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An e-newsletter from
Lakshmikumaran & Sridharan, India

December 2022 / Issue – 138

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December
2022

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Arbitral award: Compensation or consideration

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The parties to any contract enter into Arbitral proceedings for various reasons like non-performance of the contract, release of the withheld money by either of the parties, for the release of security deposit, compensation for the damages incurred due to the non-performance of the contract and others. However, the tax implications on compensations given under such arbitral proceedings are analyzed based on reason for granting award i.e., whether such award is given for the breach of contract, or any activity performed beyond the scope of the contract or for delayed payment of the consideration, or for the work already performed as per the contract entered between the parties.

In order to know the GST implications on such award, it is pertinent to understand the nature and purpose of such award. The arbitral award may provide compensation to the parties, in the form of damages. For a better understanding, we shall analyse the definition of damages under Section 73 and 74 of the Indian Contract Act, 1872 ("ICA, 1872") which are the specific provisions relating to compensation and liquidated damages. These Sections provide that when a sum is stated in the contract as the amount payable in case of breach of contract, or the contract contains any other stipulation by way of penalty, such sums constitute damages.

Further we may look at Section 2(31) of the CGST Act which defines the term 'consideration' in an inclusive manner to include any payment (in money or otherwise) or monetary value of any act or forbearance made in respect of, in response to or for the inducement of supply. Therefore, it can be said that agreeing to the obligation to tolerate an act or situation for a consideration is a supply of service which is leviable to GST in terms of Section 7 read with Schedule II of the CGST Act.

Further, we may also have a look at the development in this regard in the GST regime. For this we may refer to FAQ No. 15 of the FAQ's released by CBIC in relation to Mining Industry which deals with levy of GST on liquidated damages/penalty recovered from the contractor for non-lifting of coal up to minimum targeted annual quantity. It was clarified that such liquidated damages/ penalty would be a consideration for the supply of service of "tolerating an act" mentioned under Sl. No. 5(e) of Schedule II and would be leviable to GST. Though the FAQ is not binding, it reflects the understanding/interpretation of the Department to tax such damages/compensation.

Further, it is important to note the recent circular passed by CBIC Circular No. 178/10/2022-GST dated 3.8.2022 which clarifies that where the damages are paid as an amount which is to compensate for injury, loss or damage suffered by one of the parties due to breach of contract by the other party and where there is no express or implied agreement to refrain from or tolerate an act or do anything for the party paying such Liquidated damages, then such amount shall not qualify as consideration towards supply of any goods or services.

Thus, to understand whether the amount received under breach of contract would qualify as damage or consideration, it is pertinent to see, whether it forms part of the contract price or not. The relevant terms and conditions of the contract entered between the parties directly influence the nature of the amount received under any proceedings. If it is established that, such award which is received, is towards the execution of the contract and not towards damages, then such award amount may not qualify as compensation.

Thus, the nature of the amount has always been the most important factor to decide on the tax applicability on such amount. The CBIC Circular No. 178/10/2022-GST dated 3.8.2022, has paved way in understanding the GST implications on the Arbitral Award. However, to determine the nature of the Arbitral award, requires analysis of facts surrounding each case and the terms and conditions of the contract entered between the parties. The Awarded amount may not necessarily be in the nature of a compensation.

For example, a contract between the parties is terminated and parties decide to go for arbitral proceedings. As part of the contract, one of the parties has withheld certain amount from the contract price, due to the failure of the other party to oblige by the contract. Once the Arbitral Tribunal decides that such withheld money shall be released by the party withholding it, then it would be important to understand, whether such amount released would be part of the contract price and be in the nature of consideration or whether it is released as compensation due to the termination of the contract by the party withholding it. In case where the withheld amount was for the work which was already executed before the termination of the contract, then such award may qualify as consideration.

Another example we may take of the case, where the parties enter into contract for the execution of certain works contract. However, the contract is illegally terminated by one of the parties to the contract, in such case the other party incurs certain loss due to the illegal termination of the contract. In circumstances like this, party terminating the contract may be directed by the Arbitral Tribunal to pay certain amount to the other party so affected. This amount is paid by one of the parties because of its failure to oblige by the terms of the contract and not for any supply of goods or services. Such amount is then said to be in the nature of compensation.

However, it is significant to understand that Arbitral proceedings is for various reasons. Whenever the contract is entered between the parties, various factors are taken into consideration, such as lock-in period for the workers, the expected investment for the period, the lease period for plants and machineries in case of works contract and other reason. The delay in execution of the contract, results in non-using of the labour force, machineries, lapse of time and others. The award given for any of these reasons leaves an uncertainty regarding the nature of the awarded amount. Whether such amount would be considered as part of contract price or whether it is for compensating the delay caused.

It is observed that, there is no direct mention or inference of the same in the Circular. Such ambiguity may lead to various taxation dispute. Therefore, the parties have to methodologically review each award amount and decide on the tax implications.

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Goods and Services Tax (GST)

Notifications and Circulars

GST Council's 48th Meeting – Highlights: The 48th Meeting of the GST Council was held on 17 December 2022 under the chairpersonship of the Union Finance & Corporate Affairs Minister. Few important trade facilitation measures including important measures for streamlining compliances in GST, as recommended by the GST Council, are highlighted below.

- Minimum threshold of tax amount for launching prosecution under GST has been recommended to be revised from INR one crore to INR two crore.
- Compounding amount to be reduced from the present range of 50% to 150% of tax amount to the range of 25% to 100%.
- Specified offences - obstruction or preventing any officer in discharge of his duties; deliberate tempering of material evidence; and failure to supply the information, to be decriminalised.
- Mechanism to be prescribed for reversal of input tax credit by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit, if the supplier pays tax subsequently.
- Procedure to be prescribed for filing application of refund by the unregistered buyers in cases where the contract/ agreement for supply of services, is cancelled and the time-period of issuance of credit note by the concerned supplier is over.
- Scheme to facilitate unregistered suppliers and composition taxpayers to make intra-state supply of goods through E-Commerce Operators (ECOs), to be effective from October 2023.
- High sea sales, supply of warehoused goods before home clearance – Paras 7, 8(a) and 8(b) inserted in Schedule III of CGST Act, 2017 with effect from 1 February 2019, to be effective from 1 July 2017.
- No Claim Bonus offered by the insurance companies to the insured is an admissible deduction for valuation of insurance services.
- Proviso to sub-section (8) of section 12 of the IGST Act, 2017 relating to place of supply in respect of transportation of goods to a place outside India, may be omitted.
- Provision to be made for intimation to the taxpayer, by the common portal, about the difference between liability reported in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage.
- Provision to be made to restrict filing of returns/statements to a maximum period of three years from the due date of filing of the relevant return / statement.

Tax rate changes/clarifications

- Compensation cess of 22% applicable to motor vehicle fulfilling all four conditions, namely, it is popularly known as SUV, has engine capacity exceeding 1500 cc, length

exceeding 4000 mm and a ground clearance of 170 mm or above.

- GST is not payable where the residential dwelling is rented to a registered person if it is rented it in his/her personal capacity for use as his/her own residence and on his own account.

Ratio decidendi

Deposit of an amount during search operations when not voluntary – CBIC directed to align Instruction dated 25 May 2022 with directions of Gujarat HC in Bhumi Associate: The Delhi High Court has rejected the stand taken by the Revenue department that the deposit/payment made by the assessee at the time of search proceedings was a voluntary payment based on self-ascertainment of tax, interest and penalty. The Court noted that although payments were made in the prescribed form i.e., GST DRC-03, there was no document by the official respondents/revenue department demonstrating acknowledgement of having accepted the payment, under GST DRC-04 as required under Rule 142(2) of the CGST Rules, 2017. Further, the Court held that there was no element of voluntariness attached to the payment if one considers the circumstances in which the amount was deposited. The Court in this regard was of the view that the fact, that deposits were made during the early hours of the day when the search had not concluded, would show that the payments were not voluntary. Also, the Central Board of Indirect Taxes and Customs (CBIC) was directed to align its Instruction No. 01/2022-2023, dated 25 May 2022 with the directions issued by the Gujarat High Court in the case of *Bhumi Associate*. [*Vallabh Textiles* v. *Senior Intelligence Officer* – 2022 VIL 840 DEL]

Provisional attachment – Pendency of proceedings is sine qua non even after amendment to Section 83 from 1 January 2022: The Gujarat High Court has held that pendency of the proceedings is *sine qua non* for exercise of powers of provisional attachment under Section 83 of the Central Goods and Services Tax Act, 2017. The Court was of the view that the ratio of the decision in the case of *Radha Krishan Industries* v. *State of HP* [(2021) 6 SCC 771] would apply to the post amended section (with effect from 1 January 2022) also. Setting aside the attachment order, the High Court noted that while earlier Section 83 could be invoked only during pendency of certain proceedings as provided in certain sections, now it can be invoked 'after initiating proceedings under the Chapters mentioned therein'. [*Conceptial Trade* v. *State of Gujarat* – 2022 VIL 770 GUJ]

Release of non-relied upon seized documents/books is not mandatory within 6 months: Considering that there is a clear distinction brought about in the Central Goods and Services Tax Act, 2017 in case of inspection, search and seizure of 'documents or books or things' in contrast to seizure of 'goods', the Delhi High Court has rejected the plea seeking directions for release of laptop, computer, documents and other things which were seized by the Directorate General of GST Intelligence (DGGI) in a search. Further, the Court noted that by a conjoint reading of Sections 67(2) second proviso, 67(3), 74(2) and 74(10) of the CGST Act, 2017, the 'documents or book or things' can be retained for a maximum period of four and half years, within which period the notice has to be issued, plus thirty days from the date of erroneous refund, in case documents, books or things are not being relied upon for the issuance of notice. Dismissing the writ petition, the Court observed that the said period had not lapsed in

the present dispute. The assessee-petitioner had relied upon Section 67(7) of the CGST Act to contend that goods need to be returned within 6 months. [*Dhruv Krishan Maggu* v. *Principal Director General, DGGI* – 2022 VIL 821 DEL]

Blocking use of credit ledger when is not permissible: The Delhi High Court has held that the use of the expression 'inasmuch as' in Rule 86A of the Central Goods and Services Tax Rules, 2017 restricts the scope of ineligibility to the conditions as set out in sub-clauses of Rule 86A(1). According to the Court, it is only if any of these conditions are satisfied that the restriction under Rule 86A(1) can be imposed in respect of ITC on the ground that the ITC available in the taxpayer's electronic credit ledger ('ECL') is 'ineligible'. Further, observing that as per Rule 37 read with Section 16(2) of the CGST Act, 2017 a taxpayer is entitled to avail of ITC in the first instance, even though he has not paid the supplier for the goods/services, and that he is required to reverse the same with interest only if he does not make the payment within 180 days, the Court held that the Revenue department completely misdirected themselves in proceeding on the basis that unless a taxpayer pays the supplier, he is ineligible to avail the ITC lying to his credit in the ECL. [*Sunny Jain* v. *Union of India* – 2022 VIL 823 DEL]

Determination of tax liability under CGST Section 129(1) when not correct: The Allahabad High Court has allowed a writ petition in a case where department had proceeded to determine the tax liability as well as penalty only under the provisions of Section 129 of the CGST Act, 2017. The Court observed that there was no provision under Section 129 for determination of tax due, which could be done only by taking recourse to the provisions of Section 73 or 74, as the case may be. The Court also noted that the owner of the goods had not come forward for payment of such penalty. The dispute involved detention of goods in transit, because of non-filing of Part-B of the e-way bill by the transporter in time. [*Bharti Airtel Ltd.* v. *State of U.P.* – 2022 VIL 805 ALH]

No GST on notice pay recovery – CBIC Circular No. 178/10/2022-GST applicable retrospectively: Observing that the CBIC Circular No. 178/10/2022-GST only clarified the existing law, the Kerala High Court has held that the fact that the Circular was issued only after the issuance of order of the first appellate authority is no reason to hold that the assessee is not entitled to the benefits of the Circular. According to the Court, the question as to whether the Circular has any retrospective effect need not be considered as even otherwise, in the light of the law laid down by the Supreme Court in *Suchitra Components Ltd*., the provisions of a Circular in the nature of Circular No. 178/10/2022-GST will have to be deemed to apply retrospectively. The Circular had clarified that the amount of money received by the petitioner-assessee as notice pay from erstwhile employees is not a taxable transaction for the purposes of the GST laws. [*Manappuram Finance Ltd.* v. *Assistant Commissioner* – 2022 VIL 807 KER]

No detention and seizure of goods when e-way bill expires in transit: The Gujarat High Court has reiterated that expiry of e-way bill while the goods are in transit cannot be a ground for detention and seizure of goods along with the conveyance. The e-way bill, in the instant case, had expired 41 hours before the time of interception. According to the Revenue department, the period between the expiry of validity of e-Way bill and time of interception was not substantiated, no justification was offered by the conveyance driver and there was no satisfactory reason for non-updation of the e-way bill. The High Court in this regard relied upon Allahabad High Court decision in the case of

Govind Tobacco Manufacturing Co. and Madhya Pradesh High Court decision in the case of *Daya Shaker Singh.* [*Shree Govind Alloys Pvt. Ltd.* v. *State of Gujarat* – 2022 VIL 813 GUJ]

Cancellation of registration not sustainable when SCN and order for cancellation not clear enough: The Andhra Pradesh High Court has set aside the show cause notice and the order for cancellation of registration in a dispute where both were found by the Court to be dubious enough and failing to divulge the misdeed or fraud allegedly committed by the assessee. The Court noted that while the show cause notice said that 'in case' the petitioner has committed any fraud, wilful misstatement or suppression of facts, the order of cancellation of registration said that the assessee had not submitted 'clear records". According to the Court, both of them (SCN and Order) were not clear enough to understand the mind of the issuing authority. [*S A Traders* v. *Goods and Services Tax Officer* – 2022 VIL 777 AP]

No GST on reimbursement of expenses borne by Director on behalf of company: The Karnataka Authority for Advance Ruling has answered in negative the question of GST liability on reimbursement of expenses borne by the employees on behalf of the company. The Authority held that while the amount paid by the employee to the supplier of service counted as 'consideration', the amount reimbursed by the applicant-company to the employee would not, as the services of the employee to his employer in the course of his employment was not a supply of goods or services under Clause 1 of the Schedule III of the CGST Act, 2017. Director of the applicant had incurred certain expenses on behalf of the company which were later reimbursed. Further, on the issue of applicability and calculation of the Reverse Charge Mechanism (RCM) on the same reimbursable amount, the AAR relied upon CBIC Circular No. 140/10/2020, dated 10 June 2020 in respect of remuneration received by the director outside the scope of 'salaries' in the accounts of the Company to be considered as taxable. It was of the view that since the reimbursement of expenses did not fulfil the conditions and was not subject to TDS under Section 194J of the Income Tax Act, the transaction was covered within the course of employment and would not be subject to RCM. [In RE: *Yaadvi Scientific Solutions Private Limited* – 2022 (12) TMI 359]

Input Tax Credit – 'Plant and machinery' will not include pipeline which is 90% outside licensed area: The Maharashtra Authority for Advance Ruling has held that exclusion under the Explanation to Section 17(5) of the Central Goods and Services Tax Act, 2017, excluding pipelines outside factory premises from the purview of 'plant and machinery', would be applicable for connector pipelines used for supply of fuel to the airlines. The AAR noted that out of the total length, only 10% of the pipeline was in the project site (with 90% pipeline outside the licensed area). The authority did not find merit in the appellant's argument that as the inputs were consumed in the construction of an immovable property outside the licensed premises for providing taxable output services, they formed part of the plant and machinery within the premises, and hence ITC was available. Applicant's argument that they were not a factory and hence the said clause was not applicable to them was also rejected by the Authority. [In RE: *Mumbai Aviation Fuel Farm Facility Private Limited* – 2022 (12) TMI 509]

EU VAT – Award of vouchers free of charge to employees is not supply of services for consideration: The Court of Justice of the European Union has held that supply of services consisting, for a business, in offering retail vouchers to its employees, in the context of a programme set up by that business, designed to

recognise and reward the most deserving and high-performing employees, does not fall within its scope of Article 26(1)(b) of the EU's VAT Directive. The Court was of the view that issue of vouchers for third-party retailers to employees by a taxable person as part of a recognition programme for high-performing employees did not constitute a supply '*for his private use or for that of his staff or, more generally, for purposes other than those of his business*' within the meaning of Article 26(1)(b). The Court observed that the setting up of that programme was dictated by considerations relating to the proper conduct of that undertaking's business activities and the pursuit of additional profits, and that the resulting advantage for employees was merely incidental to the needs of the business. [*GE Aircraft Engine Services Ltd.* v. *Commissioners for His Majesty's Revenue and Customs* – Judgement dated 17 November 2022 in Case C-607/20, CJEU]

Customs

Notifications and Circulars

India-Australia FTA – Economic cooperation and trade agreement effective from 29 December 2022: The Central Government has on 22 December 2022 notified the Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022. The Rules are effective from 29 December 2022 and provide for the procedure for determining country of origin also in case of goods not wholly produced or obtained. The Rules in this regard also specify certain operations which when undertaken on non-originating materials to produce a good shall be considered as insufficient working or processing to confer on that good the status of an originating good. The Tariff notification relating to rate of duty on imports from Australia has also been notified to cover products falling under 8500 different Tariff Items. This notification is also effective from 29 December 2022.

E-Commerce – Postal Export (Electronic Declaration and Processing) Regulations notified: In order to facilitate the processing of commercial postal exports by automating the entire procedure and seamlessly connecting the postal network to the notified Foreign Post Offices, the Central Board of Indirect Taxes and Customs (CBIC) has on 9 December notified the Postal Export (Electronic Declaration and Processing) Regulations, 2022. In the new system, the exporter will not be required to visit the Foreign Post Office, rather he will be able to file Postal Bill of Export online from his home/office and deposit the parcel in the nearby post office for export. The Department of Post will move the parcel to the FPO for customs clearance. The move is being seen as benefiting e-commerce firms engaged in postal exports. A detailed Circular No. 25/2022-Cus., dated 9 December 2022 elaborating the steps prescribed under the Regulations including that for

registration, booking of postal article for export, procedure at the booking post office, customs procedure at FPO, and export incentive claim, has also been issued for the purpose.

RoDTEP – Chemicals, pharmaceuticals and iron & steel items included in list of eligible items: The Ministry of Commerce has included items falling under ITC(HS) Chapters 28, 29, 30 and 73 in Appendix 4R of the FTP-Handbook of Procedures, to be eligible for benefit of RoDTEP (Remission of Duties and Taxes on Exported Goods) scheme. The benefit will be available in respect of exports made from 15 December 2022 till 30 September 2023.

Ratio decidendi

EPCG imports – Exemption from IGST and Compensation Cess is retrospective – Amendment by Notification 79/2017-Cus is clarificatory: The Bombay High Court has held that amendment by Notification No. 79/2017-Cus., dated 13 October 2017 in Notification No. 16/2015-Cus., relating to exemption, to imports made under EPCG Scheme, from additional duty under sub-section 3(7) [IGST] and sub-section 3(9) [Compensation Cess] of the Customs Tariff Act, 1975 is clarificatory. The Court observed that it was always the intention of the Central Government to exempt imports of capital goods under the EPCG Scheme from payment of additional duty under Section 3 of the Customs Tariff Act. Gujarat High Court decisions in the cases of *Prince Spintex Pvt. Ltd.* and *Radheshyam Spinning Pvt. Ltd.* were relied upon. The Revenue department was directed to refund the IGST and Compensation Cess with interest after debit of the said amount from the credit ledger of the assessee. [*Sanathan Textile Pvt. Ltd.* v. *Union of India* – 2022 TIOL 1449 HC MUM GST]

Finished jewellery earlier exported can be imported in SEZ as raw material: Observing that there is no restriction on import of jewellery as even previously manufactured items for authorised operations in SEZ, the Bombay High Court has held that new/unused finished jewellery earlier exported can be imported into a SEZ as raw material. The Court in this regard noted that the finished jewellery ('goods') were not prohibited for import under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 and were permissible import in terms of Rule 27(1) of the SEZ Rules. It also observed that in terms of Rule 29(5) of the SEZ Rules, the unit may import goods including jewellery. Definitions of 'raw material' and 'manufacture' as provided in Rules 2(u) and 2(r) respectively, and the Ministry of Commerce Instruction No. 37, dated 7 September 2009 were also relied for the purpose. Confiscation of goods under Sections 111(d) and 111(m) were accordingly set aside. It may be noted that the Court also stated that non-adherence to procedure of Rule 29(7) of the SEZ Rules is only a procedural violation. [*Renaissance Global Ltd.* v. *Union of India* – 2022 TIOL 1448 HC MUM CUS]

Notification effective only from date of e-publication after digital signature certificate: The Gujarat High Court has held that a notification cannot be said to have been published without declaration form or digital signature certificate. Observing that only after the declaration form and documents are signed digitally that they can be uploaded for e-publishing, the Court held that the effective date of Notification in terms of Section 25(4) of the Customs Act, 1962 would be the date of its publication in Official Gazette in e-mode. Notification No. 29/2018-Cus., dated 1 March 2018 amending Notification No. 50/2017-Cus., enhancing the rate of duty, was hence held to effective from 6 March 2018 only. The petitioner-assessee was held liable to pay only 40% duty

which was applicable at the time of presenting the bills of entry for home consumption and not 54% under Section 17(4). [*Adani Wilmar Ltd.* v. *Union of India* – 2022 TIOL 1432 HC AHM CUS]

Valuation – Contemporaneous imports – Effect of exchange rate and time difference in imports: The CESTAT Delhi has found force in the argument of the assessee that the imported goods cannot be compared in value to those which may have been imported a month later. Allowing appeal against rejection of transaction value and the decision of Commissioner (A) upholding valuation under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Tribunal also observed that assessable value in Bills of Entry were given in Rupees, whereas declared values in disputed Bill of Entry were in US dollars, and it was not clear as to what rate of exchange was applied by the Department to re-determine assessable value under Rule 5.

It may be noted that the Tribunal also observed that the least one would expect while comparing the prices is to specify what goods were imported in the contemporaneous Bills of Entry, their quantity, specifications, country of origin, port of import etc., so that the same can be compared with the disputed goods. [*D M Marketing Inc.* v. *Principal Commissioner* – 2022 VIL 933 CESTAT DEL CU]

Valuation – Related person – Shareholder cannot be a partner in business: In a case of import by alleged related person, the CESTAT Ahmedabad has held that a shareholder cannot be termed as partner in the business carried on by the company [Rule 2(2)(ii) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]. Observing that Partnership is formed through an agreement, the Tribunal noted that there was no partnership agreement between the importer-Appellants and the foreign exporter, so they cannot be treated as legally recognized partners only because the Appellants held 50% share in the exporter. Department's reliance on Rule 2(2)(vi) relating to direct or indirect control by a third person, was rejected by the Tribunal while it noted that the Revenue had failed to show who is the third person who controls. The Tribunal also rejected the contention of the Revenue department that the assessee-importer and the Department of Fertiliser, Government of India [High seas seller] were officers or directors of one another's businesses [Rule 2(2)(i)]. It observed that the Department failed to prove that as to how the Appellants and DOF, GOI were officers. Upholding the transaction value, the Tribunal also noted that there was a long-term agreement as regards production and sale of goods. [*Indian Farmers Fertilizers Co-operative Limited* v. *Commissioner* – 2022 VIL 860 CESTAT AHM CU]

DFIA – Immediate parent material is relevant to decide which input was used for export product: The CESTAT Ahmedabad has held that immediate parent material is relevant to decide which input was used for manufacture of exported goods. In the dispute involving imports of maize starch claiming DFIA benefit under SION E22, the Tribunal was of the view that denial of benefit under DFIA on ground that starch was not the original input, was bereft of any legal basis. The Revenue department had contended that correct SION Entry was E76 under which the assessee-importer was entitled to import 'Maize' and not 'Starch'. According to the Department, since 'Starch' was manufactured out of 'Maize', correct SION would be E76 relating to Maize. The Tribunal in this regard noted that there was no dispute to the fact that the export item namely 'liquid glucose concentrate (food grade)' was manufactured from using 'starch slurry' which was essentially a 'starch' *albeit* in slurry form. [*Sanstar Bio Polymers Ltd.* v. *Commissioner* – 2022 VIL 923 CESTAT AHM CU]

Central Excise, Service Tax and VAT

Ratio decidendi

Rebate claim on exports – Limitation prescribed under Central Excise Section 11B applicable: The Supreme Court of India has held that merely because in Rule 18 of the Central Excise Rules, 2002, which is an enabling provision for grant of rebate of duty, and the notification issued under said Rule, there is no reference to Section 11B of the Central Excise Act, 1944, it cannot be said that the provision contained in the parent statute, namely, Section 11B shall not be applicable. Observing that subordinate legislation (under the Rules and notification) cannot be interpreted in such a manner that parent statute may become otiose or nugatory, the Apex Court overruled contrary decisions of the Madras High Court, Allahabad High Court, Punjab & Haryana High Court and Rajasthan High Court. The assessee had contended that Rule 18 and notification dated 6 September 2004 do not mention the applicability of Section 11B and that the claim for rebate of duty was different and distinct than that from claim for refund of duty under Section 11B. The Court however noted that as per Explanation (A) to Section 11B, 'refund' includes 'rebate of duty' of excise. [*Sansera Engineering Ltd.* v. *Deputy Commissioner* – 2022 TIOL 102 SC CX]

Oxygen merely a 'refining agent' and not a 'raw material' in manufacture of steel: The Supreme Court has held that oxygen used in manufacture of steel is not eligible for concessional rate of tax under Section 13(1)(b) of the Bihar Finance Act, 1981 as the same is not a raw material in the manufacture of steel. The Court relied upon an expert inspection report which had stated that oxygen gas was used as a 'refining agent' and its main function was to reduce the carbon content as per the requirement and hence the oxygen gas could not be said to be a 'raw material' used in the manufacture of the end product – steel. Reliance in this regard was also placed on the Supreme Court decision in the case of *Dy. CST* v. *Thomas Stephen & Co. Ltd.* [(1988) 2 SCC 264] which was distinguished the Apex Court in its earlier decision in the case of Collector v. Ballarpur Industries Limited [(1989) 4 SCC 566]. The High Court in this order impugned (while holding that oxygen was a raw material) before the Supreme Court had relied upon the later Supreme Court decision. [*State of Jharkhand* v. *Linde India Limited* – 2022 VIL 94 SC]

Admissibility of Cenvat credit cannot be adjudicated by invoking Section 73 of CGST Act: The Jharkhand High Court has held that the assumption of jurisdiction by the Revenue department to determine whether the Cenvat Credit was admissible under the 'existing' law, by invoking provisions of Section 73 of the CGST Act, 2017 is not proper in the eyes of law. The Court in this regard observed that Section 73 does not speak of Cenvat Credit as CGST Act does not provide for Cenvat Credit. Clauses (i) and (ii) of the proviso to Section 140 of the CGST Act were also held as not applicable in the case. It was held that initiation of proceedings by the Department under Section 73(1) for alleged contravention of the Central Excise Act, 1944 and the Finance Act, 1994 read with Cenvat Credit Rules, 2004 against the assessee by filing TRAN 1 in terms of Section 140 of the CGST Act for transition of Cenvat credit as being inadmissible under the existing law is beyond his jurisdiction. [*Usha Martin Limited* v. *Additional Commissioner* – 2022 TIOL 1478 HC JHARKHAND GST]

Sabka Vishwas (LDR) Scheme – Challenge to rejection of benefit under the scheme valid even after expiry of scheme: The Madras High Court has held that rejection of applications filed under the Sabka Vishwas (LDR) Scheme, 2019 by the assessee-petitioners and communication of the same after the scheme has expired does not bar the petitioners from challenging the impugned orders rejecting their application under the said scheme. The Court was of the view that an applicant whose application was rejected cannot be left without any remedy as the right to have the case settled under the scheme is a substantive right. It however made it clear that the right to redress a grievance against rejection of Declaration under the scheme was subject to a caveat that the applicant whose Declaration was rejected, was indeed entitled to file a Declaration under the said scheme. The High Court in this regard also condoned the delay on the part of the petitioner in approaching the Court. It held that the delay in approaching the Court was not so enormous so as to disqualify the petitioner from redressing their grievance before the Court under Article 226 of the Constitution of India. [*Win Power Engineering (P) Ltd.* v. *Designated Committee* – Judgement dated 30 November 2022 in W.P.Nos.11785, 12957 of 2020 & W.P.Nos.3320 & 3322 of 2022, Madras High Court]

Sabka Vishwas (LDR) Scheme – Issuance of SCN after 30 June 2019 not material when duty quantified earlier: The Bombay High Court has held that Section 125(1)(e) of the Finance (No. 2) Act, 2019 does not disqualify a person who has been issued a show cause notice after 30 June 2019. The Court observed that the section only says if a person has been subjected to an inquiry or investigation or audit and the amount of duty involved in the said inquiry or investigation, or order has not been quantified on or before 30 June 2019. It noted that the amount in the dispute was quantified before inasmuch as in the statement recorded on 26 June 2019, in answer to a question, the specific amount was admitted. [*Unify Facility Management Pvt. Ltd.* v. *Union of India* – 2022 TIOL 1488 HC MUM ST]

Refund of Cenvat credit on exports – Debit in Cenvat credit account, though during GST regime, is sufficient compliance: The CESTAT Delhi has held that debit of the amount of refund claim in the Cenvat credit account (in the ledger maintained by the assessee) during the GST regime, i.e., after 1 July 2017, is sufficient compliance of condition 2(h) of Notification No. 27/2017-S.T., relating to refund of Cenvat credit in respect of export of services. The Tribunal noted that the Assessing Officer had observed that the assessee had claimed refund less than the amount of Cenvat credit available as on 30 June 2017. It also noted that there could not be any more debit in the Cenvat register due to implementation of GST. [*Travel Security Services India Pvt. Ltd.* v. *Commissioner* – 2022 VIL 892 CESTAT DEL ST]

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