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Government/ PSU procurements – Possible consequences of Supreme Court decision in *Bharat Forge*

By **Atul Gupta and Narendra Singhvi**

Procurement by Government or Public Sector Undertakings (PSUs) through tenders has historically been subject to frequent litigations. Amongst various issues, it includes the issues related to tax liability on the subject-matter of such tenders. With the increasing complexities in GST laws, there are increasing complexities on their compliance *qua* these tenders also.

Added to this is the recent decision of Supreme Court in *UOI & Ors* v. *Bharat Forge Limited*, 2022-TIOL-67-SC-GST. The observations made in this decision, if looked at carefully, are going to have widespread implications on the whole procurement process.

To appreciate the implications of this decision, it is first necessary to understand the factual background thereof. In this case, a global tender inviting e-tenders for procurement of certain goods was floated by Diesel Locomotive Works [Unit of Indian Railway], under the Make in India scheme.

Bharat Forge Ltd., one of the tenderers approached the Allahabad High Court, *inter-alia*, assailing that neither the Notice Inviting Tender (NIT) nor the bid documents mention the relevant Harmonized System of Nomenclature (HSN) Code for the goods, which is adopted by the GST Council to indicate the GST rates of each product and services. It was contended by Bharat Forge that the correct GST rate on such goods is @18%, whereas the top three tenderers had shown the GST rate @ 5% and accordingly their overall prices (consideration for goods plus GST) have gone down in comparison to that quoted by Bharat Forge. Showing the HSN Code in the bid document, it had averred, facilitates the uniform disclosure of correct rate of tax for all the bidders. It was further argued that non-disclosure was capable of (i) evasion of tax and (ii) frustrating the 'Make in India' policy and depriving the local manufacturers.

The High Court allowed the petition nullifying the tender and directing Diesel Locomotive Works to mention the HSN Code in NIT so as *'to ensure uniform bidding from all participants and to provide all tenderers/bidders a 'Level Playing Field'.* The order of the High Court was impugned by the Central Government before the Apex Court. The Apex Court set aside the order of the High Court, with the following observations and directions:

a) For issuance of writ of Mandamus, there ought to be a 'public duty', but not necessarily a statutory duty. It can be imposed by common charter, common law, custom or even contract. Moreover, mandamus would also lie, if the authority having discretion fails to exercise the same and act under the 'dictation of another authority'. Referring to a catena of judgments, the Court noted that scope of the writ of Mandamus is quite wide

and wherever there is a breach of public duty, the Courts ought to invoke it without going into further technicalities.

b) On the issue regarding ambit of judicial review of contracts entered into with the State, the Court opined that the scope is limited, but it can interfere if the State acts arbitrarily, whimsically for any ulterior purpose against public interest and when its action reeks of mala fides.

c) Regarding disclosure of the HSN Code, the Court said that the tax liability was on Bharat Forge, being the supplier, so it was required to enquire and thereafter arrive at a conclusion regarding the relevant HSN Code applicable to the item and the relevant rate of tax as well. It noted that in a communication, the Railway Board had indicated that the purchaser (Diesel Locomotive Work) 'may' incorporate the HSN Code in the tender document. Considering the tax regime and in the interest of the public, the word 'may' was read, by the Court, as to not cast a mandatory duty on the purchaser. It was of the opinion that the communication did not cast a public duty upon the purchaser to indicate the HSN Code.

d) Finally, it was observed that in such tenders, the successful bidder may not discharge the correct GST liability as claimed by the Petitioner before the High Court. Therefore, an interesting direction has been issued that wherever a tender is invited by the Union Government (Railway Board), the tender document needs to include a specific term that the bidders need to disclose the contact details of their GST jurisdictional Office, and a copy of the document, by which the contract containing all material details is awarded to the successful bidder, shall be immediately forwarded to such concerned jurisdictional Assessing Officer. It was observed that this is necessary in order to ensure that the successful tenderer pays the tax due and to further ensure that, by not correctly quoting the GST rate, there is no tax evasion. The direction also binds the Central Government.

Though the directions issued in this case are in respect of tenders to be invited by the Railway only, however, the future tenders of other PSUs may also be required to follow the same, based on the same reasoning. The bidders for similar tenders floated by PSUs may approach High Courts for same directions as given by the Supreme Court. There is also a possibility that the Government, armed with this decision, may amend the law to provide that the documents of the successful bidders may be uploaded on the GST portal by the PSUs.

The decision may also affect the eligibility of a recipient of supply in seeking advance ruling under GST on issues pertaining to tax liability on supplies received by it. The decision will certainly encourage bidders to seek advance ruling before taking a decision to participate in tender.

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Goods and Services Tax (GST)

Notifications and Circulars

TRAN-1 and TRAN-2 filing/revising during October-November 2022 – CBIC issues guidelines: Consequent to the Supreme Court decision dated 22 July 2022 in the case of *Union of India* v. *Filco Trade Centre Pvt. Ltd.,* the Central Board of Indirect Taxes and Customs ('**CBIC**') has issued elaborate guidelines for filing/revising TRAN-1/TRAN-2 during the period from 1 October 2022 till 30 November 2022. Some of the salient features of the guidelines as given in Circular No. 180/12/2022-GST, dated 9 September 2022 are as follows.

- Applicant shall at the time of filing or revising the declaration also upload on the common portal the pdf copy of a specified declaration.
- Applicant claiming credit in Table 7A of Form GST TRAN-1 based on Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3.
- No claim for transitional credit shall be filed in Table 5(b) & 5(c) in respect of C-Forms, F-Forms and H/I-Forms issued after 27 December 2017.
- TRAN-2 – Entire claim in one consolidated form to be filed instead of tax period wise.
- Applicant shall download a copy of the TRAN-1/TRAN-2 filed and submit a self-certified copy of the same, along with the specified declaration and copy of TRAN-3, wherever applicable, to the jurisdictional tax officer within 7 days.
- Applicant can edit the details in FORM TRAN-1/TRAN-2 on the common portal only before clicking the 'Submit' button on the portal.
- Once the applicant files/revises these Forms filed earlier, no further opportunity to again file or revise, either during this period or subsequently, will be available.
- Cases where the credit availed based on FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected, appropriate course would be to pursue the said adjudication/ appeal.

Launching of prosecution under CGST Act – CBIC issues guidelines: The CBIC has issued guidelines for launching of prosecution under the Central Goods and Services Tax Act, 2017. According to Instruction No. 4/2022 [GST – Investigation], dated 1 September 2022, prosecution is not to be filed merely because a demand has been confirmed in the adjudication proceedings. The Instruction also states that decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected. It is stated that the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed *mens rea* for committing the offence.

The Instruction clarifies that prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund is more than INR five crore, except in cases of habitual evaders or arrest cases. Meaning of habitual evader has also been elaborated for this purpose. The Instruction also

discusses on procedure for sanction of prosecution, appeal against Court order in case of inadequate punishment/acquittal and procedure for withdrawal of prosecution.

Ratio decidendi

Refund – Extension to time to file reply to SCN – Notification No. 35/2020-CT applicable even in case of online filing: The Punjab and Haryana High Court has rejected the contention of the Revenue department that Notification No. 35/2020-Central Tax, dated 3 April 2020 is applicable only where the taxable person has to make compliances physically or join proceedings in a physical manner. Observing that the stand was misconceived and not well founded, the Court noted that even if the reply to the show cause notice had to be filed online, certain documents had to be collected for the purpose of filing a comprehensive reply, and that during the period of shut down, the same would not have been possible. Further, the Court also rejected the contention that every refund application had to be disposed of within a period of 60 days failing which an interest liability would accrue. According to it, such situation also stood covered in terms of the said extension Notification. [*Xchanging Technology Services India Pvt. Ltd.* v. *Principal Commissioner* – 2022 VIL 582 P&H]

Interest on delayed payment of tax – Waiver for availability of credit when not available: In a case where the assessee had not filed the returns and thus not paid the tax on time, the Madras High Court has held that it is only when a remittance is effected by way of debit, that an assessee would be protected from the levy of interest. According to the Court, unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credits will be set-off against tax liability. The petitioner had argued that no interest need be levied on the strength of the balances lying to its credit in the Electronic Cash Register and Electronic Credit Register. The Court held that acceding to the stand of the petitioner would result in re-writing the proviso, to the effect that, even mere availability of credit would insulate the petitioner from interest, which, was impermissible. [*India Yamaha Motor Private Limited* v. *Assistant Commissioner* – 2022 VIL 605 MAD]

Detention of goods in transit – Transporter not entitled to seek release of goods: The Madras High Court has rejected the contention that the benefit granted to the owner of the goods to seek release of the detained goods on payment of penalty or furnishing of security, would be equally applicable to the case of a transporter as well. According to the Court, the entitlement to seek release of goods under Section 129 of the Central Goods and Services Tax Act, 2017 is only *qua* the owner/agent/representative of the owner. The Court observed that this interpretation is supported by the language used in the first proviso that specifically uses the term 'transporter' and states that such transporter may seek release of the conveyance. It was also of the view that phrase 'person transporting the goods' in Sections 129(1) and (6) mean the owner or his agent who has contracted to supply the goods, and not the transporter who will provide the carriage for the same. [*TCI Freight* v. *Assistant Commissioner* – 2022 VIL 618 MAD]

Refund under inverted duty structure – CBIC Circular No. 173/05/2022-GST, dated 6 July 2022 is clarificatory: The Telangana High Court has held that CBIC Circular No. 173/05/2022-GST, dated 6 July 2022 is clarificatory in nature whereby paragraph 3.2 of the Circular dated 31 March 2020 has been substituted. The Court was of the view that being clarificatory, Circular dated 6 July 2022 inserting the above clarification

would have the effect from the date when Circular dated 31 March 2020 came into effect. The Circulars dealt with refund of GST in case of inverted duty structure. While the earlier circular had clarified that the refund is not available when input and the output supplies are the same, the later circular clarified that such refund would be allowed in cases where accumulation of input tax credit is on account of rate of tax on output supply being less than the rate of tax on inputs (same goods) at the same point of time as per some concessional notification. [*Micro Systems and Services* v. *Union of India* – 2022 VIL 622 TEL]

Registration – Inspection of premises without prior notice is not correct: The Delhi High Court has upheld the contention of the assessee that if the proper officer opts for physical verification of the petitioner's business premises, it can only be carried out in the presence of its authorized representative. Relying upon Rule 25 of the Central Goods and Services Tax Rules, 2017, the assessee had contended that in other words, a prior notice/intimation would have to be served by the proper officer. The Court in this regard also noted that no cess or tax was due from the assessee. The petitioner-assessee was directed to file an application for revocation of order of cancellation within the next 15 days. [*Curil Tradex Pvt. Ltd.* v. *Commissioner* – 2022 TIOL 1170 HC DEL GST]

No confiscation if assessee offers to pay tax and penalty on goods detained/seized: The Karnataka High Court has held that the proper officer does not possess the power to refuse the release of detained goods and conveyance if the applicable tax and penalty is paid by the owner or if 50% of value of goods reduced by applicable tax is paid by a person other than the owner or if a security equivalent is furnished. The Court noted that there is a statutory right to obtain release of the goods and conveyance detained under Section 129 if conditions specified in said section are complied with. According to the High Court, the power of confiscation when goods and conveyance are seized would be available only when the applicable tax and penalty are not paid. It observed that the power to confiscate is a distinct and independent power which can be exercised only in cases where the power to detain and seize has not been invoked. The High Court was of the view that it would not be open for the proper officer to invoke the distinct power under Section 130 after he has invoked the power under Section 129. [*Rajeev Traders* v. *Union of India* – 2022 VIL 639 KAR]

No levy of interest and penalty when tax amount mistakenly paid to service provider (Railways) instead of under reverse charge: In a case where the Petitioner, for the service received from railways, mistakenly paid the invoice amount along with the GST amount to the railways, the Bombay High Court has directed the railways to pay the GST amount to the petitioner and thereafter petitioner to remit the payment through the portal. Observing that there was no attempt to evade tax, the Court noted that it was a case where the petitioner had made a mistake and instead of paying the Govt. of India through GST authorities, the entire amount was paid to Govt. of India through Indian railways. The authorities were directed to open the portal for the Petitioner. [*Arun Krishnachandra Goswami* v. *Union of India* – 2022 VIL 635 BOM]

Export of electricity – Amendment to CGST Rule 89 by notification dated 5 July 2022 is retrospective: The Andhra Pradesh High Court has observed that amendment in Rule 89 of the

Central Goods and Services Tax Rules, 2017 by Notification No. 14/2022-CT, dated 5 July 2022 is only clarificatory in nature and as such must be made retrospective in nature. The case involved rejection of refund claim of unutilised ITC, for non-production of shipping bills to prove the quantity of energy unit transmitted across border. The Court in this regard noted CBIC Circular No. 175/07/2022-GST, dated 6 July 2022 which stated that amendment in Rule 89 was carried out to cure the defect in the said Rule, because of the problem faced by power generating units in filing refund claims. [*Sembcorp Energy India Ltd.* v. *State of Andhra Pradesh* – 2022 VIL 643 AP]

GST payable on contractual worker's portion of canteen charges: The AAR Gujarat has held that GST, at the hands of the assessee is leviable on the amount representing the contractual worker portion of canteen charges, which is collected by the assessee and paid to the Canteen service provider. The Authority was of the view that though, there is no profit on the supply of food to contractual worker, there is a 'supply', as provided in Section 7(1)(a) of the CGST Act, 2017. It was also held that Input Tax Credit (ITC) of GST paid on canteen facility is not admissible to the assessee under Section 17(5)(b) of the CGST Act on the food supplied to such contractual workers. The AAR in this regard noted that there is no mandate to the assessee/applicant company to provide canteen facility to the contractual worker. However, the Authority held that GST is not leviable on the amount representing the employee's portion of canteen charges and that ITC of GST paid on canteen facility is admissible to the assessee under Section 17(5)(b) on the food supplied to employees of the company subject to the condition that burden of GST have not been passed on to the employees of the company. [In RE: *Troikaa Pharmaceuticals Ltd.* – 2022 TIOL 106 AAR GST]

ITC available on upfront premium paid for long term lease: Observing that the upfront premium paid was not related to any construction activity of covered space but against the rental value for the period of rent calculated for the period of lease and collected upfront, the AAR Tamil Nadu has held that provisions of Section 17(5)(d) of the CGST Act, 2017 is not applicable in such case. Allowing credit of GST paid on upfront premium paid for long term lease of the space, the AAR noted that the activity involved was of 'Renting immovable property services'. It also observed that the lease allotment letter did not spell of lease for any construction activity. [In RE: *Kamarajar Port Limited* – 2022 VIL 223 AAR]

No ITC on vouchers and subscription packages procured by assessee and made available to eligible customers: The AAR Karnataka has held that the assessee would not be eligible for ITC on the vouchers and subscription packages procured by it from third party vendors and which are made available to eligible customers participating in the loyalty program. Observing that the redemption of loyalty points for receiving vouchers involved no flow of consideration from the customer, the Authority was of the view that thus vouchers were issued free of cost to the customer. It held that such disposal of vouchers by way of gift was squarely covered under clause Section 17(5)(h) of the Central Goods and Services Tax Act, 2017, denying ITC. [In RE: *Myntra Designs Pvt. Ltd.* – 2022 TIOL 111 AAR GST]

Customs

Notifications and Circulars

Settlement of exports and imports in INR: Consequent to the RBI's A.P. (DIR series) Circular No. 10, dated 11 July 2022, the Ministry of Commerce has revised the Foreign Trade Policy to notify that invoicing, payment and settlement of exports and imports is also permissible in INR. Accordingly, as per the new para 2.52(d) of the FTP, settlement of trade transactions in INR may also take place through a Special Rupee Vostro Account opened by AD banks in India.

IGCR Rules substituted to extend its scope to all end-use notifications: The Ministry of Finance has notified the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 to supersede the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, with effect from 10 September 2022. Notification No. 74/2022-Cus. (N.T.), dated 9 September 2022 and Circular No. 18/2022-Cus., dated 10 September have been issued for the purpose. Some of the key changes are given below.

- Scope of IGCR Rules has been expanded to cover all notifications which prescribe end use.
- Detailed procedure for supplying imported goods to the end use recipient is prescribed.
- Revised Bond & Bank Guarantee norms for various types of importers have been prescribed.
- New Form IGCR-3A has been notified for confirmation of consumption for intended purpose.
- Details filed in form IGCR-3A will get auto populated in the monthly statement of the subsequent month, which must be only confirmed by the importer.

RoDTEP and RoSCTL schemes – Provisions relating to recovery from transferee omitted: The Ministry of Finance has *vide* Notifications Nos. 75 and 76/2022-Cus. (N.T.), both dated 14 September 2022 amended the notifications notifying the manner to issue duty credits for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) and the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL). Amending clauses 4, 5 and 6 of both the schemes, the provisions relating to recovery of amount of duty credit from transferee have been omitted.

Rice exports – Broken rice export prohibited – Export duty imposed on specified items: The Ministry of Commerce has prohibited export of broken rice with effect from 9th September 2022. Further, the provisions under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable for export of broken rice covered under HS Code 1006 40 00. However, during the period from 9 September till 30 September 2022, certain specified consignments of broken rice will be allowed for export. Notifications Nos. 31/2015-2020, dated 8 September 2022 and 34/2015-20, dated 20 September 2022 have been issued for the purpose.

Further, Ministry of Finance has imposed 20% export duty on export of rice in the husk (paddy or rough), Husked (brown) rice and Semi-milled or wholly-milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati rice). Notification No. 49/2022-Cus., dated 8

September 2022, effective from 9 September 2022, has been issued for the purpose.

PET flakes import relaxed: Import of PET flakes has been permitted subject to NOC from the Ministry of Environment, Forest and Climate Change and authorisation from Directorate General of Foreign Trade (DGFT). Notification No. 32/2015-20, dated 14 September 2022 in this regard also lists various conditions which need to be fulfilled. One of the condition is that the unit should have used domestic waste to the extent of 70% of the capacity in the previous year. It is also stated a unit will be eligible for import after at least one year of production.

Gold, silver and platinum imports under various schemes for exports – Following of IGCR Rules: The CBIC has amended Notifications Nos. 56 and 57/2000-Cus. to provide a condition that the importers and the exporters, who are receiving the supply from the importers for the intended purpose, shall follow the procedure, as applicable, in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, with effect from the 1 October 2022. Notification No. 56/2000-Cus. provides for exemption in case of imports by nominated agencies, status holders, specified exporters of 3 years standing, under the scheme for 'Export Against Supply by Foreign buyer'. Notification No. 57/2000-Cus. provides exemption in case of imports as replenishment under the scheme for 'Export through Exhibitions/Export Promotion Tours or Export of Branded Jewellery', and under the scheme for 'Export Against Supply by Nominated Agencies'. Notifications Nos. 47 and 48/2022-Cus., both dated 7 September 2022 have been issued for this purpose.

Vegetable oils – Reduced customs duties to be effective till 31 March 2023: The Ministry of Finance has extended the sunset date for concessional rate of duty on specified vegetable oils. Exemption to crude soyabean oil, crude palm oil and crude sunflower oil will now be available till 31 March 2023 instead of till 30 September 2022. Further, the concessional rate of duty on soyabean oil (edible grade), refined bleached deodorized (RBD) palm oil, RBD palmolein, RBD palm stearin and any palm oil other than crude palm oil, and on sunflower oil (edible grade) will also be available till 31 March 2023. Notification No. 46/2022-Cus., dated 31 August 2022 has amended Notification No. 48/2021-Cus. for this purpose.

Ratio decidendi

EOU – Drawback in case of deemed exports when Cenvat credit availed – Policy Circular No. 9(RE-2013)/2009-14 read down: Reading down the Policy Circular No. 9(RE-2013)/2009-14, dated 30 October 2013, the Delhi High Court has held that the assessee (an EOU) is not required to have a brand rate of duty drawback fixed, based on actual duty-paid documents for the return of basic customs duty, in case of deemed exports. After the conversion to 100% EOU unit, the petitioner had claimed duty drawback *qua* custom duty component, on the premise that deemed export had taken place. The 2013 Circular had clarified that duty drawback in terms of paragraph 8.3(b) of the Foreign Trade Policy, according to the provisions of column B of schedule to AIR duty drawback, is not admissible if Cenvat credit has been availed. The Revenue department had pleaded that drawback can only be granted by fixing a brand rate based on actual duty-paid documents. [*Combitic Global Caplet Pvt. Ltd.* v. *Union of India* – Judgement dated 2 September 2022 in W.P.(C) 1644/2019, Delhi High Court]

Data projectors are classifiable under TI 8528 61/62 and exempted under Sl. No. 17 of Notification dated 1 March 2005: The CESTAT Delhi has held that merely because the data projectors imported by the assessee are capable

of use in both automatic data processing system (ADPS) and non-ADPS, it cannot be a basis for deciding whether the projectors are 'principally' used with ADPS. According to the CESTAT the correct test is to find out whether the specification and features are designed in such a way that they are generally or primarily meant for use with ADPS. The Tribunal was also of the view that addition of multiple ports in the goods will not take away the basic nature of goods, which was to work in conjunction with ADPS. The goods were also held to be exempt under Sl. No. 17 of Notification dated 1 March 2005, during both the periods, i.e. before and after 1 January 2017. [*Benq India Pvt. Ltd.* v. *Additional Director General (Adjudication)* – Final Order No. 50832-50843/2022, dated 12 September 2022, CESTAT New Delhi]

Exemption – Use by importer when goods, to be used for specific purpose, sold before use: Observing that nowhere in the Notification No. 21/2012-Cus. it is stated that the goods should not be sold before it is utilized by the importer in assembly and erection of the Wind Operated Energy Generator, which is done at the site of their customer, to whom it is sold, the Madras High Court has allowed the benefit of concessional rate of duty in a case where the imported goods were sold to customer, before use. The Court noted that the importer still had the contractual responsibility of manufacturing (assembly, erection and installation) of the windmill at the customer's site and that as per the contract terms, the full value of the invoices was paid only on successful commissioning of windmills and not by invoice wise. Condition under clause (b) of Condition No.45 of Notification No.12/2012-Cus, that '*he should use the goods for specific purpose*', was held to have not been violated. [*Nordex India Pvt. Ltd.* v. *Commissioner* – 2022 TIOL 1135 HC MAD CUS]

Printed circuit boards clad with metal – Classification for GST not relevant in Customs: The CESTAT Mumbai has observed that the tariff that emerges from the recommendations of the Goods and Services Tax (GST) Council cannot be deemed to interpret the classification to be adopted for assessment under the Customs Act, 1962. Classifying printed circuit boards that are metal clad under Heading 8534 of the Customs Tariff Act, 1975, the Tribunal also reiterated that the end use to which the product is put to by itself cannot be determinative of classification of product. The Revenue department had sought classification under Heading 9405 as goods for use in manufacture of lamps and had also relied upon an entry in the rate notification pertaining to levy of GST as is applicable to imports. Relying upon Rule 3(a) of the Interpretative Rules, the Tribunal rejected the department's reliance on Rule 3(c). [*Crompton Greaves Consumer Electricals Ltd.* v. *Commissioner* – 2022 VIL 702 CESTAT MUM CU]

Air conditioner kit and parts of heat exchange unit – Classification: Air conditioner kit in CKD/SKD condition, but without the capacitor, has the essential characteristics of an air-conditioner and therefore, when presented together at the stage of assessment under common invoice and bill of entry would merit classification under Heading 8415 of the Customs Tariff Act, 1975. The Authority was also of the view that parts of IDU/ODU or Cooler/Condenser [Heat Exchange Units (HEX)] imported in CKD/SKD condition would be treated as 'parts of air conditioners' in as much as such parts were specifically designed for use in the assembly of HEX (IDU/ODU or Cooler/Condenser), which was an integral part of an air-conditioner. [In RE: Mitsubishi Electric India Private Limited – 2022 VIL 69 AAR CU]

Wireless charging pad with AC adapter and Lightning audio & charger rockstar – Classification: The United Kingdom's Upper Tribunal (Tax and Chancery Chamber) has held that a wireless charging pad with AC adapter is classifiable as Static converter of a kind used with telecommunications apparatus, automatic data processing machines and units thereof under Heading 8504 40 30 of the EU's Common Classification. Classification under Heading 8504 40 90 as sought by the Revenue department was rejected. The Court in this regard observed that essential character of the charging pad was to enable mobile phones to be charged wirelessly and not the function of converting Alternate Current (AC) to Direct Current (DC). The Court however upheld the Revenue's classification in respect of cable adapter marketed as the lightning audio & charger rockstar for iPhones and iPads which enabled a user to charge their device and listen to audio at the same time would be classifiable under. The said goods were held to covered as insulated wire, cable…and other insulated electric conductors, whether or not fitted with connectors, 'Other' under 8544 42 90. [*Belkin Limited* v. *Commissioner* – Judgement dated 2 September 2022 in Case Number: UT/2021/000176, UK's Upper Tribunal (Tax and Chancery Chamber)]

Central Excise, Service Tax and VAT

Ratio decidendi

Cenvat credit – Transportation service to employees cannot be said to be 'input service': The Supreme Court has upheld the decision of the Bombay High Court wherein the High Court had denied Cenvat credit on transportation service provided to employees, for the period after 1 April 2011. The Apex Court was of the view that providing transportation service to the employees cannot be said to be 'input service' as it has nothing to do with the manufacture of the goods. The High Court in its decision had observed that the transportation of employees from distance of about 40 km for reaching the factory is not an activity which could be said to be a part of manufacturing activity. According to the High Court it was merely for personal convenience of the employees to enable them to reach the premises of the factory so as to thereafter participate in the manufacturing activity. [*Solar Industries India Limited* v. *Commissioner* – Order dated 26 August 2022 in Special Leave Petition (Civil) Diary No(s). 22650/2022, Supreme Court]

Sabka Vishwas (LDR) Scheme – Payment from electronic cash ledger maintained under CGST Act is valid: The Bombay High Court has held that payment made by electronic cash ledger maintained by the petitioner under the Central Goods and Services Tax Act, 2017 also amounts to payment through internet banking as per provisions of Section 127 of the Finance (No. 2) Act, 2019 which is for the purpose of payment under the Sabka Vishwas (Legacy Dispute

Resolution) Scheme. The Court was of the view that SVLDRS must be given a liberal interpretation and not a narrow interpretation, its intent being to unload the baggage relating to legacy disputes. Observing that the amount was received by the Government of India, the Court held that the objection taken by the Department that due to the method of payment used by petitioner, Form No.4 cannot be auto generated, was hyper technical. According to the Court, the Department can issue the Form No. 4/Discharge certificate manually. [*Reliance Infrastructure Limited* v. *Union of India* – 2022 VIL 603 BOM ST]

Maintenance of streetlight is not covered under expression 'management, maintenance or repair of roads': Observing that there was no explicit reference to maintenance of streetlights in Notification No. 24/2009-ST exempting service provided 'in relation to management, maintenance or repair of roads' from the levy of service tax, the Delhi High Court has held that expression 'management, maintenance or repair of roads' did not include maintenance of streetlights. The Court also observed that during relevant period, there was no exemption operating *qua* payment of service tax on maintenance of streetlights. Reiterating that an exemption notification has to be read strictly, the High Court held that the notification did not warrant for inclusion of a service, which was not provided therein. Contention that that roads cannot be maintained or repaired unless the streetlights are maintained, was also not accepted. [*Tata Power Delhi Distribution Ltd*. v. *MCD* – 2022 VIL 609 DEL ST]

Parts of CTVs not removed together – Rule 2(a) of Interpretative Rules is not applicable: Observing that the consignments cleared by the assessee did not contain all the parts at the same point of time, the CESTAT Allahabad has held that Interpretative Rule 2(a) [for classification as complete/finished goods] cannot be pressed into service. In this case involving classification of parts of CTVs, the Tribunal also held that even otherwise, Rule 2(a) could not have been invoked as classification would be governed by Section Note 2 to Section XVI of the Central Excise Tariff and the Rules of Interpretation would not be applicable at all. sub-assemblies and parts cleared by the assessee were held to be classifiable under Heading 8529 of the Central Excise Tariff Act, 1985. Supreme Court decision in the case of *Salora International* was distinguished. [*L.G. Electronics India Pvt. Ltd.* v. *Commissioner* – 2022 VIL 641 CESTAT ALH CE]

Fertiliser or plant growth regulator – Mere presence of small traces of plant hormone does not make a product a plant growth regulator: The CESTAT Mumbai has held that product cannot be classified as plant growth regulator just because small trace of 6-BA and 4-CPA (plant hormone) are present. Setting aside the impugned decision which classified the product Zymegold Plus as plant growth regulator and not a fertiliser, the Tribunal noted that a major constituent of the product was seaweed powder extract. It also held that jumping directly to Rule 3(c) of the Interpretative Rules without appreciating provisions of Rules 3(a) or 3(b) was not correct. Classifying goods as fertilisers, the Tribunal also observed that for purpose of classification, the Fertilizers Control Order is of no consequence. The Tribunal in this regard also took note of certain US Customs Rulings which held the product to be classifiable under Heading 3101 (fertliser). [*Goldmuhor Agrochem & Feeds Ltd.* v. *Commissioner* – 2022 VIL 629 CESTAT MUM CE]

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