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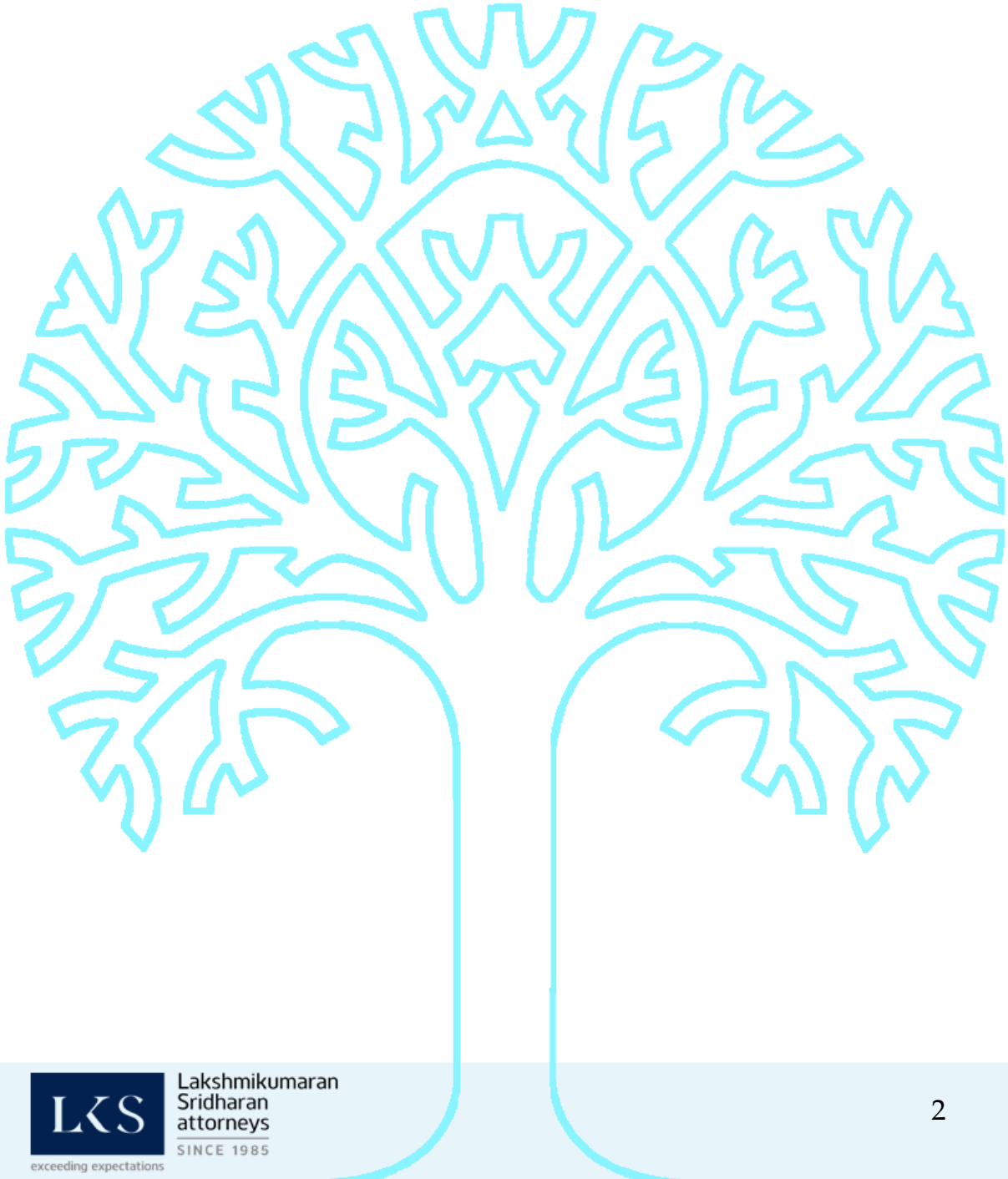

Article

Unveiling the right to challenge assessments: Is consent the end?

By **Akhilesh Kangsia, Apoorva Parihar and Nandita Reddy**

Recent judgment of the Delhi High Court in *Niraj Silk Mills & Others* has (re)triggered the debate over the significance of 'consent' given at the time of assessment of bill of entry or shipping bill, be it regarding rate of duty, valuation or classification. The article in this issue of Indirect Tax Amicus focuses on the critical aspect of whether an assessee can challenge an assessment even after giving consent or acceptance in writing. The authors feel that navigating this legal labyrinth is no walk in the park, given the complexities and conflicting judgments prevailing. Discussing the key legal points and the take-away from the High Court's judgement, the authors note that the judgment is a significant step towards ensuring fairness and transparency in customs valuation and reassessment processes. According to them, it will certainly ensure that the importer / assessee is not left remedy less.

Unveiling the right to challenge assessments: Is consent the end?

By Akhilesh Kangsia, Apoorva Parihar and Nandita Reddy

Recent judgment of the Delhi High Court in *Niraj Silk Mills & Others* [2024 (11) TMI 1361] has (re)triggered the debate over the significance of 'consent' given at the time of assessment of bill of entry or shipping bill, be it regarding rate of duty / valuation / classification. This article focuses on the critical aspect of whether an assessee can challenge an assessment even after giving consent / acceptance in writing. The authors feel that navigating this legal labyrinth is no walk in the park, given the complexities and conflicting judgments prevailing.

To set the background, the CESTAT, New Delhi and other Benches have been taking a consistent view that the importer / assessee could not question the enhancement of the value by the customs department in the appeal once it had waived its right to a speaking order under Section 17(5) of the Customs Act, 1962 and accepted the enhancement in writing.

Key legal points dealt with in the judgement by the Delhi HC:

Reassessment and Speaking Order:

- Section 17(5) of the Customs Act mandates that if reassessment is contrary to the self-assessment, a speaking order must be passed unless the importer accepts the reassessment in writing.
- The Hon'ble High Court emphasised that the proper officer must record reasons for doubting the declared value and communicate these reasons to the importer if requested as the same is a mandated requirement under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('**CVR**').

Declared Values and Reappraisal:

- The reassessment must be based on cogent reasons and evidence.
- The proper officer's decision to reject the declared value must be preceded by a reasonable doubt about the truthfulness or accuracy of the declared value.
- The High Court held that a conjoint reading of Section 17(4) alongside Rule 12 of CVR thus reinforces the fact that reasons in support of the

formation of opinion that the self-assessment declarations are incorrect must exist and stand duly recorded. In short, the proper officer is mandatorily required to give his reasons for rejecting the transaction value in writing.

Abandonment and Waiver:

- Mere acceptance of the reassessment to expedite clearance does not amount to an abandonment of the right to challenge the reassessment.
- The importer's communications indicated that they accepted the reassessment *under protest to avoid financial losses due to detention and demurrage charges.* Basis this finding, the High Court held that the decisions in the case of *Advanced Scan Support* and *Vikas Spinners* relied upon the CESTAT are not applicable to the present case.

Submissions put forth on behalf of the assessee:

The acceptance of the reassessment was made under duress to avoid delay in clearance & financial burden of detention and demurrage charges. They contended that such acceptance did not amount to a waiver of their right to challenge the reassessment. Broad legal points raised by the importer / assessee are:

- ***Procedural Fairness*:** The proper officer must provide cogent reasons for rejecting the declared value and communicate these reasons to the importer. This procedural requirement cannot be waived. This argument was made basis the judgement of the Hon'ble Apex Court in *Century Metal Recycling* v. *Union of India* - 2019 (367) ELT (SC).
- ***Right to Appeal*: *Their right to appeal against the reassessment was protected under the Customs Act, and mere acceptance of the reassessment that too under protest did not preclude them from challenging it later. This argument was made basis the judgement of the Hon'ble Apex Court in ITC Ltd. v. CCE – 2019 (368) ELT 216 which permitted challenge to self-assessment in an appeal under Section 128 of the Customs Act, 1962. Several other judgments were cited wherein assessee's right to challenge an assessment even after giving consent was upheld.***

Take-away from the High Court's judgement:

The Delhi High Court discussed in detail the inter-play between Rule 12 of the CVR and Section 17 of the Customs Act, 1962.

The Court held that a combined reading of Section 17 of the Customs Act, 1962 alongside Rule 12 of CVR would establish that the enquiry by the proper officer is essentially two-tiered. The first stage comprises of the proper officer forming the opinion that the declared value is liable to be reviewed, basis reasonable doubt being harboured with respect to its truthfulness or accuracy.

The Court further held that upon arriving at that preliminary conclusion, the proper officer is obliged to convey their opinion to the importer / assessee and elicit further information and documents to aid and assist it in the adjudicatory process. It is at this stage that the importer / assessee is entitled to call upon the proper officer to provide the grounds for doubting the declared value in writing so as to enable it to respond. The Court highlighted that the obligation to provide reasons and a reasonable opportunity of representation to the importer / assessee is clearly mandatory in light of the language employed under Rule 12(2) of CVR.

The Court also held that if the doubt persists even after consideration of the response as submitted by the importer / assessee or where it fails to respond to the notice issued, the proper officer will proceed to record its decision that the value of the goods cannot be determined in accordance with Rule 3(1). This constitutes the second tier of the adjudicatory process. Therefore, it is clear that the proper officer is bound to provide reasons for re-determination of value.

The Hon'ble Court further highlighted that the provisions contained in Rule 12(1) are in essence an amalgam of the procedure prescribed and stipulated in sub-sections (3) and (4) of Section 17. The Hon'ble Court relied upon the judgement in *Shah Mulchand & Co.* v. *Jawahar Mills* [(1952) 2 SCC 674] wherein the Supreme Court explained that abandonment of a right is much more than mere waiver, acquiescence, or laches. Mere acceptance of reassessment does not amount to an abandonment of the right to challenge it. The Court noted that the importer / assessee had registered its protest on more than one occasion and had also sought expeditious clearance of goods subject to an exercise of provisional reassessment being undertaken. These facts and circumstances clearly detract from the argument of a conscious abandonment of the right to question the reassessment or to accept the re-evaluation exercise undertaken without reservation of a right to challenge.

The Hon'ble Court also took note of the judgement in *South India Television* v. *Commissioner of Customs* [(2007) 6 SCC 373] wherein the Hon'ble Supreme Court held that the burden of proving incorrect valuation lies on the Department. The

Department must provide cogent reasons and evidence for rejecting the declared value. The High Court finally set aside the decision of the CESTAT.

In a nutshell, the Delhi High Court's judgement reaffirms the legal principles governing reassessment by Customs department and recourse available to assessee against the same. It emphasises that an assessee can challenge an assessment even after giving consent to the reassessment, provided the consent was given under protest or due to coercive circumstances.

In the authors' understanding, the above judgement echoes the settled legal position that an admission made in ignorance of legal rights or under duress does not have a binding effect on the maker of the admission. Therefore, such admission would not eliminate the right to file an appeal. Refer: *Shri Krishnan* v. *The Kurukshetra University* [(1976) 1 SCC 311 (SC)]; *Shiv Shankar* v. *ACTO* [1997 (105) STC 40 (Raj. HC)]; *Secretary, Kaniyara Seva Samaj* v. *State of Mysore* [1969 (23) STC 155 (Mysore HC)]; *Chhat Mull Aggarwal* v. *CIT* [1979 (116) STR 694 (P&H HC)]. Also, the right of appeal is a valuable right, and the same cannot be forfeited unless explicitly taken away by an enactment or by necessary implication as held by the Bombay High Court in *Nagpur Zilla Krushi Audyogik Sahakari Sangh* v. *Second ITO* [(1994) 207 ITR 213, para 6].

Another argument which can be put forth by the importer / assessee in such cases is that act of filing appeal will itself tantamount to payment of duty under protest as held by the Hon'ble Delhi High Court in *Principal Commissioner of Customs (Import & General)* v. *Cisco Systems (India)* [(2023) 3 Centax 209 (Del.)] which stands affirmed by Hon'ble Supreme Court in 2024 (387) ELT 517:

> ***13.*** *It is difficult for this Court to accept that the payment of custom duty imposed pursuant to an order while appealing the same can be construed as payment of duty without protest.* ***The very act of filing an appeal against an order imposing customs duty is a protest against the duty as assessed. The entire purpose of such an appeal is to seek reduction of the levy. It is, thus, obvious that the assessee does not accept the said levy and, payment of the same would necessarily have to be construed as payment under protest.***
>
> ***15. In view of the authoritative decision of the Supreme Court in Mafatlal Industries Ltd. v. Union of India (supra), the question whether payment of duty while appealing its imposition, is required to be***

> ***construed as payment under protest, is no longer res integra****. Although the said decision was rendered in the context of Section 11B of the Central Excise Act, 1944, the second proviso to Section 11B of the Central Excise Act, 1944 is pari materia to second proviso of Section 27(1) of the Customs Act.*
>
> … [Emphasis Supplied]

The authors' feel that this judgment of the Delhi High Court is a significant step towards ensuring fairness and transparency in customs valuation and reassessment processes, especially in cases where the customs officials obtain the consent under force / duress to avoid burden of issuing speaking order under Section 17(5) of the Customs Act, 1962. This judgement will certainly ensure that the importer / assessee is not left remedy less in cases where they are forced to accept the reassessment by the customs officials.

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Goods & Services Tax (GST)

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Notifications and Circulars

GST rates and classification of goods clarified

Pursuant to the 55th GST Council's Meeting in December 2024, the Central Board of Indirect Taxes and Customs has now issued a circular to clarify various issues pertaining to GST rates and classification of goods. Circular No. 247/04/2025-GST, dated 14 February 2025 accordingly clarifies the following.

- ***Agriculturist supplying dried pepper/raisins*** is not liable to be registered and is exempt from GST
- Ready to eat ***popcorn*** mixed with salt and spices is liable to GST @ 12% if packaged and labelled and 5% if sold otherwise. Further, popcorn mixed with sugar attracts 18% GST as same becomes sugar confectionary. Issues for period till 14 February 2025 in respect of applicability of GST on popcorn mixed with salt and species, are to be regularised on 'as is where is' basis.
- ***Autoclaved aerated concrete blocks*** containing more than 50% fly ash content attract 12% GST
- ***Compensation Cess on SUVs and utility vehicles*** – Amendment by Notification No. 3/2023-Compensation Cess (Rate) dated 26 July 2023 in Notification No. 1/2017-Compensation Cess (Rate) is prospective. The amendment introduced qualifiers of length of vehicle and unladen ground clearance.

Withdrawal of departmental appeals filed against interest and/or penalty only, when assessee fulfils conditions of amnesty scheme under Section 128A

The CBIC has clarified that in cases where the tax amount has been fully paid by the taxpayer on demand under Section 73 and the Department is in appeal only for wrong interest and/or wrong/non-imposition of penalty and the taxpayer fulfils other conditions of amnesty scheme under Section 128A, the proper officer may proceed towards withdrawing such an appeal filed. Similarly, in cases where the Department is under the process of filing any such appeal, CBIC Instruction No. 2/2025-GST, dated 7 February 2025 clarifies that the proper officer may accept the order if the same is under review stage. The Instruction in this regard notes that the intention of Section 128A is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.

Ratio Decidendi

Arrest powers under Customs and GST laws – Supreme Court clarifies

The Supreme Court has on 27 February pronounced a detailed judgement on the powers of arrest under the Customs Act, 1962 and under the GST laws. Certain important points as stated by the Apex Court, including certain pre-conditions and safeguards to protect the life and liberty of the arrestees, are highlighted below.

Customs:

- Customs officers are not police officers.
- Amendments made to the Customs Act in 2012, 2013 and 2019, designating specified offences as cognizable and non-bailable, while also imposing certain pre-conditions and stipulations for making arrest, are substantive and introduced to effectively modify the application of Supreme Court decision in *Om Prakash.*
- Paginated diary to be maintained by the officer during investigation *[Section 172 of the Code of Criminal Procedure, 1973 ('**Code**')].*
- Customs officers to inform the arrestee about his grounds of arrest *[Section 50 of Code]*. The grounds of arrest must be given in writing to the arrestee before he is produced before the Magistrate.
- Customs officers must maintain records of their statutory functions including details like the name of the informant, name of the person who violated the law, nature of information received by the officers, time of arrest, seizure details, and statements recorded during the course of detection of the offence.
- Customs officers making an arrest to bear an accurate, legible, and clear indication of their names to facilitate ease of identification. *Section 41-B of the Code*, which outlines procedures of arrest and duties of the officer making the arrest, is binding on customs officers.
- The person arrested by a customs officer has the right to meet an advocate of his choice during interrogation, but not throughout interrogation. *Section 41-D of the Code* is applicable for offences under the Customs Act.

- The Customs officer is under obligation to inform friend/relative, etc. of the person arrested, about the arrest, etc. Magistrate to satisfy himself that the requirements have been complied with. *Section 50A of the Code* is applicable.
- Reasonable care of the health and safety of the arrested person needs to be taken. *Section 55A of the Code* is applicable.
- Supreme Court's decision in the case of *Arvind Kejriwal* v. *Directorate of Enforcement*, though on Prevention of Money Laundering Act, is applicable. Court compares Section 19(1) of PMLA to Section 104(1) of the Customs Act.
- Threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code. 'Reason to believe' being more stringent than 'suspicion'.
    - Reasoning must weigh in why an arrest is being made in a specific case.
    - Reasoning must state how specified monetary thresholds are met.
    - Reasons to believe must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can be drawn.

Goods and Services Tax (GST)

- Reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts.
- GST Acts are not a complete code for search, seizure and arrest. The provisions of the Code would equally apply when they are not expressly or impliedly excluded.
- Commissioner must satisfactorily show, *vide* the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of Section 132(5) of the CGST Act are satisfied.
- Arrest cannot be made to merely investigate whether the conditions of Section 132(5) are being met. Power of arrest should be used with great circumspection and not casually.
- Computation of the tax involved in terms of the monetary limits should be supported by referring to relevant and sufficient material.
- Power under Section 132(5) can be exercised even before the assessment procedure under Section 73 is completed.

- CBIC Instruction No. 02/2022-23, dated 17 August 2022 and Instruction No. 01/2025-GST dated 13 January 2025 to be read along with directions outlined in present case.
- Coercion and threat to arrest amounts to violation of fundamental rights and the law of the land. CBIC was asked to formulate clear guidelines to ensure that no taxpayer is threatened with the power of arrest for recovery of tax in the garb of self-payment.
- However, there should not be any attempt to dictate the investigator and at the same time, there should not be any misuse of power and authority.
- It is not essential that the application for anticipatory bail should be moved only after an FIR is filed.
- It is possible for the Department to justify resorting to coercive provisions. Notes on the file must offer convincing justification for resorting to such an extreme measure.
- Sections 69 and 70 of the GST Acts are constitutionally valid. Submission that power to summon, arrest and prosecute are not ancillary and incidental to the power of levying GST and therefore, are beyond the legislative competence of the Parliament under Article 246-A of the Constitution, was rejected.

[*Radhika Agarwal* v. *Union of India* – Judgement dated 27 February 2025 in Writ Petition (Criminal) No. 336 of 2018 and Others, Supreme Court]

Provisional attachment of a bank account when a colourable exercise of power

Observing that there was no material available with the Joint Commissioner to form an opinion that the assessee was likely to defeat the demand, the Bombay High Court has directed for unfreezing the bank account of the assessee. The Court in this regard noted that the attachment order proceeded on the basis that the GST Council had recommended amendment to the words 'plant and machinery' instead of 'plant or machinery' in Section 17(5)(d) of the CGST Act, 2017 after the Supreme Court decision in the case of *Safari Retreat*, and in one sweeping line, the Joint Commissioner concluded that in order to protect the interest of the revenue, powers under Section 83 need to be exercised. Allowing assessee's writ petition, the Court also noted that the parent company of the assessee was one of the largest Foreign Direct Investors in the State of Maharashtra and were constructing projects worth INR 8,000 crore which were

free from any encumbrances. The Court of hence of the view that the attachment of the bank account was a colourable exercise of power. ***The assessee was represented by V. Sridharan, Senior Advocate, Bombay High Court and Co-founder, Lakshmikumaran & Sridharan Attorneys.*** [*Goisu Realty Pvt. Ltd.* v. *State of Maharashtra* – 2025 VIL 154 BOM]

Provisional attachment – Mere pendency of proceedings under Chapter XII, XIV or XV is not enough

The Madras High Court has held that while pendency of proceedings under Chapter XII, XIV or XV of the CGST Act, 2017 is necessary for the exercise of the power, such pendency would not automatically warrant exercise of power under Section 83 of the said Act. Relying upon the Supreme Court decision in the case of *Radha Krishan Industries* [(2021) 6 SCC 771], the Court held that the power to order a provisional attachment is draconian in nature and the conditions which are prescribed by the statute *viz.*, formation of an opinion by the Commissioner under Section 83(1), must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue. Setting aside the provisional attachment proceedings, the Court noted that the proceedings did not disclose any tangible material which led to the formation of opinion that the provisional attachment was necessary. According to the Court, the need to give reasons is even more compelling as Rule 159 of the CGST Rules, 2017 grants assessee a right to file objections against the attachment. [*Kesar Jewellers* v. *Additional Director General* – 2025 VIL 138 MAD]

Refund application for inverted duty ITC on edible oils for period before 18 July 2022, is admissible even after said date – CBIC Circular No. 181/13/2022 struck down

The Andhra Pradesh High Court has held that restrictions placed by Notification No. 9/2022-Central Tax, which came into force from 18 July 2022, would apply only to the extent of input tax credit arising after 18 July 2022. The notification had imposed prohibition for refund of unutilized ITC in case of inverted duty structure for certain edible oils. The Revenue department had denied the refund when the application for refund was filed after 18 July 2022, though ITC was for the period prior to 18 July. Further, the Court was also of the opinion that Circular No.181/13/2022-GST, dated 10 November 2022, clarifying that the restriction imposed by the notification would be applicable in respect of all refund

applications filed on or after 18 July 2022, would have to be struck down. The Department was directed to reconsider the refund application without relying upon the said circular. [*Priyanka Refineries Private Limited* v. *Deputy Commissioner* – 2025 (2) TMI 302 - Andhra Pradesh High Court]

Refund of pre-deposit cannot be denied taking aid of limitation under Section 54

The Jharkhand High Court has held that limitation of 2 years as provided under Section 54 of the Central Goods and Services Tax Act, 2017 cannot be used by the Department to deny refund of pre-deposit made by the assessee while filing appeal. The assessee's appeal in this case was allowed by the Appellate Authority on 9 February 2022 but the application for refund of the pre-deposit amount was filed only on 11 September 2024. Observing that Section 54 uses the phrase 'may make an application before the expiry of 2 years', the Court held that once refund is by way of statutory exercise, the same cannot be retained, that too by taking aid of a provision which is directory. According to the Court, restricting the refund by reading the word 'may' as 'shall' would be unreasonable and arbitrary and in conflict with Article 137 of the Limitation Act, 1963, which provides for 3 years limitation period for filing a Money Suit. [*BLA Infrastructure Private Limited* v. *State of Jharkhand* – 2025 VIL 103 JHR]

Refund of amount deposited during investigation – Payment when not voluntary

The Division Bench of the Karnataka High Court has upheld the decision of the Single Bench wherein the Court had held that the payments made by the assessee were not voluntary and lacked the element of self-ascertainment required under Section 74(5) of the CGST Act, 2017. The DB in this regard observed that the long detention of the assessee's proprietor during search proceedings, combined with summons to appear and threats of arrest, indicated a coercive environment which removed voluntariness. The High Court observed that the Court needs to look into the facts in totality to come to a conclusion whether there was threat and coercion resulting in the statements recorded and also the deposits made. Further, the Court was also of the view that filing of retraction affidavit within one week of the allegedly coerced statement and payment was not unduly delayed. Dismissing the Department's appeal, the Court directed a refund of the amount with interest. [*Intelligence Officer, DGGSTI* v. *Kesar Color Chem Industries* – 2025 VIL 110 KAR]

Refund of GST on notice pay recovery – Limitation for filing refund application to start from date of Circular No. 178/10/2022-GST

In a case involving refund of GST paid by the assessee on notice pay recovery when the CBIC vide its Circular No. 178/10/2022-GST clarified that such transactions are not liable to GST, the Gujarat High Court has held that limitation of 2 years for filing for refund will start from the date of the Circular, i.e. from 3 August 2022. The assessee had paid GST during July 2017 till July 2022 but filed the refund claims in November 2022 and the CBIC had only in August 2022 clarified that the forfeiture of salary or payment of bond amount in the event of an employee leaving the employment before the minimum agreed period, was not taxable. The Court noted that the assessee could not have had the opportunity of filing of the refund claims till the date of the Circular. The High Court observed that the State is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as 'Tax'. [*Aculife Health Care Pvt. Ltd.* v. *Union of India* – 2025 VIL 87 GUJ]

Time limit of 3 months under Section 73(2) for issuance of SCN is a mandatory requirement

The Andhra Pradesh High Court has held that time limit of three months prescribed under Section 73(2) of the CGST/APGST Act, 2017 for issuance of the show cause notice is a mandatory requirement and not a directory requirement. Observing that the periods of limitation prescribed under the GST law are mandatory and no orders can be passed beyond the periods set out in the Act, the Court found it difficult to hold that the stipulation as to the period of initiation of such proceedings by issuance of a show cause notice would only be directory and not mandatory. The Court also noted that the provisions relating to rights of personal hearings and at least three adjournments will be rendered otiose if notice is permitted to be sent without a minimum waiting period.

Further, relying upon certain precedents, the Court noted that when a period available for a certain action is defined in terms of months, it would mean that the corresponding date of the corresponding month would be the cutoff date. It observed that in the present case, the cutoff date for issuing an order was 28 February 2025 and hence the 3 months period which would elapse from this date would be 28 November 2024. The notice issued on 30 November 2024 was thus held as issued beyond

the time stipulated under Section 73(2) of the CGST Act. [*Cotton Corporation of India* v. *Assistant Commissioner* – 2025 VIL 124 AP]

Appeal to Appellate Authority beyond the period prescribed under Sections 107(1) and (4) is time-barred – Limitation Act is not applicable

The Delhi High Court has reiterated that once it is found that the legislation incorporates a provision which creates a special period of limitation and proscribes the same being entertained after a terminal date, the general provisions of the Limitation Act, 1963 would cease to apply. Relying upon multiple precedents, the High Court differed with the views of the Calcutta High Court decision in *Mukul Islam* v. *Assistant Commissioner* [2024 SCC OnLine Cal 8544] and Andhra Pradesh High Court decision in *Venkateshwara Rao Kesanakurti* v. *State of AP* [2024 SCC OnLine AP 3905] wherein it was held that Limitation Act is applicable to condone the delay in filing the appeal under GST laws. The Court here observed that the right to seek condonation of delay and invoke the discretionary power inhering in an appellate authority would depend upon whether the statute creates a special and independent regime with respect to limitations or leaves an avenue open for the appellant to invoke the general provisions of the Limitation Act to seek condonation of delay. [*Addichem Speciallity LLP* v. *Special Commissioner* – 2025 VIL 127 DEL]

Appeal to Appellate Authority – 3 months in Section 107(1) is 3 calendar months and not 90 days

The Patna High Court has held that period of 3 months and 1 month specified in Sections 107(1) and 107(4), respectively, of the CGST Act, 2017 will mean 3 and 1 calendar month, respectively, and not 90/30 days. Decision of the coordinate Bench of the Court in *Vaishnavi Enterprises*, wherein the Court took the period of limitation of three months as a period of 90 days, was held to be in ignorance of the statute and the binding precedents of the superior court. [*Brand Protection Services Private Limited* v. *State of Bihar* – 2025 (2) TMI 303 - Patna High Court]

Appeal to Appellate Authority – Delay beyond the condonable period when can be condoned

The Madras High Court has held that the delay of 35 days in filing the appeal, i.e., beyond the condonable period by 5 days, can be condoned in the interests of justice. The Court for this purpose noted the circumstances surrounding the delay and the actions already taken by the assessee to discharge a

substantial portion of the disputed tax liability. The High Court was thus of the view that the appeal should not be dismissed merely due to a procedural delay, especially when the assessee had made an effort to comply with the statutory requirements, including the pre-deposit of 10% of the tax liability and additional payments towards the disputed tax amount. [*TVL. Chennais Pet* v. *State Tax Officer* – 2025 VIL 177 MAD]

Parallel proceedings – Summons after search by Central GST authorities when are valid, even if proceedings by State authorities pending

The Delhi High Court has held that there is no justification to interdict the summons issued by the Central GST authorities pursuant to a search, in a case where the assessee had relied upon Section 6(2)(b) of the CGST Act, 2017 to submit that since the State GST authorities were in seisin of the proceedings, it would be impermissible for the Central authorities to commence any proceedings. According to the Court, summons issued pursuant to a search would have to be distinguished from an actual assessment that an authority may choose to undertake. Jharkhand High Court's decision in *Vivek Narsaria* v. *State of Jharkhand* [2024 SCC OnLine Jhar 50] was distinguished by the Court here. The High Court in this regard also observed that the search which constituted the basis for the issuance of the summons could not be construed as being related to the earlier assessments or the pending notice proceedings since it was undertaken post those events. [*Armour Security India Limited* v. *Commissioner* – 2025 VIL 142 DEL]

No GST on procurement of Excise holographic stickers/labels

The Madras High Court has held that procurement of 'holographic stickers' (excise labels) will not attract payment of GST on Reverse Charge Basis in terms of Sl.No.5 to Notification No.13/2017-Central Tax (Rate). Directing refund of the tax paid by the assessee by mistake, the Court noted that supply of 'holographic stickers' cannot be treated as a 'composite service' along with grant of liquor license under the provisions of the Tamil Nadu prohibition Act, 1937. It was also observed that activity of grant of excise license for consideration in the form of license fee / application fee is neither a supply of 'goods' nor the supply of 'services' in view of Notification No.25/2019-Central Tax (Rate). According to the Court, even if grant of license was liable to GST, supply of excise labels was not naturally bundled in the ordinary course of business. The Court was also of the view that supply of such excise labels is supply of 'goods' simplicitor and not a supply of 'service'. [*United Breweries Limited* v. *Joint Commissioner* – 2025 VIL 167 MAD]

Assessment of non-filers of returns – Limitation of 60 days under Section 62(2) is directory

The Madras High Court has held that the limitation of 60 days period prescribed under Section 62(2) of the CGST Act is directory in nature. The Court hence held that if the assessee was not able to file the returns for the reasons, which were beyond his/her control, the delay can be condoned, and the assessee can be permitted to file the returns after payment of interest, penalty and other charges as applicable. The Court in this regard noted that the Department has 5 years to pass the best judgement assessment order, and the assessee has 60 days from the end of that period. The Court was of the view that since the best judgment assessment order in the present case was made by the Department at the earliest point of time, the legal right of the assessee to file the returns cannot be taken away. [*TVL. Hi Version* v. *Commissioner* – 2025 VIL 176 MAD]

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E-way Bill – No penalty when e-way bill has SAP document number instead of tax invoice number, if intention to evade absent

The Allahabad High Court has allowed assessee's petition in a case where the e-way bill mentioned the SAP document number instead of the tax invoice number when the goods were intercepted during transit. Setting aside the order passed under Section 129(3) of the CGST Act, 2017 demanding tax and imposing penalty, the Court noted that once the authorities have not pointed out any other mismatch relating to quality, quantity, items of goods, etc. as disclosed in the tax invoice, the error can be a genuine human error. It was also noted that as per the records, there was no finding with regard to the intention to evade payment of tax, which is essential for levying penalty. According to the Court, the human error committed while generating the e-way bill cannot be the only ground for justifying the initiation of proceedings under Section 129. [*Vishnu Singh* v. *State of U.P.* – 2025 (2) TMI 890-Allahabad High Court]

Customs

Notifications and Circulars

- Bourbon whiskey – AIDC reduced to 50%
- Customs (On -Arrival Movement for Storage and Clearance at Authorised Importer Premises) Regulations, 2025 notified but yet to come into force
- *'Ekal Anuband'* – Single all-India multi-purpose electronic bond with end-to-end automation introduced
- Refunds application process digitized
- AIR Drawback – Use of certain exempted inputs for manufacture of export goods is not fatal
- Advance authorization – Description of item in GST e-invoice to be noted if complete description not reflected in shipping bill
- Document submission and payment of fees to be mandatorily done online for proceedings under FTDR Act

Ratio decidendi

- Drawback available on mobile phones unlocked before exports by merchant exporter – Unlocking/activation is mere 'configuration' and is not covered under phrase 'taken into use' – *Delhi High Court*
- Valuation – Royalty for process undertaken in India – Explanation to Rule 10(1) emphases on 'imported goods' – *CESTAT Chennai*
- Transferable DFIA – Correlation of imports with the exports of the person to whom the license was originally issued is not required – *CESTAT Chennai*
- Quality Control Order is not applicable on imports dispatched from the exporting country before date of coming into force of QCO – *CESTAT Ahmedabad*
- Aircraft engine stand is classifiable under Customs TI 8609 00 00 and not under TI 8716 39 00 – *CESTAT New Delhi*
- Light Green Float Glass having absorbent layer (Tin) on one side is classifiable under TI 7005 10 10 – *CESTAT New Delhi*
- Communication modules/network interface cards, which are essential parts of communication hubs which in turn are parts of smart meters, are classifiable under TI 8517 70 90 and not under TI 9028 90 10/ 9028 90 90 – *CESTAT New Delhi*
- MEIS benefit to EOU is not deniable for absence of RCMC from EPCES during FTP 2015-20 – *Bombay High Court*

Notifications and Circulars

Bourbon whiskey – AIDC reduced to 50%

The Ministry of Finance has reduced Agriculture Infrastructure and Development Cess (AIDC) on Bourbon Whiskey, classifiable under Tariff Items 2208 30 11 and 2208 30 91, from 100% to 50%, with effect from 13 February 2025. Amendments have been made for this purpose in Notification No. 11/2021-Cus., dated 1 February 2021 by Notification No. 14/2025-Cus., dated 13 February 2025. AIDC on all other goods of Heading 2208 however remains same as 100%.

Customs (On -Arrival Movement for Storage and Clearance at Authorised Importer Premises) Regulations, 2025 notified but yet to come into force

The Ministry of Finance has notified the Customs (On -Arrival Movement for Storage and Clearance at Authorised Importer Premises) Regulations, 2025. The new Regulation is however yet to come into effect and will come into force from a date to be notified. The Regulation will be applicable for Authorised Economic Operator under Tier II or Tier III status and he will be required to make an application before the Commissioner of Customs, seeking to avail the facility of clearance at Authorised Importer Premises, which is the designated place authorised for storage of imported goods before clearance or removal. The Regulations provide for procedure for movement, storage and clearance or removal of the goods and also provide for certain obligations of the Authorised Importer.

'Ekal Anuband' – Single all-India multi-purpose electronic bond with end-to-end automation introduced

To overcome various issues relating to submission of multiple bonds along with security for every transaction at each port for different scenarios the Central Board of Indirect Taxes and Customs has introduced a Single all-India multi-purpose electronic bond with end-to-end automation. Accordingly, the importer or exporter will have an option to submit a single bond with facilities like, ability to choose the obligations, include additional obligations or additional amount at the later stage, electronic payment of stamp duty and electronic execution of Bond, online linking of end-to-end issued electronic bank guarantee, etc. Circular No. 4/2025-Cus., dated

17 February 2025 has been issued for the purpose and covers an elaborate process of execution of bond electronically, including the digital payment of stamp duty.

Refunds application process digitized

To support the Government's initiative of 'Ease of Doing Business', the Central Board of Indirect Taxes & Customs has digitized the filing and processing of the refund application under Section 27 of the Customs Act, 1962. Circular No. 05/2025-Cus., dated 17 February 2025 introduces a streamlined digital setup for filing and processing of the refund applications, aiming to reduce paperwork, enhance transparency, and promote efficiency. Accordingly, the applicant can now file refund applications along with supporting documents on the ICEGATE Portal and has option to request reassessment (if required) to the BOE prior to filing refund application on the portal. It may be noted that concurrent audit (pre-audit) of refund claims have been done away with, and only post-audit of refund will now be conducted by the Customs Department. Most importantly, the applicants should note that refund applications can be filed either manually or digitally on Portal till 31 March 2025, and that no manual refund applications will be accepted post 31 March 2025.

AIR Drawback – Use of certain exempted inputs for manufacture of export goods is not fatal

The CBIC has reiterated that it is not open for the field formations to probe as to whether certain exempted inputs have been used in the manufacture of the export goods and consequently deny All Industry Rate ('**AIR**') of Drawback in case of affirmative results. Noticing that the AIR was being denied or reduced on export goods produced using inputs on which duties were either not paid or paid at a concessional rate, the CBIC Instruction No. 1/2025-Cus., dated 28 February, marked to the field formations, quote earlier Circular No. 19/2005-Cus., dated 21 March 2005.

Advance authorization – Description of item in GST e-invoice to be noted if complete description not reflected in shipping bill

The Directorate General of Foreign Trade (DGFT) has clarified that in cases where the item description with more than 120 characters is not completely reflected in the shipping bills, the Regional Authorities may corroborate the complete description of the export item on the basis of self-attested copies of GST system generated e-invoice. DGFT Trade Notice No. 32/2024-25, dated 28 February 2025 in this regard states that the

documents may be uploaded for redemption/EODC of Advance Authorisation.

Document submission and payment of fees to be mandatorily done online for proceedings under FTDR Act

The DGFT has made submissions of documents under various proceedings under the Foreign Trade (Development and Regulation) Act, 1992 to mandatorily done online. Accordingly, replies to show cause notices and other requests during proceedings under the FTDR Act such as the process of adjudication, appeal and review have to be compulsorily made online through the DGFT portal. Further, payment of penalties levied shall also be mandatorily made against the corresponding online ECA/Appeal or Review file as applicable. DGFT Trade Notice No. 29/2024-25, dated 11 February 2025 issued for the purpose also states that use of the miscellaneous payments feature may be avoided to ensure proper accounting of penalties.

Ratio Decidendi

Drawback available on mobile phones unlocked before exports by merchant exporter – Unlocking/activation is mere 'configuration' and is not covered under phrase 'taken into use'

The Delhi High Court has held that the act of unlocking/activating mobile phones after they were manufactured would not disentitle the merchant-exporter from claiming duty drawback on subsequent export of the said mobile phones under Section 75 of the Customs Act, 1962 read with the Customs and Central Excise Duties Drawback Rules, 2017. The Revenue department had contended that steps undertaken by the merchant exporters to unlock/activate the mobile phones, i.e. to undo 'regional locking', were all post packaging and post manufacturing activities, and accordingly, the said mobile phones were 'taken into use' as per the proviso to Rule 3(1) and thus ineligible for duty drawback. Amendment by the Finance Act, 1995 in Section 75(1) of the Customs Act to revise the expression 'manufacture' to read as 'manufacture or processing of such goods or carrying out any operation on such goods', and the definition of 'manufacture' under Rule 2(e), were also relied upon by the Court here. It was also noted that the OEMs themselves had no objection in the unlocking/activation of the phones to make the same useable in different markets.

Further, the Court also rejected the contention that irrespective of the purpose for which the exporters had operated the mobile phones, the moment the said phones were switched on and any function thereto was utilised, the same would constitute 'use' under the proviso to Rule 3(1). Decisions as relied upon by the Department wherein the benefit was not allowed by the Court, were distinguished by the High Court here. The Court in this regard noted that products involved in those decisions were utilized in a manner so as to diminish their value, while unlocking/activation of a mobile phone made the product more accessible, useful and added value. The Court was also of the view that considering the thousands of uses that a mobile phone can be put to, mere unlocking cannot constitute use by the exporter-petitioner, as the process was mere 'configuration' of the product to make it usable. ***The exporter-petitioner was represented by Lakshmikumaran & Sridharan Attorneys here.***
[*Aims Retail Services Private Limited and Ors.* v. *Union of India* – TS 100 HC 2025 (DEL) CUST]

Valuation – Royalty for process undertaken in India – Explanation to Rule 10(1) emphases on 'imported goods'

The CESTAT Chennai has allowed the importer's appeal in a case where the Department had sought for including the royalty paid by the importer on the net sales value of the products manufactured in India using the imported goods. The royalty was paid for the use of specific technology in manufacture of goods in India. The Tribunal in this regard reiterated that as long as the royalty is not paid on the imported goods and as long as there is no condition as to 'sale of goods' being valued, the same is not includable in the price. It further held that the Explanation in Rule 10(1) of the Customs Valuation Rules, 2007 also lays emphasis on the 'imported goods' which would suffer royalty when brought into India. The Tribunal observed that the imported goods should undergo the 'process' for which royalty is paid, and that it was not even the case of the Revenue department. The Tribunal in this regard noted that the imported goods were not procured from the Group Company and there was no condition that these goods were to be sold only upon payment of royalty. The CESTAT Bengaluru decision in the case of *Ibex Galleghar* was distinguished. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Owens Corning Industries (India) Pvt. Ltd.* v. *Commissioner* – 2025 VIL 254 CESTAT CHE CU]

Transferable DFIA – Correlation of imports with the exports of the person to whom the license was originally issued is not required

The CESTAT Chennai has allowed benefit of Duty Free Import Authorisation (DFIA) scheme to imports of internal combustion engines for use in medium and heavy commercial vehicles, in a case involving transfer/purchase of the authorization from the original exporter/importer who had secured the authorization for import of parts of tractors for export of agricultural tractors. Benefit of Notification No. 98/2009-Cus. was denied by the Department contending that the items allowed to be imported under the DFIA license should be parts of tractors covered under SION category C969 whereas the importer manufactured vehicles covered under SION category C1059.

The Tribunal noted that in the description of the product that could be imported in the authorization, the phrase 'internal combustion engine complete' was not qualified in any manner, and that the SION category was not mentioned in the authorization. It was observed that there was nothing on the

authorization restricting the category of goods imported only to such engines as would have been used in exports specified by the authorization. The Tribunal also held that the language or particulars of the application for the authorization cannot be read into the authorization so as to restrict the scope of the authorization. It may be noted that while allowing the importer's appeal, the Tribunal also observed that the importer cannot be expected to correlate its imports with the exports of the person to whom the authorization/license was originally issued. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Volvo India Private Ltd.* v. *Commissioner* – 2025 VIL 133 CESTAT CHE CU]

Quality Control Order is not applicable on imports dispatched from the exporting country before date of coming into force of QCO

In a case where the Bill of Lading contained the date as January 2017 while the Stainless Steel Products (Quality Control Order), 2016 came into effect from 7 February 2017, the CESTAT Ahmedabad has held that the importer was not duty bound to affix BIS mark on the stainless steel imported by them. Para 2.17 of the Foreign Trade Policy, according to which the date of shipment/ dispatch of goods should be taken as date of import, was relied upon by the Tribunal for this purpose. Further, the Tribunal did not find convincing the Department's submission that as the importer had full knowledge regarding the provisions of the QCO at the time of shipment/dispatch of the goods from the supplying country, they were duty-bound to affix the BIS mark. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Shah Foils Ltd.* v. *Commissioner* – 2024 VIL 236 CESTAT AHM CU]

Aircraft engine stand is classifiable under Customs TI 8609 00 00 and not under TI 8716 39 00

The CESTAT New Delhi has held that aircraft engine stand comprising of a cradle (holder), a base and four caster wheels, where the cradle holds the engine safely and prevents impact of any shock or jerk to the aircraft engine during transportation, is classifiable under Tariff Item 8609 00 00 of the Customs Tariff Act, 1975 and not under TI 8716 39 00. The Tribunal for this purpose relied upon Rule 3(1) of the Interpretative Rules according to which classification needs to be determined on the basis of the component that gives the essential character. It was observed that the essential character of an aircraft engine stand is given by the cradle/holder which is used to accurately curb and secure the engine, and not by the caster wheels. The Tribunal also noted that an engine stand does not by itself

enable transportation of engines but is placed on another mode of transportation, be it a truck, aircraft or a vessel. Allowing the importer's appeal, the Tribunal also noted that containers falling under TH 8609 cannot be classified under TH 7310 and that classification of goods or clearance of imported goods under a particular classification does not debar an assessee to dispute the earlier classification, when the assessments are re-opened by the departments for any reason. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Inter Globe Aviation Ltd.* v. *Commissioner* – 2024 VIL 189 CESTAT DEL CU]

Light Green Float Glass having absorbent layer (Tin) on one side is classifiable under TI 7005 10 10

The CESTAT New Delhi has held that Light Green Float Glass having absorbent layer (Tin) on one side is classifiable under Tariff Item 7005 10 10 of the Customs Tariff Act, 1975 as claimed by the importer and not under TI 7005 21 10 as claimed by the Department. Consequently, the benefit of S. No. 934 of Notification No. 46/2011-Cus. was also upheld. Dismissing the Department's appeal, the Tribunal noted that the impugned order by Commissioner (Appeals) took cognizance of the earlier order by the Commissioner (Appeals) in favour of the importer which was accepted by the Department. The Tribunal was hence of the view that once the earlier Order was accepted, it is not permissible for the Department to contend in this appeal that the product involved should be classified under TI 7005 21 10.

Further, Department's reliance on CBIC Circular No. 23/2024-Cus., clarifying that clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side and there is no other metal oxide layer on it, will be said to be having no absorbent layer; therefore, will be correctly classified under TI 7005 29 90, was also rejected. The Tribunal in this regard observed that once the legal position was settled and the same was accepted by the Department, it is not open to the Department to take a contrary view by placing reliance on a CBIC Circular.

Also, according to the Tribunal, the Circular failed to appreciate the correct understanding of Note 2(c) of Chapter 70, as Note 2(c) does not envisage any specific mode or method of 'coating', while defining the expression 'absorbent, reflecting or nonreflecting layer'. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Asahi India Glass Ltd.* – 2025 VIL 204 CESTAT DEL CU]

Communication modules/network interface cards, which are essential parts of communication hubs which in turn are parts of smart meters, are classifiable under TI 8517 70 90 and not under TI 9028 90 10/ 9028 90 90

The CESTAT New Delhi has held that Communication modules/network interface cards, which is an essential part of communication hubs which in turn is part of smart meters manufactured by the importer, is classifiable under Tariff Item 8517 70 90 of the Customs Tariff Act, 1975 and not under TI 9028 90 10/ 9028 90 90. Rejecting the contention of the Revenue department that communication modules should be classified as parts of smart meters, the Tribunal observed that since the charge of duty of customs is only on the goods imported, duty should be assessed on the goods imported, i.e., in the form in which they are imported. The Tribunal was hence of the view that the modules should be classified as parts of communication hubs.

Further, rejecting the Department's submission of collusion, wilful mis-statement and suppression of facts, the Tribunal also noted that the importer was not under any obligation under law to anticipate what view regarding classification of goods may be taken by the proper officer, DRI or some other investigating agency at any time in future and file Bills of Entry conforming to such anticipated views. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Secure Meters Ltd.* v. *Commissioner* – Final Order No. 50093-50094/2025, dated 28 January 2025, CESTAT New Delhi]

MEIS benefit to EOU is not deniable for absence of RCMC from EPCES during FTP 2015-20

The Bombay High Court has held that benefit of MEIS is not deniable to an EOU for absence of Registration-cum-Membership Certificate (RCMC) from Export Promotion Council for EOUs and SEZs (EPCES). The period involved here was from June 2017 to August 2020. The Court noted that under the subsequent Foreign Trade Policy i.e. FTP 2023, all EOUs have to be registered with EPCES to avail the benefit/scrips under the MEIS and under FTP 2015-20 there was no such requirement. The Court also noted that on 12 October 2022, the SEEPZ Special Economic Zone Authority issued Circular No.78 of 2022 informing all EOUs that EPCES membership is now compulsory for all the SEZ Units/SEZ Developers. [*Axiom Cordages Limited* v. *Union of India* – 2025 (1) TMI 1386 Bombay HC]

Central Excise, Service Tax and VAT

Ratio decidendi

- No service tax on telephone charges waived off to employees up to a certain limit – *CESTAT Chandigarh*
- EOU – Sale of imported capital goods to foreign company without physical removal is not debonding – *CESTAT Chennai*
- No service tax on withholding tax retained by service recipient when same considered reimbursable by foreign service provider – *CESTAT Chandigarh*
- Cenvat credit available on banking charges/commission paid for BG in respect of VAT setoff on purchase of raw material – *CESTAT Mumbai*

Ratio Decidendi

No service tax on telephone charges waived off to employees up to a certain limit

The CESTAT Chandigarh has held that the waiver from payment of telephone charges, given by the assessee to its employees, is not to be included for the purpose of calculating the service tax payable. The assessee was already discharging the applicable service tax on the amounts collected for the telephone services rendered by them to their employees, when the prescribed free limit was crossed by the employees. The Department was of the view that tax needs to be paid even on the free limit. The Tribunal however noted that it is the service recipient (employee) that was getting benefitted monetarily in the form of free allowance/discount and there was no flow of consideration from the service recipients to the service provider (employer). Department's contention that the assessee-employer was getting goodwill from the employees and that goodwill was the consideration received, was rejected by the Tribunal while it observed that there is no provision in the service tax law to amortize the goodwill to arrive at the gross value of consideration. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Bharti Airtel Ltd.* v. *Commissioner* – 2025 (1) TMI 1322-CESTAT Chandigarh]

EOU – Sale of imported capital goods to foreign company without physical removal is not debonding

The CESTAT Chennai has answered negatively the question as to whether sale of capital goods being used within an EOU to a foreign company, without physical removal can be treated as deemed debonding / removal of the goods from the EOU on which duty has to be paid. The Tribunal in this regard noted that as per Para 6.2(b) of the Foreign Trade Policy 2004-09 and subsequent FTPs, ownership of the capital goods is not a criterion to avail duty exemption on imports. Observing that a deeming provision should be expressed and cannot be assumed, the Tribunal held that further sale would not amount to removal of goods / debonding unless such a provision is made in law. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*FIEM Industries Ltd. (Unit - V)* v. *Commissioner* – 2025 VIL 183 CESTAT CHE CE]

No service tax on withholding tax retained by service recipient when same considered reimbursable by foreign service provider

In a case where one agreement with a foreign service provider did not recognize the payment of withholding tax by the appellants as reimbursable expenses, and another agreement with another service provider considered it to be reimbursable subject to provision of proof, the CESTAT Chandigarh has allowed assessee's appeal holding that the assessee had correctly paid service tax on reverse charge basis on the grossed-up value in the first case. According to the Tribunal, in the second case where foreign service provider considered the amount withheld as reimbursable, the amount does not form part of consideration as it flows back to the assessee-service recipient. It was held that thus the assessee was right in not discharging the service tax on the same. CESTAT Hyderabad decision in the case of *Sheladia Rites* [2019 (27) GSTL 707 (Tri. Hyd.)], as relied upon by the Department, was distinguished. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*SBI cards & Payment Services* v. *Commissioner* – 2025 VIL 203 CESTAT CHD ST]

Cenvat credit available on banking charges/commission paid for BG in respect of VAT setoff on purchase of raw material

The CESTAT Mumbai has allowed Cenvat credit of service tax paid on banking charges/commission paid for obtaining Bank Guarantee in respect of VAT setoff on purchase of raw materials used for manufacture of final products which were exported. The Tribunal was of the view that the setoff of VAT arising on account of final products being exported does not nullify that the raw materials have been used in manufacture of final products. It, for this purpose, also noted that the service was covered under 'means' and 'inclusion' parts of the definition of 'input services', and was not covered under the 'exclusions'. [*Bajaj Auto* v. *Commissioner* – 2025 (2) TMI 515-CESTAT Mumbai]

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