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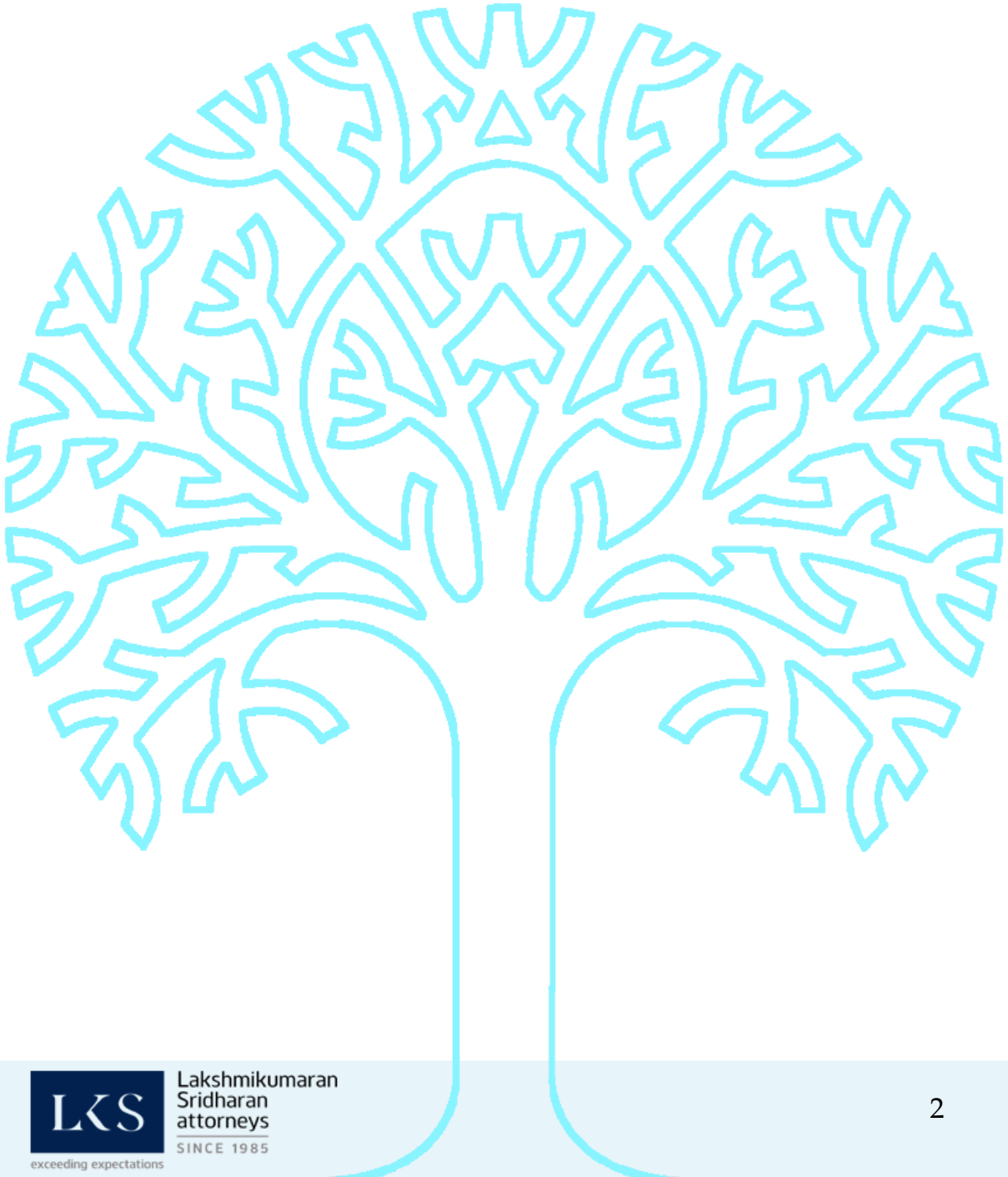

Article

Reconciling labelling requirements applicable under various Rules and Regulations for goods imported into India

By **Anaya Bhide and Srinidhi Ganeshan**

Certain labelling laws target goods by category - food, drugs, etc., while there are others which target goods based on other aspects like form of packaging (LM Rules) or applicability of quality standards (BIS). As the ambit of these laws is varied, a single product might require complying with labelling requirements set out in more than one law. The authors of the article in this issue of Indirect Tax Amicus observe that the overriding effect of specific laws over the LM Rules is only for certain declarations, i.e. only where it is specified, and that the specific laws vary with LM Rules in numerous ways. They also illustrate a few differences for this purpose. According to them, importers must be aware of all laws applicable to their product and must ensure complete compliance with the same and must be careful to ensure that compliance under one law does not amount to violation under another law.

Reconciling labelling requirements applicable under various Rules and Regulations for goods imported into India

By Anaya Bhide and Srinidhi Ganeshan

With the steady increase in the volume of imports into India, the Government of India has introduced stricter standards to ensure compliance with quality standards in India. These laws serve two essential purposes: i) establish and enforce standards of various parameters in order to streamline or regulate trade and commerce, and ii) protect the consumer's rights.

One key aspect of these laws is providing the consumer with all necessary information, so that the consumer makes an informed decision. This is done by clearly mandating the declarations to be made on the labels of the products prior to their sale in India.

Certain goods that are consumed directly by humans require strict compliance not only with the quality parameters but also with the labelling requirements. These goods may be food articles, pharmaceutical products, cosmetic products, etc. For each of these products, the Government has introduced numerous specific rules and regulations. The Drugs Rules, 1945 have been introduced for governing various types of medicine and cosmetics, and their labels. Similarly, for food articles, the Government has implemented the Food Safety and Standards (Labelling and Display) Regulations, 2020. The Medical Devices Rules, 2017 have been introduced for regulating labelling of medical devices.

However, these product specific laws are not exhaustive. For example, Bureau of Indian Standards (**'BIS'**) has also issued various standards for medical instruments and devices. The Legal Metrology (Packaged Commodities) Rules, 2011 ('**LM Rules**') govern labelling of pre-packaged commodities, irrespective of whether they are food articles, cosmetics, medical devices, etc.

Thus, while certain laws target goods by category: food, drugs, etc., there are others which target goods based on other aspects like form of packaging (LM Rules) or applicability of quality standards (BIS). By virtue of the ambit of these laws being varied, a single product might require complying with

labelling requirements set out in more than one law. In this background, the labelling requirements prescribed under different laws for the same product need to be examined.

LM Rules - References to other laws and exceptions carved qua the same

The LM Rules are general rules to be followed for the manufacture, import, sale or distribution of 'pre-packaged commodities' i.e. a commodity which, without the purchaser being present, is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity. An example of a pre-packaged commodity could be a packet of chips or a shampoo bottle, the contents of which are of a pre-determined quantity and by the very nature are required to be packed before they are sold. Thus, by virtue of it being applicable to all pre-packaged commodities, these Rules have a very wide ambit, affecting goods across different sectors.

The LM Rules stipulate the declarations and the manner in which declarations are to be made on the packages. As per the Rules, every package / label affixed thereon is required to declare name and address of the manufacturer and the packer or importer, the country of origin or of manufacture or of assembly, common or generic names of the commodities, net quantity, month and year of manufacture, best before date, etc.

Compliance with these LM Rules is mandatory if the product is a pre-packaged commodity. However, does compliance with this general law absolve the business from complying with the labelling requirements under other specialized laws? For instance, does applicability of LM Rules dispense with the requirement of the packet of chips to comply with labelling requirements under the Food Safety and Standards (Labelling and Display) Regulations, 2020? Or the bottle of shampoo from declaring on the label the directions set out in Cosmetics Rules, 2020? The answer is: No.

Each of these laws seeks to tackle different aspects of the product and endeavors to provide the consumer with the information, which is considered relevant, key under that particular law. What is relevant/key under one law need not be so under another law. However, it is most important that mandates under all applicable laws are complied.

However, the LM Rules carve out a few exceptions for the applicability of certain specific rules instead of the LM Rules. The declarations to be made under the LM Rules and the exceptions to the Rules are tabulated below:

Declarations to be made under the LM Rules	**Whether LM Rules provide for any exception for specific law to apply over Legal Metrology law**
Rule 6(1)(a) mandates declaration of the name and address of the manufacturer and the importer / packer.	As per Explanation III, this clause shall not apply to food articles, but the provisions of, and requirements under the Food Safety and Standards Act, 2006 and the rules made thereunder shall apply.
Rule 6(1)(d) mandates the declaration of the month and year of manufacture of a commodity	The rule provides for various exceptions as follows: a) For food articles the provisions of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder shall apply. b) For packages containing seeds labelled and certified under the Seeds Act, 1966 and the rules made thereunder shall apply. c) For the packages containing cosmetic products, the Drugs and Cosmetics Rules, 1945 shall apply.
As per Rule 6(1)(da) if a commodity may become unfit for human consumption after a period of time, it is required to mention the 'best before or use by the date, month and year' on the label	As per the proviso to this clause, nothing in this clause shall apply if a provision in this regard is made in any other law.

Thus, the overriding effect of specific laws over the LM Rules is only for certain declarations, i.e. only where it is specified. The general mandate is that the LM Rules must be complied with, in addition to any specific laws.

The specific laws vary with LM Rules in numerous ways. To illustrate this, a few differences are highlighted below:

- *Manner of making declaration*: LM Rules mandate declaration on the external packaging of the product.

Under the Drugs Rules, 1945, labels must be put up on the innermost containers too.

- *Nature of declaration*: Over and above the declarations needed under LM Rules, Medical Devices Rules, 2017, mandate additional declarations such as warnings or precautions, distinctive batch number, etc.
- *Difference in interpretation*: The definition of manufacturer under the LM Rules - even a brand owner, importer can claim themselves to be manufacturer (as the purpose of the act is to fasten liability for any violation in declarations). However, under the labelling mandate under BIS, only the name of actual manufacturer in whose factory the product was produced can be declared to be the manufacturer. Thus, compliance with one law might amount to violation under another law.

Therefore, compliance with one law does not absolve an importer from applicability of another law operating in a similar area. Importers must be aware of all laws applicable to their product and must ensure complete compliance with the same and must be careful to ensure that compliance under one law does not amount to violation under another law.

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Goods & Services Tax (GST)

Notifications and Circulars

- GST liability clarified for certain services

Ratio decidendi

- Assignment of leasehold rights by lessee to third party is transfer of immovable property, thus not liable to GST – *Gujarat High Court*
- Appeal to Appellate Authority – Delay in filing certified copy of order is condonable if online filing was timely completed, during period prior to amendment to Rule 108 – *Delhi High Court*
- Refund permitted of GST paid through cash, when ITC could not be transitioned due to delayed operationalization of TRAN-1 form – *Madras High Court*
- Interest is imposable when transitional credit is wrongly availed – *Gujarat High Court*
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- Services provided to the parent company when covered as exports and not as intermediary services – *Gujarat High Court*
- Solar Power Generating System is not 'immoveable property' – Supply covered as 'composite supply' and not as 'works contract' – *Andhra Pradesh High Court*
- Recovery of dues of society not permissible from its members, treating former as 'Association of Persons' – *Andhra Pradesh High Court*
- Registration – Consent of co-owner is not required for grant of registration – *Allahabad High Court*
- No GST on regulatory services by Electricity Regulatory Commissions – Bifurcating adjudicatory and regulatory roles is not correct – *Delhi High Court*
- Demand – No requirement to issue separate SCNs for each financial year – *Bombay High Court*
- Non-registration of an additional place of business is only technical and venial breach of provisions – *Madras High Court*
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- Section 129 does not envisage an inevitable levy of tax and penalty – Non-obstante clause in Section 129 does not override mandate in Section 126 – *Delhi High Court*
- Cross-empowerment of State GST officers as CGST officers – Separate notification is not required as statutory mandate available under Section 6(1) – Kerala High Court

Notifications and Circulars

In line with the recommendations of the 55th GST Council Meeting, the Central Board of Indirect Taxes and Customs (CBIC) has clarified the following. Circulars Nos. 244/01/2025-GST and 245/02/2025-GST, both dated 28 January 2025 have been issued for the purpose.

- No GST is payable on the ***penal charges levied by Regulated Entities***, in compliance with RBI directions dated 18 August 2023, for non-compliance with material terms and conditions of loan contract by the borrower.
- Exemption under Sl. No. 34 of Notification No. 12/2017-CTR is available to ***RBI regulated Payment Aggregators*** (PAs) in relation to settlement of an amount, up to INR 2000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of 'acquiring bank'.
- Payment of GST on the supply of ***R&D services by Government Entities*** against grants received from the Government Entities has been regularized for the period 1 July 2017 to 9 October 2024, on 'as is where is' basis.
- Payment of GST on ***services provided by Training Partners*** approved by the National Skill Development Corporation, which were exempt prior to 10 October 2024, is regularized for the period 10 October 2024 to 15 January 2025, on 'as is where is' basis.
- GST is applicable on the ***services provided by facility management agency to Municipal Corporation of Delhi (MCD)*** for upkeep of its head quarter building.
- Delhi Development Authority (DDA) cannot be treated as a local authority under GST law.
- Payment of GST on (RCM) basis on ***renting of commercial property*** by unregistered person to registered person under composition levy is regularized for the period from 10 October 2024 to 15 January 2025 on 'as is where is' basis.
- Payment of GST on certain ***incidental or ancillary services to the supply of transmission or distribution of***

electricity supplied by an electricity transmission or distribution utility is regularized for the period 10 October 2024 to 15 January 2025, on 'as is where is' basis.

- Payment of GST on ***co-insurance premium*** apportioned by the lead insurer to the co-insurer and on ***ceding /re-insurance commission*** deducted from the reinsurance premium paid by the insurer to the reinsurer is regularized for the period 1 July 2017 to 31 October 2024, on 'as is where is' basis.

Ratio Decidendi

Assignment of leasehold rights by lessee to third party is transfer of immovable property, thus not liable to GST

The Gujarat High Court has held that assignment of leasehold rights of the plot of land allotted on lease by Gujarat Industrial Development Corporation (GIDC) and building constructed thereon by the lessee or its successor (assignor) to a third party (assignee) on payment of lump-sum consideration is not liable to GST. The High Court was of the view that when the lessee-assignor transfers absolute right by way of sale/assignment of leasehold rights in favour of the assignee, the same shall be transfer of 'immovable property'. It, in this regard, observed that leasehold rights are nothing but benefits arising out of immovable property which according to the definition contained in different statutes would be 'immovable property'. It was noted that sale, transfer and exchange of benefit arising out of immovable property is nothing but sale, transfer and exchange of the immovable property itself.

Further, while setting aside the demand of GST, the Court noted that under the service tax provisions, even the development rights which are the benefits arising from land were not liable to tax. Observing that 'leasehold right' is a greater right and interest in land than 'development right', the Court held that the principle under the service tax regime would therefore continue to apply even under the GST regime, as the object of introduction of GST was to subsume the existing taxes.

The Court hence answered in negative the question as to whether assignment of the leasehold rights of the land along with the building thereon would be covered by the scope of supply so as to levy GST. ***One of the petitioners here was represented by Mr. V. Sridharan, Senior Advocate and Co-founder of Lakshmikumaran & Sridharan Attorneys.*** [*Gujarat Chamber of Commerce and Industry and Ors.* v. *Union of India* – Judgement dated 3 January 2025 in R/Special Civil Application No. 11345 of 2023 and Ors., Gujarat High Court]

Appeal to Appellate Authority – Delay in filing certified copy of order is condonable if online filing was timely completed, during period prior to amendment to Rule 108

In a case where an appeal to the Appellate Authority was filed prior to the amendment of Rule 108 of the CGST Rules, 2017,

and where the certified copy was submitted with a delay, the Delhi High Court has held that the delay may be condoned if the online filing was completed within the prescribed limitation period. The Department in this case had submitted that the benefit of the amendment to Rule 108 in 2022 ought not to be extended as there was a delay in the filing of the physical certified copy of the order. Rule 108 initially provided for submission of physical certified copy within 7 days while the Rule as amended on 26 December 2022 to eliminate such requirement. The High Court perused the amended rule and few decisions of other High Courts to hold that the condition to physically file the certified copy of the impugned decision/order was not mandatory. The Court in this regard also observed that it would be retrograde to opine that online filing, which was complete in all respects, including electronic copy of the order, is not valid filing. ***The petitioner was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Chegg India Pvt. Ltd.* v. *Union of India* – 2024 VIL 1409 DEL]

Refund permitted of GST paid through cash, when ITC could not be transitioned due to delayed operationalization of TRAN-1 form

The Madras High Court has directed the Revenue to permit the Assessee to rectify its GSTR-3B Returns filed for the period from July 2017 till November 2017. The Department was also directed to refund the GST paid from cash ledger during the said period, subject to the assessee debiting an equivalent amount from the electronic credit ledger. The Court found that the assessee could not seamlessly transition the erstwhile credits into the GST regime and could not utilize ITC to meet its output GST liabilities only due to the delayed operationalization of the TRAN-1 form, which was not the fault of the assessee. The High Court observed that, if the system had been made fully operational at the time of GST implementation, the assessee would have been able to discharge a substantial portion of its tax liability from the transitional ITC, instead of being compelled to pay in cash.

The instant situation was factually distinguished from the decision of the Supreme Court in *Bharti Airtel Ltd.* which had observed that the assessee had belatedly availed ITC by citing the inoperability of Form GSTR-2A. In contrast, the Assessee here could not transition the credit immediately w.e.f. 1 July 2017 on account of technical glitches, which was not the fault of the assessee. Further, the Court also observed that the rectification of the Returns here was not on account of the situation contemplated under Section 39(9) of the CGST Act. ***The Assessee was represented by Lakshmikumaran &***

Sridharan Attorneys. [*Dell International Services India Private Limited* v. *Union of India* – 2025 VIL 93 MAD: 2025: MHC:251]

1) Interest is imposable when transitional credit is wrongly availed

2) Penalty – Section 122(2)(b) cannot be invoked in absence of intention to evade

The Gujarat High Court has held that the credit available as per the 'existing law' in the form of Cenvat credit or any other input tax credit would fall within the scope of 'input tax credit' under the CGST Act also. Accordingly, the Court was of the opinion that the petitioner-assessee was liable to pay interest under Section 50(3) for wrongly availing excess transitional credit. Section 140 of the CGST Act, 2017 was relied upon for this purpose by the Court here.

However, the Court set aside the penalty imposed by the Department under Section 122(2)(b). The High Court in this regard observed that the petitioner was under *bona fide* belief that the specified amount of Cenvat credit was available to be carried forward. It also observed that the provisions of Section 122(1)(b) read with Section 74(1) could not have been invoked, more particularly, when the petitioner had not challenged the confirmation of demand of the excess ITC claimed in Form TRAN-I. Supreme Court's decision in the case of *Rajasthan Spinning & Weaving Mills* was distinguished here, while the Court observed that there was no intention on part of the petitioner which was a Government company to evade tax. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Deendayal Port Authority* v. *Union of India* – 2025 VIL 43 GUJ]

Services provided to the parent company when covered as exports and not as intermediary services

Considering the terms and conditions of the service agreement between the assessee-petitioner and its parent company, the Gujarat High Court has allowed the writ petition filed by the assessee for refund of unutilized ITC, holding the transaction as exports and not as provision of 'intermediary services'. The assessee was required to assist the foreign parent entity in carrying on the business of providing information and consultancy in the business of software development and to provide advisory services for expansion of business, marketing, advertising, publicity, and personnel accounting to its parent company. The Court also noted that the assessee was also earning profit on the cost incurred by it in providing

services to its parent company, and that there was provision of arbitration in case of any dispute between the parties. According to the Court, thus, the assessee was an independent company incorporated in India having distinct entity and the services provided to the parent company were in independent capacity and not in the capacity of either agent or broker or any other person. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Infodesk India Pvt. Limited* v. *Union of India* – 2025 VIL 28 GUJ]

Solar Power Generating System is not 'immoveable property' – Supply covered as 'composite supply' and not as 'works contract'

The Andhra Pradesh High Court has held that a Solar Power Generating System (Solar Power Plant) is to be treated as a moveable property and thus supply thereof will be covered as 'composite supply' and not as 'works contract' service. The Court in this regard observed that the solar power module is attached to the civil foundation which is embedded in the earth, and that as per Section 3 of the Transfer of Property Act, 1882, the property, which is attached to a structure embedded in the earth, would also become 'immoveable property' *only* when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth. The High Court noted that the solar modules and the Solar Power Generating System were not attached to the civil structure for the purpose of better enjoyment of the civil foundation, but, on the contrary, the civil foundation was embedded for beneficial enjoyment of the Solar Power Generating Station. It was thus held that the Solar Power Generating System would not answer the description of 'immoveable property' and the supply would not fall within the meaning of 'works contract' as defined under Section 2(119) of the CGST/APGST Act. [*Sterling and Wilson Private Limited* v. *Joint Commissioner* – 2025 VIL 29 AP]

Recovery of dues of society not permissible from its members, treating former as 'Association of Persons'

The Andhra Pradesh High Court has held that a Society registered under the Andhra Pradesh Societies Registration Act, 2001 would not fall within the purview of the term 'Association of Persons' set out under Section 94(1) of the CGST/SGST Act for recovery of dues of the Society from its members. The Court for this purpose observed that Section 2(84) of the CGST Act makes a distinction between a Society and Association of Persons by placing 'Association of Persons' in cub-clause 'f' and by placing 'Society' in sub-clause 'l'.

Further, observing that Society mentioned in Section 2(84)(l) is as defined under Societies Registration Act, 1860, the Court noted that a Society registered under the Act of 2001 meets all the requirements of a Society, as defined under the Act of 1860. Demand proceedings against the Secretary/member of the Society were hence set aside. [*Gunnuru Satya Rama Murthy* v. *Assistant Commissioner* – 2024 VIL 1426 AP]

Registration – Consent of co-owner is not required for grant of registration

The Allahabad High Court has upheld the rejection of an application by a co-owner of the property for cancellation of the GST registration of another co-owner. The application for cancellation of the registration was filed on the ground that no consent was obtained from the petitioner, who was the co-owner of the property in question, prior to grant of the registration. Taking note of the documents which were required for GST Registration and prescribed in clause (a) of the Form REG-01, the Court observed that there is no mention there of the resident being sole owner. The Appellate Authority had also held that as such, there was no requirement of a consent letter. [*Satya Dev Singh* v. *Union of India* – 2025 (1) TMI 297 – Allahabad High Court]

No GST on regulatory services by Electricity Regulatory Commissions – Bifurcating adjudicatory and regulatory roles is not correct

The Delhi High Court has held that tariff and license fee collected from various power utilities by the Central Electricity Regulatory Commission and Delhi Electricity Regulatory Commission are not liable to GST under 'support services to electricity transmission and distribution services under Service Accounting Code 998631' as per Sl. No. 466 of Notification No. 11/2017-Central Tax (Rate). The Department had contended that any income or receipts derived by the Commissions in the course of discharge of their regulatory function would be exigible to tax under the CGST Act.

The Court observed that the power of regulation which stands statutorily vested in a Commission does not fall within the ambit of any of the activities as enumerated in Section 2(17)(a), defining 'business'. The Court was also of the view that the regulatory functions of the Commissions will also not fall under Section 2(17)(i), as a Commission constituted under the Electricity Act cannot be equated with the Central/State Government or even a local authority. Further, taking note of the definition of 'consideration, the Court observed that it was

not the case of the Department that the fee received by Commissions was an outcome of an inducement to supply goods or services. Rejecting the Department's submission, the Court held that even if the fee received is assumed as being a consideration, it is not the one obtained in the course or furtherance of business.

Also, considering Schedule III of the CGST Act which expressly provides exclusion to services by Courts and Tribunals, the High Court did not agree with the Department undertaking an exercise to bifurcate the adjudicatory and regulatory role of Commissions. It also noted that the Electricity Act makes no distinction between the regulatory and adjudicatory functions of the Commissions. [*Central Electricity Regulatory Commission* v. *Additional Director, DGGI* – 2025 (1) TMI 887 – Delhi High Court]

Demand – No requirement to issue separate SCNs for each financial year

The Bombay High Court has rejected the argument that one show cause notice for the period from July 2018 to March 2023 was impermissible and that for each financial year a separate show cause notice ought to have been issued. According to the Court, *prima facie*, a notice under Section 74(1) of the CGST Act, 2017 can be issued for any period provided said notice is given at least 6 months prior to the time limit specified in Section 74(10) for issuance of the order. The High Court was hence *prima facie* not satisfied to entertain the writ petition challenging the show cause notice. It directed the petitioner to face the show cause notice while allowing it to canvass all arguments, including the issues raised in the present petition, before the concerned authority. [*Riocare India Private Limited* v. *Assistant Commissioner* – 2025 (1) TMI 518 – Bombay High Court]

Non-registration of an additional place of business is only technical and venial breach of provisions

The Madras High Court has held that non-registration of an additional place of business is only the procedural irregularity as there is only technical and venial breach of the provisions. Setting aside the detention of goods from said additional place of business and consequent imposition of penalty, the Court also noted the presence of invoice and e-way bill which was generated a day before the goods were detained, covering the transaction as described in the detention order. The Court was also of the view that unless there was a variance between quantity in the invoice and the e-way bill and the actual seizure

made, the question of imposing penalty under Section 129(3) of CGST Act, 2017 would be harsh under the given facts and circumstances of the case. [*Creamline Dairy Products Limited* v. *State Tax Officer* – 2025 VIL 08 MAD]

Refund of IGST on exports when PAN in Shipping Bill and GST return mismatched – Reflection of shipping bill amendment in ICEGATE directed

In a case where the IGST refund was denied to the exporter for mismatch of PAN in the Shipping Bill with that in GST returns, the Gujarat High Court has directed the authorities to make suitable amendments in the computer system so as to sanction the refund. The Court noted that the order under Section 149 of the Customs Act, 1962, which approved the amendment of shipping bill by modifying the IEC Code and GSTIN, remained on paper only without being reflected in the ICEGATE system, thus leading to non-grant of refund due to this technical glitch. [*Tulip Turnomatic* v. *Commissioner* – 2025 VIL 11 GUJ]

Arrest/detention – Continued detention at stage of investigation when not required

The Gauhati High Court has observed that while the power to arrest is conferred under Section 69 of the CGST Act, the same can only be imposed upon reasons to believe to be arrived at by the Commissioner that the person has committed any of the specified offences. Directing release of the petitioner accused of falsely claiming Input Tax Credit, on interim bail, the Court observed that the petitioner had cooperated with the investigating authority, his statement had been recorded and there was no material to suggest that he would abscond or not respond to summons issued. The Court also noted that there was no material which *prima facie* suggested that there was determination of the liability by the Commissioner or the investigating officer. It was thus held that continued detention of the petitioner at the stage of investigation was not required. [*Dharmendra Agarwal* v. *Union of India* – 2025 VIL 36 GAU]

Refund of GST paid on advance payments, to buyer, in case of cancellation of contract, is permissible

Observing that the levy of tax is on the transaction and if the transaction fails what is paid in advance needs to be refunded, the Karnataka High Court has allowed refund of GST to the buyer of goods in the case involving cancellation of the contract. The buyer-petitioner had made payment of GST to the

seller on advance payments made to the latter. According to the Court, the amount remitted to the exchequer in contemplation of discharge of contract cannot be retained by the State when the contract fails. The Revenue department's contention that the buyer-petitioner was not eligible for refund in absence of credit note by the supplier (who was liable to pay tax to the exchequer), was rejected by the Court. According to the Court, the question of issuing a credit note would not arise since goods were never delivered and there was a gross breach of contract because of which it was rescinded and the price paid in advance was retrieved by encashing the bank guarantee. Supreme Court's decision in the case of *Oswal Chemicals and Fertilizers Limited*, holding that purchasers can also seek refund, was relied upon. [*Joint Commissioner* v. *NAM Estates Private Limited* – 2025 VIL 39 KAR]

Absence of corresponding notification by State Government does not make notification by Central Government ultra vires

The Chhattisgarh High Court has rejected the contention of the assessee that invocation of Section 168A of the CGST Act to issue Notification No. 56/2023-Central Tax, without there being any corresponding notification issued under the State GST Act, is illegal and without jurisdiction. The Court in this regard stated that this cannot be a ground for seeking declaration of the said notification to be *ultra vires*. Dismissing the writ petition filed by the assessee, the Court also observed that no ground worth consideration was raised by the assessee and that the assessee had liberty to take recourse to the remedy of appeal as provided under Section 107 of the CGST Act, 2017. [*Abhiram Marketing Services Limited* v. *Union of India* – 2025 VIL 44 CHG]

Section 129 does not envisage an inevitable levy of tax and penalty – *Non-obstante* clause in Section 129 does not override mandate in Section 126

The Delhi High Court has held that Section 129 of the CGST Act, 2017 does not seeks to levy a statutory penalty, i.e., the said section cannot be construed as envisaging an inevitable levy of tax and penalty. According to the Court, while Section 129 provides for the detention and seizure of goods and conveyances in transit, the principles of moderation and proportionality enshrined in Section 126 must guide the imposition of penalties under the CGST Act. The High Court was also of the view that the non-obstante clause in Section 129 cannot be interpreted to override the statutory mandate in

Section 126 or annihilate the rules of guidance which stood embodied therein, requiring the officers to desist from imposing penalties for minor breaches, omissions or mistakes in documentation that are easily rectifiable and not tainted by fraudulent intent or gross negligence. The Court in this regard observed that since the subject of levy of penalty in connection with goods being transported in contravention of the Act had not been previously dealt with, the Legislature thought it fit and appropriate to deploy the non-obstante in order to deal with that subject. The Department's view that notwithstanding the absence of *mens rea*, fraudulent motive or an intent to evade tax, where goods are sought to be transported in contravention of the provisions of the Act, a demand of tax would inevitably arise, was thus rejected.

Further, the Court held that provisions contained in Section 126(6), providing that Section 126 would not apply to cases where penalties stand specified either as a fixed sum or percentage, also cannot be read as whittling down the application of sub-sections (1) and (2) of Section 126. Accordingly, it was held that Section 126(6) operates only for transgressions falling under sub-sections (1), (1A), (1B) and (2) of Section 122. The Court noted that all the other provisions in Chapter XIX either use the expression 'which may extend to' or 'shall not exceed and thus are instances where the penalty cannot be described to be a fixed sum, or one expressed as a fixed percentage. [*Kamal Envirotech Pvt. Ltd.* v. *Commissioner* – 2025 VIL 52 DEL]

Cross-empowerment of State GST officers as CGST officers – Separate notification is not required as statutory mandate available under Section 6(1)

The Division Bench of the Kerala High Court has held that as per the provisions of Section 6(1) of the CGST Act, the cross-empowerment of the Officers of the SGST/UTGST Department to function as proper officers under the CGST Act is through the legislative mandate under Section 6(1). It is a mandate and empowerment that is presently unqualified but expressly made subject to such conditions as the Government shall, on the recommendation of the Council, by a notification, specify. Thus, according to the Court, while the statutory mandate at present is unqualified, it will be qualified in the event the Government specifies conditions for the exercise of power under the statutory mandate, pursuant to the recommendations of the Council.

The High Court hence rejected the contention that officers under the SGST/UTGST Act cannot be authorised as proper officers for the purposes of the CGST Act unless and until conditions for exercise of the powers of a proper officer were first specified by the Government on the recommendation of the GST Council through a notification issued for the purpose.

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The Court could not persuade itself to read the statutory mandate as the one that does not presently bring about a cross-empowerment but merely envisages such a situation when a notification is issued at some time in the future. [*Pinnacle Vehicles and Services Private Limited* v. *Joint Commissioner* – 2025 VIL 60 KER]

Customs

Notifications and Circulars

- India-Australia FTA – Fourth tranche of concessions notified
- Authorised Economic Operator – Automated Out of Charge for AEO T2 and T3 from 1 January
- Foreign Trade Policy amendments – Stakeholder consultation introduced
- Sea Cargo Manifest and Transshipment Regulations – Applicability for Ports (Other than certain specified ports) further deferred till 31 March 2025
- SCOMET – Guidelines issued for voluntary disclosure of failure to comply with the Regulations
- Seeds and Planting Materials – SOP issued for export authorisations for restricted goods

Ratio decidendi

- Penalty not imposable under Customs Act for alleged misdeclaration before DGFT to obtain an authorization – *CESTAT New Delhi*
- 'Liable to penalty' can only mean 'may be penalised' – Discretion to be judiciously exercised – *CESTAT New Delhi*
- Exemption – Condition of specific use after import does not mean 'actual user' condition – *CESTAT New Delhi*
- Customs cannot question an Export Obligation Discharge Certificate issued by DGFT – *CESTAT New Delhi*
- Exemption to WAP products using MIMO technology – Word 'and' in Sl. No. 13(iv) in Notification No. 24/2005-Cus. is to be read disjunctively – *Delhi High Court*
- SEZ – Jurisdiction of Commissioner of Customs to investigate various issues – *CESTAT Allahabad*
- Investigation Report is not an appealable order – *CESTAT Chennai*
- Rate of duty when BE could not be filed due to a system error and the rates got revised subsequently – *CESTAT Chennai*
- Adjudication – Placement of matter in call book does not constitute valid ground to condone delay in adjudication – *Delhi High Court*

Notifications and Circulars

India-Australia FTA – Fourth tranche of concessions notified

The Ministry of Finance has notified the fourth tranche of concessions under the India-Australia Economic Cooperation and Trade Agreement. Accordingly, the Basic Customs Duty (BCD) rates have been further reduced for imports from Australia, if the importer proves that the goods are of the origin of Australia in terms of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. The concessions as notified by Notification No. 50/2024-Cus., dated 30 December have come into effect from 1 January 2025. Tables I and II in Notification No. 62/2022-Cus. have been substituted for this purpose.

Authorised Economic Operator – Automated Out of Charge for AEO T2 and T3 from 1 January

To streamline trade procedures, improve compliance, and reduce administrative burdens, the CBIC has rolled-out automated Out of Charge (Auto-OOC) facility for AEO T2 and T3 importers starting 1 January 2025. Bills of Entry that meet specific criteria of no examination or scanning, completed assessment, and OTP authentication for duty deferment can avail the benefit. The Auto-OOC will be granted on a risk basis, with the option for customs officers to override it if necessary. Circular No. 01/2025-Cus., dated 1 January 2025 has been issued for this purpose.

Foreign Trade Policy amendments – Stakeholder consultation introduced

The Central Government has introduced paras 1.07A and 1.07B to Foreign Trade Policy (FTP), which introduce a mechanism for consulting stakeholders, including importers, exporters, and industry experts, to seek their views, suggestions, comments, or feedback on the formulation or amendments to the FTP. This amendment aims to enhance trade facilitation while maintaining flexibility for the government. Notification No. 47/2024-2025, dated 2 January 2025 has been issued for this purpose.

Sea Cargo Manifest and Transshipment Regulations – Applicability for Ports (Other than certain specified ports) further deferred till 31 March 2025

The Sea Cargo Manifest and Transshipment Regulations, 2018, were introduced to supersede the Import Manifest (Vessels)

Regulations, 1971, and the Export Manifest (Vessels) Regulations, 1976. These 2018 regulations mandate that importers and exporters submit import and export manifests to the proper officer. Regulation 15 of the 2018 Regulations provides a transitional period during which importers and exporters may continue filing import and export manifests according to the old Regulations until the date specified in the table appended to the Regulations. Initially set for 30 November 2024, this date was extended to 15 January 2025, and has now been further deferred to 31 March 2025, for ports not previously specified. Notification No. 02/2025-Cus. (N.T.), dated 15 January 2025, has been issued for this purpose. Further, it may be noted that Circular No. 2/2025-Cus., dated 17 January 2025 advises stakeholders that electronic filing of messages should be done in the format as prescribed in SCMTR during the extension period also.

SCOMET – Guidelines issued for voluntary disclosure of failure to comply with the Regulations

The DGFT has issued Public Notice No. 40/2024-25, dated 15 January 2025 to notify the Standard Operating Procedure/Guidelines for voluntary disclosure of non-compliance/violations related to export of SCOMET items and SCOMET Regulations. The Public Notice elaborates on the types of violations for which voluntary disclosures may be made, the standard operating procedure in case of any voluntary disclosure made, factors for consideration while deciding the liability in case of such voluntary disclosures, etc. SCOMET refers to Special Chemicals, Organisms, Materials, Equipment and Technologies. ***Please see LKS Customs Update No. 4 of 2025 for further details and relevant comments from the LKS Customs Team.***

Seeds and Planting Materials – SOP issued for export authorisations for restricted goods

Export of seeds and planting materials which are under the 'Restricted' category under the ITC (HS) Export Policy is permissible only under export authorization by the DGFT. A Standard Operating Procedure (SOP) has been issued by the DGFT to streamline the export authorization process for seeds and planting materials categorized as 'Restricted'. As per this SOP, exporters are required to submit detailed specifications of the seeds or planting materials, including their source and raw materials used in production of the seed, when applying for the authorisation. Trade Notice No. 26/2024-25, dated 30 December 2024 has been issued for the purpose.

Ratio Decidendi

1) Penalty not imposable under Customs Act for alleged misdeclaration before DGFT to obtain an authorization

2) 'Liable to penalty' can only mean 'may be penalised' – Discretion to be judiciously exercised

The CESTAT New Delhi has held that any mis-declaration before the DGFT to obtain a licence is not a declaration in a proceeding under the Customs Act, 1962, but a proceeding under Foreign Trade Policy framed under the Foreign Trade (Development & Regulation) Act, 1992. The Tribunal hence held that the declaration by the proprietor before the DGFT for EPCG authrisation by allegedly mis-declaring the year of manufacture of the machine, is not covered by Section 114AA of the Customs Act for imposition of penalty. Setting aside the penalty, the Tribunal also observed that specific acts, omissions, knowledge or intent of the proprietor-appellant were not indicated in the impugned order.

Further, the Tribunal observed that if one is 'liable to penalty', it can only mean that one 'may be penalised'. It was noted that there is nothing in Section 114AA which says that such a person 'shall be penalised'. Reliance in this regard was placed by the Tribunal on various Court decisions which had interpreted the phrase 'liable to'. It was observed that the meaning of the expression 'shall be liable to' confiscation or penalty in the Customs Act is that a penalty may be imposed on the person who falls under the section or, the goods may be confiscated, and that the Authority has not only has the discretion but also an obligation to judiciously exercise it and decide whether to impose penalty. Allowing the appeal, the Tribunal noted that the Commissioner had also not exercised its discretion to decide on penalty in this case. ***The appellant was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*S.B. Agarwal* v. *Commissioner* – TS 710 CESTAT 2024 (DEL) CUST]

Exemption – Condition of specific use after import does not mean 'actual user' condition

The CESTAT New Delhi has allowed assessee's appeal in a case where the Department had alleged violation of Notification No. 146/94-Cus. which provided exemption to imports by National Sports Federations. The Department had alleged that the import conditions were violated inasmuch as the assessee-

importer had not used the imported arms and ammunition but sold them to the State Rifle Associations and District clubs. Setting aside the finding of confiscation under Section 111(o) of the Customs Act, 1962, the Tribunal noted that the notification did not say that the importer itself must use them for the purpose. Noting that the notification stated that the goods should be used for national or international championships or competitions, the Tribunal observed that when a National Sports Federation imports goods, it does not itself conduct all the championships and competitions directly, and that it will work through its constituent State and District bodies.

The Tribunal in this regard also noted that goods which were imported as per the licences issued by the DGFT and there is no determination by the DGFT of any violation, the goods will not be liable for confiscation under Section 111(d) if after import, some of the conditions of import licences are violated. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*National Rifle Association of India* v. *Commissioner* – TS 10 CESTAT 2025 (DEL) CUST]

Customs cannot question an Export Obligation Discharge Certificate issued by DGFT

The CESTAT New Delhi has held that custom authorities cannot question the discharge certificate issued by the DGFT in respect of an obligation under EPCG authorization, unless the DGFT itself takes a prior decision that the assessee had not discharged the obligation under said Authorisation. Delhi High Court's decision in the case of Designco and others v. Union of India, wherein the Court had held that 'it would be impermissible for the customs authorities to either doubt the validity of an instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by the DGFT', was relied upon by the Tribunal for this purpose. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Super Cassettes Inds. Ltd.* v. *Commissioner* – 2025 (1) TMI 233-CESTAT New Delhi]

Exemption to WAP products using MIMO technology – Word 'and' in Sl. No. 13(iv) in Notification No. 24/2005-Cus. is to be read disjunctively

The Delhi High Court has held that the word 'and' used in the exclusion entry (iv) of Serial No. 13 of Notification No. 24/2005-Cus., as amended by Notification No. 11/2014-Cus., should be interpreted disjunctively. The period involved was before 2 February 2021. The High Court hence upheld the Tribunal's

decision allowing exemption to WAP products operating solely on Multiple Input/Multiple Output ('MIMO') technology. The Revenue department interpreted the excluding entry 'MIMO and LTE Products' to apply separately and individually to both MIMO-based and LTE-based products.

The Court in this regard noted that every technology or feature as stated in the notification was followed by words such as 'products' or a specific product such as 'switch', but the word 'products' was put after the words 'MIMO and LTE', thereby indicating that 'MIMO and LTE Products' includes those products which work on both MIMO technology and LTE standards. It was also noted that if the intention of the Central Government was to include products utilizing either MIMO technology or LTE standard or both, the phrase 'MIMO or LTE Products' could have been used, such as in Serial No. 13 (ii) and (iii), or commas would have been used.

Further, the Court also held that the subsequent amendment to the notification, after which the entry read – '(i) MIMO products; (ii) LTE products', will be applicable only from the date of coming into force of these amendments i.e. 2 February 2021. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Ingram Micro India Pvt. Ltd.* – TS 20 HC 2025 (DEL) CUST]

SEZ – Jurisdiction of Commissioner of Customs to investigate various issues

In a case involving difference of opinion between the Members, the CESTAT Allahabad (Prayagraj) has by a majority decision held that the Commissioner of Customs, Noida has no jurisdiction to investigate, issue show cause notice and adjudicate the matter, which falls under the purview of the Development Commissioner, NSEZ. According to the majority decision, the disputes regarding sub-contracting/sending goods for job work under Rules 41 and 42 of the SEZ Rules fall under the jurisdiction of the Development Commissioner, NSEZ and not the Commissioner of Customs. It was also held that manufacturing activity by SEZ unit within the SEZ without valid LOA falls within the jurisdiction of Development Commissioner and is not a contravention under the Customs Act, 1962, which can be adjudicated by the Commissioner of Customs. [*Encee International NSEZ* v. *Commissioner* – 2025 VIL 58 CESTAT ALH CU]

Investigation Report is not an appealable order

The CESTAT Chennai has, after examining the requirements under Section 128, held that the Investigation Report ('**IR**') is an administrative and fact-finding document prepared as per a

Circular and does not constitute a decision or order by a quasi-judicial authority. Therefore, the appellant cannot be considered as an 'aggrieved person' under the statute to file an appeal against the IR. The Tribunal further observed that since there was no statutory right for a hearing at the stage of preparation of the IR, the appellant has not been wrongly deprived of the right. [*Hyundai Motor India Ltd.* v. *Commissioner* – 2025 VIL 39 CESTAT CHE CU]

Rate of duty when BE could not be filed due to a system error and the rates got revised subsequently

The CESTAT Chennai has upheld the decision of the Commissioner (Appeals) which had allowed the rate of duty as on the date which was 6-7 months before the date when the goods were actually cleared. The assessee-appellant had claimed that ICEGATE did not admit the BEs after they attempted to file the same and that they were informed that the error was on account of the non-updation of the bond details by the appellant in the Indian Customs EDI System (ICES), manually. The Tribunal in this regard noted that defects in linking of the bond module and ICES by the Department cannot be a reason to deny the adherence to a statutory requirement by an importer, more so when the statute does not require the importer to enter such details in the ICES prior to filing a bill of entry. According to the Tribunal, it is at best a curable defect and not a substantive one. The Tribunal hence held that the importer should not be blamed for the delay and held responsible once it is shown that it had attempted filing the bill of entry prior to the issue of a rate change notification. [*Commissioner* v. *MIRC Electronics Ltd.* – 2025 VIL 22 CESTAT CHE CU]

Adjudication – Placement of matter in call book does not constitute valid ground to condone delay in adjudication

The Delhi High Court has held that the phrase 'where it is possible to do so' in Section 28(9) of the Customs Act, 1962 cannot be interpreted to justify an unreasonable delay in adjudication. Noting that the Department failed to establish any genuine difficulty or impediment that prevented it from adjudicating the show-cause notice within the prescribed time, the Court observed that mere exchange of letters, rescheduling of hearings, and placement of the matter on the call book do not constitute valid grounds to condone the delay. Recent decisions of the coordinate Benches of the Court in *Swatch Group India Pvt. Ltd.* and *VOS Technologies India* were relied upon. [*Shri Balaji Enterprises* v. *Additional Director* – 2024 VIL 1410 DEL CU]

Central Excise, Service Tax and VAT

Ratio decidendi

- Intra-group transactions, between foreign HO and Indian branch, does not automatically lead to service tax liability without actual provision of services – *CESTAT Mumbai*
- Branch office in India is not liable to service tax for services rendered by foreign CRS/GDS companies to HO located outside India – *CESTAT Larger Bench*

Ratio Decidendi

Intra-group transactions, between foreign HO and Indian branch, does not automatically lead to service tax liability without actual provision of services

The CESTAT Mumbai has held that 'Head office executive and general administrative expenses' incurred for operations of head office abroad, which was allocated by the HO to all the overseas branch offices, including Indian branches, is not liable to service tax under reverse charge under Support Services for Business. The period involved was from 2009 till June 2017. The Tribunal in this regard noted that there was no element of any service involved, the assessee had not entered into any agreement or contract with respect to the said expenses or for receipt of any services, the said amount was not recorded by the assessee in its books of accounts as expenditure, and no invoice was raised for the said amounts by the foreign Head Office on the assessee. Further, noting that the assessee had only claimed deduction of head office expenses (allocated to them *vide* an independent auditor's report) under the provisions of the Income-tax Act, 1961, the Tribunal was of the view that such treatment *per se* does not tantamount to the same being treated as 'gross amount' received for provision of services between foreign head office and Indian branch office.

Also, in respect of demand of service tax for the period before 1 May 2011, the Tribunal held that the comprehensive services of 'operational or administrative assistance' were brought under the tax net only with effect from 1 May 2011. ***The assessee was represented by Mr. V. Sridharan, Senior Advocate Bombay High Court and Co-founder, Lakshmikumaran & Sridharan Attorneys, along with the LKS Team.*** [*Standard Chartered Bank* v. *Commissioner* – 2025 VIL 108 CESTAT Mumbai ST]

Branch office in India is not liable to service tax for services rendered by foreign CRS/GDS companies to HO located outside India

Observing that the assessee (branch office of an international airline) had not received any service in India, the Larger Bench of the CESTAT has held that the branch office cannot be held liable to pay service tax in respect of the services rendered by the foreign CRS/GDS companies to the head office located outside India. The Revenue department had contended that the India branch office of the International Airline was the recipient of

OIDAR services from CRS/GDS companies, irrespective of the fact that contract and payment was directly undertaken by the head office of the International Airline with the CRS/GDS companies. The period involved was from 18 April 2006 to 30 June 2012.

The Tribunal observed that the privity of contract was between the head office and the CRS/GDS companies, both located outside India; the India branch office was not provided any access or data of the CRS/GDS companies; head office was contractually entitled to receive the services and make payments for services rendered by the CRS/GDS companies; there was absence of any payment by the Indian office to the CRS/GDS companies; reservations by the India branch office of the Airline were made on the system of the head office and not through the system of the CRS/GDS companies; and that the India branch office was a separate person, distinct from the head office under Section 66A of the Finance Act, 1994. The Larger Bench in this regard also noted that where the service recipient has more than one establishment, the establishment most directly concerned with the receipt of service must be seen. It was hence held that the India branch office cannot be considered as a service recipient under said section. ***Mr. V. Sridharan, Senior Advocate Bombay High Court and Co-founder, Lakshmikumaran & Sridharan Attorneys, along with the LKS Team, were intervenors here.*** [*Cathay Pacific Airways Ltd.* v. *Commissioner* – 2025 VIL 103 CESTAT MUM ST]

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