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Articles

Tata Motors' AAR decision: A fix to the age-old strife?

By **Tanya Garg**

Employee recoveries have always been a contentious issue, whether in pre-GST era or in GST era. This issue has been addressed by Maharashtra Authority of Advance Ruling ('**AAR**') in case of *Tata Motors Ltd.*[1] recently. The advance ruling was sought on the issue, as to whether, provision of bus facilities by the employer to the employee on a nominal price will be liable to GST. The AAR observed that since the facility is provided only in the capacity of employee, the transaction between the applicant [Tata Motors Ltd] and the employees is due to 'Employer-Employee' relation and is not a supply under GST by virtue of clause 1 of Schedule III to the Central Goods and Services Tax Act, 2017 ('**CGST Act**').

The above ruling is a welcome one for the assessees, as it will certainly help, at least, in reduced compliance work.

We will be discussing effect of this AAR ruling in the context of other employee recoveries.

Recovery as deduction from salary

Let us address the taxability of the most common ways of recovering the amount from employees i.e. deduction from the salary of employees. The same was dealt in the case of *Tata Motors Ltd*.

The taxable event i.e. Supply (Section 7 of the CGST Act) and the term 'business', both have been defined in an inclusive manner under GST which connotes their wide coverage. All forms of supply which are provided for consideration in the course or furtherance of business have been covered within the ambit of supply.

On reading of above provisions, it can be said that the services provided by the employers to the employees are covered under the ambit of supply and the same is leviable to GST.

However, it is worthwhile to see if the above services can be said to be covered under Schedule III of the CGST Act, as held by the AAR. It is pertinent to highlight that the said schedule covers services provided by 'employee to employer' and not by 'employer to employee'.

A doubt which arises here is whether the service provided by the employer can be considered to be in the capacity of a service provider? Further, will it make any difference if the services are provided only to select employees, on payment of consideration? It seems that this relationship of employer and employee, i.e. as service provider and service recipient has not been considered by the AAR.

Further, since the services are not provided to all the employees, can the services be said to be provided in the course of employment? If yes, can it be supported by the Press Release dated 10-07-2017?

Let us address the above issues by delving into the tax treatment by other rulings of AARs, in service-tax regime and jurisprudence developed in some other mature VAT jurisdictions.

[1] 2020-VIL-257-AAR

Clearly contrary to the above ruling of the AAR, Kerala AAR in the matter of *Caltech Polymers Pvt. Ltd.*[2] (upheld by Appellate AAR[3]), has held that the recovery of amount from employees for the canteen services provided by the company is taxable under GST. However, the same was not considered in the decision of *Tata Motors*.

The issue has also been dealt in the erstwhile service tax regime. A draft circular *(which was never finalized)* clarified that whether the amount is deducted from salary or the services are provided against a portion of the salary foregone by the employee, both will fall within the definition of 'service'. The status of the employee will be of service recipient and not as a mere employee when consuming such output service. The above draft circular was relied upon by the CESTAT in case of *Ultra Tech* as well as *SPM Autocomp*. Since the above circular was never finalized, the sanctity of the same is an open issue.

The above view has been endorsed internationally as well, particularly in the case of *Astra Zeneca UK Ltd.*[4] In the said case, a scheme was introduced under which employees could opt to take a portion of their remuneration in the form of goods and/or services rather than as part of cash salary. It was held by the Court that provision of vouchers amounts to supply of services effected for consideration. Following the said case, HMRC Revenue and Customs issued Brief No. 28/11 which clarified that the amount of salary foregone is consideration for supplies of the benefits, whether provided under a salary sacrifice or by a deduction from salary.

From the above, it can be said the services provided by the employers can be said to be an independent service in the capacity of 'service provider'. However, the view taken in *Tata Motors* AAR ruling is to the contrary. But, since the *Tata Motors* ruling is favourable to industry, it will be interesting to see how far one can count on and rely on the said ruling.

Apart from deduction from salary of employees, let us see if this AAR ruling can be applied in other cases also.

No recovery/ provision of services as part of employment contract (cost to company)

Will the situation change if the facilities are provided to all the employees as part of the employment contract as perquisites i.e. CTC and thus, no recovery is made from employees?

This seems to be the most convenient way of dealing with such activities since Press Release dated 10-07-2017 has clarified that the services provided free of charge, in terms of the contract between the employer and employee, to all the employees, will not be chargeable to GST.

Though the press release is in favour of companies, the ambiguity which remains is whether these services can be said to be in nature of salary foregone, in the form of perquisites, and will be leviable to tax? In such cases, can one try to protect them contractually?

Recovery from employees on behalf of vendors

A company may recover an amount from the employees on behalf of the vendors and pass on the same to vendors. Well, the case seems to be similar to deduction from salary, but it may not be!

In such cases, a doubt which always keeps lingering is that whether the services are actually provided to employees directly, or the service recipient is employer, who is merely recovering the amount from the employees?

[2] 2018 (4) TMI 582
[3] 2018 (10) TMI 1313
[4] Case C-40/09

Precisely, in the case of insurance recoveries, AAR[5] has held that such recoveries are not taxable. But the fate of other services for which recoveries are made from employees on behalf of vendors has not been addressed. It will be interesting to see how authorities and courts reconcile this principle with other recoveries made from employees on behalf of vendors.

Direct payment by employees to contractor/vendor

There may be situations where the contract has been entered by the company for facilitating services to employees and consideration is being paid by employees. In such cases, there is always an uncertainty about the recipient of services. Can the services be said to be received by employer since he is contractually obliged by the vendor or the services will be said to be received by the employees, since he is paying consideration?

The tax treatment and the compliances vary in both situations. The issue was addressed by the Karnataka AAR in the case of *Elior India Catering LLP*[6] wherein it was held that since the employee is paying consideration, he becomes the recipient of the service and the service is rendered by the vendor to the employee.

Can a person be said to be a recipient merely by payment of consideration, is a point to ponder, especially because the consideration can be paid by third party as well?

The issue of employee recoveries is an unclear area. The subject AAR ruling has given relief to Tata Motors Ltd, for whom it is binding. Unless the issues are properly addressed by the authorities by way of proper clarification, there will be no uniformity. Considering that there are conflicting decisions and orders on this subject, one should not simply rely on the AAR ruling in *Tata Motors* while determining the taxability on employee recoveries.

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Goods and Services Tax (GST)

Notifications and Circulars

Interest payable on net cash liability from 01-07-2017 – CBIC instructs field formations to keep SCNs in call book: The Central Board of Indirect Taxes and Customs ('**CBIC**') has instructed its field formations to keep show cause notices, issued in respect of interest payable on gross tax payable in case of delayed payment of tax, in the call book, till the time retrospective amendment is carried out in Section 50 of the Central Goods and Services Tax Act, 2017. According to the Administrative Instruction dated 18-09-2020 (F.No. CBEC-20/01/08/2019-GST), the field formations are to recover interest only on net tax liability for the period 01-07-2017 till 31-

[5] 2019-VIL-25-AAR

[6] 2019 (10) TMI 562

08-2020. The Instruction notes that post issuance of Notification No. 63/2020-Central Tax, effective from 01-09-2020, there were apprehensions that the Notification was contrary to the GST Councils decision taken in its 39th meeting.

GSTR-4 – Reduction of late fee and extension of due date for filing by specified persons: The CBIC has once again extended the last date of filing GSTR-4 by specified persons, as required under Notification No. 21/2019-Central Tax, for the financial year 2019-2020, till 31-10-2020. Notification No. 64/2020-Central Tax, dated 31-08-2020 has been issued for the purpose. Further, the late fees payable by the registered person who had failed to furnish the GSTR-4 for the quarters from July, 2017 to March, 2020 by the due date but furnishes the said return between the period from 22-09-2020 to 31-10-2020, has been limited to INR 500 (250 each under CGST and SGST provisions). It may be noted that the late fee is fully waived if the tax payable in the said return is nil. Notification No. 67/2020-Central Tax, dated 21-09-2020 has amended Notification No. 73/2017-Central Tax, for this purpose.

GSTR-10 – Late fee reduced if return furnished between 22-09-2020 till 31-12-2020: The CBIC has reduced the amount of late fees payable under Section 47 of the Central Goods and Services Tax Act, 2017 by registered persons who fail to furnish the return in Form GSTR-10 by the due date but furnishes the said return between 22-09-2020 to 31-12-2020. According to Notification No. 68/2020-Central Tax, dated 21-09-2020 the late fee payable in such cases would be INR 250.

Invoices under Section 31(7) – Time limit extended till 31-10-2020: Section 31(7) of the Central Goods and Services Tax Act, 2017 provides that where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier. Now, as per Notification No. 66/2017-Central Tax, dated 21-09-2020, any time limit for completion or compliance of any action, under said provision, which falls during 20-03-2020 till 30-10-2020, has been extended upto 31-10-2020. Amendment has been made in Notification No. 35/2020-Central Tax for this purpose.

Ratio decidendi

Provisional attachment – Pendency of proceedings under specified provisions is mandatory: Observing that pendency of proceedings is the *sine qua non* for provisional attachment under Section 83 of the Central Goods and Services Tax Act, 2107, the Punjab and Haryana High Court has held that the effect of Section 83 shall come to an end as soon as the proceedings pending under any of the Section 63 or 64 or 67 or 73 or 74 is over. Department's view that orders for attachment of bank accounts, when proceedings initiated under Section 67 (search, inspection and seizure), shall subsist till the culmination of the proceedings into that of Section 63 or 74, was hence rejected. It held that Commissioner can still pass attachment orders if the proceedings are initiated in any of the aforesaid provisions and are pending, but not for proceedings that have been initiated earlier and are over. [*UFV India Global Education* v. *Union of India* – Judgement dated 09-09-2020 in CWP No. 11961 of 2020 (O&M), Punjab and Haryana High Court]

SEZ unit entitled to claim refund of unutilized ITC distributed to it by ISD: The Gujarat High Court has allowed refund of unutilized Input Tax Credit ('**ITC**') to a SEZ unit to whom the credit was distributed by the Input Service Distributer ('**ISD**'). Department's contention that since Rule 89 of the Central Goods and Services Tax Rules, 2017 ('**CGST Rules**') prescribes that application

for refund of tax must be filed by the supplier in respect of supplies to a SEZ unit, petitioner (SEZ unit) cannot file the refund application, was rejected. It was held that since it will not be possible, in the present case, for a supplier of goods or services to file a refund application to claim refund of ITC distributed by ISD, the SEZ unit would be entitled to claim such refund. [*Britannia Industries Limited* v. *Union of India* – Judgement dated 11-03-2200 in R/Special Civil Application No. 15473 of 2019, Gujarat High Court]

Appeal – Time period to file appeal starts only when impugned order is uploaded on GST portal: The Gujarat High Court has held that even when the physical copy of the adjudication order is handed over to the assessee earlier, the time-period to file appeal would start only when the impugned order is uploaded on the GST portal. The Court, on perusal of Section 107 of the CGST Act read with Rule 108 of the CGST Rules, stated that the order is required to be uploaded online so that appeal can be filed electronically. Holding that filing of the appeal and uploading of the order are intertwined activities, the High Court rejected the department's contention that these are two different processes. It held that there was no failure on the part of the petitioner to file the appeal within the prescribed period of limitation, and that rejection of the manual appeal on the basis of limitation, was not sustainable. [*Gujarat State Petronet Ltd.* v. *Union of India* – 2020 VIL 426 GUJ]

Refund of ITC on input services due to inverted duty structure, not available: The Madras High Court has held that Section 54(3)(ii) of the CGST Act, 2017 enables a registered person to claim a refund of unutilised input tax credit ('ITC') only to the extent that such credit has accumulated on account of the rate of tax on input goods being higher than the rate of tax on output supplies. The Court was also of the view that the amended Rule 89(5) is in conformity with the statute i.e., Section 54(3)(ii), and that said section is not violative of Article 14 of the Constitution of India. It also held that classification by way of which benefit was extended to ITC on input goods while excluding input services, was valid, nonarbitrary and far from invidious. Gujarat High Court's decision in the case of *VKC Footsteps*, was not agreed with. [*Tvl. Transtonnelstroy Afcons Joint Venture* v. *Union of India* – Judgement dated 21-09-2020 in Writ Petition Nos. 8596 and others, Madras High Court]

Cash amount can be seized under Section 67 of the CGST Act: The Madhya Pradesh High Court has held that cash can be seized by the department under Section 67 of the Central Goods and Services Tax Act, 2017. The Court was of the view that cash is covered as 'things' under the said section and that a conjoint reading of Sections 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer. Assessees contention that once the word 'money' is not included under Section 67(2) and that the Investigating Agency / Department is not competent to seize the same, was thus rejected. Further, considering the facts of the case, the Court was of the view that until the investigation was carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. [*Kanishka Matta* v. *Union of India* – 2020 TIOL 1445 HC MP GST]

Detention of goods and vehicle – Transporter has locus standi to file petition for release: The Karnataka High Court has held that the transporter of the goods has the *locus standi* to file a petition for release of goods and his vehicle detained by the GST authorities. The Court noted that the supplier was under an obligation to pay the demurrage charges and therefore, the petitioner was entitled to challenge the

proceedings and seek release of the goods so that it could recover all its claims from the supplier or the recipient or from the sale of the goods, under certain circumstances. It also observed that the GST law recognized the role of a registered transporter. Section 15 of the Carriage by Road Act, 2007 providing for right of common carrier in case of consignee's default, was relied upon. [*Shri Venkateshvara Logistics Fleet Owners and Transport Contractors* v. *Assistant Commissioner* – 2020 VIL 393 KAR]

No detention when e-way bill mentions consignee as unregistered: In a case where though the e-way bill showed the consignee as an unregistered person but the invoice that accompanied the goods referred to the GSTIN of the consignee, the Kerala High Court has held that the reason that consignee was shown as an unregistered person in the e-way bill, was insufficient to attract provisions of Section 129 of Central Goods and Services Tax Act, 2017. The assessee had also mentioned by mistake the tax amount in the delivery challan that was used for stock transfer of goods. [*Abco Trades (P) Ltd.* v. *Assistant State Tax Officer* – 2020 VIL 399 KER]

E-way Bill – Effective value of goods to be seen: Observing that as per GST provisions an e-way bill is mandatory only for consignments whose value exceeds INR 50,000, the Kerala High Court has set aside the detention of the goods and the vehicle in a case where the effective value of the goods was only INR 8.99. The Court noted that the goods were accompanied by tax invoice, where the supplier had shown the actual price of the consignment of watches as INR 4,49,550 and had given a discount of almost the entire amount save to the extent of INR 8.99 while paying IGST on the actual value. The consignment was detained as it was not accompanied by valid e-way bill. [*Best Sellers (Cochin) Private Limited* v. *Assistant State Tax Officer* – 2020 VIL 455 KER]

Customs

Notifications and Circulars

FTAs – Bill of Entry formats revised to enforce requirements of CAROTA Rules: The Ministry of Finance has revised the formats for all 3 types of Bills of Entry – for home consumption, for warehousing and for ex-bond clearance. The revised formats which are effective from 21-09-2020, now capture the new requirements as mandated by the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('**CAROTA Rules**'). As per the new formats, the country of origin and country of origin code is now required to be declared. Further, if the country of consignment is different from the country of origin, it must be specifically declared along with the country code. Certain declarations in respect of preferential duty claims have also been revised. Bill of Entry (Forms) Regulations, 1976 has been amended for this purpose by Notification No. 90/2020-Cus. (N.T.), dated 17-09-2020.

Merchandise Export from India Scheme – Ceiling limit and sunset notified: The Ministry of Commerce has fixed a ceiling limit of INR 2 crores per IEC for claiming the Merchandise Export from India Scheme ('**MEIS**') benefits

against exports made between 01-09-2020 to 31-12-2020 (based on LEO date of shipping bill). According to the new para 3.04A of the Foreign Trade Policy 2015-20, as inserted by Notification No. 30/2015-20, dated 01-09-2020, the said ceiling limit is subject to further reduction to ensure that the total claim under MEIS for the said period does not exceed INR 5000 crores. Further, IEC holder who has not made any exports with LEO date between 01-09-2019 to 31-08-2020 or has obtained IEC on or after 01-09-2020 would not be entitled for MEIS claim against exports made from 01-09-2020 onwards. New para 3.04B provides that MEIS Scheme will not be available for exports made from 01-01-2021.

Standard Unit Quantity Codes mandatory from 1-11-2020 for all exports/imports: Directorate General of Foreign Trade ('**DGFT**') has requested all authorisation holders, where non-standard units are indicated in the authorisations in the import and export quantities, to approach the concerned Regional Authority ('**RA**') for converting them to standard Unit Quantity Codes ('**UQC**'). As per Trade Notice No. 27/2020-21, dated 14-09-2020, for authorisations already issued and carrying non-standard units, Customs have been requested to allow export against such authorisations till 30-10-2020. The Trade Notice, issued to address the difficulties arising out of Public Notice dated 18-08-2020 issued by JNCH Mumbai, also states that exports/imports without standard UQC will not be permitted after 1-11-2020.

Faceless assessment for import of goods to be rolled out pan India from 31-10-2020: The Central Board of Indirect Taxes and Customs ('**CBIC**') has decided to roll-out the Faceless Assessment at all India level at all ports of import and for all imported goods by 31-10-2020. Circular No. 40/2020-Cus., dated 04-09-2020 issued for this purpose, provides various roll-out dates for different ports. According to the Circular, 11 National Assessment Centres, organised commodity-wise according to Schedule I to the Customs Tariff Act, 1975, will be constituted to monitor the assessment practice, study audit objections, etc. The working groups have been asked to virtually meet for a short duration every day at a scheduled time to review timeliness of assessment, identify bottlenecks and take measures to remove difficulties. It may be noted that Phase I of the faceless assessment was launched on 05-06-2020 at Chennai and Bengaluru for goods falling under Chapters 84 and 85 of the Customs Tariff Act, 1975. Phase II had begun on 03-08-2020 at Chennai, Bengaluru, Delhi, for goods covered under Chapters 50 to 71, 84, 85 and 86 to 92, and in Mumbai for goods under Chapter 29.

Courier exports – Auto LEO to be given under Express Cargo Clearance System: Export goods which are covered under Courier Shipping Bills, are fully facilitated by the Risk Management System and are cleared by customs x-ray scanning will now be automatically given Let Export Order ('**LEO**') by the Express Cargo Clearance System. Circular No. 41/2020-Cus., dated 07-09-2020 issued for this purpose notes that this is expected to considerably reduce the dwell time of clearance of export shipments through courier.

Onion exports prohibited: Export of all varieties of onion, excluding cut, sliced or broken, in powder form is now prohibited with effect from 14-09-2020. According to Notification No. 31/2015-20, dated 14-09-2020, the provisions under para 1.05 of the Foreign Trade Policy 2015-20 regarding transitional arrangement shall not be applicable for such prohibition.

Ratio decidendi

Retrospectivity of an amendment – Addressing an anomaly is not rectification of error: The Supreme Court has held that merely because an anomaly has been addressed, it cannot be passed off as an error having been rectified to hold the amendment as retrospective. It also observed that to call the amendment notification clarificatory or curative in nature, it would require that there had been an error/mistake/omission in the previous notification which is merely sought to be explained. Further, observing that all laws are deemed to apply prospectively unless either expressly specified to apply retrospectively or intended to have been done so by the legislature, the Court held that the latter would be a case of necessary implication and cannot be inferred lightly. On the facts of the case, the Court held that the amendment in Notification No. 126/94-Cus. by Notification No. 56/01Cus., dated 18-05-2001, purporting to amend the criteria for determination of duty on inputs, was prospective. The assessee's contention that Circular No. 31/2001-Cus. stated that there existed an anomaly in respect of certain agriculture sector EOUs earlier, and that hence the amendment was retrospective, was rejected. It also held that the earlier provision was not an error that crept in but, was intentionally introduced by the Government to determine the charging rate and hence the amendment cannot be clarificatory. [*L. R. Brothers Indo Flora Ltd.* v. *Commissioner* – Judgement dated 01-09-2020 in Civil Appeal No. 7157 of 2008, Supreme Court]

Date of effect of notification – Provisions of Section 25(4) of Customs Act, as amended by Finance Act, 2016, are arbitrary: The Gujarat High Court has held that Section 25(4) of the Customs Act, 1962 as amended by Finance Act, 2016, is arbitrary and contrary to Sections 25(1) & (2)(A) of the Customs Act, 1962. Decision of the Andhra Pradesh High Court in the case of present petitioner, was followed by the Court to maintain consistency in application of the provision of the Customs Act, 1962. Calcutta High Court's decision in the case of same assessee, holding to the contrary, was however distinguished observing that the same pertained to the provisions of Section 25(4) prior to its amendment by the Finance Act, 2016. The Court also observed that the Calcutta High Court decision was rendered on the facts of the case relying upon the affidavit of the department. The department had demanded enhanced customs duty in a case where the notification revising the duty, though issued on the date of filing of Bill of Entry, was published in the Gazette only later. [*Ruchi Soya Industries Ltd.* v. *Union of India* – Judgement dated 12-03-2020 in R/Special Civil Application No. 11063 of 2018 and Others, Gujarat High Court]

No power to freeze bank account before amendment in Customs Section 110 in 2019: The Division Bench of the Rajasthan High Court has set aside the Order of the Deputy Commissioner of Customs (Preventive) directing for freezing of the bank account of the assessee in view of the investigation initiated against the petitioner company by Anti Evasion Wing of Central Goods and Service Tax. It observed that the impugned order was passed before the amendment of Section 110 of the Customs Act, 1962 by the Finance (No.2) Act, 2019 by way of insertion of sub-section (5), had come in operation. Setting aside the Order dated 04-06-2019, the Court also noted that as per the amendment also, the account could not be frozen beyond a period of one year. [*Padmavati Industries* v. *Commissioner* – Order dated 08-09-

2020 in D.B. Civil Writ Petition No. 2366/2020, Rajasthan High Court]

Interestingly, the Division Bench of the Bombay High Court has also passed a similar Order on 10-09-2020 in a different case where the bank accounts were frozen before the insertion of sub-section (5) in Section 110 of the Customs Act, 1962. Directing unfreezing of the accounts, the Court observed that the said provision was inserted with effect from 01-08-2019 and *prima facie* may not be applicable for the case. Here also, the Court noted that the period of freezing including the extended period had elapsed, and hence continuing with the freezing of the bank account of the petitioner would be oppressive and without any sanction of law. [*Sai Enterprise* v. *Union of India* – Order dated 10-09-2020 in Writ Petition No. 2867 of 2019, Bombay High Court]

Demand under Section 28AAA not sustainable without challenging assessment order: Observing that the issue of classification and other facets concerning exportation of certain goods covered under the already assessed shipping bills had attained finality, the CESTAT Mumbai has held that any issue arising out of finalisation of such shipping bills cannot be questioned or agitated by the department subsequently by initiating proceedings against the exporter. It noted that the order passed by the proper officer of Customs, permitting exportation of goods including classification and other aspects as per Section 51 of the Customs Act, 1962, was considered as legal and proper by the Commissioner of Customs as no specific order was passed by the latter directing the subordinate officer for filing appeal before the Commissioner (Appeals), as mandated in Section 129D(2). The Department had initiated proceedings under Section 28AAA alleging taking of excess MEIS benefits due to incorrect classification of export goods. Further, observing that the administration of MEIS squarely falls within the jurisdiction of DGFT and not the Customs authorities, the Tribunal while allowing the appeal, also noted that there was no evidence that that the competent licensing authority under the Foreign Trade Policy had initiated any proceedings against the assessee, alleging acquisition of scrips in a fraudulent manner. [*Axiom Cordages Ltd.* v. *Commissioner* - Final Order No. A/85727/2020, dated 11-09-2020, CESTAT Mumbai]

Customs cannot deny benefit where licensing authority not taking any action – SFIS benefit available to golf carts: The CESTAT Mumbai has held that the Customs authorities cannot refuse exemption in a case where the licensing authority, i.e. the DGFT, had not taken any action against the assessee for availing the benefit under Served from India Scheme ('**SFIS**') while importing golf carts. The Tribunal noted that DGFT had issued various clarifications that golf carts do not come under the category of vehicles restricted under para 3.6.4.5 of the Foreign Trade Policy 2004-09 for benefit of SFIS. It also observed that the clarifications issued by the DGFT are binding on the Customs authorities. The department had denied benefit of SFIS scrips for import of golf carts, terming them as 'vehicles'. The Tribunal while allowing the appeal also observed that the earlier order of the Commissioner (Appeals) remanding the matter to the adjudicating authority for decision as per DGFT guidelines, was not appealed by the department. [*EIH Associated Hotels Ltd.* v. *Commissioner* – 2020 TIOL 1358 CESTAT MUM]

Interest for delayed refund payable after 3 months from filing claim - Defective refund application is only irregularity and not illegality: The Karnataka High Court has rejected the contention of the department that interest for delayed refund is not payable since the refund application is deemed to be received only on the date of receipt of complete application. The Court upheld the CESTAT Order which had held that cause for action for claiming interest would arise after 3 months from the date of filing of refund claim and that if at all the application is defective, it would only be an irregularity and not illegality. [*Commissioner* v. *Gimpex Ltd.* - 2020 (373) ELT 512 (Kar.)]

Central Excise, Service Tax and VAT

Ratio decidendi

Supply of pipes and measurement equipment, charged as 'gas connection charges', liable to service tax under 'Supply of Tangible Goods for Use': The Supreme Court has held that supply of pipes and measurement equipment (SKID equipment) fulfils the taxable entry under Section 65(105)(zzzzj) of the Finance Act, 1994 and hence the 'gas connection charges' received therefor were leviable to service tax. Observing that the ingredient of not transferring the ownership, possession or effective control of the goods was satisfied, the Apex Court also held that the supply of the equipment was for the 'use' of the customers. It observed that the expression 'use' does not have a fixed meaning and that the content of the expression must be based on the context in which the expression is adopted. It held that the equipment served the contractual rights of both the seller and the purchaser of gas and Section 65(105)(zzzzj) did not require exclusivity of use. The argument that the gas connection charges constituted a refundable security deposit, was also rejected. The assessee was in the business of distributing CNG and PNG and had installed the equipment at their customers' sites, which regulated the supply and recorded the quantity consumed. The ownership of the equipment was retained by the assessee and the customer had no control or any legal rights over the equipment. The period involved was from 16-05-2008 to 31-03-2009. [*Commissioner* v. *Adani Gas Ltd.* – Judgment dated 28-08-2020 in Civil Appeal No. 2633 of 2020, Supreme Court]

SVLDR Scheme – Designated Authority to only verify correctness of declaration and not adjudicate: The Karnataka High Court has held that the term 'verify the correctness' in Section 126 of the Finance (No. 2) Act, 2019 providing for Sabka Vishwas (Legacy Dispute Resolution) Scheme ('**SVLDR Scheme**'), cannot be stretched to mean that the Designated Committee can embark upon an adjudication regarding the entitlement or otherwise of the declarant. According to the Court, the Committee, in the guise of verifying the accuracy of the declaration, cannot adjudicate upon any of the contentious issues which existed between the revenue department and the assessee before the Scheme was enacted. It held that if the Designated Committee is permitted to embark upon an

adjudication process after a declaration is made, the very object behind the Scheme i.e., resolving an existing dispute voluntarily would be defeated. The issue before the Court was whether the petitioner could contend that he was entitled to take advantage of Cenvat credit on input services and consider the same as a pre-deposit. The Designated Committee had, after creating a 'Remarks' column in the Form No. SVLDRS-2, denied the claim. [*Jagadish Advertising* v. *Designated Committee* – 2020 TIOL 1444 HC KAR ST]

SVLDR Scheme – Department should take liberal approach: The Kerala High Court has held that the revenue department is duty-bound to take a liberal approach in entertaining applications/ declarations under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The Court observed that the interest of the revenue is amply protected under the Scheme since a provision is made to reopen the cases of voluntary declarations within one year of issue of a Discharge Certificate, if subsequently any material particular is found to be false. Further, relying on Para 10(g) of CBIC Circular dated 27-08-2019, the Court held that the quantification as defined under Section 121(r) of the Finance (No. 2) Act, 2019 would include duty liability admitted by the person during enquiry, investigation or audit. Observing that the petitioner had declared the service tax dues even before verification proceedings were initiated, it held that the amounts admitted must be taken as the quantified amount due. [*Hi-lite Projects Pvt. Ltd.* v. *Joint Commissioner* – 2020 TIOL 1600 HC KERALA ST]

SVLDR Scheme – Mentioning of dues payable in clause 9.1 of Form SVLDRS-1 instead of clause 9.4, curable: The Gauhati High Court has held that the mistake of mentioning the dues payable in clause 9.1 of the Form SVLDRS-1 instead of in clause 9.4, can be allowed to be corrected. Terming the mistake as 'callous' mistake, the Court observed that an inadvertent mistake which may creep in due to an oversight or because of a callous attitude of the person making the claim but, when the ultimate result of such mistake would not accrue a benefit which the person otherwise would not have been entitled, can be accepted to be a curable mistake. Requiring the petitioner to submit an application for correction in Form SVLDRS-1, the High Court noted that the petitioner had not claimed an undue benefit which they were otherwise not entitled under the law. [*Urban Systems* v. *Union of India* – Judgement dated 28-08-2020 in WP(C) 2264/2020, Gauhati High Court]

Valuation – Related parties – Reporting transactions as related party transaction in balance sheet is irrelevant: The CESTAT Ahmedabad has held that mere fact that one company is reporting transactions with another as 'related party transaction' in their balance sheet is irrelevant for treating them as 'related' under the Central Excise Act, 1944. The Tribunal was of the view that there must be positive evidence of the companies having interest in the business of each other. Considering the facts of the case, the Tribunal observed that the loan granted from one to another was purely a business transaction when the rate of interest was not less than the prevailing bank rate. It also held that sharing some staff cost, which was charged to each other, cannot be treated as transaction creating interest in business of each other, and that mere sale of entire production of one company through another is not sufficient to make them related parties. [*SKF Technologies India Pvt. Ltd.* v. Commissioner - A/11135-11137/2020, dated 25-08-2020, CESTAT Ahmedabad]

Cenvat credit of service of short-term accommodation in hotel, when available: The CESTAT Mumbai has allowed Cenvat credit on short term accommodation in hotels service availed by the assessee for accommodating its personnel while they awaited necessary permissions and approvals from the service recipient before commencement of work. The Tribunal observed that the appellant could not afford to deploy people without the required clearance certificate and safety training and therefore had no choice but to accommodate its personnel for the time impending the said approvals and permissions. It held that the said service would not qualify as a service availed for personal consumption but was in relation to and in pursuance of the output service being provided by the assessee. [*Aban Offshore Limited* v. *Commissioner* – 2020 VIL 396 CESTAT MUM ST]

Bihar VAT – Industrial Incentive Policy 2006 covers subsidy of Entry Tax also: The Patna High Court has held that the subsidy/incentive under clause 2(vi) of the Industrial Incentive Policy, 2006 shall also cover subsidy/ incentive on Entry Tax leviable under Bihar Entry Tax Act and not only VAT under Bihar VAT Act. The Court noted that there was no provision in the entire Industrial Incentive Policy, 2006 which postulated exclusion of the amount of Entry Tax from the term 'admitted VAT'. It also noted that Annexure-III to the Industrial Incentive Policy, 2006, containing the format of pass-book to be maintained for the purposes of claiming the incentive under clause-2(vi), took into consideration the amount of tax admitted under the Bihar Entry Tax Act also. Rejecting department's contention, the Court also held that merely the heading of a provision/clause cannot be relied upon since the same is not always determinative in the matter of interpretation of the policy. [*Gangotri Iron and Steel Company Ltd*. v. *State of Bihar* – 2020 TIOL 1496 HC PATNA VAT]

Cenvat credit available on re-insurance services availed by general insurance service provider: The CESTAT Delhi has held that re-insurance services availed by the assessee providing general insurance services would qualify as 'input services' for Cenvat credit. Holding that the reinsurance services were used by the insurer for providing the output services, the Tribunal observed that without the use of such re-insurance services, it may not be commercially prudent for any insurance company to assume high risks under the original insurance policies. It also noted that re-insurance was a statutory requirement as per Section 101A of the Insurance Act. The contention that Cenvat credit was not available since re-insurance services are availed after the provision of insurance services, was also rejected. The Tribunal was also of the view that the restrictions from April 2012 on Cenvat credit on insurance services availed in respect of motor vehicles, will not cover re-insurance services. The assessee was also held eligible to avail Cenvat credit of re-insurance service provided by pool member companies under the Insurance Pool formed by IRDA. [*Shriram General Insurance Company Ltd.* v. *Commissioner* - Final Order No. 50709-50711/2020, dated 04-03-2020, CESTAT Delhi]

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