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Article

GST on services provided in the course of employment

By **Brijesh Kothary and Amber Kumrawat**

Introduction

Employers often arrange for various facilities such as transportation, canteen, healthcare, insurance, for their employees. Such facilities are usually procured by the employer from third party vendors on payment of tax and made available for use by the employees. These facilities which are supposed to be utilized by the employee during the course or furtherance of employment are provided mainly free of charge, but in some cases, employer recovers a very nominal amount from his employees towards the said facility.

Issues

The above model adopted by employers nationwide, has been questioned time and again by the department on the aspects of **taxability of cost recoveries made by the employer** from the employees for providing the said facilities. The issues raised in this regard are:

1. Whether the said facilities arranged by the employer for its employees amount to supply of services?
2. Whether GST is applicable on the nominal amounts recovered by employer from the employees towards the availment of said facilities?

Controversy: Service Tax regime

The above-stated issues are not new to the GST regime, rather the said issues had been raised before various courts time and again in the erstwhile service tax regime, wherein, a view prevailed that if any recovery is made by the employer from employees for provision of services to the employees, the same will be covered under the definition of service and it will be leviable to service tax. In this regard a draft Circular *vide* F. No. 354/127/2012, dated 27 July 2012 clarified that where the services are provided against a portion of the salary foregone by the employee, such activities will be considered as having been made for a consideration and thus will be liable to tax.

However, in 2017 the Telangana High Court in case of *Bhimas Hotel Pvt. Ltd.* v. *Union of India* [2007 (4) TMI 860] held that provision of food at subsidized prices to the employees of the company would not be subjected to service tax. The Court decided the said issue without examining whether the same qualifies as service or not, but merely on the ground that same has already been subjected to VAT.

The issue saw new dimension in yet another order issued by CESTAT, Hyderabad in *Ultratech Cement Ltd.* v. *Commissioner* [2019 (9) TMI 888], wherein a passing reference was made by the Tribunal while deciding the issue of ITC to the extent of recoveries made. The Tribunal noted that to the extent the amounts are recovered from employees, they do not remain in employer-employee relationship, rather the parties enter into a relationship of service provider and a service recipient. Hence, the appellant was held liable to pay service tax on the services rendered to their employees.

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It is therefore evident that the issue of taxability of recoveries has been controversial. But, under GST regime where all such levies are clubbed into one, the said issue was expected to be clear.

Controversy: GST regime

The CBIC, mindful of the fact that the same issues might arise under GST regime, have tried to resolve the issue by issuing a Press Release dated 10 July 2017 right after the commencement of the GST regime. The press release *inter alia* clarified that:

> *"The services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST. It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST*."

It may be noted from the above excerpt of the press release, that the Board has relied upon **Entry 1 of Schedule III** which provides that '*Services by an employee to the employer in the course of or in relation to his employment'* shall not be treated as supply..

Instead of providing clarity on the issue, the Board has rather complicated the issue. The Board has not considered that the said transaction – between employer and employee - may amount to supply of services between related persons as employer and employee are treated as related person under GST law and by virtue of **Entry 2 of Schedule I**, the transactions between related persons made in the course or furtherance of business are treated as taxable supplies, even if made without consideration.

In light of the ambiguity created by the said press release, various applicants in different States have sought rulings from Advance Ruling Authority to get an authoritative ruling. However, with different rulings from different States has created more confusion. Hence, till the time the matter is fully resolved by the HC / Supreme Court, the taxpayers are in an unenviable position.

Recent Advance Rulings

The two recent AARs, one issued to *Tata Motors Limited* [2020 VIL 257 AAR] by AAR Maharashtra dated 25 August 2020 and another issued to *Beumer India Private Limited* [2020 VIL 316 AAR] by AAR-Haryana dated 29 October 2020, are noteworthy at this juncture as both these AARs are latest in time and have taken opposite views.

In *Tata Motors,* the applicant / employer had engaged a service provider to provide transportation facilities for its employees and the company was recovering a nominal amount from employees for availing such facility. The advance ruling was sought on the aspects of availability of ITC of tax paid to service provider and taxability of nominal amounts recovered from employees for said facilities. The AAR, with regard to the taxability of recoveries, ruled that the transaction between the applicant and their employees, having 'Employer-Employee' relation, is not a supply under CGST Act by virtue of **Entry 1 of Schedule III.** Hence, when applicant is not supplying any services to its employees, GST would not be applicable on the nominal amounts recovered by applicants from their employees.

In *Beumer India* also, similar facts were involved, wherein the applicant / employer engaged a transport agency under a contract, to provide buses for transportation of employees of

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the company to and from the workplace. The company provided such facilities to its employees as part of its human resource policy free of cost but recovered a nominal amount in case of air conditioning facility. The advance ruling was sought on the aspects of taxability of such facility provided by the employer to the employee with or without recovery of cost from employees.

The AAR Haryana at the outset rejected the contention of applicant that transportation facility provided by the employer to employee are not taxable by virtue of Entry 1 of Schedule III, on the ground that the said entry covers transactions between employee and employer and not the other way around. Observing that the transportation service/facility in the instant case was the service provided by the employer and not by the employee, at the same time, it is in the furtherance of his business, the AAR held the service as not covered under Schedule III.

It is pertinent to note that the view taken by AAR Haryana conforms to the ruling issued in the matter of *Caltech Polymers Private Limited* [2018 (12) G.S.T.L. 350 (A.A.R. - GST)] which has been affirmed by the Appellate Authority for Advance Ruling [2018 (18) G.S.T.L. 373 (App. A.A.R. - GST)], wherein it was held that recovery of amount from employees for the canteen services provided by the company would be considered as outward supply and GST will be applicable on the same.

It may however be noted that above rulings in *Beumer India* and *Caltech Polymers* matters are contrary to the ruling in *Tata Motors* matter and the Press Release dated 10 July 2017, wherein it was clarified by CBIC that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

The liability for payment of tax on provision of facilities to employees may arise when perquisites are outside the scope of employment agreement. The terms of contract or employment therefore plays a crucial role in determining the taxability of perquisites in the hands of the employer.

Conclusion

In view of the divergent rulings on this issue, employers providing certain facilities or perquisites (such as transportation, canteen, insurance, healthcare, etc.) to their employees are advised to review the terms of employment with its employees. The companies are also advised to revisit the stand taken by them on the GST implication on partial recovery of money towards provision of various facilities to their employees.

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Goods and Services Tax (GST)

Notifications and Circulars

Dynamic QR Code for B2C invoices – No penalty for non-compliance between 1 December 2020 to 31 March 2021: The Central Board of Indirect Taxes and Customs ('**CBIC**') has waived the penalty under Section 125 of the Central Goods and Services Tax Act, 2017 for non-compliance of Notification No. 14/2020-Central Tax during the period from 1 December 2020 to 31 March 2021. The said notification, which has come into effect from 1 December 2020, mandates specified taxpayers to have Dynamic Quick Response ('**QR**') Code in invoices issued to unregistered persons (B2C transactions). It may however be noted that according to Notification No. 89/2020-Central Tax, dated 29 November 2020, the penalty waiver is subject to the condition that the said person complies with the provisions of the said notification from 1 April 2021.

Ratio decidendi

E-way Bill validity not relevant at the time of unloading: The Karnataka High Court has rejected the Revenue department's contention that e-way bill must be valid even at the time when the goods are being unloaded from the conveyance. The petitioner had transported vehicles in a conveyance under appropriate e-way bills that reached the place of destination before the validity of the e-way bill expired. However, the goods from the conveyance were unloaded on the subsequent day. The department issued a notice under Section 129(3) of the CGST Act, 2017 stating that goods had to be unloaded from the conveyance before the validity of e-way bill expired. Noting that the conveyance had reached the destination well within the expiry of e-way bills, the High Court quashed the notice. [*Hemanth Motors* v. *State of Karnataka* – 2020 VIL 618 KAR]

No detention on the ground that the value mentioned in delivery challan to job worker mis-matched with value mentioned in e-way bill from job worker: In a case where the goods were detained during transit since there was a mismatch between the value of goods mentioned in the delivery challan (issued by the principal earlier while sending goods for job work) and the value shown in the e-way bill and the job work invoice on the return journey, i.e. from the job workers premises, the Kerala High Court has set aside the detention of the goods. The Court observed that both job work invoice as well as e-way bill (for return journey) specified the correct quantity and description of goods and that there was no doubt on identity of the goods transported. It noted that the difference in value shown in the e-way bill and the delivery challan was only for maintaining uniformity between the e-way bill and the job work invoice. [*P.H. Muhammad Kunju and Brothers* v. *Assistant State Tax Officer* - 2020 VIL 579 KER]

ITC on promotional material given to franchisees and retailers: The Karnataka AAR has held that Input Tax Credit ('**ITC**') is available to the assessee on uniforms, gifts and carry bags provided to the franchisees to be used by them or to be given by them free of cost to the purchasers. The AAR observed that franchisees of the applicant are associated in the business

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and hence are related persons. The goods given by way of gifts and free supplies to promote business were hence held to be supplies in terms of Para 2 of Schedule I to the CGST Act, 2017. The AAR was of the view that the applicant needs to discharge GST on such supplies and thereby is entitled to avail input tax credit on the said supply of goods. The AAR however held that ITC would not be available in case the similar goods are given to other shops / retailers, as they are not covered as related persons to the assessee. [In RE: *Page Industries Ltd.* – 2020 VIL 332 AAR]

Job work of fabrication and transportation to site and works contract of applying paint at site, covered as mixed supply: In a case where the applicant was involved in fabrication work for his principal, the West Bengal AAR has held that job work of fabrication, applying a coat of paint and transportation of the movable structures to the site, all constituted a composite supply, the predominant nature of which is the job work of fabrication. The Authority was of the view that mere extension of the payment schedule till the time the assessee paints the steel structures after they are erected (not by him), does not turn the job description into works contract. Noting that the job work of fabrication ended with the delivery of the fabricated structures at the site and that the works contract of applying paint to the erected structures was a separate supply made in conjunction with the job work, it was held that the supply was a mixed supply. The supply was held taxable @ 12%. [In RE: *Vrinda Engineers Pvt. Ltd.* – 2020 VIL 317 AAR]

Online testing involving human evaluators when covered under OIDAR services: Online test consisting of multiple-choice and essay-based questions where both were evaluated by an algorithm and essay-based questions were further subjected to human evaluators, is covered under Online information and database access or retrieval services (OIDAR). Allowing the departmental appeal against the AAR decision, the Karnataka Appellate AAR observed that the human intervention, that is, evaluation of essay-based questions by human evaluator was only for the quality testing of the outcome and accordingly will be covered under the condition of 'minimal human intervention'. The AAAR noted that other requirements for being an OIDAR service were also satisfied. The AAAR was also of the view that even in case of revaluation, where the evaluation was done by human scorer, it would fall under OIDAR since there is no direct human interaction between evaluator and candidate. [In RE: NCS Pearson Inc. – 2020 VIL 71 AAAR]

Sale of undivided share in property received under JDA when not liable to GST: The Karnataka AAR has held that sale of share in the property by the land owner, who consequent to a joint development agreement with the developer had received an undivided right, title and interest, would not be liable to GST subject to conditions. The Authority was of the view that the sale of applicant's share would not be liable to GST in terms of clause 5 of Schedule III, if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate. The AAR however observed that in case the applicant themselves or the developer on behalf of the applicant sells the applicant's share of units/flats prior to the issuance of completion certificate, then the transaction would amount to supply of 'Works Contract Service' liable to GST. [In RE: *Sri B.R. Sridhar* – 2020 VIL 313 AAR]

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Import of services when foreign company providing services, though invoices raised through branch in India: In a case there a foreign company had entered into a contract with an Indian company for providing maintenance and repair services and the applicant (branch office of foreign company) was created only to facilitate and support the business of foreign company as the job was in India, the West Bengal Appellate AAR has held that the Indian recipient of service was liable to GST under reverse charge mechanism. Contrary to the AAR view, the AAAR held that the registered place of a business cannot be termed as a fixed establishment. It observed that the AAR had not adduced any finding to draw conclusion that branch office registered in India maintained suitable structures in terms of human and technical resources to provide the service. Further, noting that only the invoice was raised by the applicant, the location of supplier was outside India and the location of recipient was in India, the AAAR held that the transaction qualified as import of service and GST was liable to be paid by the recipient on reverse charge basis. [In RE: *Iz Kartex* – 2020 TIOL 66 AAAR GST]

Classic Malabar parotta and whole wheat Malabar parotta are classifiable under Heading 2106: The Kerala Appellate AAR has held that classic Malabar parotta and whole wheat Malabar parotta are classifiable under Heading 2106 of the Customs Tariff Act, 1975. Dismissing the plea of classification under Heading 1905, the AAAR observed that the said goods cannot be equated with bread under the common parlance test as well as in the essential nature of the products. It also noted that the concerned products required further processing/heating for human consumption, unlike bread. The goods were held to be rightly classifiable under sub-heading 2106 90. Reliance by the applicant on Cross Ruling of California USA and British Government BTI references, was also rejected. Goods were held liable to GST @ 18%. [In RE: *Modern Food Enterprises Private Limited* – 2020 VIL 72 AAAR]

EU VAT – Deduction of input VAT on consultancy services for acquiring shares permissible even where acquisition not took place: The Court of Justice of the European Union has held that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input value added tax paid on the purchase of consultancy services relating to a market study carried out with a view to acquiring shares in another company, including where that acquisition did not ultimately take place. The Court observed that since the costs relating to those consultancy services were part of the general costs in respect of the economic activity which the holding company carried out, that company has the right to deduct the VAT paid on those services. The Court however declined the input VAT paid on a bank commission for organising and putting together a bond loan, intended to provide subsidiaries with the necessary means to make investments in a case where the investments were not made. [*Sonaecom SGPS SA* v. *Autoridade Tributária e Aduaneira* – Judgement dated 12 November 2020 in Case C-42/19, Court of Justice of the European Union]

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Customs

Notifications and Circulars

Faceless assessment – Mandatory uploading of supporting documents in e-Sanchit w.e.f. 15 January 2021: The CBIC has issued an elaborate circular to provide clarifications on various aspects of faceless assessment. Emphasizing that re-assessment should be in accordance with the principles of natural justice, the Circular also advises the importers and customs brokers to give complete description of the imported goods while filing the Bill of Entry ('**B/E**'). Circular No. 55/2020-Cus., dated 15 December 2020 also states that with effect from 15 January 2021, importers would be required to mandatorily upload the supporting documents along with the B/E in e-Sanchit. Further, the Board has enhanced the monetary limit of assessment of B/E by the Appraising Officers. The new limit of INR 5 lakh is applicable from 21 December 2020.

COO issued with third party invoicing, under DFTP Scheme for LDC, for 'wholly obtained goods', acceptable: CBIC has clarified that Certificate of Origin ('COO') issued with the third party commercial invoice may be accepted in cases where the value of the goods does not have any impact on the originating status of goods which fall in 'wholly obtained' category, under the Duty Free Tariff Preference ('DFTP') Scheme for Least Developed Countries ('LDC') [Notification No. 29/2015 (N.T.)]. As per Circular No. 52/2020-Cus., dated 8 December 2020, this is subject to the condition that the goods in both Certificate of Origin and invoice correspond to each other and satisfy the applicable Rules of Origin.

AEO T1 and T2 accreditation – Compliance and security requirements for MSMEs relaxed: The CBIC has relaxed the compliance and security requirements for MSMEs for accreditation to Authorised Economic Operator ('**AEO**') T1 and T2 programme. Accordingly, the AEO accreditation of MSMEs now requires submission of only two annexures for AEO T1 and three annexures for AEO T2 applicants respectively. Among many other relaxations as listed in Circular No. 54/2020-Cus., dated 15 December 2020, the time limit for processing of MSME AEO T1 and T2 has been reduced to 15 working days and three months respectively. The time required earlier was one month and six months respectively. Further, the benefit of relaxation in furnishing the bank guarantee by MSME AEOs has been further relaxed.

Crude palm oil – BCD reduced: Notification No. 50/2017-Cus. has been amended to reduce Basic Customs Duty from 44% to 27.5% on crude palm oil covered under Tariff Item 1511 10 00 of the Customs Tariff Act, 1975. Notification No. 43/2020-Cus., dated 26 November 2020 amends Sl. No. 57 of the original notification with effect from 27 November 2020 for this purpose.

Gems and Jewellery export permissible through courier mode: The CBIC has clarified that Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and Courier Imports and Exports (Clearance) Regulations, 1998 do not restrict exports of gems and jewellery through courier mode. According to Circular No. 52/2020-Cus., dated 27 November 2020, the restriction is only applicable on imports of such goods. The Gems and Jewellery Export Promotion Council had sought such clarification.

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The Circular however notes that the clarification must be read along with other provisions for exports through courier.

Providing documents sought by investigating agencies like CBI, EDI, DRI etc.: Head of the Regional Authority is to now decide on handing over the documents to external investigating authorities like CBI, ED, DRI, etc. The ECA Circular No. 36/2015-20, dated 7 December 2020, issued for this purpose, however, also states that if for any reason, the head of the RA is of the view that requisite documents should not be handed over, he must make a reference to the ECA, clearly bringing out the reasons. The Circular notes that ECA Circular No. 3/1999-2000, dated 10 January 2000 and OM No. 11/2004, dated 26 July 2004 stated that RAs would hand over the cases to the investigating agencies with the prior approval of Headquarters, which was leading to delay in handing over of documents and consequently delay in investigations.

Ratio decidendi

Drawback – Limitation for SCN under Drawback Rules, 1995 and saving of SCNs, for earlier period, issued after Drawback Rules, 2017: The Supreme Court has stayed the operation of the Punjab & Haryana High Court's 2019 decision wherein the High Court had held that any notice issued under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 beyond 5 years from the date of export is barred by limitation. It had observed that the department cannot open any assessment at its whims and fancies. The High Court had further observed that Rule 20(2) of Drawback Rules, 2017 does not deal with drawback claims filed and sanctioned prior to 1 October 2017 and does not save recovery proceedings of already paid drawback. It had however noted that had there not been Rule 20(2) then Section 159A of Customs Act, 1962 would have saved all the rights and liabilities arising out of the 1995 Rules. [*Union of India* v. *Famina Knit Fabs* – Order dated 20 November 2020 in SLP (Civil) Diary No.14404/2020, Supreme Court]

Detention of imported goods without seizure is illegal: The Bombay High Court has held the customs authorities cannot proceed with detention without initiating the procedure of seizure prescribed under Section 110 of the Customs Act, 1962. Holding that the detention of goods without effecting seizure was illegal, the Court also observed that there was no provision under the Customs Act for detention of goods. It observed that 'detention' and 'seizure' are two distinct terms which cannot be used interchangeably and that detention would be at a stage after seizure. It also noted that there cannot be any detention of goods even in the case of seizure, without issuing show-cause notice under Section 124(a) of the Customs Act. [*Exim Incorporation* v. *UOI* - 2020 (12) TMI 329-Bom HC]

Seizure for overvaluation of exports – Valuation provisions to be considered at stage of confiscation and not seizure: The CESTAT New Delhi has held that provisions of Section 14 of the Customs Act, 1962 and Rule 3 of the Export Valuation Rules have to be applied only at the stage of considering liability to confiscation (in a case of alleged overvaluation), after providing an opportunity as contemplated in Section 124, and not at the stage of seizure. The Tribunal was of the view that it is only at the stage of confiscation it is determined whether the goods entered for exportation correspond in value or in any material particulars with the entry made in the shipping bill. Noting that for seizure of goods, the proper officer should only have reason to believe that the goods are liable to confiscation, the Tribunal set aside the Order of

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Commissioner (A) which in turn had set aside the seizure observing that transaction value can be challenged only in accordance with the Export Valuation Rules and that the procedure prescribed therein was not followed by the department. [*Commissioner* v. *Bushrah Export House* - 2020 (11) TMI 546-CESTAT New Delhi]

Interest for delayed refund – Relevant date is date of refund application: The CESTAT Hyderabad has held that if the refund is not paid within three months from the date of receipt of refund application, interest must be paid. It observed that the relevant date for calculation of interest to be paid on the refunded amount is the date of refund application as per Section 27A of the Customs Act, 1962. Commissioner (A)'s Order taking the date of receipt of Final Order of the Tribunal as the relevant date, was held to be contrary to the provisions of Section 27A. [*Andhra Organics Ltd.* v. *Commissioner* – 2020 TIOL 1645 CESTAT-HYD]

Redemption of confiscated goods – No condition of re-export envisaged under Customs Act: The Madras High Court has held that the imposing the condition of re-export on redemption of confiscated goods under Section 125 of the Customs Act, 1962, is not justified. The goods were confiscated for contravention of the provisions of Foreign Trade (Development and Regulation) Act, 1992 read with the Steel and Steel Products (Quality Control) Order, 2018 with a stipulation that the goods should be re-exported after payment of redemption fine. The High Court observed that imposition of condition of re-export was not envisaged under the Customs Act. [*Commissioner* v. *Magal Engineering Tech. Pvt. Ltd.* – 2020 TIOL 2114 HC MAD CUS]

Seizure – Reason to believe liability for confiscation is sine *qua non*: The Bombay High Court has reiterated that for seizure under Section 110 of the Customs Act, 1962 the proper officer must have a 'reason to believe' that the goods in question are liable for confiscation. It also observed that the section envisages two conditions, firstly, the seizure of goods must be undertaken by the proper officer who has 'reasons to believe' that the goods are liable to confiscation, and secondly, the seizure memo or *panchnama* must provide for the reasons to believe by such proper officer. Noting that no reason to believe was discernible in the *panchnama* or in the seizure memo, the Court set aside the seizure memo. [*Nikom Copper & Conductors Pvt. Ltd.* v. *Union of India* – 2020 VIL 605 BOM CU]

Appeal provision provided in subordinate legislation cannot supplant or curtail appellate remedy available under Customs Act: The Bombay High Court has held that for non-availing of the additional or supplementary remedy provided by the subordinate legislation, an aggrieved person cannot be nonsuited in appeal, a statutory remedy provided by the parent enactment. The High Court rejected the contention that remedy of making representation before the Principal Commissioner of Customs against the revocation of registration, as provided under Regulation 14(2) of the Courier Imports and Exports (Clearance) Regulations, 1998, cannot displace the appellate power of the Tribunal as provided in Section 129A of the Customs Act. [*Commissioner* v. *Poonam Courier Pvt. Ltd*. – 2020 VIL 574 BOM CU]

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Central Excise, Service Tax and VAT

Ratio decidendi

Commission paid to whole time directors not liable to service tax under reverse charge mechanism: The CESTAT Kolkata has held that mere fact that the whole-time Director was compensated by way of variable pay (commission based on percentage of profit), will not in any manner alter or dilute the position of employer-employee status between the company-assessee and the whole-time Director. Setting aside the demand of service tax under reverse charge mechanism, the Tribunal observed that the whole-time Director was essentially an employee of the company and accordingly, whatever remuneration was paid in conformity with the provisions of the Companies Act, was pursuant to employer-employee relationship. It noted that when the provisions of the Companies Act made the whole-time director (as also in capacity of key managerial personnel) responsible for any default/offences, those directors are employees. [*Bengal Beverages Pvt. Ltd.* v. *Commissioner* – 2020 VIL 533 CESTAT KOL ST]

Phrase 'gas based products' also includes goods in a form other than gas: The CESTAT Kolkata has held that the phrase 'gas based intermediate products' under Notification No. 33/99-C.E., has to be understood to mean the products or the intermediate products generated during the exploration and production of 'gas based products'. According to the Tribunal, the correct interpretation of gas based products would include all the products which are produced in the processes of production of gas/LPG. Department's view that Solvex-GL is a liquid and not a gas and hence the benefit of exemption is not available, was thus rejected. It was held that the concerned notification did not give any such interpretation. [*Commissioner* v. *GAIL (India) Ltd.* – 2020 VIL 536 CESTAT KOL CE]

Sabka Vishwas (LDR) Scheme – Quantification of tax amount – Statement recorded during investigation: Observing that the assessee, in his statement recorded by the investigating authorities, had admitted the service tax liability which was also corroborated later by the department's letter, the Bombay High Court has set aside the Order of the Designated Authority rejecting the assessee's application under Sabka Vishwas (Legacy Dispute Resolution) Scheme. The Writ petition was allowed observing that rejection of the application on the ground that the investigation was still going on and that there was no quantification of demand, was not justified. Court's recent decision in the case of *Thought Blurb* v. *Union of India* was relied upon. [*G. R. Palle Electricals* v. *Union of India* – 2020 VIL 593 BOM ST]

Brand promotion v. promotion of product – Service tax when not liable under BAS: In a case where the assessee had made available his celebrity image as a brand ambassador for promotion, the CESTAT Kolkata has set aside the demand of service tax under Business Auxiliary services ('BAS') for the period from 2006 till 2010. The Tribunal observed that the activity was rightly classifiable as promotion of brand of goods by appearing in advertisement, which service would be taxable only under Section 65(105)(zzzzq) of the Finance Act w.e.f.

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1 July 2010. It noted that the assessee was required to provide services in connection with advertisement, promotion, marketing and endorsement of the products under the particular trade mark or advertise and promote the business of a particular company. CBIC's Instruction dated 26 February 2020 stating that if the brand name/house mark is promoted by a celebrity, without reference to any specific product or services, the service would not be classified under BAS, was relied upon. [*Sourav Ganguly* v. *Commissioner* – 2020 TIOL 1687 CESTAT KOL]

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