherlands DTAA, which have been duly ratified by both India and Netherlands and accordingly, the benefit of the lower rate or a scope more restricted could be granted only by way of an amendment to the India Netherlands DTAA. Since no such amendment was made, the withholding tax rate cannot be lower than 10%.

The High Court, placing reliance on the ruling in the case of Steria (India) Ltd. ((2016) 386 ITR 390 (Delhi)), held that the Protocol (containing the MFN clause) forms an integral part of the Convention and accordingly no separate notification was required, insofar as the applicability of provisions of the Protocol was concerned and the same would apply automatically.

The High Court further observed that the Protocol (containing the MFN clause) incorporated the principle of parity and the same kicked in, inter alia, if the following conditions were fulfilled:

- First, the third State with whom India enters into a DTAA should be a member of the OECD.

- Second, India should have, in its DTAA, executed with the third State, limited its rate of withholding tax, on subject remittances, at a rate lower or a scope more restricted, than the rate or scope provided in the subject DTAA.

Once the aforementioned conditions were fulfilled, then, from the date on which the DTAA between India and a third State came into force, the same rate of withholding tax or scope as provided in the DTAA executed between India and the third State, would necessarily have to apply to the India

– Netherland DTAA, even though the third State was not a member of OECD at the time of signing of respective DTAA but were members at the time when the benefit under MFN clause was sought to be availed.

The High Court further observed that the word "is" as provided in clause IV (2) of the Protocol, which reads as "…which is a member of the OECD…" describes a state of affairs that should exist not necessarily at the time when the subject treaty was executed but when a request was made by a taxpayer for issuance of lower rate of withholding tax certificate under section 197 of the Act.

It also observed that the best interpretative tool that could be employed to comprehend the intent of the Contracting States in framing the Protocol would be as to how the Netherlands had interpreted this provision. In this regard, reliance was placed on decree issued by the Kingdom of Netherlands wherein it was provided that, as per MFN clause in the Protocol, a rate of 5% would apply to participation dividends paid by a company resident in the Netherlands to a body resident in India. Therefore, following the 'principle of common interpretation', it was observed that the Courts of the Contracting States were required to ensure that the provisions of DTAA were applied efficiently and fairly so that there was no inconsistency in the interpretation.

Considering the above, the High Court quashed the lower withholding tax certificate that was issued at a rate of 10% and directed the tax officer to issue a fresh certificate under section 197 of the Act indicating the withholding tax rate of 5%.



WNS Capital Investment Limited (ITA No. 3851/Mum/18) / [TS-320-ITAT-2021 (Mum)]

Mumbai Tribunal held that withholding tax obligation cannot be imposed retrospectively on account of impossibility of performance.

The assessee was a non-resident company based out of Mauritius, that acquired the shares of Aviva Global Services Singapore Pte Ltd, Singapore (Aviva Singapore) from Aviva International Holdings Ltd, UK (Aviva UK) on 11 July 2008.

Aviva Singapore had three subsidiaries out of which two subsidiaries were based out of India. Accordingly, the AO, in view of Explanation 5 to Section 9(1)(i) of the Act (introduced retrospectively by Finance Act 2012), contended that the transaction resulted in indirect transfer of shares of the two Indian companies, as the shares of Aviva Singapore derived its "substantial value", directly or indirectly, from the assets located in India. Accordingly, the capital gains arising on such indirect transfer would be chargeable to tax in India. The AO further noted that even a non-resident was under an obligation to withhold taxes under section 195 of the Act. Since, the assessee had not deducted tax at source on such capital gains, the AO considered the assessee as an "assessee in default" and tax demands were raised under section 201(1) and 201(1A) of the Act.

The Commissioner of Income-tax (Appeals) [CIT(A)] noted that Aviva UK has already paid the tax on capital gains in question. Accordingly, the demand raised under section 201(1) of the Act (i.e. principal amount of TDS) was deleted. With respect to interest on TDS under section 201(1A), the CIT(A) relied on the decision of the Bombay High Court in the case of *NGC Network (India) Pvt. Ltd* (ITA No 397 of 2015, Mumbai) and deleted the same. Aggrieved against the CIT(A) order, the Revenue authorities preferred an appeal before the Tribunal.

The Tribunal observed that the Explanation 2 to Section 195 of the Act, which imposes the obligation to withhold tax at source on non-residents, was introduced by Finance Act, 2012, retrospectively, w.e.f 1 April 1962. In this regard, the Tribunal observed that the withholding tax requirement under Section 195 imposes duties and obligations on a person, including a non-resident, involving an element of income chargeable to tax in India. Therefore, the question which arose was whether such a legislative amendment can also be introduced with retrospective effect and accordingly the non-resident buyer is under an obligation to deduct tax at source under section 195 of the Act.

In this regard, the Tribunal placed reliance on the recent ruling of Hon'ble Supreme Court in the case of *Engineering Analysis Centre of Excellence* ((2021) 125 taxmann.com 42 (SC)) wherein the Supreme Court while dealing with a similar situation i.e. with respect to the obligations of a person

under tax withholding requirements, observed that "It is thus clear that the "person" mentioned in section 195 of the Income Tax Act cannot be expected to do the impossible, namely, to apply (the law as it did not exist as the point of time when the obligations in question were being performed)".

Accordingly, the Tribunal observed that in order for a person to perform the tax withholding obligations on the basis of an amendment in law which was enacted on a date later than the date on which tax withholding obligations were required to be performed, is expecting that person to do the impossible. Thus, the Tribunal held that the assessee was not required to deduct tax at source under section 195 of the Act in the present facts of the case.

Additionally, the Tribunal observed that the issue under consideration is entirely tax neutral as Aviva UK has already paid the taxes on the same and independent proceedings in the said matter are in progress. With respect to chargeability of interest, it was observed that, in case the taxability of such income is determined in the hands of Aviva UK, then there would be consequential levy of interest under section 234B of the Act and charging of interest under section 201(1A) or under section 234B, is to the exclusion of levy of interest under the other provision.

Considering the above, the Tribunal upheld the issue in favour of the assessee.

III. International Court Ruling

Sproger (UK Co.) [TS-303-FC-2021(DEN)]

Danish Tax Council (DTC) held that employees providing mere "Marketing Support" from home will not constitute Permanent Establishment in Denmark.

The assessee was a UK based company that developed software to provide companies with a more flexible virtual workforce. The assessee had an organizational structure such that the employees worked with colleagues across different legal entities and across borders.

One of the employees, a Danish Citizen, working from UK, intended to return to Denmark, on a permanent basis, for personal reasons. Thus, the employee was to work full time in Denmark. The role of the employee was such that it could be performed from anywhere and thus had no connection to Denmark, as he was neither part of a Danish nor a Nordic team and was neither aimed at Danish colleagues nor customers. The employee provided support to the sales team, **but in a marketing capacity**, rather than a direct client-facing role.

In view of the above, the question that arose before the DTC was whether the work performed by an employee through permanent "Home office" in Denmark would constitute Permanent Establishment (PE).

The DTC observed that the activities of a foreign company would constitute a permanent establishment in Denmark only if all the conditions of "permanent establishment" under Article 5 of the tax treaty were satisfied. Accordingly, it observed/ held as under:

Permanent Place of Business:

- The DTC relied on point 18 of the commentary on Article 5 of the OECD Model Convention which provides that the business activity carried out in the home of a natural person (eg. an employee) would in many cases be so irregular or haphazard that the home would not be considered as a site available to the enterprise.

- The Court observed that the key factor that must be assessed was that the business activity must be carried out with advantage from Denmark, whereby the employer had an interest in the work being carried out from Denmark.

- In the present case, the role of the employee was to monitor the market and act as internal support for his colleagues. It was further observed that the employee did not perform work that would be aimed at Denmark or at customers, nor signed contracts in Denmark. The only reason the employee performed work for the British unit from his home office in Denmark, was entirely for personal reasons.

- Further, the "home office" of the employee was not at the disposal of the assessee.

- Thus, the DTC held that the "home office" of the employee did not constitute permanent place of business of the assessee in Denmark.

Dependent Agent:

- It was observed that the employee would only have an internal role, and he was not authorized to enter into contracts or play a significant role up to the conclusion of contracts. Further, the employee should not have direct customer contact and would not participate in negotiations of contract.

- It was thus held that the employee would not be considered as a dependent agent of the assessee.

Considering the above, DTC held that the "home office" of the employee did not constitute Permanent Establishment of the assessee in Denmark.

B. Notifications/ Circulars

Notification No. 41/2021 dated 03rd May 2021:

CBDT notifies Rule 11UD under Income Tax Rules, 1962 to prescribe thresholds for the purpose of determining Significant Economic Presence.

The Central Board of Direct Taxes (CBDT) vide above mentioned notification has notified Rule 11UD to prescribe the 'revenue' and 'users' threshold for the purpose of determining Significant Economic Presence (SEP) of a non-resident entity in India. It shall come into force with effect from 1 April 2021 (i.e. Financial Year 2021-22 and Assessment Year 2022-23 onwards).

The threshold limit notified by CBDT for the purpose of SEP has been tabulated as under:

Sr. No.	Nature	Threshold Limit
1	**Revenue threshold** [For the purposes of clause (a) of *Explanation 2A* to clause (i) of sub-section (1) of section 9] – Transaction in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India.	INR 2 crores
2	**Number of users threshold [**For the purposes of clause (b) of *Explanation 2A* to clause (i) of sub-section (1) of section 9] **–** Systematic and continuous soliciting of business activities or engaging in interaction with users in India.	3 lakhs users

Notification No. 41/2021 dated 03rd May 2021:

CBDT inserts sub-rule (2A) under Rule 114AAB of the Income-tax Rules, 1962 to provide that eligible foreign investor shall not be required to obtain PAN.

CBDT, vide above-mentioned notification, has relaxed the requirement for obtaining Permanent Account Number (PAN) for eligible foreign investors, who have made transaction only in a capital

asset referred to in section 47(vii)(ab), which are listed on a recognised stock exchange, located in any International Financial Services Centre [i.e. GIFT city] and the consideration on transfer of such capital asset is paid or payable in foreign currency, subject to satisfaction of the prescribed conditions.

Notification No. 50/2021 dated 05th May 2021:

CBDT inserts sub-rule (1A) under Rule 2B of the Income-tax Rules, 1962 to prescribe the conditions for availing exemption for cash allowance in lieu of Leave travel allowance.

CBDT has prescribed the conditions to be satisfied by the specified persons for availing (for the period 12th October 2020 to 31st March 2021) tax exemption under section 10(5) of the Income Tax Act, 1961, on any cash allowance received by such person from his employer, in lieu of any travel concession or assistance. Further the amount of exemption shall not exceed thirty-six thousand rupees per person, for the individual and the member of his family, or one-third of the specified expenditure (*inter alia*, purchase of goods or services which are subject to 12% GST), whichever is less.

Notification No. 68/2021 dated 24 May 2021:

CBDT notifies Rule 11UAE under Income-tax Rules, 1962 for calculation of fair market value of capital assets in case of Slump Sale.

Vide Finance Act, 2021, the provisions of section 50B (2) was amended to provide that the Fair Market Value (FMV) of the capital assets as on the date of transfer shall be deemed to be the full value of consideration which is to be calculated in the prescribed manner.

CBDT, vide above-mentioned notification, has inserted Rule 11UAE which prescribes the manner of computation of FMV of the capital asset as required under section 50(B)(ii) of the Act. The FMV of the capital asset would be computed using two methods as provided under the Rule 11UAE and higher of these two FMVs would be considered as full value of consideration for the purpose of computing capital gains.

Circular No. 09/2021 dated 20th May 2021:

Extension of time limits for various compliances during the pandemic period.

In order to provide relief to taxpayers, CBDT has extended time limit for undertaking various compliances. The same has been tabulated as under:

Sr No	Nature of Compliance	Existing due date	Extended due date
1	Statement of Financial Transaction (SFT)	31-05-2021	30-06-2021
2	Statement of Reportable Account	31-05-2021	30-06-2021
3	TDS Return	31-05-2021	30-06-2021
4	Certificate of TDS in Form 16	15-06-2021	15-07-2021
5	Form 24G – TDS / TCS Book Adjustment Statement	15-06-2021	30-06-2021
6	Statement of Deduction of Tax from contribution by the trustees in superannuation fund	31-05-2021	30-06-2021
7	Form 64D by Investment fund – Income paid or credited	15-06-2021	30-06-2021
8	Form 64C by Investment fund – Income paid or credited	15-06-2021	30-06-2021
9	Return of income – Non-audit Case	31-07-2021	30-09-2021
10	Tax Audit Report	30-09-2021	31-10-2021
11	Transfer Pricing Audit Report	31-10-2021	30-11-2021
12	Return of income – Audit Case	31-10-2021	30-11-2021
13	Return of income – Transfer Pricing Case	30-11-2021	31-12-2021
14	Belated / Revised return	31-12-2021	31-01-2022

INDIRECT TAX

A. Recent Case Laws:

Bhawna Chugh vs. UOI [TS-1168-HC(DEL)-2021-GST]

Summons declared ambiguous on delayed delivery.

In this case, the assessee filed a writ petition against the summons served upon him in an inquiry on ground of GST evasion. The Hon'ble High Court of Delhi ruled in favor of the assessee, declaring the summon as ambiguous if delivered after the date of appearance. The Court advised the proper officer to attend to the legal parameters of the inquiry, when taking recourse to Section 70 of the CGST Act, 2017.

Sarvasiddhi Agrotech Pvt. Ltd vs UOI [TS-196-HC(TRI)-2021-GST]

Taxability of unregistered branded rice clarified.

In this case, the GST authority raided the premises of the assessee in Tripura, who claimed to supply unbranded rice. The Hon'ble High Court of Tripura rejected the assessee' s contention that the brand was not a registered brand and hence there was no liability to pay GST. The Hon'ble Court affirmed the GST demand. It relied on the amended Notification dated September 22, 2017, confirming that the previous requirement of supply of goods in unit container and bearing a registered brand name was expanded to "either bearing of a registered brand name or bearing a brand name on which actionable claim or enforceable right in a court of law is available."

Shri Tafiz Ali vs. State of Tripura [TS-206-HC(TRI)-2021-GST]

Revenue released the detained goods, on taking the promise to pay.

In this case, the goods were detained for transporting without a valid e-way bill. The Hon'ble High

Court perused the law on search, detention and seizure under the Tripura GST Act and affirmed the Superintendent's power to detain and seize and release goods/conveyance on furnishing of bond or payment by the assessee. The Hon'ble High Court allowed the release of goods on deposit under protest or on furnishing a bank guarantee of the value of 25% of the principal tax and penalties.

Golden Mesh Industries vs Assistant Commissioner [TS-1170-HC(TEL)-2021-GST]

Best Judgement assessment declared arbitrary.

In this case, the assessee filed a writ petition before the Hon'ble High Court of Telangana challenging the best judgement assessment by the tax department in response to non-filing of return in Form GSTR-3B by the assessee. A notice was served on the assessee urging to file its return to which the assessee did not comply, and the proper officer multiplied three times the payable SGST and determined the tax liability. The Hon'ble Court declared the order as arbitrary and contrary to the provisions of the law and directed issuance of notice indicating the assessment method with instructions to grant an opportunity of personal hearing to the assessee.

Bhavesh Kiritbhai Kalani vs UOI [TS-1166-HC(GUJ)-2021-GST]

Attachment pursuant to a third-party inquiry, revoked.

In this case, the assessee' s bank account got attached pursuant to an inquiry on voluminous transactions with a third party. The Hon'ble High Court of Gujarat set aside the attachment order and confirmed that since the proceedings on the assessee were in connection with a third party, attachment of property was unwarranted. The Court remarked against the bank for not applying its mind and attaching the account without intimating the assessee.

Roshni Sana Jaiswal vs. Commissioner of Central Taxes [TS-226-HC(DEL)-2021-GST

Failing to prove involvement in GST evasion invites the release of attachment.

In this case, the assessee was a shareholder of a company accused of availing input tax credit against fake/ineligible invoices and to this the assessee' s bank accounts got attached against which a writ petition was filed before the Hon'ble Delhi High Court. The Court directed the release of the bank accounts in the absence of material available with revenue linking the assessee to the accusation. The Court quoted, "in the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person". The Court confirmed that provisional attachment could be ordered only qua property, including bank account, belonging to the taxable person.

Krishna Murari Singh vs. UOI [TS-220-HC(BOM)-2021-GST]

Bail granted to the assessee cooperating in the investigation.

In this case, the assessee filed a writ petition before the High Court of Bombay challenging his arrest under the GST law. The Hon'ble Court granted bail to the assessee on observing his cooperation in the search and seizure process and bona fide conduct. The Court placed reliance on the decision in the case of Daulat Mehta (W.P. No. 471 of 2021) and confirmed that an offence is compoundable on payment of tax liability, and the primary concern of the law is collection of revenue so one cannot be detention beyond a total period of 60 days where investigation relates to an offence punishable with imprisonment for a term not less than ten years.

Tvl. Mehar Tex vs. The Commissioner of CGST [TS--219-HC(MAD)-2021-GST]

Denial of refund on technical glitches, inequitable.

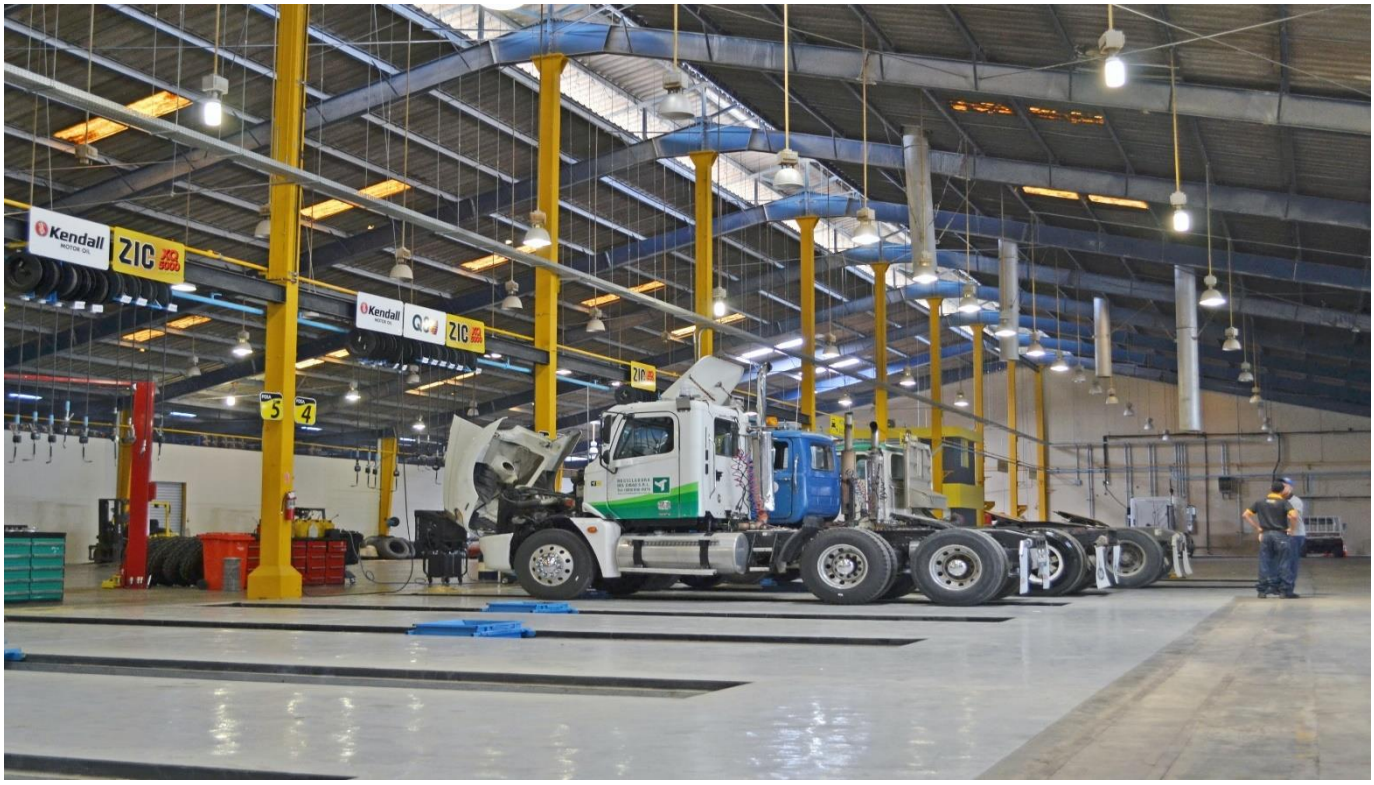
In this case, the assessee filed a refund consequent to zero-rated sales. However, when assessee uploaded the application, the CGST and IGST claim amount got merged with SGST, which restricted the refund to the said head alone. Aggrieved by the denial of the claim, the assessee filed a writ petition before the High Court of Madras. The Court allowed the refund claim of CGST and IGST, stating that the assessee cannot be denied an eligible refund on the ground of technical glitches that occurred due to an error in the new software system. The Court remitted the matter to the

Assistant Commissioner to verify the claim and grant refund within eight weeks from the date of its order.

Carlstahl Craftsman Enterprises Private Limited Vs. UOI [TS-216-HC(MAD)-2021-GST]

A liberal view endorsed vs rigid view in procedural matters.

In this case, the assessee filed a writ petition in the High Court of Madras against the denied request to carry forward Input Tax Credit (ITC) into the Goods and Service Tax regime, irrespective, the carry forward request was within the time prescribed and basis of rejection was a procedural slip. The Hon'ble Court allowed the transition noting a human error and quoted that "the era of GST is nascent and… a rigid view should not be taken in procedural matters such as the present one". The Court denied the contention that the Revenue granted many opportunities to rectify the procedural lapse, and the assessee failed to do so within the period allowed.



B. Notification/ Circulars

Notification No. 15/2021-Central Tax dated May 18th, 2021:

Rule 23 and Rule 90 of Central Goods and Services Tax Rules, 2017 amended.

Vide this Notification amendments have been made to the Central Goods and Services Tax Rules, 2017. Rule 23(1) allowing revocation of cancellation of registration within 30 days from the date of service of the order of such cancellation. In respect of a refund claim, Rule 90(3) is amended. For the period of limitation, i.e., two years, the period from the date of filing of the refund claim till date of communication of the deficiencies will be excluded as in many cases the deficiency memos were being issued late at the time of expiry of the statutory period of 2 years. Also, an amendment is made to Rule 90, allowing a person to withdraw a refund application filed by him based on FORM RFD-01W.

Circular No. 148/04/2021-GST [CBEC-20/06/04/2020-GST]:

Extension of time limit for revocation of cancellation of registration.

The Circular has been issued to bring in uniformity in the provisions relating to extension of time limit for applying for revocation of cancellation of registration. An independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal and guidelines are issued in this regard.

A. Recent Case Laws:

Cochin International Airport Ltd [TS-197-CESTAT-2021-ST]

Time-limit under Section 11B of the Central Excise Act not applicable to refund of advance payment.

In this case, the assessee filed a refund claim in terms of the transitional provisions in Section 142 of the CGST Act, 2017 regarding service tax paid in advance under Rule 6(1A) of the Service Tax Rules, 1994. The Deputy Commissioner denied the claim being time-barred under Section 11B of the Central Excise Act, 1944, and the Commissioner (Appeals) affirmed it. Aggrieved by the order, the assessee filed an appeal before the CESTAT, which allowed the claim approving that Section 11B (1) is inapplicable to refund of tax deposit or tax paid in advance.

M.G.M. International Exports Ltd Vs the AC of Service Tax [TS-173-HC-2021(MAD)-EXC]

Refund of wrong tax paid denied for being barred by limitation.

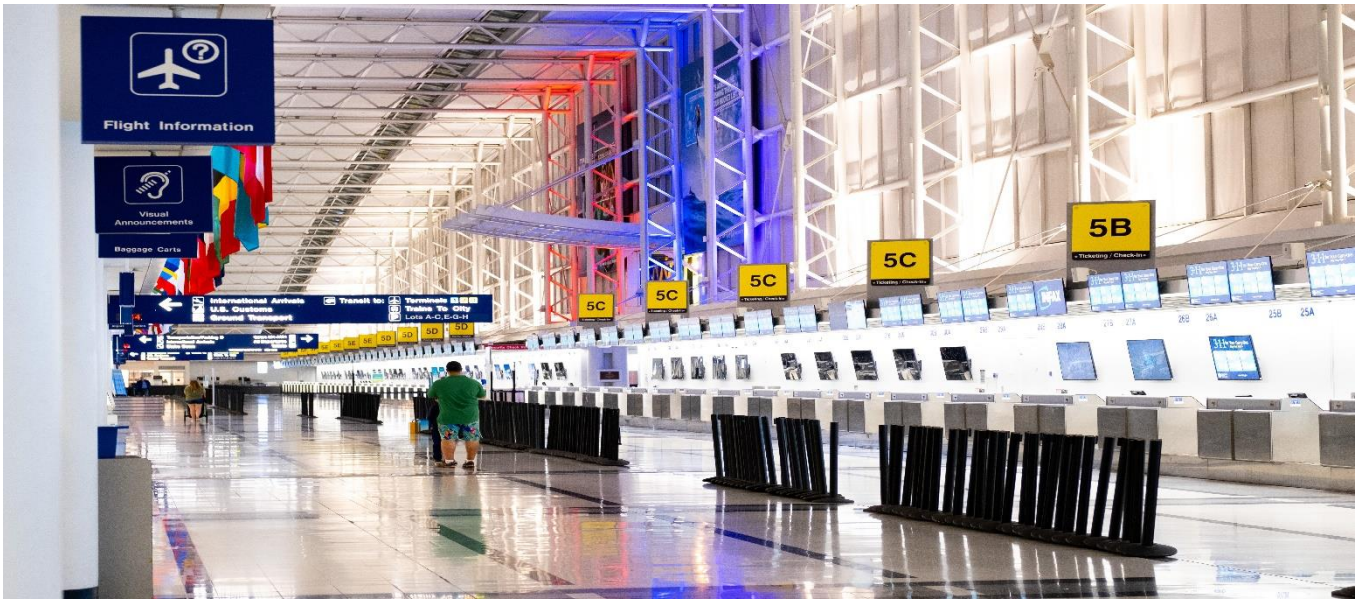
The assessee paid service tax for availing a storage facility and subsequently filed a refund claim on account of non-applicability of service tax on the said service. On the ground of being time-barred, the authorities rejected the claim invoking Section 11B of the Central Excise Act, 1944. Aggrieved by the order, the assessee filed a writ before the Madras High Court. The Hon'ble Court dismissed the petition holding that all refund claims are to be filed only under Section 11B of the Central Excise Act, 1944 and within the time prescribed thereunder, regardless of the fact that the petitioner became aware of the wrong tax payment on a clarification issued by the CBIC.

Rajratan Global Wire Ltd Vs Commissioner, Central Goods & Service Tax [TS-185-CESTAT-2021-EXC]

Scope of input service clarified to include club membership and employee insurance.

In this case, the Revenue denied the CENVAT credit of service tax paid on subscription of club membership and insurance service, among others. The CESTAT, upon appeal by the assessee, revoked the show-cause notice intending to disallow CENVAT credit on the subscription of club membership and insurance service. The CESTAT perused Rule 2 of the CENVAT Credit Rules, 2004 and confirmed that the definition of input services is inclusive, and any service can be input service provided the assessee used it in the manufacture of the final product.

Customs



A. Recent Case Laws:

Hari Babu vs. Commissioner of Customs [TS-168-CESTAT-2021-CUST]

Date of communication to be considered over the date of dispatch while computing the limitation period.

In this case, the Commissioner (Appels) dismissed the appeal on being barred by limitation. The Hon'ble Tribunal held in favour of the appellant directing the Commissioner (Appeal) to consider the delay condonation application perusing Sections 128(1) and 153 of Customs Act, 1962. The Hon'ble Tribunal appraised the words 'communication' and 'service' and stated that while computing the limitation period, one shall consider the date of service of the order. It directed that an appellant shall not be denied a remedy for technical errors and be allowed to rectify defects.

Gurcharan Singh vs. Ministry of Finance [TS-202-HC-2021(DEL)-CUST]

IGST on oxygen concentrators held unconstitutional.

Acknowledging the scarcity of liquid medical oxygen amid the pandemic, the High Court of Delhi declared the levy of Integrated Goods and Services Tax on imported oxygen concentrators for personal use as "unconstitutional". While deciding on the levy, the Court quashed the Notification No. 30/2021, reduced IGST from 28% to 12% on life-saving drugs. The Court exempted the import on receiving an undertaking that the importer will not put the oxygen concentrator to commercial use.

Ambey Sales vs. Commissioner of Customs [TS-199-CESTAT-2021-CUST]

Time limit for filing SAD refund claim.

In this case, the assessee paid Special Additional Duty of Customs (SAD) on import of goods and filed refund claim, which got denied on being barred by limitation considering Notification No.102/2007-Cus as amended vide Notification No.93/2008-Cus which directed the sale of goods within a year of import. The Hon'ble Tribunal confirmed that refund of SAD is not available if VAT/Sales tax is not paid, i.e., a refund is only allowed if claimed within the year of import after the sale of goods and payment of VAT/Sales tax. The Tribunal has referred the matter to the Larger Bench for final decision.

Interglobe Aviation Ltd vs. Commissioner of Customs [TS-193-CESTAT-2021-CUST]

Scope of Customs Duty clarified - Notification to explicitly mention IGST.

In this case, the assessee, an airline operator, exported its aircraft and its parts for repairs out of India. Before the Tribunal, the question was on the availability of exemption from integrated GST under the General Exemption Notification No. 45/2017 dated June 30, 2017, on re-import of repaired parts/aircraft into India. The Tribunal confirmed that Section 2(15) read with Section 12 of the Customs Act, 1962, refers to customs duty and does not include additional duty specified u/s 3 of the Customs Tariff Act, 1975 and accordingly, for availing exemption, an importer should not view IGST as the duty of customs.

Excise

A. Recent Case Law:

Supermax Personal Care Pvt. Ltd vs. Union of India [TS-183-HC-2021(BOM)-EXC]

Excise duty demand quashed in the absence of jurisdiction.

In this case, the assessee, a manufacturer from Thane, engaged a job worker in Himachal Pradesh to process the goods on a job work basis. The assessee supplied inputs/components and packing materials required and availed CENVAT credit of the service tax paid on inputs/inputs services and utilized the same for payment of excise duty on the goods manufactured. The Revenue accused the assessee of collecting excise duty and not paying it to the Government. Aggrieved by the order, the assessee filed a writ petition before the Hon'ble High Court of Bombay.

The Court quashed the demand noting that the manufacture of the goods had occurred in Himachal Pradesh, and the Thane Commissionerate had no jurisdiction to issue a notice raising demand. It further quoted that ownership, title holder, ultimate manufacturer, etc. have no bearing on the taxable event.

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