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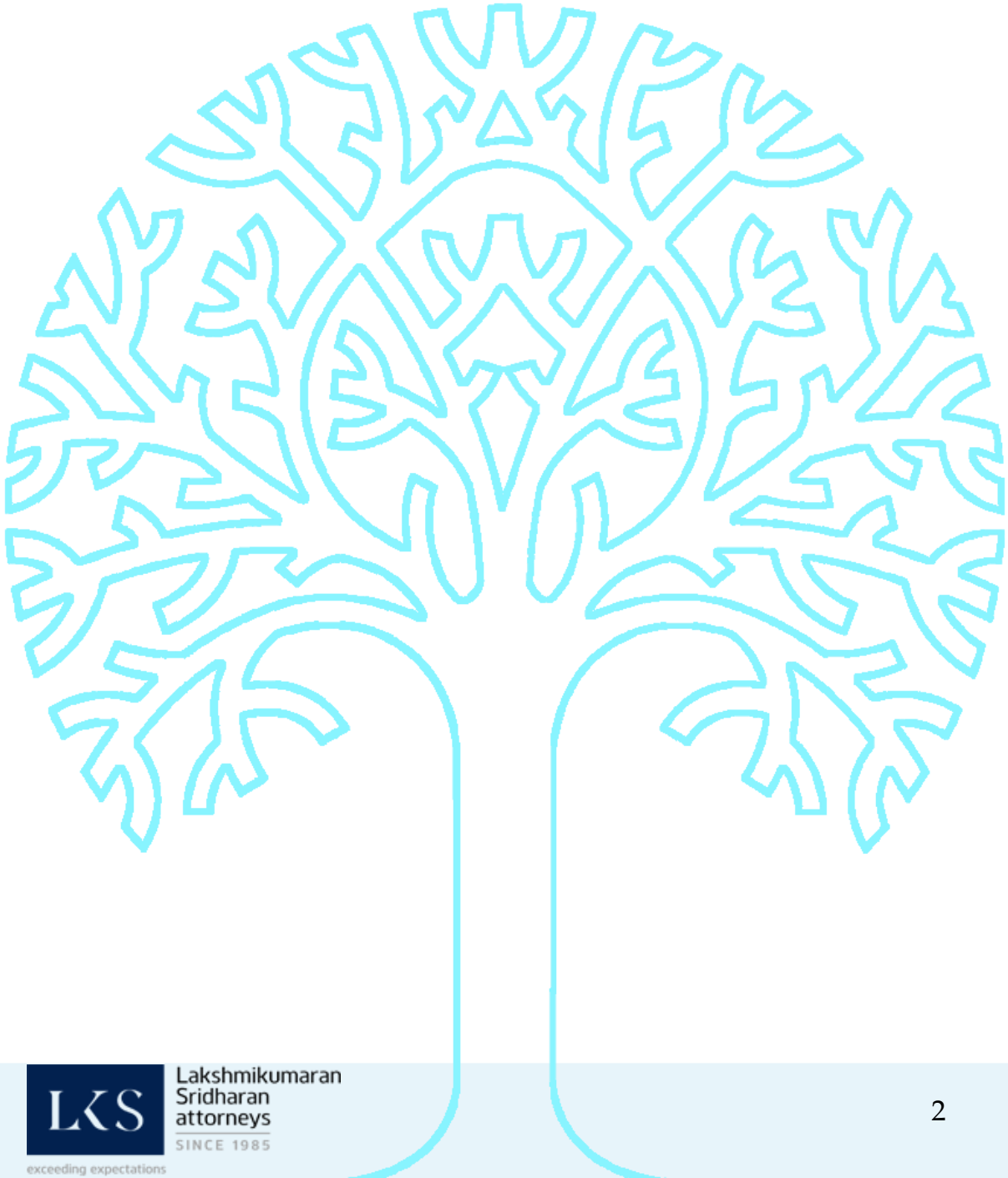

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Notifications and Circulars

Distribution of credit through Input Service Distributor will be mandatory w.e.f. 1 April 2025

Sections 2(61) and 20 of the Central Goods and Services Tax Act, 2017 were substituted by Sections 11 and 12 of the Finance Act, 2024, as assented by the President on 15 February 2024 (Interim Budget 2024). The provisions make Input Service Distribution (ISD) mechanism mandatory for distribution of ITC of common input services procured from third parties. The amendments will now come into effect from 1 April 2025. The Ministry of Finance has issued Notification No. 16/2024-Central Tax, dated 6 August 2024 for this purpose.

Penalty for running unregistered machines for manufacture of pan masala, tobacco, etc., as per special procedure, effective from 1 October 2024

Section 122A was inserted in the CGST Act, 2017 by Section 13 of the Finance Act, 2024 to prescribe a penalty for running unregistered machines used in manufacture of specified goods i.e., pan masala, tobacco and related tobacco products as per special procedure previously prescribed by Notification No. 4/2024 dated 5 January 2024. As per Notification No. 16/2024-Central Tax, dated 6 August 2024, the said provision will now come into effect from 1 October 2024.

Ratio Decidendi

Transitional credit – Taking transitional credit at branch office and not at registered office having centralized registration, is not wrong

The Telangana High Court has allowed writ petition of the assessee in a case involving transfer of Transitional credit by the branch in Telangana to its registered office having centralised registration (under service tax regime) in Maharashtra after filing return TRAN-1 in Telangana portal. The assessee-petitioner had faced problems in filing return electronically because of technical glitch in the GST portal of Maharashtra and had hence filed the return in the Telangana GST portal.

The Court in this regard noted that the registration number / PAN of the petitioner was same nationwide and that Section 140(1) of the CGST Act, 2017 not mandates filing of return only in the GST portal of Maharashtra. It was also noted that the credit was transferred on the very same day to the Maharashtra office/portal and the case was covered under the last proviso to Section 140(8). Further, it was observed that the Department could not establish that there was any prohibition/bar in filing the return in GST portal of Telangana and that the Revenue suffered any loss because of the aforesaid action of the assessee.

It may be noted that the Court reiterated that if the portal was not functional or having technical glitch and because of that the assessee was compelled to file return in the portal of Telangana, the assessee cannot be saddled with demand, interest and penalty. ***The assessee-petitioner was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Standard Chartered Bank* v. *Principal Commissioner* – 2024 VIL 699 TEL]

VAT credit available in ledgers on 2 June 2014, at time of bifurcation of State of Andhra Pradesh, can be transferred to AP GST regime

The Andhra Pradesh High Court has held that the tax credit available in the ledgers of the assessee-petitioners, as on 2 June 2014, on account of unused input tax, can be transferred to the AP GST regime. The Department here was of the view that the tax credit available in the ledgers under the AP VAT Act as on 2 June 2014, at the time of the bifurcation of the Andhra Pradesh State, cannot be transferred from the AP VAT regime to the AP GST regime as Section 56 of the Andhra Pradesh

Reorganisation Act, 2014 only permits a refund. Setting aside the demand orders, the Court however observed that Section 56 of the Andhra Pradesh Reogranisation Act, 2014 was not applicable in the present case. The Court in this regard noted that the provision was related to the liability of the Successor State, relating to refund of taxes which were collected in excess of the liability of the tax payer, while the tax credit available in the ledgers of the assessee was input tax credit, which is not tax paid in excess. [*Sri Lakshmi Vallabha Granites* v. *Assistant Commissioner* – 2024 VIL 779 AP]

Input Tax Credit – Purchasing dealer cannot be punished for non-deposit of tax collected by the seller – Gauhati HC relies on Delhi HC decision involving Delhi VAT

In a case involving denial of ITC to the assessee on account of failure to deposit tax by the supplier, the Gauhati High Court has set aside the show cause notices and the consequential orders. The High Court in this regard relied upon a Delhi High Court decision involving VAT, wherein the Court had held that a purchasing dealer cannot be punished for the act of the selling dealer in case the selling dealer had failed to deposit the tax collected by it. The Gauhati High Court in this regard observed that the provisions of Section 9(2)(g) of the Delhi Value Added Tax Act are analogous to the provisions of Sections 16(2)(c) and 16(2)(d) of the Assam Goods and Services Tax Act, 2017 as well as Sections 16(2)(c) and 16(2)(d) of the Central Goods and Services Tax Act, 2017. It also noted that SLP against the said Delhi High Court was subsequently dismissed by the Supreme Court. It may be noted that the Court in the present case, while setting aside the SCNs, stated that the Department is free to act in cases where the purchase transactions are not *bona fide*. [*National Plasto Moulding* v. *State of Assam* – 2024 VIL 804 GAU]

Input Tax Credit – Mere production of tax invoices, e-way bills and payment details are not sufficient

The Allahabad High Court has upheld the demand proceedings under Section 74 of the CGST Act, 2017 in a case where the assessee had only brought on record the tax invoices, e-way bills, and payment through banking channel, for purpose of claiming ITC. The Court in this regard reiterated that in the absence of documents such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof, the actual physical movement of goods and genuineness of transportation as well as transaction

cannot be established. It also noted that no proof of filing of GSTR 2A was brought on record. The Supreme Court decision in the case of *State of Karnataka* v. *Ecom Gill Coffee Trading Private Limited*, relating to *pari materia* Section 70 of the Karnataka Value Added Tax Act, 2003 was relied upon by the Court for the purpose. [*Anil Rice Mill* v. *State of U.P.* – 2024 VIL 861 ALH]

Refund of ITC on exports – Time-period of 60 days for issuance of order by proper officer is not mandatory but only directory

The Calcutta High Court has held that provisions of Section 54(7) of the Central Goods and Services Tax Act, 2017, providing for issuance of an order under sub-section (5) by the proper officer within sixty days from the date of receipt of complete refund application, are not mandatory but only directory. Relying on various case law relating to mandatory/directory nature of provisions, the Court held that the term 'shall' as used in Section 54(7) is directory in nature since any delay beyond the prescribed period of time in cases where a refund has been ordered is remedied by Section 56 providing for interest on delayed refunds. It also noted that failure to pass any order within the specific period of time does not defeat, nullify nor prejudice the purpose or object behind enactment of the section. According to the Court, the injustice and inconvenience resulting from such rigid adherence to the statutory prescription is also a relevant factor in holding that the above provision is merely directory. [*Suraj Mangar* v. *Assistant Commissioner* – 2024 VIL 818 CAL]

Refund of ITC on exports – Rule 92(3) not contemplates a general enquiry for eliciting documents – Bank Realisation Certificate is not required

In a case involving rejection of refund of accumulated ITC on exports, the Delhi High Court has held that the proper officer's demand to provide BRCs, bank statements and ledger accounts of the suppliers for further evaluation was not *sensu stricto* in conformity with Rule 92(3) of the CGST Rules, 2017. The Court noted that a notice for rejection of an application for refund can be made only if the proper officer has satisfied himself that the claim for refund is not admissible and that Rule 92(3) does not contemplate a general enquiry for eliciting documents or examining the returns. It also noted that there were no grounds for the proper officer to be satisfied that the petitioner's application for refund was required to be rejected on grounds of non-furnishing of BRCs, ledger accounts, etc.

Further, the Court found merit in the submission of the assessee that its claim for refund could not be rejected on account of non-furnishing of BRCs. CBIC Circular No. 125/44/2019-GST, dated 18 November 2019 was noted for this purpose. It was also noted that reference to Section 16(2) of the CGST Act by the Appellate Authority was outside the context of the appeal. [*Rajiv Sharma* v. *Union of India* – 2024 VIL 798 DEL]

E-way bill not accompanying goods – Discrepancy is cured if e-way bill produced before seizure order after issuance of SCN

In a case where no e-way bill was produced at the time of interception of goods, the Allahabad High Court has held that once e-way bill was produced before the seizure order could be passed after issuance of show cause notice, it cannot be said that any contravention of the provision of the CGST Act was made by the assessee-petitioner, as the discrepancy, if any, was cured. Allowing the writ petition, the Court noted that the authority could have conducted a survey of the business premises of the petitioner to find out the correctness of transaction, but they chose in their wisdom to not do so. The Court's earlier decisions in the cases of *Akhilesh Trader* and *Hawkins Cookers Limited* were also distinguished here. [*Bans Steel* v. *State of U.P.* – 2024 VIL 838 ALH]

Adjudication – Notification No. 56/2023-CT, extending time-limit for issuing order, is prima facie not in consonance with CGST Section 168(A)

The Gauhati High Court has opined that *prima facie* Notification No. 56/2023-Central Tax is not in consonance with the provisions of Section 168(A) of the Central Goods and Services Tax Act, 2017, which mandates recommendation of the GST Council for issuance of such notification. The said notification extends the period to pass the order under Section 73(9) of the CGST Act, 2017 for the Financial Year 2018-2019 up to the 30 April 2024 and for the Financial Year 2019-2020 up to 31 August 2024. The petitioner was thus held entitled to interim protection. [*Shree Shyam Steel* v. *Union of India* – 2024 (8) TMI 455-Gauhati High Court]

Appeal to Appellate Authority – Writ Court can condone delay in filing appeal beyond prescribed period

The Rajasthan High Court has held that the statutory provisions of limitation under Section 107 of the CGST Act,

2017 would bind the statutory authority which cannot condone the delay except in the circumstances envisaged thereunder, but such limitations are not applicable in a writ proceeding. In a case where the appeal was filed after expiry of the prescribed period of three months and a further period of one month which could be condoned by the Appellate Authority, the Court observed that a right to appeal as provided under the statute must be decided on merits irrespective of some laches or delay on the part of the assessee. The High Court in this regard observed that the CGST Act besides seeking levy and calculation of taxes also intends to facilitate commercial and business activities, as is manifest from Section 30 of the CGST Act and hence the provisions under Section 107 cannot be frustrated on mere technicalities. [*Shree Shakti Minerals* v. *Commissioner* – 2024 VIL 784 RAJ]

Appeal to Appellate Authority – Authority is not competent to condone delay beyond one month after expiry of three months – High Court can condone delay only in exceptional circumstances

The Jammu & Kashmir High Court has held that the appellate authority cannot entertain an appeal under Section 107 of the CGST Act, 2017 against a decision or order of the adjudicating authority, if it is filed beyond the period of four months from the date such decision or order is communicated to the person aggrieved. The Calcutta High Court decision in *S.K. Chakrobarty* v. *Union of India*, which had held that the Appellate Authority can condone delay beyond the prescribed limit since provisions of Section 5 of the Limitation Act, 1963 were not expressly or impliedly excluded by Section 107 of the CGST Act, was held as not laying down the correct position of law.

Further, though the High Court noted that the prohibition contained in Section 107(4) cannot come in the way of the Constitutional Court exercising extraordinary jurisdiction to render substantial justice, it was of the view that doing so without there being exceptional circumstances would render such statute or legislative enactment otiose. Accordingly, it held that each case is required to be evaluated on its specific facts and circumstances. [*Jatinder Singh* v. *Union Territory of Jammu & Kashmir* – 2024 VIL 850 J&K]

Orders passed by Central Government office to be in English in Andhra Pradesh

Deciding on the question as to whether the appellate order under Section 107 of the CGST Act, 2017 can be issued in the State of Andhra Pradesh in Hindi only, the Andhra Pradesh

High Court has directed Commissioner (Appeals) to furnish copies of the orders passed by him in English. The Court in this regard noted that as per Official Language Act, 1963 and the Official Language (Use for Official Purposes of the Union) Rules, 1976, any communications of a Central Government office is required to be in both Hindi and English normally, however, any communication from a Central Government office to any person in region 'C' (which includes Andhra Pradesh) shall be in English. Further, the Court also stated that the orders passed by the Commissioner (Appeals) would not come into effect until English copies of the said orders are served. [*Subodh Enterprises* v. *Union of India* – 2024 VIL 810 AP]

Organising physical card game of Bridge, played for money, is not liable to GST

The West Bengal AAR has held that the applicant, who is organizing a tournament of physical /offline card games of 'Bridge' when played for money, cannot be held to be a supplier of 'specified actionable claim' and therefore is not liable to pay GST. The Authority was of the view that even it is held that playing of bridge against money qualifies to be 'specified actionable claim', the applicant cannot be held to be engaged in supply of specified actionable claim by organizing the tournament of bridge where contribution of money was deposited in a common pool and the applicant does not lien over this money or money's worth contributed by players. [In RE: *Bridge Federation of India* – 2024 VIL 142 AAR]

Transfer of title of goods stored in FTWZ unit to DTA unit is covered under para 8(a) of Schedule III to CGST Act

The Tamil Nadu AAR has held that the activity of the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ, will get covered under para 8(a) of Schedule-III of the CGST/TNGST Acts, 2017. Further, the Authority also held that with the amendment to Explanation of Section 17(3) of the CGST Act, 2017 by the Finance Act, 2023 proportionate reversal of ITC of common inputs/capital goods/services availed, if any, is required to be made by the applicant-assessee. [In RE: *Panasonic Life Solutions India Private Limited* – 2024 VIL 140 AAR]

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Customs

Notifications and Circulars

- Goods (excluding undenatured ethyl alcohol of any alcoholic strength) for use in laboratory or research and laboratory purposes liable to BCD @ 10%
- Gold and silver jewellery/articles – AIR of Drawback reduced
- EOUs – Implementation of automation in Customs IGCRS Rules, 2022 from 1 September 2024
- Advance authorization – Provisions relating to regularization of *bona fide* default relaxed

Ratio decidendi

- Port restriction for import of new vehicles is not applicable for vehicles imported in completely knocked down (CKD) condition – *CESTAT New Delhi*
- SCOMET – Export of goods certified by experts as for civil use cannot be stopped alleging potential military use – *Delhi High Court*
- Order – Not giving a finding on any issue after recording submissions means that Department satisfied with the explanation – *Bombay High Court*
- SAD refund not deniable, for mismatch of description of goods, without challenging CA certificate – *CESTAT Chennai*
- No interest, redemption fine and penalty payable, for late payment of IGST on imports, in absence of provisions for same – *CESTAT Ahmedabad*
- Valuation of scrap – Reliance on Circular No. 14/2005-Cus. while ignoring contemporaneous imports, is not correct – *CESTAT Mumbai*
- Classification of goods – Possible misuse after import is no criteria for classification – Provisional release allowed as investigation under process – *CESTAT Mumbai*
- Echo Dot (5th Gen), Echo Dot (5th Gen) with Clock and Echo Pop are classifiable under Tariff Item 8517 62 90 – *Delhi High Court*

Notifications and Circulars

Goods (excluding undenatured ethyl alcohol of any alcoholic strength) for use in laboratory or research and laboratory purposes liable to BCD @ 10%

CBIC has amended Notification No. 50/2017-Cus. by inserting Sr. No. 606A and has thereby extended the benefit of reduced BCD @ 10% to all goods (excluding undenatured ethyl alcohol of any alcoholic strength), classifiable under Tariff Item 9802 00 00 and for use in laboratory or research and laboratory purposes. The relevant condition in respect of these goods has been inserted under S. No. 123. The amendment introduced *vide* Notification No. 41/2024-Customs is effective from 1 August 2024.

Gold and silver jewellery/articles – AIR of Drawback reduced

The Ministry of Finance has reduced by more than 50% the All-Industry Rates of Drawback for articles of jewellery and parts thereof, made of gold or silver falling under Tariff Items 711301 and 711302, and on articles made of silver covered under Tariff Item 711401 of the Drawback Schedule notified by Notification No. 77/2023-Cus. (N.T.). Notification No. 55/2024-Cus. (N.T.), dated 23 August 2024 has been issued for the purpose.

EOUs – Implementation of automation in Customs IGCRS Rules, 2022 from 1 September 2024

The Central Board of Indirect Taxes and Customs has decided to implement the automation in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, in respect of EOUs with effect from 1 September 2024. EOUs have been directed to obtain IGCR Identification Number (IIN) at ICEGATE portal and also register their IGCR bond for filing a bill of entry with IGCR benefit. As per CBIC Circular No. 11/2024-Cus., dated 25 August 2024, once this module is activated, the same process would be used for clearances from SEZ to EOUs.

Advance authorization – Provisions relating to regularization of bona fide default relaxed

The Directorate General of Foreign Trade (DGFT) has on 22 August 2024 relaxed various provisions relating to

regularization of *bona fide* default for Advance Authorisations. While para 4.49(g)(i) of the FTP Handbook of Procedures has been amended to simplify provision for re-export of unutilized drugs, removing the requirement to re-export to the same supplier, para 4.49(g)(ii) has been amended to include all types of shipping bills in lieu of Destruction Certificate. As per Public Notice No. 18/2024, dated 22 August 2024, the changes have been made for ease of doing business and for reduction of compliance burden.

Ratio Decidendi

Port restriction for import of new vehicles is not applicable for vehicles imported in completely knocked down (CKD) condition

The CESTAT New Delhi has held that Policy Condition no. 2(II)(d) present in Chapter 87 of ITC (HS), restricting the ports and ICDs through which the new vehicles can be imported, does not apply to vehicles imported in Complete Knocked Down (CKD) condition. The Tribunal in this regard observed that if the expression 'motor vehicles' mentioned in condition 2 to Chapter 87 included motor vehicles in CKD condition then it would result in absurd consequences. The CESTAT for this purpose noted it was not possible for motor vehicles imported in CKD condition to comply with other conditions of Policy Condition No. 2(II), i.e., (a), (b) and (c), and that if same word or expression (motor vehicle, here) is used at many places in the same legislation, it should be understood to have been used in the same sense. ***The Appellant was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Honda Motorcycle and Scooter India Pvt. Ltd.* v. *Commissioner* – 2024 (8) TMI 30-CESTAT New Delhi]

SCOMET – Export of goods certified by experts as for civil use cannot be stopped alleging potential military use

The Delhi High Court has held that the goods which are exported purely for civil application would not attract any of the restrictions mentioned in the SCOMET list or Catch-All provisions. The Court negated the contention of the Department that the civil/commercial aircrafts parts imported by the petitioner could be used for military purpose, i.e., dual use, and hence should not be exported without further clearance of the DGFT. The Court observed that items which have been certified by the subject matter experts as having civil use and are allowed within the ambit of the export policy, cannot be stopped from being exported on the pretext that the products may have a potential military used. The High Court for this purpose also stated that almost everything can have a dual use. [*A.R. Sales Pvt Ltd.* v. *Union of India* – 2024 (8) TMI 729 - Delhi High Court]

Order – Not giving a finding on any issue after recording submissions means that Department satisfied with the explanation

The Bombay High Court has held that once the show cause notice is issued making certain allegations and the petitioner has replied to it and attended the personal hearing, not giving a finding on that issue after recording copiously the submissions of petitioner would mean that the Department was satisfied with the explanation given by the petitioner. The present case was related to the import of used hemodialysis machines which were treated as 'prohibited goods' by the Department. In this case the impugned order was silent about labelling the said goods as 'hazardous waste' or 'waste'. It was held that since there was no discussion or finding on the issue of hazardous waste in the impugned order, the department must have accepted petitioner's explanation. [*Hemant Surgical Industries Ltd.* v. *Union of India* – 2024 (8) TMI 34-Bombay High Court]

SAD refund not deniable, for mismatch of description of goods, without challenging CA certificate

The CESTAT Chennai has held that rejection of the SAD refund merely on grounds of the mismatch of description of the goods in the Bill of Entry and invoice, without challenging the CA certificate is not sustainable. The Tribunal noted that the CA's certificate showed that the goods mentioned in the Bill of Entry and commercial invoice as per the correlation statement were one and the same thing. In this case, the importer had filed a claim for refund of 4% SAD for their import of 'PB100 Fingerprint Scanner with USB Cable' in terms of Notification No. 102/2007-Cus. [*Precision Infomatic (M) Pvt. Ltd.* v. *Commissioner* – 2024 (8) TMI 483-CESTAT Chennai]

No interest, redemption fine and penalty payable, for late payment of IGST on imports, in absence of provisions for same

The CESTAT Ahmedabad has held that in absence of specific provision relating to levy of interest, redemption fine and penalty for late payment of IGST in case of imports, same cannot be demanded by taking recourse to machinery provisions relating to recovery of duty. The IGST was paid

belatedly after the Supreme Court had held that IGST was payable if 'pre-import condition' was not satisfied. The CESTAT in this regard noted that for recovery of IGST on import of goods, provisions are made under Section 3(7) of Customs Tariff Act, 1975. However, no specific provision is made for recovery or charging of interest, fine and penalty under Section 3(7) or 3(12) as compared to such similar provisions made under Sections 8B(9) and 9A(8) of the said Act. [*Chiripal Poly Films Ltd.* v. *Commissioner* – 2024 VIL 876 CESTAT AHM CU]

Valuation of scrap – Reliance on Circular No. 14/2005-Cus. while ignoring contemporaneous imports, is not correct

In a case where the Adjudicating authority had proceeded to re-determine value of imported scrap on basis of Circular No.14/2005-Cus. issued by the Director General of Valuation, while not considering contemporaneous data available on record, the CESTAT Mumbai has held that if the value of contemporaneous imports is available, same should be the basis for re-determination of value. Further, the Tribunal held that the price declared by the assessee-importer should be considered as the transaction value, as imports made by those contemporaneous importers were at same commercial level at which the assessee had imported the impugned goods. Also, the CESTAT observed that LME prices cannot be the sacrosanct evidence to substantiate the charge of undervaluation.

Allowing the appeals, the Tribunal further noted that it was not Revenue's case that the assessee had paid any other amount either to the overseas supplier or any other person, over and above the contractual amount, in context with importation of the subject goods. [*Nico Extrusions Ltd.* v. *Commissioner* – 2024 VIL 826 CESTAT MUM CU]

Classification of goods – Possible misuse after import is no criteria for classification – Provisional release allowed as investigation under process

The CESTAT Mumbai has allowed provisional release of goods in a case where the assessee-importer was of the view that the imported tyres were of a kind used in mining and other off-road purposes while according to the Department the tyres were being misused as truck and bus tyres. According to the Department, the tyres would hence require clearance from the competent authority and should also adhere to the BIS specifications. Allowing provisional release on furnishing of bond and bank guarantee, the Tribunal noted that the

allegation was not yet established (nature of the goods being restricted was yet to be established) as the investigation was in progress.

Further, the Tribunal observed that the end-use or subsequent possible mis-use cannot be a criteria for the classification of the goods. The Tribunal was also of the view that allowing goods to be released to some importer as per the test report given by IRMRA while denying even a provisional release to some for whom opinion of IRMRA is also not obtained, goes beyond the boundary of 'discretion' and borders upon 'discrimination'. [*Vikas Retail Private Limited* v. *Commissioner* – 2024 VIL 822 CESTAT MUM CU]

Echo Dot (5th Gen), Echo Dot (5th Gen) with Clock and Echo Pop are classifiable under Tariff Item 8517 62 90

The Delhi High Court has held that Echo Dot (5th Gen), Echo Dot (5th Gen) with Clock and Echo Pop are classifiable under Tariff Item 8517 62 90 of the Customs Tariff Act, 1975 and not under Heading 8518 *ibid.* The High Court relied on its 2023 decision in the case of same parties and observed that it had then recognized that the principal attributes of the Echo Family Devices make them liable to be acknowledged as 'convergence devices' as opposed to mere speaker or other audio devices of a like character. Further, dealing with amendments introduced in Heading 8518 by the Finance Act, 2022, the Court noted that though expression 'wireless' has been included, the broad heading remains unchanged. The High Court was of the view that merely because the subject devices in the present case are also enabled to perform and operate in a wireless environment, they would not be liable to be placed under Heading 8518. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Amazon Wholesale India Private Limited* v. *Customs AAR* – 2024 VIL 875 DEL CU]

Central Excise, Service Tax and VAT

Ratio decidendi

- No service tax on foreclosure charges, penal charges and on insurance administration fees – Supreme Court upholds CESTAT decision
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Ratio Decidendi

No service tax on foreclosure charges, penal charges and on insurance administration fees – Supreme Court upholds CESTAT decision

The Supreme Court has on 29 July 2024 affirmed the CESTAT Chandigarh decision dated 20 April 2023 in the case *Clix Capital Services Pvt. Ltd.* v. *Commissioner*, wherein the Tribunal had passed the Order in favour of the assessee in all the three issues in question before it. The Tribunal had held that Foreclosure charges charged by Banks and non-banking financial companies on premature termination of loan is not liable to service tax. Similarly, in respect of penal charges recovered from customers when the latter defaults in making timely payments and in case of dishonor of cheques, the Tribunal was of the view that such collection arose on account of separate cause of action which was independent of lending services rendered by the assessee. Further, the Tribunal had also set aside the demand of service tax on insurance administration fees under the category of BAS.

Condoning the delay by the Department in filing the Civil Appeal, the Supreme Court dismissed the appeals. The Apex Court's Order states that the Court was not inclined to interfere with the CESTAT decision. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Clix Capital Services Pvt. Ltd.* – Order dated 29 July 2024 in Civil Appeal Nos. 8066-8067/2024, Supreme Court]

No service tax on out roamer revenue received if service tax paid by other entity which collected charges including tax from subscribers

The CESTAT Chennai has set aside the demand of service tax on out roamer revenue in a case where the service tax was already discharged on the services provided to the subscriber, though by other entities of the assessee which had collected the tax from the subscriber. In the dispute, the recharge vouchers / E-top ups were purchased by the assessee's subscribers from other entities or from other Circles while they were in roaming Circle while paying the charges for the services as well as service tax on such service to the other entity. The entity in the roaming circle, who had collected the charges along with service tax, paid service tax to the Government exchequer and transferred the charges to the assessee. The Department had demanded service tax on such amount received by the assessee.

The Tribunal for this purpose noted that the department had no explanation as to what happened to the service tax collected by the other entities or other circles on the out roamer revenue which was the subject for demand of service tax in the present dispute.

Further, the Tribunal also set aside the demand of Cenvat credit when the Department had contended that since part of the consideration for certain input services were reimbursed by other circles who had also used the services, the appellant was eligible to avail proportionate credit only. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Vodafone Mobile Services Limited* v. *Commissioner* – TS 295 CESTAT 2024(CHNY) ST]

Exemption – Requirement of a certificate for central excise exemption is only procedural

The CESTAT Ahmedabad has held that the requirement of a certificate (essentiality certificate) for purpose of central excise exemption is only a procedural requirement. According to the Tribunal, the nature of supply is predominant for granting the exemption and if the certificate was obtained later after the clearance, the exemption is available as the procedural requirement also stood fulfilled. Holding that the refund claim was in order, the Tribunal held that merely because the certificate required for availing the exemption notification was not available at the time of clearance of the goods, the exemption could not have been denied when the same was produced later. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*GE Power India Ltd.* v. *Commissioner* – 2024 VIL 761 CESTAT AHM CE]

Cash refund of CVD and SAD paid under 'existing law' but after 1 July 2017

The CESTAT New Delhi has reiterated that the assessee is entitled to claim refund of Cenvat credit in cash on the amount of CVD and SAD paid under the existing law (as they existed prior to introduction of GST), considering the provisions of Section 142(3) of the CGST Act, even if the said duties were paid after 1 July 2017. Department's contention that the assessee had not paid the said duties under the 'existing law' as they were paid later because the assessee had failed to fulfil the export obligation within the time specified in the Advance Authorisations, was thus rejected. The Delhi High Court decision in the case of *Rai Agro Industries* was held as not applicable as the assessee in the present case had also paid interest along with the specified duties. CESTAT Larger Bench decision in the case of *Bosch Electrical Drive India Private Limited*

was relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Assistant Commissioner* v. *Shakti Pumps (I) Limited* – 2024 VIL 841 CESTAT DEL CE]

Kopiko, a hard-boiled sugar and glucose confectionery, containing 1.57% Coffee flavour is classifiable under TI 1704 90 90 as sugar confectionery

The CESTAT Ahmedabad has held that Kopiko, a hard-boiled sugar and glucose confectionery, containing 1.57% Coffee flavour is classifiable under TI 1704 90 90 as sugar confectionery, and not under TI 2101 12 00 of the Central Excise Tariff, 1985 as claimed by the Revenue. The Tribunal in this regard noted that the product contained more than 74% sugar and glucose with only 1.57% flavour coffee for giving flavor while not contributing in the main product i.e. confectionery. It was thus held that the product could not be classified under 2101 12 00 as it was not a preparation with basis of coffee. The Rules of Interpretation of the Central Excise Tariff were also relied by the Tribunal for the purpose. It was noted that sugar boiled confectionery was specifically covered under Heading 1704 which was also a more specific description, and that the product was held to be covered under Chapter 17 by foreign countries and by Indian Customs. [*Inbisco India Pvt. Ltd*. v. Commissioner – TS 329 CESTAT 2024 (Ahd) EXC]

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