INDIRECT TAX

amicus

April 2025 / Issue – 166

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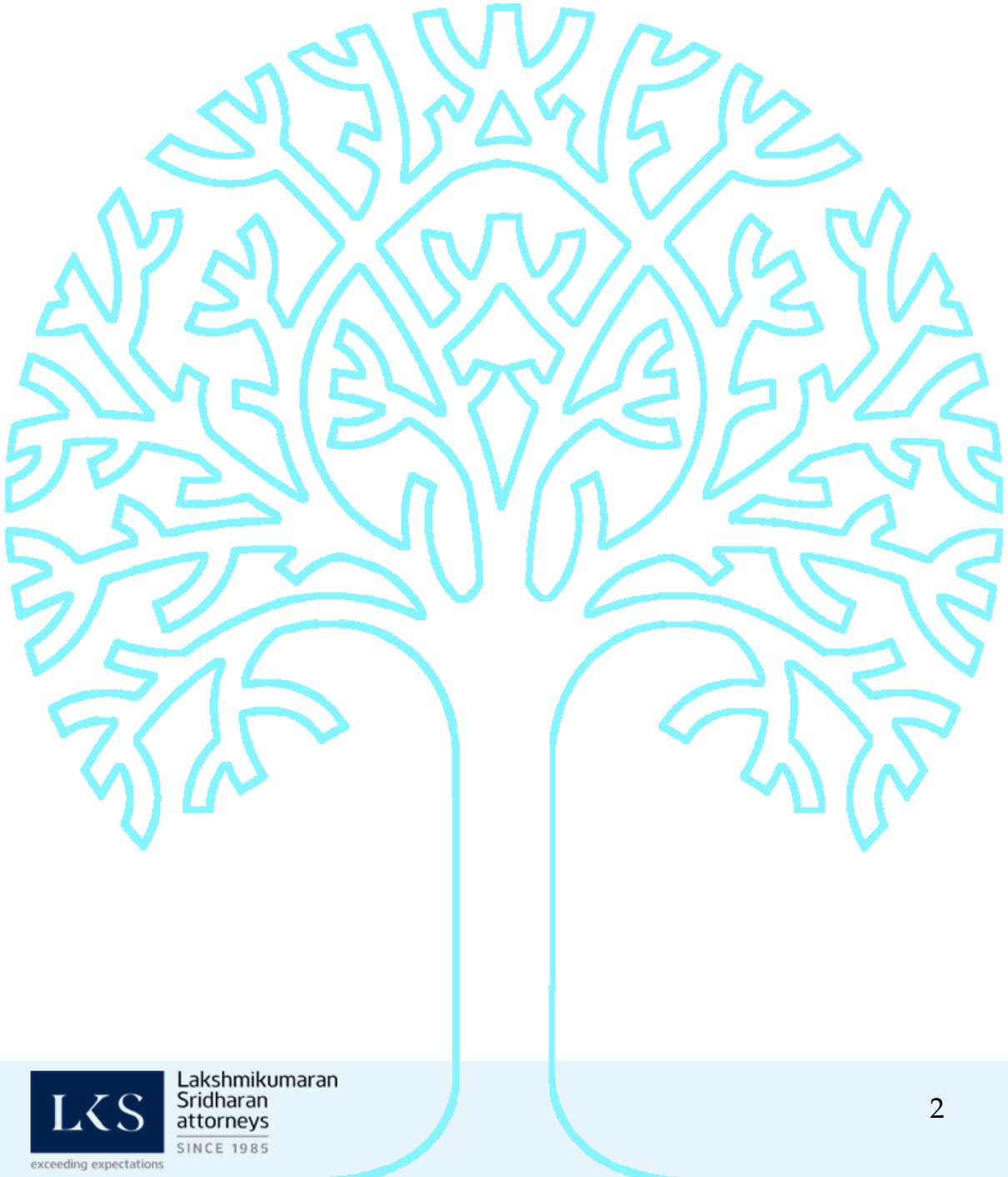

Article

Export refund simplification: Prospective by legislature; retroactive by the courts!!!

By **Krina Shah and Asish Philip**

The article in this issue of Indirect Tax Amicus discusses the amendments in Rule 89 and Rule 96 of the CGST Rules, 2017, in relation to export refunds and their impact on pending proceedings and investigations in the light of recent High Court orders. The article notes that the omission of Rule 96(10), Rule 89(4A) and Rule 89(4B) is a welcome development for exporters but the prospective omission of the Rules, without any saving clause, has created a significant legal ambiguity concerning live proceedings. The authors discuss various recent decisions of the High Courts, holding that the rule was *ultra vires* before the omission and that the omission is retroactive. They also note that batch matters are pending before the different High Courts challenging the validity of the rule and implications of the unconditional omission of Rules without a saving clause. According to them, an enabling ecosystem with legal certainty must be made available to exporters to enhance the global competitiveness of Indian products, especially in the current era of Tariffs.

Export refund simplification: Prospective by legislature; retroactive by the courts!!!

By Krina Shah and Asish Philip

The amendments in Rule 89 and Rule 96 in relation to export refunds and their impact on pending proceedings and investigations are examined in the light of recent High Court orders. The road ahead provides certainty and clarity for exporters from the technical and procedural rigors of the refund formula.

The *Make in India* initiative emphasizes the crucial role of exporters in transforming India into a global manufacturing hub. Exports play a key role in achieving the ambitious goal of a $5 Trillion economy. To promote export-driven manufacturing, the Government has launched various initiatives such as the Production-Linked Incentive (PLI) scheme, PM Gati Shakti for unified infrastructure & logistics modernization, the liberalization of Foreign Direct Investment (FDI) policies, etc. The objective is to boost domestic production and integrate Indian exporters into global supply chains.

However, frequent changes in Goods and Services Tax (GST) laws related to export refunds, procedural rigors of refund formula, and the stringent conditions under Foreign Trade Policy (FTP) schemes have posed significant challenges for exporters. GST regulations have led to financial strain, procedural hurdles and multiple investigations. In response, many exporters contested the validity of these restrictions before various High Courts. As part of the Ease of Doing Business (EoDB) initiative, the GST council has simplified the refund process for the future from 2024. The amendment was not made retrospective by legislature, unlike the amendment made related to 'plant or /and machinery'. The Sword of Damocles was on the exporters in relation to past refund claims and pending investigations. This article examines the retroactive impact of the amendment for the past in the light of recent High Court decisions.

The omission of Rule 96(10), Rule 89(4A) and Rule 89(4B) of the Central Goods and Services Tax Rules, 2017 (Rules), is a welcome development for exporters. The simplified refund procedures reduce capital blockages and help boost export competitiveness. Exporters can now claim IGST refunds without the previous limitations, thereby enhancing EoDB. The

prospective omission of the Rules, without any saving clause, has created a significant legal ambiguity concerning live proceedings. The deletion of the Rules automatically quashes the pending proceedings related to past periods as legally non-est.

Background: Multiple amendments to restrict export refund

The Export Refund Rules in the past have seen a plethora of amendments and clarifications, *ultra vires* of the explicit provisions of Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) for zero rated exports. The first amendment to Rule 96 for restricting refund was made within months of GST implementation with retrospective effect[1]. The refund was restricted for exporters procuring the inputs by availing specific FTP schemes for exports such as Advance Authorization or Export Oriented Units (EOUs), etc. The intent was to prevent the perceived dual benefit of availing duty concessions on inputs and claiming IGST refunds.

The second amendment in 2018[2] was made to rectify the ambiguity related to 'by/to supplier' in earlier amendment. The validity of Rule 96(10), along with prospective or retrospective application of amendment, was challenged in various High Courts. The Gujarat High Court, in the case of *Cosmo Films Limited*[3] reviewed the order and upheld the validity of the Rule 96(10) prospectively for the period starting from 9 October 2018.

Rule 89(4A) and Rule 89(4B) prescribed methods for computing refund for exports under Letter of Undertaking (LUT) for importers availing FTP scheme benefits. The nuances of the formula and practical challenges in computing the refund made the process cumbersome for exporters. DGGI investigations into eligibility and method of calculation of export refunds were challenged by exporters.

Export refund simplification – New era of liberalisation

The 54th GST council recognised challenges faced by the Exporters in implementation of the Rules. The Council emphasized that export-related benefits under the GST framework were intended to boost exports by easing working capital constraints and increasing foreign exchange inflows.

[1] Notification No. 3/2018-Central Tax dated 23.01.2018 (w.e.f. 23.10.2017)
[2] Notification No. 39/2018-Central Tax dated 04.09.2018 (w.e.f. 23.10.2017)

[3] *Cosmo Films Limited* [2024 (10) TMI 275]

The ambiguous wording of Rules resulted in interpretational challenges and procedural complexities leading to multitude of litigations. The GST Council recommended deletion of the said Rules[4] without having a saving clause for the actions initiated prior to omission. The refund can be claimed for future exports in tandem with FTP scheme benefits.

Judicial developments: Rule is manifestly arbitrary, or omission of Rule is retroactive?

Kerala High Court: Rule is manifestly arbitrary and ultra vires to Section 16

In the case of *Sance Laboratories Private Limited*[5], the deletion of Rule 96(10) was noted by the Court while declaring the Rule as *ultra vires* the provisions of Section 16 of the IGST Act for the period prior to deletion of the Rule (23 October 2017 and 8 October 2024) and unenforceable. The Court relied on the decision of Apex Court in *Shayara Bano* to hold that the provisions of plenary or subordinate legislation which is manifestly arbitrary must be struck down. The wording of Rule 96(10) creates a restriction not contemplated by Section 16 of the IGST Act on the 'right to refund'. The Rule, as it stands, produces absurd results for exporters, which were not intended by Legislature. It is a settled position that, by virtue of exercising powers to issue notifications for the purposes of imposing conditions, safeguards and procedure, the authority cannot exceed its jurisdiction by creating a situation that either restricts the rights granted under the Act itself or makes the Act redundant, as held by the Hon'ble Supreme Court in case of *Zenith Spinners*.

Uttarakhand High Court: Omission of Rule is retroactive

In the case of *Sri Sai Vishwas Polymers*[6], the Court noted the declaration of Rule 96(10) as *ultra vires* by Kerala High Court in *Sance Laboratories* and the subsequent deletion of the Rule. The Court proceeded to Prayer 2 concerning the competence and jurisdiction of the officer to pass the order subsequent to the omission of the Rule. The Court held that in the absence of a saving clause for pending proceedings, all actions under Rule 96(10) must cease from the date of its omission on 8 October 2024. The Court held that the department lacked authority to issue orders by invoking provisions of Rule 96(10) after its

[4] Notification No. 20/2024-Central Tax dated 08.10.2024
[5] *Sance Laboratories Private Limited* [2024 (11) TMI 188]
[6] *Sri Sai Vishwas Polymers* [WP (MB) No. 103 of 2025]

deletion and accordingly, allowed the writ petition and set aside the order.

The Court referred to the Hon'ble Supreme Court's ruling in *Kolhapur Canesugar Works Limited & Anr*[7], which clarified that the effect of omission of a rule from the statute book is different from the effect of substitution of rule and the effect of amendment of a statute which is saved by a saving clause. The Hon'ble Supreme Court observed that normal effect of repealing of a statute or deleting a provision is to obliterate it from the statue book subject to exemption engrafted in Section 6 of the General Clauses Act, 1897. However, the said exemption does not apply to omission of a 'rule'. If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceeding, all actions must stop. If the final relief has not been granted before of the omission of a provision of a statute, the same cannot be granted after such omission.

Batch matters are pending before the Gujarat High Court[8], Bombay High Court[9] Allahabad High Court[10] and Calcutta High Court[11]challenging the validity of the rule and implications of the unconditional omission of Rules without a saving clause. The High courts have given interim protection from coercive recovery of past refunds under Rule 96(10). The decisions of various High Courts on this matter are awaited.

Way forward for exporters: Certainty and clarity

An enabling ecosystem with legal certainty must be made available to exporters. This is imperative to enhance the global competitiveness of Indian products, especially in the current era of Tariffs. The cardinal principle that taxes and duties should not be exported must form *grundnorm* of all tax policies. Had the legislature provided a retrospective effect to the deletion, it would have avoided the need for judiciary to fill the vacuum concerning past period litigations.

These principles shall equally extend to orders issued under Rule 89(4A) and Rule 89(4B). The matter remains unsettled until the appeals pending before the Hon'ble

[7] *Kolhapur Canesugar Works Limited & Anr*. [(2000) 2 SCC 536]
[8] *Sterlite Power Transmission Limited* [2187 of 2023]; *Messrs Koshambh Multitred* [4217 of 2023]; *Macson Product* [2025 (4) TMI 1573]
[9] *Aeroflex Industries Limited* [18847 of 2024]; *Electrolead (Pune) Private Limited* [12927 of 2024]
[10] *Saru Silver Alloys Private Limited* [2025 (1) TMI 212]
[11] *Glen Industries Private limited & Anr*. [2025 (4) TMI 492]

Supreme Court are finally decided. Taxpayers have received a mixed bag of outcomes from Apex Court in the GST era. For instance, in the case of ocean freight, the Hon'ble Supreme Court agreed with the High Court and granted relief in *Mohit Minerals,* whereas in the case of inverted duty, the validity of the formula was upheld in *VKC Footsteps.*

In line with the 54th GST Council meeting, the Council can issue clarification on an 'as-is-where-is' basis, aiming to regularize refund claims for the past periods. While this change marks a positive shift for the future period, uncertainty and the Sword of Damocles in the form litigation continues to loom over past period claims.

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Goods & Services Tax (GST)

Notifications and Circulars

- Registration – CBIC issues instruction for processing of applications
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Notifications and Circulars

Registration – CBIC issues instruction for processing of applications

The Central Board of Indirect Tax and Customs has issued Instruction No. 03/2025-GST dated 17 April 2025 to the officers providing for a list of documents to be examined for registration under GST. It also mandates the officers to adhere to certain directions in respect of processing of registration applications elaborated in the Instruction.

A detailed Update from the LKS Indirect Tax Team is available here.

GST Appellate Tribunal (Procedure) Rules, 2025 notified

The GST Appellate Tribunal has notified the GST Appellate Tribunal (Procedure) Rules, 2025 to regulate the procedure and functions of the Tribunal in terms of Section 111 of the Central Goods and Services Tax Act, 2017. The Rules are divided into fifteen (15) chapters and contain related GSTAT Forms. They provide inherent powers to the Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellant Tribunal. Further, the Rules categorically provide that every appeal or application, to be filed before the Tribunal, shall be uploaded electronically on the GSTAT portal. The Gazette copy of the Rules is available here.

Ratio Decidendi

Rectification of returns when there is no loss to Revenue – Right to correct clerical/arithmetical errors flows from the right to do business

The Supreme Court has upheld the Bombay High Court decision wherein the High Court had directed the Revenue department to open the GST portal and inform the assessee to enable them to amend / rectify Form GSTR-1 and GSTR-3B. The High Court in its impugned order had noted that there is no loss to revenue if the assessee-petitioner is permitted to amend the GST returns filed.

Observing that human errors and mistakes are normal, and errors are also made by the Revenue, the Apex Court held that the right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from the right to do business and should not be denied unless there is good justification and reason to deny benefit of correction. Further, according to the Court, software limitation itself cannot be a good justification, as software is meant to ease compliance and can be configured. The Central Board of Indirect Taxes and Customs (CBIC) was thus directed to re-examine the provisions/timelines fixed for correcting the *bona fide* errors. [*CBIC* v. *Aberdare Technologies Private Limited* – 2025 VIL 15 SC].

No GST on supply of service by a club/association to its members

The Division Bench of the Kerala High Court has held that Section 2(17)(e) and Section 7(1)(aa) of the Central Goods and Services Tax Act, 2017 are unconstitutional and void being *ultra vires* to the provisions of Article 246A read with Articles 366(12A) and 265 of the Constitution of India. Holding that GST would not be leviable on supply of services by a club or association to its members, the Court observed that the concept of self-supply or self-service were not envisioned under the Constitution for the purpose of levy of GST. The Court noted that even if the transaction between a club/association and its members was deemed as 'supply' in terms of Section 7(1)(aa) of the CGST Act, the Constitution has not been amended to deem such supply as a taxable supply of service. The High Court hence answered in negative the question as to whether legislature can deem a transaction that does not involve two persons as a taxable transaction, when the Constitution

understands a taxable transaction as necessarily involving two persons.

The Court also noted that Article 246A of the Constitution uses the word 'supply' without giving it an artificial meaning that would take in even a 'deemed supply'. It also observed that even earlier when a deeming provision was introduced to bring transactions, that did not fit into the traditional concept of sale of goods, to sales tax, the Constitution was amended in 1982 (46th Amendment) to deem those transactions as 'Sales' or 'Purchases'. [*Indian Medical Association* v. *Union of India* – 2025 VIL 338 KER]

Registration only for supply of goods does not disentitle refund of IGST on zero-rated supply of services

The Andhra Pradesh High Court has held that non-mention of the categories of supply being undertaken by the applicant / registered person, in the application form, cannot preclude grant of refund to such person. The dispute involved denial of refund of IGST on zero-rated supply of services when the assessee was registered only for supply of goods. According to the Court, the assessee would not be precluded from claiming such refund on the ground that the certificate of registration does not contain the details of the services which are being supplied.

Allowing the petition, the High Court took note of Section 25 of the CGST Act, 2017 and Rules 8 and 10 of the CGST Rules, and observed that according to the registration procedure, no importance is given to the details of the goods or services the person would be supplying. The only requirement is that any person who would have to pay tax on such supply, whether of goods or services, would have to be registered. It was also of the view that since only top 5 services were required to be provided in Entry 19 of Part-B of Form GST REG-01, the authorities cannot refuse refund on the grounds that such services were not mentioned at all in Entry No.19. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Alstom Transport India Ltd.* v. *Additional Commissioner* – 2025 VIL 385 AP]

Export of services – Customer support service when not covered as 'intermediary'

In a case where the Amazon Consumer Entities, which are part of Amazon Group companies, had entered into Customer Services Agreements with their Foreign Affiliates and the foreign affiliates had in turn entered into agreements with the

assessee in India for provision of services, the Karnataka High Court allowed refund of accumulated ITC, treating the provision of service as exports. The Department had rejected the refund claim in relation to the services provided by the assessee, treating the assessee as an 'intermediary' under Section 2(13) of the IGST Act.

Relying upon CBIC Circular No.159/15/2021-GST dated 20 September 2021 which specified the pre-requisites to qualify as intermediary and the Customer Services Agreements, the Court observed that the assessee was not an intermediary. The Court noted that the Agreement expressly restricted the assessee from acting as an agent and precluded it from entering or negotiating contracts for sale of products; the services provided by the assessee were on principal-to-principal basis on own account; assessee could not be said to be facilitating or arranging supply of services; and the necessary ingredients of existence of two distinct supplies was not fulfilled. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Amazon Development Centre India Private Limited* v. *Additional Commissioner* – Judgement dated 17 September 2024 in Writ Petition No. 13007 of 2024 (T-RES), Karnataka High Court]

Omission of Rule 96(10) – Pending proceedings not to continue

Observing that Rule 96(10) of the CGST Rules, 2017 was omitted from the statute book without any saving clause, the Calcutta High Court has held that all actions under this Rule from the date of its omission must stop. Accordingly, it was held that there was no scope for the Adjudicating authority to pass any order by invoking the provisions of Rule 96(10). Supreme Court's decision in the case of *Kolhapur Canesugar Works Ltd.* v. *Union of India* [(2000) 2 SCC 536] was relied upon for the purpose of considering the effect of omission of the Rule. [*Glen Industries Private Limited* v. *Deputy Director, DGGSTI* – 2025 VIL 288 CAL]

Refund permissible of unutilized ITC of cess paid on coal utilized for manufacture of goods exported on payment of IGST

In a case where the assessee paid Compensation Cess on the inputs (coal) used in the manufacture of goods which were exported on payment of IGST but not the Cess, the Gujarat High Court has allowed refund of unutilized ITC of the said Compensation Cess. The refund of IGST paid on exports was earlier granted to the assessee-petitioner. The Court noted that

as per the provision of Section 54(3) of the CGST Act read with Section 16(3) of the IGST Act and Section 11(2) of the GST (Compensation to State) Act, 2017, the petitioner can claim the refund of unutilized input tax credit for purchase of coal used for manufacture of goods exported being zero rated supply. Proviso to Section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess only for the payment of cess on the outward supplies, was held as not applicable in the facts of the case. Reliance placed by the Department on para-42 of the Circular No.125/44/2019 dated 18 November 2019 was found to be misplaced. [*Patson Papers Private Limited* v. *Union of India* – 2025 VIL 403 GUJ]

Refund of ITC due to inverted duty structure – Substitution of Para 3.2 of Circular No.135/05/2020-GST by Circular No.173/05/2022-GST is applicable retrospectively

The Karnataka High Court has held that Section 54(3)(ii) of the CGST Act does not proscribe the grant of refund where the input and the output are the same and it also does not contemplate comparing the rate of tax on the principal input with the rate of tax chargeable on the principal output supply. The Court in this regard was of the view that substitution of Para 3.2 of Circular No.135/05/2020-GST, dated 31 March 2020 by subsequent Circular No.173/05/2022-GST dated 6 July 2022 being beneficial in nature, has to be applied retrospectively. [*Indian Oil Corporation Ltd.* v. *Assistant Commissioner* – 2025 VIL 318 KAR]

Refund of accumulated ITC on export of goods when not deniable

The Jharkhand High Court had rejected Revenue department's contentions of non-furnishing of receipt of payment within 180 days of export; non-furnishing of proof of export within 90 days of invoice; non-furnishing of declaration of non-prosecution; non-furnishing of undertaking under proviso to Section 11(2) of the Cess Act; and non-furnishing of statement as per Para 43(C) of the 2019 Circular, as a criteria to avail refund of accumulated Input Tax Credit on export of goods under LUT. Regarding the first contention, the Court noted that proof of payment is only required for export of services and not of goods. Various CBIC Circulars were relied upon by the Court while it allowed the writ petition filed by the assessee. [*Tata Steel Ltd.* v. *State of Jharkhand* – 2025 (4) TMI 427 - Jharkhand High Court]

Refund cannot be rejected at stage of acknowledgement of application by issuing a deficiency memo

The Gujarat High Court has quashed the order passed by the Department vide a deficiency memo and held that the refund application filed by the assessee in Form GST RFD – 01 cannot be rejected by the Department at the stage of acknowledgement stating, 'Refund not allowed in cases payment made voluntary by DRC-03' vide a deficiency memo. The Court held that the Department should not have disallowed the refund in the deficiency memo and that such declaration or order is not contemplated in Rule 90(3) of the CGST Rules, 2017. Further, the Court also highlighted that Rule 92 of the CGST Rules, 2017 prescribes a separate procedure for passing an order either accepting/ rejecting the refund in Form GSTR RFD – 06 sanctioning the amount of refund or to grant an opportunity of hearing by issuing notice in Form GST RFD – 08. [*Kuldeep Kumar Contractors* v. *Union of India* – 2025 VIL 337 GUJ]

Refund – Mere opinion under Section 54(11) cannot result in holding back refund

In this instance, an assessee's refund was held back consequent to an opinion issued under 54(11) of the CGST Act, 2017 which stipulated that the processing of the refund claim shall be withheld until the finality of Appellate proceedings before GSTAT/ HC/ SC. The Delhi High Court relied on a Coordinate Bench decision of the Delhi High Court in the case of *GS Industries* [(2023) VIL 1084 (Del.)] and held that the Department's opinion under Section 54(11) cannot be relied upon on a standalone basis to withhold processing of a refund application. It was held that in the absence of a pending appeal/ any other proceeding challenging the order passed by the Appellate Authority, the opinion under Section 54(11) of the CGST Act cannot result in holding back the refund.

The Court noted that as per Section 54(11), the refund can be held back on the satisfaction of two conditions – (i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and (ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue. Further, it was observed that as refund amounts are payable with interest for any delay in payment of the same to the assessee, holding back of the refund would be contrary to the interest of the revenue. [*Shalender Kumar* v. *Commissioner* – 2025 VIL 325 DEL]

Cancellation of registration due to non-filing of returns for 6 months cannot be set aside if not all returns filed after SCN

The Kerala High Court has answered in negative the question as to whether an order of cancellation of registration due to non-filing of returns for six months continuously, be set aside, if returns are filed for a few months, subsequent to the issuance of show cause notice. The Court was of the view that piecemeal filing of returns is not contemplated by the proviso to Rule 22(4) of CGST Rules, 2017 and unless the returns for all six months, along with tax interest and late fee, are submitted, the cause of action that arose due to non-filing of returns for six months will not be wiped off. Court's earlier decision in the case of *Phoenix Rubbers* v. *Commercial Tax Officer* [2020 KHC 533] was held as *per incuriam*. Observing that the assessee had, after the issuance of the show cause notice, filed the return initially for one month and two weeks later for yet another month, the Court was of the view that the requirement of the proviso to Rule 22(4) was not satisfied. [*Aisha Padmini* v. *Superintendent* – 2025 VIL 335 KER]

Input Tax Credit can be claimed based on deemed receipt of goods

In this instance, the purchaser (assessee) had directed the seller to deliver the goods to the end consumer directly. The Department denied availment of Input Tax Credit claiming that there was no movement of goods from the seller to the purchaser. Here, the Patna High Court held that Input Tax Credit can be claimed.

The Court observed that the Explanation under Section 16(2)(b) of CGST Act expands the interpretation of 'received' to include specific situations where the registered person may not have physical possession of the goods. According to the Court, the Assessing Officer is required to examine the memorandum of understanding among the seller, dealer and what was the communication to the end consumer insofar as the delivery of goods in the absence of receipt of goods by the assessee-petitioner. The decision in the case of *State of Karnataka* v. *Ecom Gill Trading Private Limited* was distinguished by the Court noting that in that case, material information relating to selling, dealer details of vehicle was not placed, whereas in the present case the assessee had produced all necessary documents. [*Sane Retails Private Limited* v. *State of Bihar* – 2025 VIL 339 PAT]

Sale of the partly constructed mall by Liquidator on 'as is where is' basis, without any further construction services to be provided is not liable to GST

The Karnataka High Court has held that sale of the partly constructed mall by the Liquidator to the petitioner on 'as is where is' basis, without any further construction services to be provided by the Liquidator, is not liable to GST. It was noted that if the contract is for sale of land or sale of building without there being any construction services or works contract services involved, the question of attracting GST will not apply. The Revenue department was of the view here that Entry 5(b) of Schedule II of the CGST/KGST Act was applicable to the subject transaction which was amenable/exigible to levy of GST and that Entry 5 of Schedule III which grants/provides exemption from levy/payment of GST was not applicable. According to the High Court, insisting on taxation of a building on the grounds that the completion certificate is yet to be received will not reflect the true nature of the transaction being undertaken. It was thus held that the Department was wrong in fastening the liability on the liquidator as the said services were never rendered through the agreement nor was it in contemplation. [*Rohan Corporation India Pvt Ltd.* v. *Union of India* – 2025 VIL 324 KAR]

No GST on 'Solatium', which is compensation received for acquisition of lands by the State

The Karnataka High Court has held that the compensation paid in favour of the petitioners towards acquisition of their lands by the State/KIADB under the head 'Solatium' is not exigible/amenable to levy of GST under the provisions of CGST/KGST Act, 2017. Solatium is 'money comfort' quantified by the statute and given as a conciliatory measure for the compulsory acquisition of land of the citizen, by a welfare State.

It was observed in this regard that the package compensation offered by the Bangalore Metro by categorising / describing various amounts out of the total package offered under various heads including solatium, was for the limited / restricted purpose of offering package compensation and in reality / substance, the said amount cannot be treated as 'solatium' in true / strict / real sense. The Court noted that the transaction essentially was in the nature of a sale / transfer of all rights in land of the petitioners which was exempted from levy of GST under Entry 5 of the Schedule - III of the CGST / KGST Act. The amount was also not held to be for agreeing to an obligation to

tolerate acquisition to attract Entry 5(e) of Schedule-II. [*Asha R* v. *Assistant Commissioner* – 2025 VIL 316 KAR]

Agreement for the right to develop a property is not covered as service by way of transfer of development rights

The Bombay High Court has held that an agreement of development entered into between the petitioner and the land-owner, in terms of which the petitioner, was granted the right to develop a property by utilizing its present Floor Space Index or any increases thereof, is not covered under Entry 5B of Notification dated 28 June 2017 as amended by Notification dated 29 March 2019. The said Entry relates to services which can be said to be supplied by any person by way of transfer of development rights or Floor Space Index (FSI) [including additional FSI] for construction of a project by a promoter. The Court was of the view that TDR / FSI as contemplated by Entry 5B, cannot be related to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built-up units for consideration to be appropriated by the developer. [*Shrinivasa Realcon Private Ltd.* v. *Deputy Commissioner* – 2025 VIL 362 BOM]

Demand – Separate show-cause notices are required for different assessment years

The Division Bench of the Kerala High Court has reiterated that separate show cause notices are required before proceeding to assess the assessee for different years of assessment under Section 74 of the CGST Act, 2017. Observing that the entitlement to proceed and assess each year being separate and distinct, and further the time limit being prescribed under the statute for each assessment year being distinct, the Court was of the view that separate show cause notices are required before proceeding to assess the assessee for different years of assessment under Section 74. The High Court in this regard also observed that by issuing a composite notice, the assessing authority, cannot bypass the mandatory requirement of Section 73 (normal period of limitation) to complete the assessment by falling back on a larger period of limitation under Section 74(10). It also noted that in case of composite notice, the assessee would be allowed lesser period to submit a proper and meaningful explanation. [*Tharayil Medicals* v. *Deputy Commissioner* – 2025 VIL 356 KER]

Mere denial of cross-examination is not sufficient to invoke writ jurisdiction

The Delhi High Court has held that mere rejection of the Petitioner's request for cross-examination cannot, in and of itself, be treated as sufficient grounds to bypass the statutorily prescribed appellate remedy and invoke the writ jurisdiction of the High Court. The Court in this regard also noted that parties cannot, by praying for cross-examination, convert Show-cause Notice proceedings into mini-trials. It was also observed that a blanket request to cross-examine all persons whose statements have been recorded by the Department cannot be sustained and that cross-examination could be permitted by the Authority in the case of some persons and not all. [*Vallabh Textiles* v. *Additional Commissioner* – 2025 VIL 377 DEL]

Demand – Issuance of just summary of SCN without the main notice when not fatal

The Himachal Pradesh High Court has rejected the contention of the assessee-petitioner that both the notice and summary thereof, are required to be issued under Section 74 read with Rule 142 of the CGST Rules, 2017. In this dispute, the Department had only issued a summary of the show cause notice. Although the main notice was never issued, the complete audit report was furnished to the petitioner. Dismissing the writ petition, the Court noted that the petitioner was fully aware of the case that they were required to meet, as a complete copy of the audit report was made available to them. Hence, the High Court was of the view that no prejudice was caused to the assessee-petitioner by non-issuance of the notice, as the petitioner does not dispute the case against them. [*Saluja Motors Pvt. Ltd.* v. *State of H.P.* – 2025 VIL 382 HP]

Service of notice/order, etc., by making them available in the Common Portal is a valid mode of service – Court relies upon DB decision interpreting similar provision under TNGST Act, 1959

The Madras High Court has answered affirmatively the question of whether service of notice/order by making available of the same in the Common Portal is valid. The High Court for this purpose relied upon the Division Bench decision of the Court which had interpreted similar provisions (Rule 52 of TNGST Rules, 1959) under the TNGST Act, 1959. It was held that the modes of service provided in clauses (a) to (e) to Section 169(1) of the CGST Act, 2017 are alternate to each other before resorting to clause (f) to Section 169(1). It may be noted that the

Court differed here from its two recent decisions wherein it was held that the modes of service provided in sub-clauses (a) to (c) of Section 169(1) are alternate modes and sub-clauses (d) to (f) could be resorted to only after sub-clauses (a) to (c) are exhausted. The High Court here in this regard observed that it is trite law that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted, and that hardship is no reason to depart from the plain language of the statute.

Further, the Court was of the view that Section 169 is a standalone independent provision, and its operation is not dependent on any notification under Section 146 of the CGST Act. Assessee's reliance on Rule 142 to contend that the service of detailed notice/order, summons or other communications by making available in the common portal is impermissible, was also rejected. It may be noted that the Court has recommended to simultaneously issue an SMS alert to the mobile number of the taxable persons and send an e-mail to the registered email ID to make the taxable person aware that such notice/orders/proceedings have been uploaded in the common portal. [*Poomika Infra Developers* v. *State Tax Officer* – 2025 VIL 386 MAD]

Procedures need not be insisted upon if leading to miscarriage of justice

Observing that in certain cases, owing to situations beyond the control of the parties, including the Department at times, the performance of the duties of the assessee becomes impossible, the Gujarat High Court held that in such situations, insistence on the procedure or the rigorous implementation of a certain Circular would defeat the substantive rights of the assessee, thereby causing miscarriage of justice. The case involved the submission of another refund claim, as the assessee had missed considering certain bills of supplies initially, under the category 'Any Other (Specify)', since the refund application under the category 'Supply to SEZ Unit without payment of Taxes' could only be claimed once. The refund was rejected by the Department on the grounds that it was not permissible under Circular No. 125/44/2019-GST dated 18 November 2019. The Court here was of the view that procedure, being a handmaid of substantive justice, does not edge out the substantive rights of the assessee. [*ABN Industries* v. *Union of India* – 2025 (3) TMI 1298 - Gujarat High Court]

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Customs and FTP

Notifications and Circulars

- Transshipment of goods imported for all customs stations – Application fees removed
- Export Entry (Post export conversion in relation to instrument-based scheme) Regulations, 2025 notified
- Interactive Flat Panel Displays and Monitors (other than IFPDs) – CBIC clarifies on difference and rate of duty

Ratio decidendi

- Classification of goods – Test of 'most akin' and not 'preponderance of probability' to be followed when laboratory testing not done on all specified parameters – *Supreme Court*
- Interest and penalty are not leviable on IGST on imports, before amendment to Customs Tariff Section 3(12) on 16 August 2024 – Judgment in Mahindra & Mahindra in respect of Sections 3(6) and 3A(4) relied upon – *Bombay High Court*
- Provisional attachment of bank account is not permissible at the investigation stage – *Madhya Pradesh High Court*
- Deemed closure of proceedings when duty, interest and penalty paid within 30 days of SCN, though corrigendum to SCN, revising demand, issued later – *CESTAT New Delhi*
- Valuation – Weight not to influence transaction value when purchase order on per piece basis – *CESTAT Ahmedabad*
- Valuation – Floating crane charges whether includible as transportation/unloading charges – *CESTAT Ahmedabad*
- DFIA scheme – Export goods not become 'prohibited' for non-declaration of technical characteristics of inputs on shipping bills – *CESTAT New Delhi*

Notifications and Circulars

Transshipment of goods imported for all customs stations – Application fees removed

The Ministry of Finance has removed the fees to be charged in respect of applications for transshipment of the goods imported for all customs stations. Amendments in this regard have been made in the Goods Imported (Conditions of Transshipment) Regulations, 1995 by Notification No. 30/2025-Cus. (N.T.), dated 24 April 2025. Rule 5 of the said Rules has been substituted. As per CBIC Circular No. 15/2025-Cus., dated 25 April 2025, the Transshipment Permit fees of INR 20, being collected for every movement, has been removed in order to expedite the process and as a compliance reduction measure.

Export Entry (Post export conversion in relation to instrument-based scheme) Regulations, 2025 notified

The Ministry of Finance has on 3 April 2025 notified the Export Entry (Post export conversion in relation to instrument-based scheme) Regulations, 2025 to supersede Shipping Bill (Post Export Conversion in relation to Instrument based Scheme) Regulations, 2022. The Rules provide in detail the manner and time-limit for applying for post-export conversion of export entry, and conditions and restrictions for conversion of export entry. It may be noted that while application for conversion can be filled by an exporter in writing within one year from the date of clearance of goods, where an export entry was filed before 22 February 2022, the period of one year is to be reckoned from the date on which these regulations came into force. It may be noted that as per the CBIC Circular No. 11/2025-Cus., dated 3 April 2025, the new Rules also provide for export entries filed under drawback to be converted into instrument-based schemes and all conversions of Export Entry, other than Free Shipping Bills have also been covered.

Interactive Flat Panel Displays and Monitors (other than IFPDs) – CBIC clarifies on difference and rate of duty

The CBIC has clarified that both Interactive Flat Panel Displays (IFPDs) and monitors other than IFPDs are classifiable under Tariff Item 8528 59 00 of the Customs Tariff. Circular No. 12/2025-Cus., dated 7 April 2025 also clarifies that parts of IFPDs, such as Touch Glass Sheets and Touch Sensor PCBs,

shall be classified under Heading 8529 attracting BCD rate of 5% as per Sr. No. 515D of Notification No.50/2017-Cus. The Circular also notes that *vide* Notification No. 23/2025-Cus., dated 4 April 2025, S. No. 515C of Notification No. 50/2017-Cus. has been amended to remove the IGCR condition in respect of import of monitors other than IFPDs. The industry associations had sought clarification on compliance of IGCR conditions, as these monitors are not used in further manufacturing activity. It may be noted that after the Budget 2025-26 BCD on IFPDs was increased 20% while monitors are liable to 10% BCD, now without any condition.

Ratio Decidendi

Classification of goods – Test of 'most akin' and not 'preponderance of probability' to be followed when laboratory testing not done on all specified parameters

In a case where laboratory testing of imported goods was not done on all the specified parameters, the Supreme Court has observed that test of being 'most akin' to the specified goods is to be followed rather than considering preponderance of probability. The dispute involved classification of imported goods as base oil or HSD and the High Court in its impugned order had, based on preponderance of probability, held the goods to be HSD.

The Apex Court, however, noted that the High Court had based its conclusion on incomplete test reports where laboratory tests were not done on all the parameters as specified under the BIS IS:1460:2005 and there was a lack of clarity of opinion by the expert. The Supreme Court also noted that the expert had avoided giving satisfactory answers to the questions relating to the 'flash point' and its significance in determining the nature of the fuel.

Accordingly, the Supreme Court was of the view that the real test for classification would be as to whether any goods or substance in question is 'most akin' or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Customs Tariff Act, and not by applying the test of preponderance of probability which does not provide an accurate test. [*Gastrade International* v. *Commissioner* – 2025 VIL 17 SC CU]

Interest and penalty are not leviable on IGST on imports, before amendment to Customs Tariff Section 3(12) on 16 August 2024 – Judgment in *Mahindra & Mahindra* in respect of Sections 3(6) and 3A(4) relied upon

The Bombay High Court has held that interest and penalty are not leviable on IGST not paid on imports, before the amendment to Section 3(12) of the Customs Tariff Act, 1975 by the Finance (No. 2) Act, 2024. The Court relied upon its earlier decision in the case of *Mahindra & Mahindra* which was upheld by the Supreme Court. It noted that the unamended Section

3(12), which was applicable to the levy of IGST, was *pari materia* to Sections 3(6) and 3A(4) of the Customs Tariff Act as referred to in the case of *Mahindra & Mahindra*. The decision in *Mahindra & Mahindra* had earlier held that since no specific reference was made to interest and penalties in Sections 3(6) and 3A(4), which were substantive provisions, imposing interest and penalty would be without the authority of law.

Similarly, the Department's submissions based on the use of the word 'including' in Section 3(12) of the Tariff Act, thus implying that the other provisions of the Customs Act were also applicable, were also found to be not acceptable. The fact that the Department had itself transferred the matter to Call-book in view of pendency of the Review Petition before the Supreme Court in the earlier case, also went against the Department here. The High Court also held that the amendment in Section 3(12) was prospective in nature and would apply only with effect from 16 August 2024.

Further, CBIC Circular No. 16/2023-Cus., to the extent that it sought to recover interest in case of violation of 'pre-import' condition of advance authorization scheme, was found to be bad in law. [*A.R. Sulphonates Private Limited* v. *Union of India* – 2025 (4) TMI 578 - Bombay High Court]

Provisional attachment of bank account is not permissible at the investigation stage

The Madhya Pradesh High Court has opined that the word 'proceedings' which finds mention in Section 110(5) of the Customs Act, 1962, is referrable to proceedings initiated under Section 28, or Section 28AAA or Section 28B, and that proceedings under the said Sections would commence only after issuance of Show Cause Notice as provided under the said Sections. In the facts of the case, where investigation was still pending and no show cause notice had been issued under the abovementioned provisions, the Court held that the Revenue department had no jurisdiction/authority in law to pass an order of provisional attachment under Section 110(5). Rules regarding the interpretation of taxing statutes, as specified by the Supreme Court in *Chief Commissioner* v. *Safari Retreats Private Ltd.* [(2025) 2 SCC 523], were relied upon.

Further, the Court was also of the view that since there is no remedy available under Section 110A, against such intimation of provisional attachment, the petition before the High Court was maintainable. It was noted that remedy under Section 110A against provisional attachment of bank accounts would only be available to the petitioners after initiation of

'proceedings' pending order of the adjudicating authority. [*Mundhra Exim Pvt. Ltd.* v. *Union of India* – 2025 VIL 400 MP CU]

Deemed closure of proceedings when duty, interest and penalty paid within 30 days of SCN, though corrigendum to SCN, revising demand, issued later

The CESTAT New Delhi has allowed assessee's appeal, calling for closure of the proceedings under Section 28(6) of the Customs Act, 1962, in a case where the assessee had paid entire duty, interest and penalty as specified in the SCN within 30 days of the same, even though the corrigendum to the SCN was issued much later revising the duty demand. Observing that the Principal Commissioner, while rejecting the assessee's plea of closure under Section 28(6), expected the assessee to deposit the additional amount demanded through the corrigendum dated 16 July 2019 within 30 days of the show cause notice issued on 5 March 2018, the Court was of the view that the Authority did not apply its mind at all while he expected the assessee to perform an impossibility. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Cerana Beverages Pvt. Ltd.* v. *Commissioner* – 2025 VIL 587 CESTAT DEL CU]

Valuation – Weight not to influence transaction value when purchase order on per piece basis

The CESTAT Ahmedabad has held that weight cannot be considered to be influencing the transaction value when purchase order was given on per piece basis. The Tribunal in this regard also noted that there was nothing on record to show that there was any excess remittance made for the excess weight found at the time of examination. It was also noted that as per the very nature of the goods, they were sold in the market by units and not by weight. The Tribunal here also agreed with the assessee that filing an appeal itself can be taken as a protest. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Isgec Heavy Engineering Ltd.* v. *Commissioner* – 2025 VIL 605 CESTAT AHM CU]

Valuation – Floating crane charges whether includible as transportation/unloading charges

In a case involving difference of opinion among the Member of the CESTAT, the Tribunal, through its third Member, has held that the floating crane charges cannot be straightaway classified as transportation/unloading cost solely based on the amended Section 14(1) of the Customs Act, 1962. The Final Order issued by the third Member concurred with the view that the matter requires detailed examination of various factual

aspects, such as the stage at which the goods were cleared for home consumption, permission granted under Sections 33 and 34 for moving the cargo to barges, the port of discharge mentioned in the bills of lading, and the finalization of provisional assessment under Section 18(2). The charges were incurred for unloading the goods from the mother vessel to the barges by utilizing the services of floating cranes. The assessee-importer had contended that such charges were already included in the 1% under Rule 9(2)(b) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. [*Nayara Energy Limited* v. *Commissioner* – 2025 VIL 550 CESTAT AHM CU]

DFIA scheme – Export goods not become 'prohibited' for non-declaration of technical characteristics of inputs on shipping bills

In a case involving exports under the DFIA scheme, the CESTAT New Delhi has held that non-declaration of the technical characteristics of the inputs (essential oils) used in the manufacture of the export goods (pan masala and gutka) on the shipping bills does not render the export goods as 'prohibited' under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. The DFIA scheme in the Foreign Trade Policy and Notifications Nos. 40/2006-Cus. and 98/2009-Cus., all mandated the exporter to indicate the technical characteristics, quality, specification and value of the essential oils used in the manufacture of pan masala/gutkha in their shipping bills at the time of export.

The Tribunal in this regard noted that exports were made without claiming any duty exemption and that DFIA licence was obtained only subsequent to exports and transferred to third parties. Further, observing that there was no evidence that the export goods were the 'resultant products' as mentioned in 4.55 of the FTP Handbook of Procedures, the Tribunal was of the opinion that non-compliance of condition of DFIA/Notifications in the shipping bills could affect the duty-free import of inputs but shall have no effect on such exports. It was thus held that the conditions of importability of import cannot be applied to 'exportability of finished goods'.

It may be noted that the Tribunal also took note of the fact that the DGFT had already issued a SCN and the joint DGFT had modified the licences deleting the inputs, the technical clarifications whereof were not declared. [*Kothari Products Limited* v. *Commissioner* – 2025 (3) TMI 1259 - CESTAT New Delhi]

Central Excise, Service Tax and VAT

Ratio decidendi

- Refund of unutilised Input Tax Credit of VAT regime, when same not carried forward in Form GST TRAN-1 to GST regime – *Gujarat High Court*
- Valuation (Service tax) – 15% service component in a composite contract when correct – *CESTAT Ahmedabad*
- Area based exemption is available even if part of land is not covered under exemption notification – *CESTAT New Delhi*
- Valuation (Service tax) – Compensation received for lost-in-hole equipment is not includible in value of services – *CESTAT New Delhi*

Ratio Decidendi

Refund of unutilised Input Tax Credit of VAT regime, when same not carried forward in Form GST TRAN-1 to GST regime

The Gujarat High Court has allowed refund of unutilised Input Tax Credit of the VAT regime in a case where the assessee had not shown carry forward of such unadjusted tax credit in Form GST TRAN-1 to the GST regime. The Court noted that as per Section 140 of the CGST Act, 2017, it is not mandatory for the assessee to carry forward the credit or eligible duties in the return filed under the various Acts. Reliance was also placed on Section 174(2)(c) which provides that the repeal of the legacy Acts shall not affect any right/liability under the amended/repealed Acts or orders under such Acts.

Allowing the refund, the Court noted that the assessee was not able to claim set-off of the unutilised tax credit under the VAT Act in absence of next tax period and that the Department had not carried out any assessment for the Financial Year 2017-18, more particularly for the quarter 1 April 2017 to 30 June 2017 under Section 34(2) of the Gujarat VAT Act. It was thus held that in absence of any assessment, the assessee was entitled to refund of the unutilised tax credit as per the provisions of Section 36 of the Gujarat VAT Act read with Rule 15(6) of the Gujarat VAT Rules. [*Weatherproof Solution* v. *State of Gujarat* – 2025 VIL 336 GUJ]

Valuation (Service tax) – 15% service component in a composite contract when correct

In this instance, the assessee was discharging VAT/ Sales Tax on 85% of the invoice value, the same being towards the goods and paid service tax on the remaining 15%. The issue pertained to correctness of duty paid on 15% as service component by the assessee considering 85% element of good supplied, which has been described by them as the actual value on the basis of contract price or as per their invoices.

The Department's contention was that despite specific percentage being mandated in Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006, when actual value was not available of the goods, the assessee had circumvented by not providing actual data/ cost etc. and the Commissioner too had as adjudicating authority largely accepted the same without detailed scrutiny. This matter was referred to a Third Member due to a difference of opinion between the Judicial and the Technical Member.

The Tribunal in this regard took note of a notification by the Government of Gujarat wherein in case of lifts and elevators, 15% abatement was granted on account of service portion, and the assessee was required to pay VAT on 85%. Further, the Tribunal also took note of an invoice and held that the same would be proof enough, once read along the Gujarat notification, to conclude that the assessee had not arbitrarily adopted 85% to 15% bifurcation in respect of their transactions. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Trio Elevators Co. India ltd.* – TS 302 CESTAT 2025 (Ahd)-ST]

Area based exemption is available even if part of land is not covered under exemption notification

The CESTAT New Delhi has held that the unit would be eligible for the benefit of area-based exemption Notification No. 50/2003-C.E., even if the part of the land (one of the Khasra, out of the four Khasras forming part of the factory) is not listed under the said notification. Allowing the appeal of the assessee, the Tribunal noted that as per the layout plan the entire manufacturing unit of the appellant was situated in the notified Khasra, while the other non-notified Khasra, which formed only 7% of the total plot, comprised only the boundary wall with the balance being vacant land. Accordingly, it was held that merely because Khasra No. 281 measuring 0.146 Hectares was not mentioned in the exemption notification, which in fact includes Khasra No's. 282, 283 and 284, should not result in denying the benefit, when no manufacturing activity is taking place in Khasra No. 281. [*Diamond Entertainment Technologies Pvt. Ltd.* v. *Commissioner* – 2025 VIL 582 CESTAT DEL CE]

Valuation (Service tax) – Compensation received for lost-in-hole equipment is not includible in value of services

The CESTAT New Delhi has held that compensation received by the assessee for equipment/tools lost in 'Lost-in-Hole' ('LIH'), while providing drilling of oil field service to the customers, is not required to be included in the value of taxable service for the purpose of payment of service tax during the period 1 October 2010 to 31 March 2016. The Department had relied upon a Certificate issued by the Directorate General of Hydrocarbon to hold that since the LIH equipment/tools were 'consumed'; compensation received from the customers would have to be included in the taxable value of services.

However, according to the Tribunal, the word 'consume' in the Certificate was in the context of the Customs Act and does not have relevance to the word 'consumed' used in service tax law.

The Tribunal observed that the LIH equipment/tools could not have been consumed as they were lost, which fact was also noted in the Certificate when it declared that the equipment/tools were lost in hole. Contention that the compensation received was for an indemnity contract and not for any service was thus upheld by the Tribunal while it noted that LIH equipment/tools would not be assisting in the drilling. Rule 6(2)(vi) of the Service Tax (Determination of Value) Rules, 2006 and paragraphs 2.3 and 8.6.2 of the CBEC Education Guide were also relied upon for the purpose. [*Halliburton Offshore Services Inc.* v. *Additional Director General* – 2025 VIL 490 CESTAT DEL ST]

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