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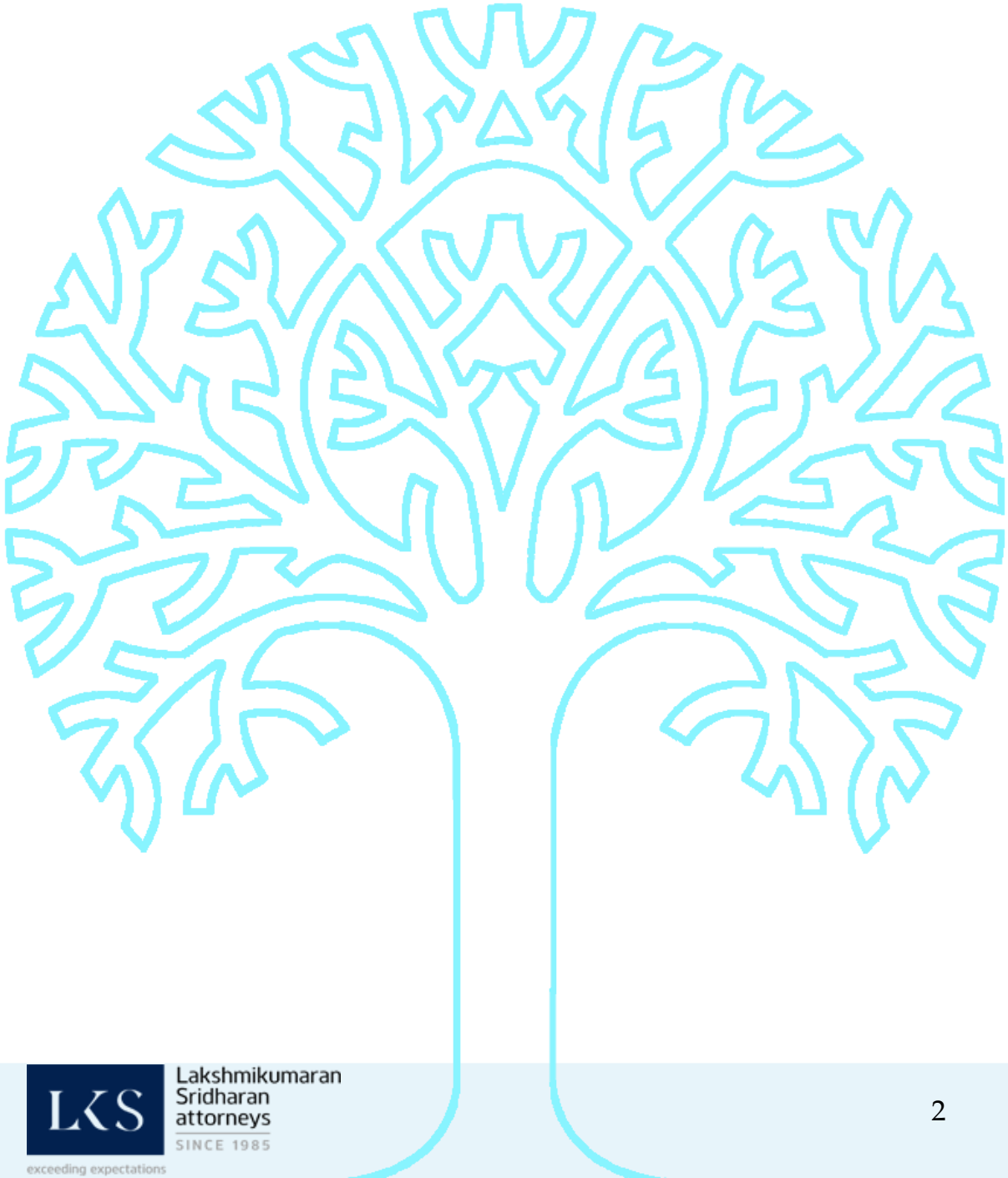

Article

Union Budget 2024-25 – Introduction of 'fetters' to beneficial character of MOOWR scheme

By **Dhruv Matta and Namrata Singhal**

The article in this issue of Indirect Tax Amicus attempts to explore the ramifications of a specific legislative change introduced in the Union Budget 2024-25 vide Clause 101 of Finance (No.2) Bill, 2024 which seeks to amend Section 65 of the Customs Act, 1962. Section 65 covers Manufacture and Other Operations in Warehouse Regulations (MOOWR) scheme. The proposed amendment empowers the Central Government to notify certain manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a MOOWR unit. The article discusses the background leading to this amendment while it observes that this change may dent the viability of the scheme. According to the authors, the amendment should have provided license holders an opportunity to switch to other schemes like EPCG/Advance Authorizations. Alternatively, grandfathering clauses could be envisaged to not adversely impact the vested rights of license holders.

Union Budget 2024-25 – Introduction of 'fetters' to beneficial character of MOOWR scheme

By Dhruv Matta and Namrata Singhal

In this article, an attempt shall be made to explore the ramifications of a specific legislative change introduced in Budget 2024-25 *vide* Clause 101 of Finance (No.2) Bill, 2024 ('**Finance Bill**') in relation to Section 65 of the Customs Act, 1962 ('**Customs Act**'). The amendment proposed under Clause 101 of the Finance Bill shall come into effect on the date of enactment of the Finance (No.2) Act, 2024.

Background of MOOWR scheme

Section 65 of the Customs Act is the foundational provision basis which the Manufacture and Other Operations in Warehouse Regulations (MOOWR) scheme was introduced under Notification No. 69/2019- Customs (N.T.) dated 1 October 2019.

Essentially, the objective behind introduction of MOOWR is to attract investment into India and to strengthen *Make in India* program. MOOWR allows deferment of import duties on '*any*' goods (both inputs and capital goods) that are warehoused at the time of import in India for the purpose of carrying out any manufacturing process or other operations with no interest liability. The duties are fully remitted if the goods resulting from such operations are exported. Import duty is payable on proportional inputs only if the manufactured goods or imported goods are cleared in the domestic market

Keeping in mind the beneficial character of MOOWR, it is highlighted that prior to the proposed amendment, the language imported into Section 65 of the Customs Act was wide and liberal because it extended the benefits of MOOWR to 'any' warehoused goods. This understanding has been affirmed by the Delhi High Court in the case of *ACME Heergarh Powertech Private Limited* v. *Central Board of Indirect Taxes and Customs & Anr.* [Judgement dated 6 May 2024 in W.P.(C) 10537/2022]

Decision in the case of *ACME Heergarh* Powertech

In this case, Hon'ble High Court dealt with the issue pertaining to the legality of Instruction No. 13/2022-Cus. dated 9 July 2022 ('**Instruction No. 13/2022**') which directed the proper officers to

refrain from granting any fresh licenses to solar power generating units and to review licenses issued under MOOWR because in view of the Customs Department, the activity of solar power generation fell outside the ambit of Section 65 of the Customs Act as well as the MOOWR Regulations.

For the purpose of generating solar powered electricity, M/s. Acme Heergarh Powertech Private Limited ('**petitioner**') was granted MOOWR license for warehousing imported capital goods which were used in the generation of solar power in MOOWR Unit. However, on the basis of Instruction No. 13/2022, a Show Cause Notice was issued to the petitioner, proposing to cancel the license held by the petitioner in terms of Section 65 of the Customs Act. Upon adjudication of the matter, it was held that Section 65 of the Customs Act does not make an exception for a certain category of manufacturing activities from its ambit because the provision does not use words of qualification or limitation insofar as the nature of goods is concerned.

Therefore, it was held that Section 65 cannot be recognised as being restricted or limited to a particular or compartmentalized genre of goods. Accordingly, Instruction No. 13/2022 was quashed to the extent it directed the proper officer to cancel or not grant license to solar power generation units under Section 65 of the Customs Act.

Analysis of changes introduced *vide* Clause 101 of the Finance Bill

As per the Budget 2024-25, Clause 101[1] of Finance Bill has proposed to insert proviso to Section 65(1) of the Customs Act to empower the Central Government to notify certain manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a MOOWR unit. Hence, the proposed amendment seeks to restrict the scope of 'any warehoused goods' as contemplated under Section 65 of the Customs Act by empowering the Central Government to exclude the class of such goods/manufacturing and operations which would not be able to avail the benefit of MOOWR.

Conclusion

Thus, *vide* the amendment, the Central Government has introduced a legislative basis to limit certain manufacturing and operations/class of goods that shall not be permitted for MOOWR

[1] Clause 101 of the Finance Bill states that:
'In section 65 of the Customs Act, in sub-section (1), the following proviso shall be inserted, namely:—

Provided that the Central Government may, if satisfied that it is necessary in the public interest so to do, by notification in the Official Gazette, specify the manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse.'

benefits. While the policy decision of the Central Government is understandable insofar as it seeks to possess the capability to put brakes on activities that could be perceived as a misuse of the scheme, it does leave certain questions unanswered.

There is no doubt that the MOOWR scheme has been immensely successful. However, the fact that the government possesses a carte balance power to remove any operation from the ambit of MOOWR benefits without any advance notice shall dent the viability of the scheme. It shall require importers to re-consider their supply chain operations as they shall be in doubt over the longevity of the benefits that shall accrue under the scheme. Furthermore, existing units which are enjoying benefits under the scheme shall have to conduct a risk analysis as there is no visibility about sudden removal of benefits. Such units may suddenly be saddled with large customs duty liabilities if the benefits are removed without notice.

It is the opinion of the authors that such an amendment should have included additional language to provide a license holder an opportunity to switch to other schemes like EPCG/Advance Authorizations for capital goods/raw materials respectively. Alternatively, grandfathering clauses could be envisaged so as to not adversely impact the vested rights of a license holder.

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Goods & Services Tax (GST)

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Notifications and Circulars

Union Budget 2024 – Highlights of changes proposed in GST regime

The Finance Minister has presented the Union Budget on 23 July 2024 proposing many changes in all the GST laws – Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017 and Union Territory Goods and Services Tax Act, 2017. It may be noted that these changes are in line with the recent recommendations of the GST Council. Some of the important changes are listed below. A detailed analysis of all the changes, including relevant comments from the LKS Indirect Tax Team, is available here.

- Uniform limitation period will be applicable for the financial year, 2024 onwards in respect of demands under GST, regardless of whether fraud or suppression is involved.
- Time limit for availment of ITC for the period till March 2021 has been extended till 30 November 2021. Conditional waiver of interest and penalty for period till financial year 2020 has been allowed except for erroneous refund cases.
- Maximum amount of pre-deposit for filing appeal with the Appellate Authority and the Appellate Tribunal is being reduced to INR 40 crore (IGST).
- Taxability of co-insurance premium – Amendments have been brought in whereby the activity of apportionment of co-insurance premium by the lead insurer to the co-insurer has been categorised as not a supply and hence, not taxable. Similar amendments have also been brought in for services by insurer to reinsurer.
- Government will be able to regularise any non-levy or short levy owing to a generally prevalent practice.
- Undenatured ENA or rectified spirit used for manufacture of alcoholic liquor under GST is proposed to be specifically excluded from the purview of GST.

GST and Customs law – Reference to old criminal laws to be read as referring to new laws

The Ministry of Law and Justice has on 16 July 2024 issued Notification No. S.O. 2790(E) to notify that any reference of the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 or

the Indian Evidence Act, 1872 or any provisions thereof to be respectively read as reference to the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 or the Bharatiya Sakshya Adhiniyam, 2023. This will be applicable to any Act made by the Parliament or State, Ordinance, Regulations made under Article 240 of the Constitution, President's Order, rules, regulations, order or notification made under any Act, Ordinance or Regulation. Notably, the new criminal laws have come into force from 1 July 2024. Both GST and Customs law refer to the old criminal laws in various provisions, especially in provisions relating to arrest, confiscation, power of search and seizure, and recovery of tax, etc.

Ratio Decidendi

Refund of ITC on exports – 'FOB value' and not 'net realized value' to be considered

The Bombay High Court has held that for the purpose of refund of Input Tax Credit in case of exports, the FOB value as indicated in the invoice (or the shipping bill, whichever is lower) should be considered. The High Court in this regard rejected the contention of the Revenue department that the net realised value and not FOB value is to be considered for the purpose. The Court observed that there is nothing in the Rules to indicate that it is only the net realisation value which must be considered. The assessee's GST invoice had declared the FOB value as USD 224846.75 with advance in form of gold supplied free of cost for USD 219017.61 and balance payable by the buyer as USD 6479.39. The Department had taken only USD 6479.39 as the FOB value for computing refund of ITC. [*AU Finja Jewels* v. *Assistant Commissioner* – 2024 VIL 625 BOM]

Blocking of Electronic Credit Ledger without issuance of show cause notice is wrong

The Telangana High Court has held that blocking of the electronic credit ledger of the assessee without following the principles of natural justice and without assigning adequate reasons is not sustainable. According to the Court, to avoid inconsistency, injustice, anomaly and hardship and in order to iron out the creases between Section 74 of the CGST Act and Rule 86A of the CGST Rules, it is proper to interpret it by holding that principles of natural justice must be observed while taking an action under said Rule. The Court in this regard also noted that CBIC Circular dated 2 November 2021 clearly shows that the Department is conscious of the impact of invoking Rule 86A in a mechanical manner and therefore, a word of caution was communicated to the authorities to deal with such matters with utmost care, caution and sensitivity. It was noted that the emphasis was laid for existence of reasons which must be based on material evidence regarding fraudulent availment of ITC. The Department's view was rejected by the Court while it also observed that Rule 86A neither expressly nor by necessary implication excludes the principles of natural justice. [*Bhavani Oxides* v. *State of Telangana* – 2024 VIL 649 TEL]

Disallowing debit of electronic credit ledger under Rule 86A – CBIC Instruction dated 2 November 2021 is not applicable to State GST unless adopted by the State

The Orissa High Court has held that CBIC Instruction dated 2 November 2021, relating to guidelines for disallowing debit of electronic credit ledger under Rule 86A of the Central Goods and Services Tax Rules, 2017, is only applicable to the Central GST and not to the State GST. The Court in this regard noted that nothing was placed on record to show that the said circular was adopted by the State Government for State GST. [*Atulya Minerals* v. *Commissioner* – 2024 VIL 613 ORI]

Transitional credit – No time-limit prescribed under Section 140(5) for filing application for extension for recording of invoices in books of account

The Bombay High Court has observed that Section 140(5) of the Central Goods and Services Tax Act, 2017 does not prescribe any time-limit to make an application for extension to record in the books of account. The Court noted that Section 140(5) only requires the supplier to have paid before the appointed day and the invoice or the duty/ tax paying document being recorded in the books of account of registered person within a period of thirty days from 1 July 2017, which period could be extended by a further thirty days on sufficient cause being shown. The High Court hence allowed the writ petition in the case where the assessee could not record in its accounts the invoices due to certain circumstances and hence applied on 26 October 2017 to the Commissioner to extend the time-period under Section 140(5). The matter was remanded to verify and pass appropriate orders on the claim of ITC credit made by the assessee as if extension has been granted under Section 140(5).

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Damco India Private Limited* v. *Union of India* – 2024 VIL 633 BOM]

Payment of tax during search, i.e., before completion of search, is not voluntary payment

The Calcutta High Court has opined that the payment of tax during the course of search, i.e. even before the search could be completed, cannot be treated to be a voluntary payment. The High Court in this regard noted that the search as per the recording in the *Panchanama* was completed after about two hours after the assessee had affected the payment. Directing the

Department to return the amount deposited by the assessee, the Court also noted that it was an admitted case that the Department had not issued any receipt under GST DRC-04, and that there was no ascertainment of the tax liability nor there was any ascertainment of any alleged non-payment or short payment of taxes. The Bombay High Court decision in *Innovators Façade Systems Ltd.* v. *Assistant Additional Director General of GST Investigation*, was distinguished. CBIC Instruction dated 25 May 2022 was relied upon. [*ATR Malleable Casting Private Limited* v. *Inspector of Central Tax* – 2024 VIL 632 CAL]

No interest from date of deposit in electronic cash ledger (ECL) till date of filing of return – Amount in ECL is in nature of advance tax which can only be utilised for payment of tax

The Gujarat High Court has held that the assessee cannot be made to pay interest from the date of deposit in the account of electronic cash ledger till the date of filing of the return GSTR-3B. The High Court in this regard was of the view that when the assessee deposits the amount which is credited into electronic cash ledger after actual deposit in the government treasury, there is no loss to the government revenue merely because such deposit gets adjusted against the actual liability at the later date at the time of filing of the return. It was also observed that the amount in the electronic cash ledger is nothing but in nature of advance tax lying the account of the assessee which cannot be withdrawn or utilised in any manner by the assessee except for payment of tax liability as the return filed. The Court also, for this purpose, held that introduction of proviso to Section 50(1) of the CGST Act, 2017 was only to clarify on liability of interest on net tax liability and not on gross, and that it had nothing to do with the period for which interest is to be levied. [*Arya Cotton Industries* v. *Union of India* – 2024 VIL 634 GUJ]

Transportation of imported machinery from Customs port to own factory – Penalty for absence of e-way bill imposable only under second limb of Section 129(1)(a)

The Bombay High Court has held that penalty for absence of e-way bill in a case of transportation of imported machinery from a Customs port to own factory of the assessee is imposable only under second limb of Section 129(1)(a) of the CGST Act, 2017. The Court in this regard observed that such a transportation will not fall within 'supply' as defined by Section 7, as the

requirement of existence of more than one person was not satisfied and there was absence of 'consideration' in the case. It was thus held that first limb of Section 129(1)(a) [imposing penalty equal to tax] was not applicable. Holding that penalty of INR 25,000 was only imposable, the Court also held that provisions of Section 129(1)(a) and 129(1)(b) were mutually exclusive. [*Fabricship Pvt. Ltd.* v. *Union of India* – 2024 VIL 639 BOM]

Appeal to Appellate Authority – Substitution of Rule 108(3) by Notification dated 26 December 2022, is applicable retrospectively

The Karnataka High Court has held that substitution of Rule 108(3) of the CGST Rules, 2017, providing that the date of appeal would be the date of issuance of acknowledgment, ought to date back from the date when the Rule was introduced, and not from 26 December 2022 when the said Rule was substituted by Notification No. 26/2022-Central Tax. Taking note of the Minutes of 48th GST Council Meeting, the Court observed that the substituted provision was in the nature of a clarification to provide clarity on the requirement of submission of certified copy of the order.

The assessee filed the appeal online on 3 June 2022, but physical filing of the order impugned was made only on 25 January 2023. The appeal was rejected as time barred as the Rule before the substitution provided date of furnishing of certified copy of the order, if submitted after seven days, to be the date of appeal. In the case, though appeal was filed prior to substitution of Rule 108(3), the Court held that since the matter was decided after the amendment by way of substitution, the amended Rule ought to be taken note of.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Hitachi Energy India Limited* v. *State of Karnataka* – 2024 VIL 644 KAR]

Appeal to Appellate Authority – Section 5 of Limitation Act cannot be invoked to condone delay

The Patna High Court has held that there is no power in the Appellate Authority to extend the period for filing the appeal even beyond the further period provided of one month after the limitation period of three months and condone the delay invoking the power under Section 5 of the Limitation Act. Disagreeing with the Calcutta High Court decision in *S.K.*

Chakraborty & Sons v. *Union of India*, the Court observed that when there is a provision which only specifies the period in which the proceeding must be initiated; in the absence of any clause permitting the condonation of delay for sufficient cause shown, then there is complete exclusion of the Limitation Act. Taking note of various precedents, the Court held that when a specific time period is provided for the authority/tribunal/court before which a proceeding is to be initiated and a further period is specified for delay condonation, then there is exclusion of Section 5 of the Limitation Act. [*Vishal Kumar Gupta* v. *Union of India* – 2024 VIL 656 PAT]

Discount given by supplier post supply is not service provided by purchaser to supplier

The Madras High Cour has held that the conclusion by the assessing officer that the assessee-purchaser was providing a service to the supplier while taking the benefit of a discount (by the supplier) by facilitating an increase in the volume of sales of such supplier, was *ex facie* erroneous and contrary to the fundamental tenets of GST law. The issue of reversal of Input Tax Credit for the value of credit notes issued by the supplier was thus remanded by the Court for re-consideration. [*TVL Shivam Steels* v. *Assistant Commissioner* – Order dated 25 June 2024 in W. P.No.15335 of 2024, Madras High Court]

No penalty for mentioning different dates on e-way bill and tax invoice, which is a *bona fide* typographical error

The Allahabad High Court has held that the mistake of mentioning different dates on e-way bill and tax invoice is a *bona fide* typographical error on the part of person who generated the same, and as such is a minor error. According to the Court, it cannot be held in such case that there was *mens rea* of evading tax, which is essential for imposing penalty. Further, the Court also observed that merely because the supplier (Trimbakeswar Steels) had shown the office in some flat, will not entitle the Department to draw any adverse inference against the assessee until and unless some cogent material is brought on record. Setting aside the seizure order issued after detaining the goods during transit, the Court observed that inference was only drawn against the assessee on surmises and conjectures, which cannot be permitted in the eye of law. [*Nanhey Mal Munna Lal* v. *Additional Commissioner* – 2024 VIL 691 ALH]

Non-furnishing of certified copy of order in English prejudices assessees right

The Andhra Pradesh High Court has upheld the contention of the assessee that he is entitled to a certified copy of the order in English to enable him to take further steps in the matter. In a dispute where the order was issued in Hindi, the Court agreed with the assessee that non-furnishing of such an order copy (in English) would gravely prejudice his rights under the provisions of the CGST Act, 2017, as he would be unable to take further steps under the provisions of the CGST Act, 2017. The assessee had approached the Court contending that he was not conversant with Hindi and that both himself and his counsel were unable to prepare a proper appeal. The High Cour in this issue also directed that the limitation period here will commence when certified copy of the order in English is furnished to the assessee. [*KVR Estates* v. *Commissioner* – 2024 VIL 701 AP]

Refund of IGST on exports – Claim under Rule 96 instead of Rule 89 is not fatal

Observing that the procedural irregularity committed by the assessee should not come in the legitimate way of grant of export incentives as exports were made and the refund claims were itself based on the shipping bills, the Madras High Court has allowed assessee's petition in a case involving refund of IGST on exports when the assessee had wrongly claimed refund under Rule 96 instead of Rule 89. The Department had denied refund and sought for recovery of refund earlier granted alleging that the refund was not admissible considering restrictions of Rule 96(10) of the CGST Rules, 2017. The Court observed that the assessee was entitled to exemption under Rule 89, as the petitioner had received inputs under Notification No.48/2017-Central Tax and under Notification No.78/2017-Cus. [*Shobikaa Impex Private Limited* v. *Union of India* – 2024 VIL 702 MAD]

Scrutiny of returns – Non-issuance of ASMT-10 notice vitiates scrutiny process including discrepancies noticed, though such notice is not a mandatory pre-requisite for adjudication

Observing that issuance of ASMT-10 notice is mandatory, the Madras High Court has held that the not issuance of ASMT-10 notice, in spite of noticing discrepancies after selecting and scrutinizing returns, would vitiate the scrutiny process, including the discrepancies noticed thereby and the quantification, if any, done in course thereof. The Court noted

that Rule 99(1) of the CGST Rules, 2017 uses the language '*and in case of any discrepancy, he shall issue a notice to the said person in Form GST ASMT-10*', thus raising the presumption that the obligation is mandatory. Taking note of Section 61(1) of the CGST Act, 2017, the High Court also observed that upon fulfilment of two conditions, namely, selection of returns for scrutiny and the discovery of discrepancies on such scrutiny, there is an obligation to issue notice. It was hence held that such scrutiny under Section 61 cannot be relied upon for adjudication.

However, considering Sections 61 and 73, the Court was of the view that there was no indication in either provision that scrutiny of returns and the issuance of notice in Form ASMT-10 constitute mandatory pre-requisites for adjudication even in cases where returns were scrutinized. [*Mandarina Apartment Owners Welfare Association* v. *Commercial Tax Officer* – 2024 VIL 721 MAD]

Seizure order when vehicle was not on regular route or on different route, is not correct

Observing that under GST there is no specific provision which bounds the selling dealer to disclose the route to be taken during transportation of goods or while goods are in transit, the Allahabad High Court has held that the authorities were not correct in passing the seizure order even if the vehicle was not on regular route or on different route. According to the Court, once the documents accompanying the goods were found to be genuine, the goods ought not be seized. [*Exide Industries Ltd.* v. *Additional Commissioner* – 2024 VIL 724 ALH]

Recovery of retention bonus, joining bonus, tuition assistance program, and work from home allowance from employees is not taxable

The AAR Karnataka has held that recovery of retention bonus, joining bonus, tuition assistance program, and work from home allowance, from the employee, if it wishes to voluntarily exit the organisation before serving the stipulated time period, is not liable to GST. Observing that the intention behind such bonus/allowance was to incentivise and motivate the employee to remain in the organisation, the Authority held that such recovery was in same lines as forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment, which was clarified as not taxable by CBIC Circular No. 178/10/2022-GST, dated 3 August 2022. The AAR in this regard also relied upon Circular No. 172/04/2022-GST which had clarified that perquisites provided by employer to

employee in terms of contractual agreement are not taxable. [In RE: *Fidelity Information Services India Pvt. Ltd.* – 2024 VIL 105 AAR]

Value of materials and cost of installation borne by the recipient when not includible

In a case where there was no relationship between the customer and the assessee which could be categorized as that of supplier and recipient, except for the services of the supervising the whole work, the AAR Uttar Pradesh has held that the value of materials and cost of execution of work are borne by the recipient of service shall not be included in the value of supply of supervision work done by the assessee. The Authority in this regard noted that all the payments were being made by the customer directly to the vendor and contractors, except for supervision work and that though the property subjected to works contract services belonged to the assessee, but the supply of works contract services was not made on its behest. The AAR was of the view that since there was no obligation to pay on part of the assessee, the provisions of Section 15(2)(b) of CGST Act, 2017 were not applicable. [In RE: *Uttar Pradesh Power Transmission Corporation Ltd.* – 2024 VIL 116 AAR]

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Notifications and Circulars

Union Budget 2024 – Highlights of changes in Customs law and duty rates

The Union Budget 2024 was presented by the Finance Minister on 23 July with many changes across different sectors. The proposals relating to customs duties, as per the speech of the Finance Minister, intend to support domestic manufacturing, deepen local value addition, promote export competitiveness, and simplify taxation, while keeping the interest of the general public and consumers surmount. A comprehensive review of the rate structure is also being proposed over the next six months to rationalise and simplify it for ease of trade, removal of duty inversion and reduction of disputes.

Some of the important changes are highlighted below:

- Section 28 DA of the Customs Act, 1962 is being amended to enable the acceptance of different types of proof of origin provided in trade agreements (FTAs). This will align the said section with trade agreements, which provide for self-certification.
- Section 65 of the Customs Act, 1962 is being amended to allow the Central Government to notify manufacturing process and operations that shall not be permissible within a Manufacturing and Other Operations in Warehouse ('MOOWR') unit.
- Section 143AA of the Customs Act is being amended to allow CBIC to notify procedures for instances such as transparency in documentation, clearance of goods and related transaction costs for 'any other persons' as well.
- Similarly, Section 157 is being amended to allow CBIC to make regulations to provide measures and separate procedure or documentation for a class of importers or exporters or for 'any other persons' or categories of goods or on the basis of the modes of transport of goods.
- Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 have been amended to insert a provision for New Shipper Review. This is effective from 24 July 2024.
- Time-period of duty-free re-import of goods (other than those under export promotion schemes) exported out

from India under warranty has been increased from 3 years to 5 years, further extendable by 2 years. *Refer Notification No. 39/2024-Cus. amending Notification No. 45/2017-Cus.*

- Aircrafts and vessels imported for maintenance, repair and overhauling can now be re-exported within 1 year (instead of 6 months), further extendable by 1 year. *Refer Notification No. 38/2024-Cus. amending Notification No. 153/94-Cus.*
- BCD has also been reduced on shea nuts, goods relating to aquafarming & marine exports, 27 critical minerals, Ferro Nickel, Blister Copper, Ammonium Nitrate, certain goods for textile and leather sector, 3 cancer drugs, precious metals, certain medical equipment, certain specified goods of IT and Electronics sector (covering mobile phone, charger/adapter, PCBA, etc.), capital goods for use in manufacture of solar cells or solar modules, and capital goods for petroleum exploration operations
- BCD exemption has been extended till 31 March 2026 on Ferrous scrap and certain specified raw materials for manufacture of CRGO steel.
- Tariff rate of BCD has been increased to 25% for Poly vinyl chloride (PVC) flex films. This is effective from 24 July 2024
- Tariff rate of BCD has been increased to 150% for Laboratory Chemicals. This is effective from 24 July 2024. However, it may be noted that *vide* Notification No. 41/2024-Cus., dated 31 July 2024, all goods (except undenatured ethyl alcohol of any alcoholic strength) for use in laboratory or for research and development purposes, are liable to 10% BCD with effect from 1 August 2024, subject to certain conditions.
- Tariff rates of BCD are also being revised for roasted nuts and seeds, and other nuts otherwise prepared or preserved, both including arecanuts, with effect from 1 October 2024, to 150%.
- BCD has been increased on Printed Circuit Board Assembly (PCBA) of specified telecom equipment, from 10% to 15%.
- Export duty on raw skins, hides & leather is being simplified and rationalized.

Compensation Cess exemption on imports by SEZ unit or developer for authorised operations – Retrospective applicability proposed

The Ministry of Finance has exempted all goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations, from the whole of Goods and Services Tax Compensation Cess that is leviable on them under Section 3(9) of the Customs Tariff Act, 1975 read with Section 8(2) of the Goods and Services Tax (Compensation to States) Act, 2017. Notification No. 27/2024-Cus., dated 12 July 2024 is effective from 15 July 2024. It may however be noted that notification is being validated retrospectively with effect from 1 July 2017 by clause 104 of the Finance (N0.2) Bill, 2024 presented by the Finance Minister on 23 July 2024.

Defence imports – Exemption extended till 30 June 2029

Specified goods imported by the Ministry of Defence or the Defence forces, or the Defence Public Sector Units or other Public Sector Units, or any other entity, for the Defence forces are exempted from Basic Customs Duty and IGST, subject to certain other conditions. This exemption, which was available till 30 June 2024, has now been extended till 30 June 2029. Notification No. 26/2024-Cus., dated 27 June 2024 has amended Notification No. 19/2019-Cus. for this purpose.

Provisional attachment of bank account under Customs Section 110(5) – CBIC issues detailed Instructions

The Central Board of Indirect Taxes and Customs (CBIC) has issued a detailed Instruction in respect of provisional attachment of bank accounts under Section 110(5) of the Customs Act, 1962. Instruction No. 19/2024-Cus., dated 22 July 2024 states,

- Basis on which the proper officer forms an opinion to seek approval of provisional attachment of a person's bank account must be duly recorded on file.
- Written approval of (Pr.) Commissioner is required.
- Power of provisional attachment must not be exercised in a routine/mechanical manner.
- Extension beyond the initial period of maximum six months to be made by (Pr.) Commissioner only after providing the bank account holder with an opportunity to be heard in person and thereafter recording in writing the reasons for such an extension.

- Provisional attachment order, or its extension, must be specifically addressed to both the bank account holder and the concerned bank.

EPCG Scheme – Procedural aspects relaxed

The Directorate General of Foreign Trade (DGFT) *vide* Public Notice No.15/2024-25 dated 25 July 2024 has made certain amendments in Chapter 5 of the FTP Handbook of Procedures 2023. The Chapter is related to Export Promotion Capital Goods ('**EPCG**') Scheme. The amendments seek to reduce the compliance burden on the importer-exporter and thus enhance ease of doing business. Detailed clause-by-clause analysis of the changes by the LKS Customs Team is available here.

Ratio Decidendi

No penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 for non-fulfilment of export obligation by EOU

The Karnataka High Court has held that order of the Development Commission imposing penalty on the assessee, an EOU, on grounds of shortfall in the export of manufactured goods is without authority. The Court in this regard observed that Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, under which penalty was imposed, is invokable only when a person attempts to or succeeds in making an import or export in contravention of the provisions of the FT(DR) Act, and that in the present case there was no such allegation. Supreme Court's decision in the case of EMBIO Ltd., was relied upon by the Court here. [*Such Silk International Ltd.* v. *Development Commissioner* – 2024 (7) TMI 628-Karnataka High Court]

Withdrawal of ex-bond Bills of Entry and reinstatement of into-bond Bills of Entry when permissible

The CESTAT Kolkata has allowed conversion of ex-bond Bills of Entry into into-bond Bills of Entry under Section 46(5) of the Customs Act, 1962, in a case where the assessee-importer had filed ex-bond B/E on 21 and 28 September 2021 but later on 8 October 2021 filed an application for withdrawal/cancellation of ex-bond B/E and reinstatement of into-bond B/E. The rate of duty (BCD and AIDC) on goods was reduced subsequently effective from 14 October 2021 and therefore the request for withdrawal was rejected by the Department on 27 October alleging revenue loss.

Allowing the appeal, the Tribunal noted that though B/E were filed for home consumption, the assessee had not paid any duty nor any order for clearance was made by the proper officer. It also noted that on 8 October, when withdrawal was requested, there was no change in rate of duty (thus no revenue loss) and that the Department cannot be allowed to take benefit of own wrong. [*Emami Agrotech Ltd.* v. *Commissioner* – 2024 VIL 701 CESTAT KOL CU]

Time of publication of notification in gazette, and not only date of its publication, is important

The Bombay High Court held refund of the additional duty paid under protest by Patanjali with respect to four Ex-Bond

Bills of Entry should be given to them as the bill of entry were presented before the Notification increasing the tariff value of the goods from USD 1163 PMT to USD 1219 PMT came into force. The Court relied upon the Supreme Court decision in the case *of Union of India* v. *G.S. Chatha Rice Mills* and observed that not only the date but also the time of the notification coming into force has to be taken into consideration. [*Patanjali Foods Ltd.* v. *Union of India* – 2024 (7) TMI 426-BOMBAY HIGH COURT]

Delay in issuance of project authority certificate is not fatal – Refund of duty paid earlier permissible as exemption eligible

Observing that the assessee-importer had applied for the project authority certificate five months before import, the Gujarat High Court has held that because of the delay in the issuance of certificate by the State the importer cannot be deprived of the exemption in accordance with Notification No. 84/97-Cus. Noting that the certificate issued by the State also clearly specified that the machinery was used by the project approved by the World bank, the Court stated that the authorities are required to reassess the bills of entry granting exemption based on the project authority certificate. The assessee had paid duty under protest pending certificate from the State and subsequently filed for refund after the certificate was given to them. The High Court in this regard also took note of Section 149 of the Customs Act, 1962, allowing the Department to amend the Bill of Entry. [*RKC Infrabuilt Pvt. Ltd.* v. *Union of India* – 2024 VIL 658 GUJ CU]

Transponder, Muxponder and Optical splitter cards are classifiable as 'parts' under TI 8517 70 90

The CESTAT New Delhi held that the correct classification for Transponder, Muxponder, and Optical splitter cards is under Tariff Item 8517 70 90 as 'parts' and not under TI 8517 69 90 of the Customs Tariff Act, 1975 as 'other communication apparatus'. The Tribunal relied upon the twin test laid down in *Vodafone Idea Limited* (Customs Appeal No. 52287 of 2019 decided on 20 September 2022) and came to the conclusion that the cards were not Network Interface Card (NIC) as all the three cards were dependent on other components of the main equipment and become functional only when they were plugged into the slot of modular chassis of the main equipment.

Therefore, not being able to function independently, the goods were to be considered as parts. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Vodafone Idea Limited* v. *Principal Commissioner* – 2024 VIL 717 CESTAT DEL CU]

'Injection Stretch Blow Moulding Machine' is classifiable as 'Blow Moulding Machine' and not as 'Injection Moulding Machine' – Not liable to anti-dumping duty

The CESTAT Ahmedabad held that Injection Stretch Blow Moulding Machine, imported from China and of being Chinese Origin as per certificate of origin, is to be classified under Tariff Item 8477 30 00 as 'Blow moulding machines' and not under TI 8477 10 00 of the Customs Tariff Act, 1975 as 'Injection-moulding machines', which is liable to anti-dumping duty under Notification No. 57/2015-Customs (ADD). The Tribunal in this regard noted that the machine was a composite machine, i.e., two machines fitted together forming a whole, part of which was Injection Molding Machine and remaining part was Blow Moulding Machine. It was noted that as per Note 7 of Chapter 84, where composite machines consisting of two or more machines are used to perform complementary/alternative function then composite machine is to be classified as per the principal function of that machine, which in this case was blow moulding used in pharmaceutical industry for the development of IV Fluid containers. [*Amanta Healthcare Limited* v. *Commissioner* – 2024 (7) TMI 766-CESTAT AHMEDABAD]

Central Excise, Service Tax and VAT

Ratio decidendi

- Valuation – Section 4A (MRP based valuation) not applicable for HDPE bag containing 100 poly packs containing 33+1 smaller packs – *Supreme Court*
- Front cover, middle cover and back cover of cellular phones are classifiable under TI 8517 70 90 – Supreme Court upholds CESTAT decision
- No service tax on expenses for establishing and running representative offices outside India – Supreme Court upholds CESTAT decision
- No intellectual property service for allowing use of trademark by proprietorship concern owned by wife – *CESTAT Chennai*
- Cenvat credit on capital goods handed over to supplier for installation – *CESTAT Kolkata*

Ratio Decidendi

Valuation – Section 4A (MRP based valuation) not applicable for HDPE bag containing 100 poly packs containing 33+1 smaller packs

The Supreme Court of India has set aside the appeal filed by the Revenue department against the CESTAT decision involving applicability of Section 4A of the Central Excise Act, 1944 in a case of HDPE bags containing 100 poly packs, which in turn contained 33 plus one smaller pack each. The Court was of the view that even assuming that 100 poly packs were retail packages, HDPE bags would be covered by the definition of 'wholesale package' as defined in clause (iii) of Rule 2(x) of the Standards of Weight & Measures (Packaged Commodity) Rules, 1977, and thus, the HDPE bags were not 'group packages' within the meaning of Rule 2(g). Further, observing that there was no finding recorded by the Commissioner that what was distributed/sold by the assessee was a poly pack containing 33 plus one small pack, the Court held that it was not required to deal with the issue of whether a poly pack containing 33 plus one small package was intended for retail sale. The Apex Court in this regard noted that the Commissioner had not rejected the specific case made out by the assessee in reply to the show cause notices that it was selling said HDPE bags.

While dismissing the Department's appeal, the Court also observed that in case of a package that does not attract provisions of the said Rules regarding mentioning the retail price, even if the retail price is mentioned on the package, that itself will not attract Section 4A(1).

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Commissioner* v. *Miraj Products Pvt. Ltd.* – 2024 VIL 19 SC CE]

Front cover, middle cover and back cover of cellular phones are classifiable under TI 8517 70 90 – Supreme Court upholds CESTAT decision

The Supreme Court of India has on 19 July 2024 dismissed an appeal filed by the Revenue department against the CESTAT decision dated 20 December 2023 in the case of *Samsung India Electronics Pvt. Ltd.* v. *Principal Commissioner* [2023 VIL 1341 CESTAT DEL CU]. The Apex Court in this regard relied upon its earlier decision dated 10 July 2024 [*Principal Commissioner* v. *Padget Electronics Pvt. Ltd.*], wherein the Court had held that

there was no error in the view taken by the Tribunal. Similar view was also taken by the Supreme Court in its separate decision dated 19 July 2024 in the case of *Principal Commissioner* v. *Transsion India Pvt. Ltd.*

The CESTAT New Delhi in the case of *Samsung India Electronics Pvt. Ltd.* had held that front cover, middle cover and back covers of cellular phones which house various components of the phone and also provide for dissipation of the heat, are classifiable under Tariff Item 8517 70 90 of the Customs Tariff Act, 1975 and not under TI 3920 99 99. Considering the process of manufacture of the goods in question, the Tribunal was of the view that process of vapour deposition, being lamination, take the goods out of purview of Heading 3920. The Tribunal in this regard had also observed that the processes of thermoforming and CNC milling being processes beyond cutting and surface working, take the goods out of the scope of Chapter Note 2(s) to Chapter 39.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys in this dispute. [*Principal Commissioner* v. *Samsung India Electronics Pvt. Ltd.* – Order dated 19 July 2024 in Diary No. 25225/2024, Supreme Court]

No service tax on expenses for establishing and running representative offices outside India – Supreme Court upholds CESTAT decision

The Supreme Court of India has on 9 July 2024 dismissed on the ground of delay as well as on merits the appeal filed by the Revenue department in a case where the CESTAT New Delhi had held that there was no liability to pay service tax under reverse charge for value of foreign expenses incurred on establishing and running representative offices by the Indian company-assessee.

The Department, in this dispute for the period September 2014 to September 2015, had alleged that the assessee made payments in foreign currency to its representative offices in countries other than India and such expenses were towards business promotions, marketing and consultancy activity which were taxable in India. The CESTAT had in its Order dated 2 March 2023 set aside the demand observing that the issue was earlier decided in favour of the assessee in their own case for periods both under pre-negative list and post-negative list regime.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Commissioner* v. *Kusum Healthcare Pvt. Ltd.* –

Order dated 9 July 2024 in Diary No. 21294 of 2024, Supreme Court]

No intellectual property service for allowing use of trademark by proprietorship concern owned by wife

The CESTAT Chennai has set aside the demand of service tax under Intellectual Property services in Section 65(105)(zzr) of the Finance Act, 1994, in a case where the assessee had allowed another concern (proprietorship firm owned by his wife) to use the trademarks of the assessee. The Department had alleged that since the other concern, which used the trademark, had given huge amount of interest free loans to the assessee, the notional interest on these loans was the consideration for service of allowing use of the trademark/brand names.

The Tribunal in this regard noted that when the parties themselves had agreed to give/take interest free loans, the Department cannot assume and impose notional interest on such loans. It was also of the view that when both the entities are proprietorship concerns owned by husband and wife, the grant of interest free loans by one concern to another is not a doubtful or camouflaged transaction, moreover when the same were accounted and did not even start with the disputed period. Further, the Tribunal also noted that there was no evidence to show that the parties had any intention to bind each other for performance of an act. The Tribunal in this regard stated that '*the idea of rendering service arises out of contracts which are enforceable and not gratuitous in nature*.' It was noted that since both the businesses were being run within the family, they had commonly used the brand name for the benefit of both.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [Prabhu Soap Works v. Commissioner – 2024 VIL 742 CESTAT CHE ST]

Cenvat credit on capital goods handed over to supplier for installation

The CESTAT Kolkata has allowed Cenvat credit on capital goods procured by the assessee under separate contract from another company, which were then handed over to the said company for installation and commissioning. The company installing the goods paid service tax on the activity without taking Cenvat credit on the inputs used for providing the service. The assessee here had submitted that Cenvat Credit cannot be denied to them solely for the reason that availment of Cenvat Credit on such goods was restricted to works contractor who installed such goods in the assessee's premises. Allowing the appeals, the

Court took note of the Himachal Pradesh High Court decision in *Commissioner* v. *Gujrat Ambuja Cement Ltd.* and the CESTAT decision in *Rajasthan Spinning & Weaving Mills (RWSM) Ltd.* It in this regard also observed that that the said capital goods which were installed in the factory of the appellant were used for manufacturing of their final product.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Tata Steel Ltd.* v. *Commissioner* – 2024 VIL 808 CESTAT KOL CE

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