INDIRECT TAX

amicus

May 2025 / Issue – 167

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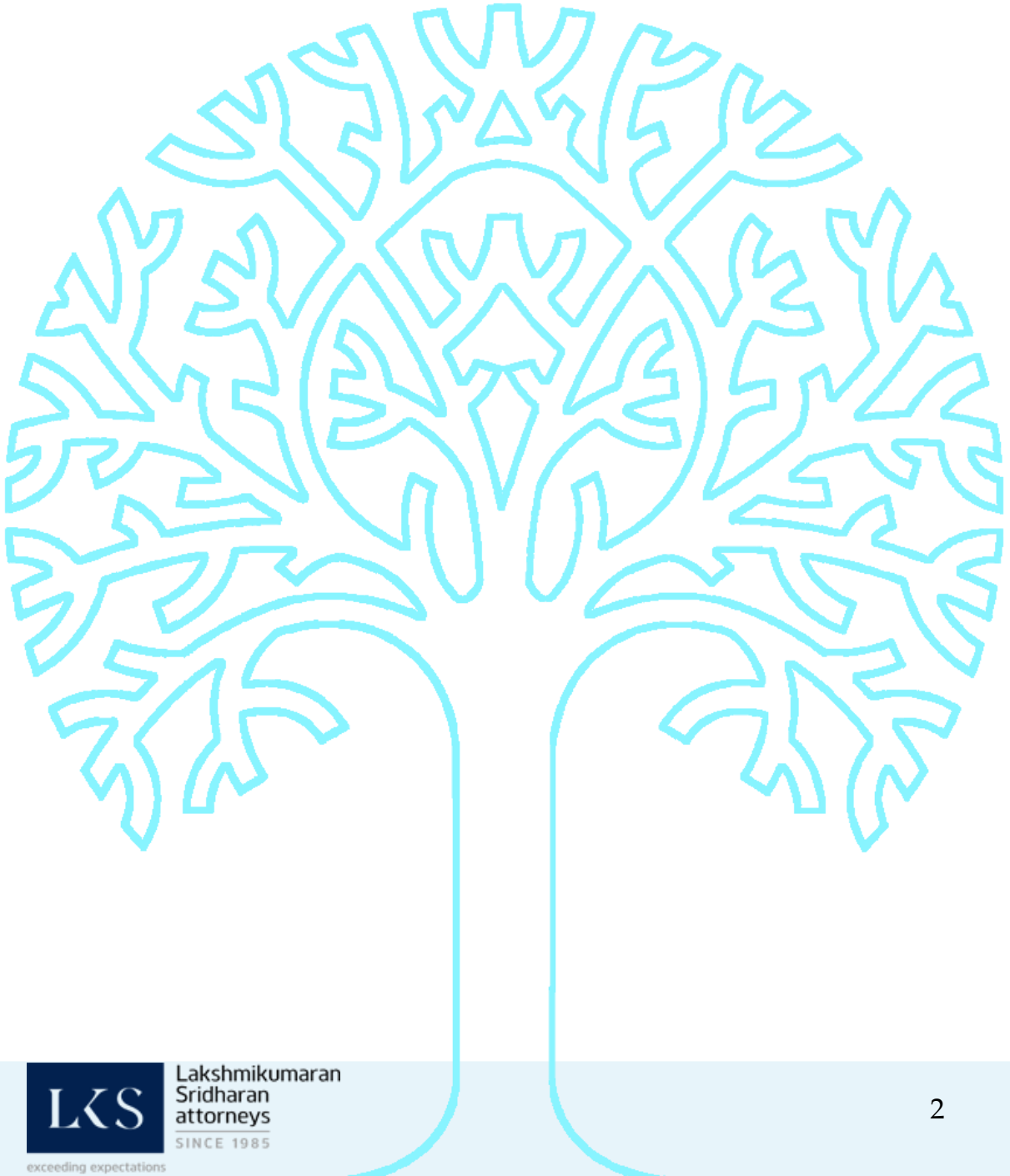

Article

Classification disputes on networking equipment forcing a policy change

By **Dhruv Matta and Shobhit Jain**

The article in this issue of Indirect Tax Amicus focuses on a recent decision regarding classification of small form-factor pluggable ('**SFPs**'). It notes that judicial forums including the Supreme Court have recently ruled in favour of the telecom companies, classifying SFP as part of networking telecom equipment under Tariff Item 8517 70 90 of the Customs Tariff Act, 1975. The article hence notes that the said goods will be eligible for Basic Customs Duty (BCD) exemption. However, citing a recent press report indicating that the Finance Ministry is considering a 10% BCD on telecom network equipment components, the article ponders over various approaches the Government may take to restrict the exemption. Further, the authors also delve into the question as to whether such products will continue to enjoy exemptions under India's different Free Trade Agreements (FTAs). According to them, the only certain outcome is that yet again the tax landscape is liable to change, and it will require impacted players to re-align their strategies.

Classification disputes on networking equipment forcing a policy change

By Dhruv Matta and Shobhit Jain

In recent times, the telecom sector has witnessed multiple litigations over the classification of network equipment. Given the rapid pace of technological evolution, telecom products are frequently upgraded, making classification disputes almost inevitable on such networking products. Every few years, new versions of antennas, RF modules, routers, and optical transceivers etc. enter the market, further complicating the classification of these products.

It is a well-known fact that several multinational companies have been involved in high-stakes classification disputes under Customs law. The primary issue in many disputes is whether goods are properly classifiable as components/ parts of telecom equipment (eligible for exemption) or as complete machine/ apparatus (liable for duty). This is considering the policy backdrop that India incentivises import of parts for manufacture in India. For this, it issues exemptions that cover tariff lines meant for parts.

For the sake of this article, we shall be focusing on the recent decision pertaining to classification of small form-factor pluggable ('**SFPs**'). Judicial forums including the Supreme Court have recently ruled in favour of telecom companies classifying SFP as part of networking telecom equipment under Tariff Item 8517 70 90.[1]

Recent reports indicate that the Union Finance Ministry[2] is reportedly considering a 10% Basic Customs Duty (BCD) on telecom network equipment components. This move comes with a background that upon Courts approving classification of SFPs as parts they became eligible to exemption from BCD. The news report indicates that the Government policy going forward will keep such goods outside the scope of exemption keeping in mind the Phased Manufacturing Programme ('**PMP**') scheme, which has been introduced for the telecom sector.

[1] *Commissioner* v. *Reliance Jio Infocomm Ltd*. – 2022 (8) TMI 76 - CESTAT Mumbai affirmed by Supreme Court in the *Commissioner* v. *Reliance Jio Infocomm Ltd.* – 2023 (2) TMI 1295 - SC ORDER.

[2] Article on '*Finance ministry considers 10% duty on key telecom gear amid tax disputes*', available here.

One possible approach is to restrict the exemption for a wide range of telecom products. The Government may be considering an approach similar to what was done previously in Notification No. 24/2005-Cus., dated 1 March 2005 ('**NN 24/2005**'). Initially, this notification granted exemption to 'All Goods' under Heading 8517, with specific exclusions. Over the period of time, the scope of this exemption was narrowed through amendments:

- **In 2017, *vide* Notification No. 58/2017-Cus., dated 30 June 2017:** Sl. No. 13 was split into Sl. Nos. 13A to 13S, each covering specific tariff items, and exemption was continued on 'All Goods'.
- **In 2018, *vide* Notification No. 76/2018-Cus., dated 11 October 2018:** Sl. No. 13S was amended to exclude Printed Circuit Board Assemblies ('**PCBAs**') of certain telecom products from exemption, thereby imposing BCD on them.

This historical pattern demonstrates that the government has effectively used tariff line restructuring to withdraw exemptions and impose duties on the products.

The afore-cited news report also indicated that the government may be trying to introduce a new tariff line. Considering that the Courts have ruled that SFPs are classifiable as Parts, it will be interesting to see where exactly the new tariff line is introduced. If the government considers introducing a new tariff line purporting to correctly classify SFPs as machines, it will mean that they have deviated interpretation of the Import Tariff interpreted by the Courts. It would be interesting to see if impacted importers will look to challenge the legislative competence of the Government to enact such a change.

These are interesting times, and it remains to be seen what approach the government will adopt to resolve this issue. Will the government continue with its established approach of amending the existing notification to exclude specific product lines from exemption? Or will it introduce a completely new tariff line? If a new tariff line is introduced, it also raises the possibility of legal challenges in the near future.

In any case, it is yet to be seen whether such products will continue to enjoy duty exemptions under India's Free Trade Agreements ('**FTAs**'), such as, ASEAN-India Free Trade Area (AIFTA) under the Framework Agreement on Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations; The India–South

Korea Comprehensive Economic Partnership Agreement ('**CEPA**') and the India–Japan CEPA.

These agreements offer preferential duty rates for products classified under Heading 8517. However, if a new 8-digit tariff code is introduced that deviates from the existing FTA nomenclature or is not recognized by partner countries, several important questions arise:

- Will FTA-based exemptions still apply to the newly classified products?
- Could trading partners challenge the reclassification under the terms of the FTA or WTO?
- How will importers demonstrate eligibility for preferential treatment under the new tariff lines when claiming FTA benefits?

These uncertainties highlight the need for clarity and consistency in tariff classification, especially in a globally integrated trade environment.

Any development on this issue will impact the Indian consumer as India is a major importer of these goods. Therefore, the government needs to assess whether these products are capable of being manufactured to the desired scale and quality parameters in India. The performance of telecom networks depends on the seamless integration and synchronization of various components, any compromise in quality could disrupt the entire system.

Furthermore, the financial burden of these taxes ultimately falls on the importing companies, which is then passed on to end consumers. This could indirectly lead to higher costs for telecom services.

The only certain outcome is that yet again the tax landscape is liable to change, and it will require impacted players to re-align their strategies for the future.

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Notifications and Circulars

Registration – Grievance Redressal Mechanism for processing of applications introduced

The Central Board of Indirect Taxes and Customs (CBIC) has prescribed a Grievance Redressal Mechanism for the applicants whose Application Reference Number (ARN) has been assigned to the Central jurisdiction and who have a grievance in respect of any query regarding grounds of rejection of the registration application. As per Instruction No. 4/2025-GST, dated 2 May 2025,

- Applicants can send grievances containing ARN details, jurisdiction details (Centre/State) and issue in brief on the email address publicized by the Principal Chief Commissioner/Chief Commissioner for the purpose.
- Principal Chief Commissioner/Chief Commissioner may ensure timely resolution of grievances received by them and intimate the applicants regarding the same.
- Principal Chief Commissioner/Chief Commissioner may submit a monthly report on the status of grievance redressal.

Sharing information/records with C&AG Audit Team – CBIC instructs field formations to get documents, if required, from taxpayers

The CBIC has instructed its field formations that in cases where the documents sought by the C&AG audit team are available with the taxpayer, a letter may be sent to the concerned taxpayer requesting that they provide the documents expeditiously. Instruction No. 5/2025-GST, dated 2 May 2025 also states that necessary follow-ups may also be done, as and when required, so that the data requested by the audit team is provided as soon as possible. The issue of non-production of records/information by the field formations to the C&AG audit teams was raised by the office of C&AG in various meetings held with the Ministry on GST-related matters.

Ratio Decidendi

Input Tax Credit is available on construction of 'plant' for letting out – SC dismisses review petition

The Supreme Court of India has dismissed a review petition filed by the Revenue department against the Court's earlier decision in the case of *Chief Commissioner* v. *Safari Retreats Private Ltd.* The Apex Court had earlier held that if the building in which the premises are situated qualifies for a 'plant', Input Tax Credit (ITC) can be allowed on goods and services used in setting up the immovable property, which is a plant. The Court had held that if the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease, etc., which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a 'plant', and consequently taken out of the exception carved out by Section 17(5)(d) to Section 16(1). ***A detailed summary of the earlier decision was reported in October 2024 issue of LKS Indirect Tax Amicus, as available here.*** [*Chief Commissioner* v. *Safari Retreats Private Limited* – Order dated 20 May 2025 in Review Petition (C) [Diary No.1188 of 2025] in Civil Appeal No.2948 of 2023, Supreme Court]

Refund under inverted duty structure – Restrictions by Notification No. 9/2022-CT are applicable only for ITC arising after 18 July 2022

The Supreme Court of India has upheld the decision of the Andhra Pradesh High Court wherein the High Court had struck down CBIC Circular No. 181/13/2022-GST. The Circular had clarified that the restriction imposed by Notification No. 9/2022-Central Tax, effective from 18 July 2022 would be applicable in respect of all refund applications filed on or after 18 July 2022.

The notification had imposed prohibition for refund of unutilized ITC in case of inverted duty structure for certain edible oils. The Revenue department had denied the refund when the application for refund was filed after 18 July 2022, though ITC was for the period prior to 18 July. The High Court had however held that the restrictions placed by the notification would apply only to the extent of input tax credit arising after 18 July 2022.

The Supreme Court has now dismissed the SLP filed by the Department against the High Court decision, while declining

to interfere with the impugned order. ***A detailed summary of the Andhra Pradesh High Court decision was reported in February 2025 issue of LKS Indirect Tax Amicus, as available here.*** [*Assistant Commissioner* v. *Gemini Edibles and Fats India Limited & Anr.* – 2025 VIL 30 SC]

Electronic Credit Ledger cannot be blocked for an amount exceeding the credit available

The Supreme Court of India has dismissed the SLP filed by the Revenue department against a Delhi High Court decision wherein the High Court had answered in negative the question as to whether Rule 86A of the CGST Rules, 2017 permits the Department to block a taxpayer's ECL (Electronic Credit Ledger) by an amount exceeding the credit available at the time of issuance of the said order. Relying upon plain interpretation of the statute, the High Court had held that the expression 'available in the electronic credit ledger' should not be read as the ITC that was available in the ECL sometime earlier, prior to the same being used. It was also noted that the said Rule is not a machinery provision for recovery of tax or dues.

Dismissing the Department's SLP, after condoning the delay, the Apex Court, however, observed that other remedies of the petitioners for recovery in accordance with law are kept open. ***A detailed summary of the Delhi High Court decision was reported in October 2024 issue of LKS Indirect Tax Amicus, as available here.*** [*Commissioner* v. *Raghav Agarwal* – 2025 VIL 28 SC]

Pre-deposit can be made by using Electronic Credit Ledger

The Supreme Court of India has dismissed a Special Leave Petition filed by the Revenue department against the Gujarat High Court decision, wherein the High Court had held that the amount paid by the assessee as pre-deposit in compliance of Section 107(6)(b) of the CGST Act, utilizing the amount of Electronic Credit Ledger, is required to be considered valid. The Apex Court was of the view that the High Court order does not call for any interference. [*Union of India* v. *Yasho Industries Ltd.* – 2025 VIL 33 SC]

Flavoured milk is classifiable as milk under Heading 0402 and not as beverage containing milk under Heading 2202

The Supreme Court of India has upheld the decision of the Andhra Pradesh High Court which had reiterated that flavoured milk is classifiable under Tariff Item 0402 99 00 and

not under TI 2202 99 30 of the Customs Tariff Act, 1975 as applicable to GST. Observing that the Entry 0402 in the GST schedule also includes milk products, the High Court had held that flavoured milk cannot be taken out of Heading 0402 merely because of the addition of 0.5% of Badam flavour. Dismissing the Revenue department's SLP after condoning the delay, the Apex Court in its order dated 9 May 2025 stated that it was not inclined to interfere with the impugned judgment. ***A detailed summary of the Andhra Pradesh High Court decision was reported in December 2024 issue of LKS Indirect Tax Amicus, as available here.*** [*Assistant Commissioner* v. *Sri Vijaya Visakha Milk Producers Company Ltd.* – 2025 VIL 27 SC]

Supplies to merchant exporters qualify as 'export of goods' – GST Council strongly urged to consider exempting compensation cess on such supplies

The Gujarat High Court has observed that supplies to merchant exporters also qualify as 'export of goods'. It was thus held that the assessee manufacturer is not liable to pay compensation cess at the rate of 160% on the supply of goods, i.e. branded tobacco products, to the merchant exporters for exports.

The Court for this purpose noted that no tax was paid by the assessee under the earlier regime before the introduction of GST, and that after GST the basic concept of export of goods without payment of duty or tax is being continued. CBIC Circular No. 37/11/2018-GST dated 15 March 2018 and Supreme Court's decisions in *Amritsar Sugar Mills Co. Ltd.* [AIR 1966 SC 1242] and *Lord Krishna Sugar Mills* [(1966) 18 STC 498 (SC)], were relied upon to state that supply by the assessee to the merchant exporters would qualify as export supply.

Further, the Court relied on the recommendations of the GST Council in its 22nd meeting wherein granting of exemption from payment of CGST and IGST in such cases of supply to merchant exporters was recommended. The Court also relied on the notices issued by the Ministry consequential to these recommendations. The Court was of the view that notification issued under the provisions of CGST and IGST Act are required to be applied for levy of compensation cess as well.

It was observed that Section 11 of the GST (Compensation to States) Act, 2017 provides for applicability of the provisions of CGST and IGST Act *mutatis mutandis* for levy of cess as per Section 8 thereof and thus, there cannot be any discrepancy of levy of GST, IGST and Compensation Cess. The Court also noted the effect of revenue neutrality in relation to the refund,

obtained by the merchant exporters, of the cess paid as per Section 16 of the IGST Act read with Section 54(3) of the CGST Act.

Disposing of the petitions, the Court also noted that movement of goods from the assessee's factory to the port for export and then outside India was integrally connected and was therefore, a part and parcel of the same transaction. Further, noting that the GSTIN of the assessee and the tax invoice number were mentioned in the shipping bill by the merchant exporter, the Court held that as per Section 2(5) of the IGST Act, supply of goods to merchant exporters is to be considered as export of goods.

The High Court hence strongly urged the GST Council to consider the issue of granting exemption from the levy of Compensation Cess at par with CGST and IGST, as recommended by it in its 22nd Meeting, to see that there is no working capital blockage for manufacturers or exporters including EOUs. ***The assessee was represented by Shri. V. Sridharan, Senior Advocate and Co-founder of LKS, along with the LKS team.*** [*Sopariwala Export Pvt. Ltd.* v. *Joint Commissioner* – 2025 (5) TMI 921 - Gujarat High Court]

Seizure – Not issuing notice under Section 129(3) and proceeding directly to Section 130 is wrong

In a case of seizure of goods where no notice was issued under Section 129(3) of the CGST Act, 2017, the Andhra Pradesh High Court held that it was not permissible for the authorities to proceed directly to the process under Section 130, relating to confiscation. Further, the Court also noted that no legible reasons for seizure were set out in the seizure memo, while it directed the Department to issue a notice under Section 129(3) and to pass the order within 3 days thereafter, after giving the assessee an opportunity. It was directed that the goods of the petitioner-assessee would then be released in terms of Section 129(1). The Department was also directed to initiate the proceedings under Section 130 only after the said process is completed. [*Srinivas Traders* v. *Assistant Commissioner* – 2025 VIL 446 AP]

Shortage of goods – Confiscation of goods that are not physically available – Redemption Fine

The Odisha High Court, refusing to invoke its extraordinary powers conferred under Article 226 of the Constitution of India, dismissed a writ petition. In this instance, the assessee had challenged the appellate order which was dismissed on the

grounds of limitation and the relevant Show Cause Notice which alleged shortage of stocks and imposed penalty along with redemption fine in lieu of confiscation of goods.

The Court held that the power is conferred upon a proper officer in relation to search and seizure as per Section 67 of the CGST Act when the proper officer has reason to believe that any goods, liable to confiscation or any documents or books or things will be useful or relevant to any proceeds under the Act. Therefore, it cannot be said that the power to confiscate is eminently and/ or evidently absent in the said proper officer and therefore, exercise of such power cannot be fundamentally flawed on the ground of complete lack of inherent jurisdiction and powers. Reading Section 67, 122, and 130 together, the Court held that a conjoint reading of the provisions are the expositions of powers, and the jurisdiction conferred upon the proper authorities not only to the inspection, search and seizure, but also the confiscation of the goods and the payment of redemption fine in lieu of such confiscation. It is thus not a case of a complete lack of jurisdiction or powers, but hovers around the exercise of such powers or jurisdiction in relation to goods liable to confiscation and the meaning to be assigned to the word 'goods'. Referring to the definition of goods under Section 2(52) of the CGST Act, the Court further observed that the canon of statutory interpretation in relation to a meaning to be assigned to a word given in the said statute which contains the expressions, "means and includes" should be given a broader meaning.

The Court observed that the assessee was conscious that the order of the appellate authority in rejecting the application on the ground of limitation cannot be assailed on the legal parameters, took a circuitous route under Article 226 of the Constitution of India assailing the Show Cause Notice and imposition of the redemption fine in lieu of confiscation of goods which is not physically available. The Court observed that there has been a categorical stand taken before the authority admitting the shortage of stocks and conceding the payment of penalty and the fine in lieu of confiscation and thus, held that the instant case does not warrant invocation of extraordinary powers conferred under Article 226 of the Constitution of India. [*Viraj Steel & Energy Private Ltd.* v. *Joint Commissioner* – 2025 VIL 475 ORI]

Notice under Section 61 (scrutiny of returns) alleging undervaluation is wrong

The Jharkhand High Court has set aside the notices issued under Section 61 of the JGST Act, 2017 in a case where the

Department had compared the assessee's price with the prevalent market price and, thereafter, asked the assessee to show cause as to why appropriate proceedings for recovery of tax and dues be not initiated against them. The Court was of the opinion that the notices were wholly without jurisdiction and beyond the scope of Section 61. It was noted that the objective of Section 61 was to enable an Assessing Officer to point out discrepancies and errors which are occurring in the return filed by a registered person. The High Court in this regard also observed that the mere fact that the goods were sold at a concessional rate/rate less than the market price would not entitle the Department to assess the difference. [*Sri Ram Stone Works* v. *State of Jharkhand* – 2025 VIL 457 JHR]

Adjudication – Fixing personal hearing date before the date for submission of reply is akin to putting the cart before the horse

The Uttarakhand High Court has opined that the Revenue department's approach in fixing the personal hearing date before the last date for submission of reply is akin to putting the cart before the horse. Observing that the insistence on having a personal hearing prior to submitting a reply is contrary to the scheme of the Act also, the Court noted that submissions to be made during the personal hearing would necessarily be based on the reply effected. Remitting back the matter to the competent authority to proceed from the stage of the notice, the Court noted that the order does not disclose any justifiable reasons for rejecting the application for adjournment and that the approach itself was incorrect and contrary to the scheme of Section 75, more particularly, sub-sections (4) and (5). [*Modine Thermal Systems Private Limited* v. *State of Uttarakhand* – 2025 VIL 478 UTR]

Recovery from Directors under Section 88(3) only possible for tax, penalty or interest determined under the CGST Act

The Andhra Pradesh High Court has held that tax, penalty or interest which had been determined under the CGST Act alone can be recovered from the directors of the private company, which in this instance was under liquidation, subject to the condition set out in Section 88(3) of the CGST Act, 2017. The High Court thus set aside the notices issued to the petitioners (Directors of the liquidated company) for recovery of the dues of the liquidated company, relating to the Central Excise Act, 1944. It may be noted that while holding that the provisions of the CGST Act would not be available for such recovery, the

High Court allowed the Department to initiate action, if permissible, under the provisions of the Central Excise Act, 1944, against the petitioners. [*Ravindra Muthavarapu* v. *Superintendent* – 2025 VIL 406 AP]

Recovery – Section 75(12) is not invokable if self-assessed tax under Section 37 (GSTR-1) is included in return under Section 39 (GSTR-3B)

Relying upon the Explanation to Section 75(12) of the CGST Act, 2017, the Calcutta High Court has held that if the self-assessed tax, as per Section 37, is included in the return furnished under Section 39, Section 75(12) can no longer be invoked. The Court in this regard also noted that as per the notice issued in ASMT 10, the returns filed by the assessee in Form GSTR1 were included in Form GSTR-3B. It was also observed that the Department had proceeded to determine late fees and interest from the date of filing of return under Section 39 in Form GSTR-3B. It was thus held that the Department could neither invoke Section 75(12), nor claim that the demands were based on admission made by the assessee. However, considering the admission made by the assessee in response to the ASMT 10, the Court was of the view that the order invoking Section 75(12) can be treated as a show cause notice. [*Kuddus Ali* v. *Assistant Commissioner* – 2025 VIL 460 CAL]

Recovery – Authority must wait for 3 months after service of order, before initiating recovery proceeding

Taking note of the provisions of Sections 78 and 79 of the CGST Act, 2017, the Patna High Court has held that the Revenue Authority must wait for three months after service of the order before initiation of the recovery proceedings. According to the Court, only in case of the assessee failing to deposit the amount within the prescribed period of three months, one of the modes as prescribed under Section 79 can be invoked. Setting aside the recovery made from the bill of the assessee though its employer by sending a notice within 28 days of the order, the Court directed the Department to refund the amount along with interest at the rate of 6% per annum from the date of recovery till refund. [*Kaushlendra Kumar* v. *State of Bihar* – 2025 VIL 429 PAT]

GST liability on Development Agreements registered prior to GST, when project completed later

In a case where the development agreement was registered prior to the coming into force of the GST laws but the project

was completed on 20 December 2018, the Patna High Court has upheld the liability to pay GST. The assessee had submitted that since the transfer of land had already taken place during pre-GST period, no tax could be levied by way of Reverse Charge Mechanism upon the builder-assessee who was giving this supply of construction services to the landowner. The High Court, however, noted that there was no material to establish that with the execution of the development agreement, the assessee got ownership in the land, and that the assessee got the ownership only after the project was completed and completion certificate was issued.

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Further, the Court also observed that transfer of development rights as well as the supply of construction services cannot be brought within the purview of sale of land subject to clause (b) of Paragraph 5 of Schedule II to the CGST Act, 2017. The assessee was held liable to GST under SAC Code 9954 on RCM basis on the construction services rendered by him in lieu of the developments rights under the Development Agreement. Assessee's contention that it was liable to pay tax in respect of transfer of development rights only on or after 1 April 2019 after coming into force of Notification No.04/2019-Central Tax, was also rejected. [*Shashi Ranjan Constructions Private Limited* v. *Union of India* – 2025 VIL 439 PAT]

Customs and FTP

Notifications and Circulars

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Notifications and Circulars

RoDTEP benefit restored for Advance Authorisation holders, EOUs and units in SEZs

The Ministry of Commerce has restored the benefits under the RoDTEP scheme to holders of Advance Authorisations, Export Oriented Units and to the units in the Special Economic Zones. The benefit will be available from 1 June 2025. It may be noted that the benefit to such exporters was earlier available only till 5 February 2025. Notification No. 11/2025-26, dated 26 May 2025 has been issued for the purpose, which also states that the rates are available in Appendix 4RE, including newly aligned HS Codes as per the Finance Act, 2025. It may be noted that Appendix 4R relating to rates and caps for the RoDTEP scheme has also been updated and aligned with the changes made by the Finance Act, 2025, with effect from 1 May 2025.

Works of art and antiques – Exemption when imported for public exhibition

The Ministry of Finance has exempt works of art including statuary and pictures intended for public exhibition in a museum or art gallery. Similarly, exemption from Basic Customs Duty (BCD) has also been granted to antiques and all items under the definition of 'antiquity' under the Antiquities and Art Treasures Act, 1972, that is also intended for public exhibition in any museum or art gallery. Further, as per Notification No. 29/2025-Cus., dated 9 May 2025, works of art namely memorials of a public character intended to be put up in a public place including materials used or to be used in their construction, have also been exempted, subject to conditions. It may be noted that the exemption is available if the establishment operating such a museum or an art gallery is itself the importer being the purchaser or owner of such works of art or antiques. The notification also states other conditions like undertaking of specified use and certificate issued by the Authorized Officer as per a notification issued by Ministry of Culture.

Bangalore Rose Onions – Exports relaxed

The Ministry of Finance has removed the condition for export of Bangalore Rose Onions without export duty. The condition of furnishing a certificate from the Horticulture Commissioner, Government of Karnataka, certifying the item and quantity of

the goods to be exported, has now been removed. Amendments have been made in Notification No. 55/2022-Cus. by Notification No. 30/2025-Cus., dated 23 May 2025. The condition for duty free export was imposed in September 2023.

Port restrictions imposed on certain imports from Bangladesh

The Ministry of Commerce has imposed port restrictions on imports of certain products from Bangladesh. Accordingly, import of ready-made garments is now allowed only through seaports of Nhava Sheva and Kolkata.

Further, import of fruit/fruit flavoured carbonated drinks, processed food items (baked goods, snacks, chips, and confectionery), cotton and cotton yarn waste, plastic and PVC finished goods (except pigments, dyes, plasticisers, and granules that form input for own industry), and wooden furniture, are not eligible to import through LCSs/ICPs in Assam, Meghalaya, Tripura and Mizoram, and LCS Changrabandha and Fulbari in West Bengal.

It may be noted that the restrictions are not applicable for import of fish, LPG, edible oil, and crushed stone from Bangladesh. The restrictions will also not apply to Bangladesh exports to Nepal or Bhutan through India. Notification No. 7/2025-26, dated 17 May 2025 introduces Para 19 in the General Notes Regarding Import Policy under the ITC(HS), 2022. The CBIC has also issued Instruction No. 11/2025-Cus. of the same date, for this purpose.

Prohibition on imports from Pakistan

The Ministry of Commerce has imposed prohibitions on imports from Pakistan. Accordingly, direct or indirect import or transit of all goods originating in or exported from Pakistan has been prohibited with effect from 2 May 2025. As per new Para 2.20A inserted in the Foreign Trade Policy by Notification No. 6/2025-26, dated 2 May 2025, the restriction is in the interest of national security and public policy and any exception to this prohibition would require prior approval of the Government of India. The CBIC has also issued Instruction No. 7/2025-Cus., dated 3 May 2025 for this purpose.

Ratio Decidendi

Unjust enrichment doctrine is not applicable for refund of amount recovered by encashing bank guarantee, as same is not customs duty

The Supreme Court has held that provisions relating to unjust enrichment are not applicable for refund of amount recovered by encashing bank guarantees given by the assessee on directions of the High Court. The Apex Court thus answered in negative the question as to whether forcible encashment of bank guarantees by the Department which were offered as security by the assessee in terms of the interim order of the High Court, following dismissal of the writ petitions can be said to be the Customs duty 'paid' by the assessee-importer. According to the Court, the doctrine of unjust enrichment or Section 27 of the Customs Act, 1962 would not be applicable in such a case. While directing the refund of the amount covered by the bank guarantees, the Court also directed payment of interest @ 6% from the dates of encashment till repayment.

It may be noted that the Apex Court's earlier decision in *DCW Limited* v. *Union of India* [(2016) 15 SCC 789] was distinguished by the Court here while it observed that the Court in the earlier decision had permitted the Department to cash the bank guarantee there, after vacating the stay order, because of the persistent default on the part of the applicant in that case in paying the duty. [*Patanjali Foods Limited* v. *Union of India* – TS 430 SC 2025 CUST]

Valuation – Product support services provided by Indian agent of the foreign exporter

The Supreme Court has upheld the finding of the Tribunal that the services rendered by the Indian distribution agent were not post-importation activities and thus value thereof was includible in the value of imports. It was held that the product support services provided by the agent were directly relatable to the import of the goods, which is covered by Sections 14(1) and 14(1A) of the Customs Act read with Rule 9(1)(e) of the Customs Valuation Rules. The CESTAT had also held that the payments made to the Indian agent were only as a condition of sale and not for any services rendered. Therefore, it had a direct nexus to the value of the goods imported. On facts, the foreign supply had directed the importer to pay an additional 8 percent of the total FOB amount on a pro-rata basis against each shipment to the Indian agent in Indian currency. The assessee

had contended that the agent had rendered maintenance and engineering services to them and that such services rendered by it had no direct nexus to the value of the goods imported. [*Coal India Ltd.* v. *Commissioner* – 2025 VIL 26 SC CU]

Drawback – Customs component of AIR drawback when input stage rebate taken by exporter – CBIC Circular No. 35/2010-Cus. is applicable retrospectively

The Supreme Court of India has held that CBIC Circular No. 35/2010-Cus., dated 17 September 2010 is applicable retrospectively. The said Circular stated that customs component of the All-Industry Rate drawback is available to the exporter even if it had taken the rebate of central excise duties in respect of inputs or procured the inputs without payment of central excise duties.

Observing that it is apposite to give credence to the substance of the Circular and not merely its form, the Court noted that the Circular was issued pursuant to representations and references by exporters, there was no express distinction in the benefit accrued to the exporters from day one to the date of issuance of the circular, and that it did not vest any fresh rights on merchant exporters or cast any burden on the Department.

Further, according to the Court, language of the Circular did not expand or alter the scope of the previous Notifications, but cemented the claim of the merchant exporters, who were entitled to receive the benefit of AIR customs duty drawback since 2007. It was held that being explanatory in nature, the Circular was not an adoption of fresh fiscal regime for rebate of customs duty. The Apex Court in this regard also noted that it was not the Department's case that before the Circular, the Notifications for the years 2006 to 2009 were not in operation. Statutory principle of '*contemporanea exposito*', was also taken note of, while the Court was also of the view that the retrospectivity of a statute is to be tested on the anvil of the doctrine of 'fairness'. [*Suraj Impex (India) Pvt. Ltd.* v. *Union of India* – TS 443 SC 2025 CUST]

Crude degummed soyabean oil is not an agricultural product – Benefit of DFCE scheme is available

The Supreme Court has held that crude degummed soyabean oil is not an agricultural product to be excluded from the Duty-Free Credit Entitlement scheme under Notification

No.53/2003-Cus. Notably, agricultural products were not eligible for exemption under the Scheme. The Apex Court hence overruled the High Court decision which had held that as crude degummed soyabean oil was not further refined, it was not a consumable item and did not have a distinct identity from soyabean which is an agricultural product. The Court in this regard listed the essential features for constituting 'manufacture' and observed that the test is not whether the end product is a consumable product or not. Further, taking into consideration the dictionary meaning of the phrase 'agricultural product' as also by applying the common parlance test, the Supreme Court was unable to concur with the High Court's view that crude degummed soyabean oil is an agricultural product.

It was also held that the CBIC, *vide* its Circular No. 10/2024-Cus., could not have expanded the scope of the expression 'other than agricultural and dairy products', as stipulated in the notification, to mean 'all types of products derived from agriculture/dairy origin including crude edible oil'. According to the Court, it amounts to rewriting the conditions of exclusion from exempted goods statutorily provided in the notification. [*Noble Resources and Trading India Private Limited* v. *Union of India* – TS 401 SC 2025 CUST]

'Mechanical Electrical Assembly Front' is covered under 'Display Assembly' of a cellular mobile for exemption under Notification No. 57/2017-Cus. – Department's reliance on MEITY Report and two CBIC Circulars rejected

The CESTAT New Delhi has held that 'Mechanical Electrical Assembly Front' is eligible to exemption under Sl. No. 6(a)(iv) of Notification No. 57/2017-Cus., as the goods are covered under the entry 'Display Assembly'. The Tribunal here rejected the Department's contention that inclusion of a non-detachable battery and parts/sub-assemblies of mobile phones in the Assembly Front would have the effect of depriving the assessee-importer from exemption. According to the Tribunal, addition of other components does not alter the basic character of the Assembly Front as 'Display Assembly'.

The Department's reliance on MEITY Committee Report, wherein the Committee had stated that the Assembly Front does not *only* consist of a 'Display Assembly', was rejected by the Tribunal while it observed that the word 'only' was not in the notification. It was also held that the report cannot curtail or restrict the scope of the exemption notification. It may be noted that the Department's reliance on two CBIC Circulars

dated 18 August 2022 and 7 August 2024, was also rejected by the Tribunal while it observed that the Circulars introduced additional conditions even though the Assembly Front may satisfy the description of the product in the notification. Further, reliance on MEITY's Notification dealing with 'phased manufacturing programme to promote indigenous manufacturing…', was also rejected. Also, the findings in the orders impugned before the Tribunal, based on 'common trade parlance', were found to be not supported by any evidence. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Samsung India Electronics Pvt. Ltd.* v. *Deputy Commissioner* – 2025 VIL 769 CESTAT DEL CU]

'Lemoneez', a blend of lemon juice concentrate with water, is classifiable under TI 2009 31 00 and not under TI 2016 90 19

The CESTAT Kolkata has held that 'Lemoneez', a blend of lemon juice concentrates with water to such extent that the water content is not more than what is there in natural lemon juice, subjected to pasteurization and addition of preservatives, is classifiable under Tariff Item 2009 31 00 of the Customs Tariff Act, 1975, as juice of a single citrus fruit, and not under TI 2106 90 19 *ibid*, as soft drink concentrate.

Rejecting the Revenue department's submission that the product is not merely a juice/ juice concentrate but is also an edible preparation and thus is classifiable under Heading 2106, the Tribunal noted that the classification here is not decided based on the end-use. The Tribunal also rejected the contention that 'reconstituted juices' referred to in the Explanatory Notes to HSN under Heading 2009 refers to intermixes of the juices of fruits, nuts or vegetables of the same or different types, not blending of juice with water. Allowing assessee-importer's appeal, the Tribunal also noted that soft drinks are commonly understood to be aerated beverages/ preparations containing merely essences or flavours with no actual juice content and are thus different from fruit juices.

Further, relying upon Supplementary Note 5 to Chapter 21 and paragraph 12 of the HSN Explanatory Notes to Heading 2106, the Tribunal also observed that the primary composition of products classifiable under Heading 2106 is not necessarily fruit juices and that only those preparations, where the concentrated fruit juice is added with citric acid, essential oils of fruits, synthetic sweetening agents etc. would be classifiable under Heading 2106. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Dabur India Limited* v. *Commissioner* – TS 394 CESTAT 2025(Kol) CUST]

Special warehousing license cannot be denied solely on grounds of imposition of penalty under Customs Section 112 in the past – 'Contravention' is not 'offence'

The CESTAT Chennai has observed that Regulation 3(2)(c) of the Special Warehousing Licensing Regulations, 2016 which disqualifies an applicant who 'has been penalized for an offence under the Customs Act' targets only applicants who have been found guilty of offenses of a kind that denote serious wrongdoing – essentially those entailing *mens rea* and prosecuted as crimes or subject to compounding in lieu of prosecution. Thus, the Tribunal answered in negative the question whether the Principal Commissioner was justified in refusing a special warehouse license solely on the grounds that the assessee-applicant had been penalized under Section 112(a) of the Customs Act in the past. The use of the word 'offence' in the title to Chapter XVI of the Customs Act, 1962, which covers criminal and other grave offences, etc., was noted by the Tribunal for this purpose, while it also noted that the penalty imposed on the assessee earlier under Section 112(a) was for a wrong claim of exemption (a civil 'contravention') and not for an 'offence' under Chapter XVI. Tribunal's earlier decision in the case of *Kundan Care Products Ltd.* [2024 (8) TMI 271] was relied upon. [*Mumbai Travel Retail Private Limited* v. *Commissioner* – 2025 (5) TMI 778-CESTAT Chennai]

It may be noted that the Gujarat High Court has also recently held that merely because the litigation is pending for any contravention of any of the provisions of the Act, same cannot be considered as an offence as there is a distinction between the 'contravention' and 'offence' of the Act. The issue therein was also regarding denial of warehousing licence under Regulation 3(2)(c). [*Deepak Fertilisers and Petrochemicals Corporation Limited* v. *Union of India* – 2025 VIL 466 GUJ CU]

Refund of customs duty available when perishable goods got damaged due to certain delays by shipping company and customs – Customs Section 26A(3) is not applicable

In a case where the perishable goods got damaged due to the delay in amendment of IGM and further filing of Manual/ Advance Bill of Entry for clearance of goods at a specified port, solely on account of Shipping Company as well as Customs, the Punjab & Haryana High Court has directed a full refund of customs duty. The Court was of the opinion that the provisions of Section 26A(3) of the Customs Act, 1962 would not be applicable where the goods perished on account of non-

compliance of Court's order within time. Section 26A(3) excludes refund in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period. According to the Court, the import of Section 26A(3) cannot be understood to allow unjust enrichment from a justified, *bona fide* importer. It was also held that Section 26A(3) cannot deny a refund claim even where the shelf life has ended after the goods have already touched the store. Allowing the refund of customs duty along with 6% interest, the High Court also directed that the importer be paid compensation of INR 50 lakhs which will be recovered from the erring officers. [*Prenda Creations Private Limited* v. *Union of India* – 2025 VIL 413 P&H CU]

CESTAT has power to grant compensatory interest for delayed adjudication of provisional assessment, but the rate of interest is to be as per the notification

In a case involving delayed adjudication of provisional assessment of imports, the Orissa High Court has upheld the CESTAT's decision to grant compensatory interest from the date of first assessment. The Revenue department had contended that since the refund was made with the statutory period prescribed in Section 27A of the Customs Act, 1962, interest is not payable. Observing that the assessment was finalized, accepting excess payment of Customs duty, only after an unexplained inordinate delay of nearly 14 years, the Court found it inconceivable that the authority sat over the issue for long time despite Chapter VII of the CBIC Manual providing for prompt finalization of provisional assessment. According to the Court, taking advantage of the nuances of the law that the payment was made within three months from the date of the order, despite such order being passed after fourteen years, was unreasonable. Further, the Court was of the view that there is no fetter on the imposition of any interest for the delayed payment under Section 27A and on the part of the Tribunal. According to the Court, if substantial justice is pitted against technical objections, the former must prevail.

However, it may be noted that the order of the Tribunal was modified to the extent that instead of an interest at the rate of 12% per annum, the interest at the rate of 6% per annum, as specified in the notification issued under Section 27A, was held to be payable. [*Commissioner* v. *Vedanta Ltd.* – TS 403 HC 2025(ORI) CUST]

Order rejecting warehousing license is appealable before CESTAT

The CESTAT Chennai has held that the order rejecting the warehousing license can be considered a 'decision or order' of the Principal Commissioner passed as an adjudicating authority and thus appealable before the CESTAT. According to the Tribunal, if the effect is to deny a benefit or right under the Customs Act, and the source of power is the Customs Act itself, the order cannot be placed beyond scrutiny - otherwise, the aggrieved party would be left remediless or driven to writ jurisdiction for matters that the Tribunal is well-equipped to handle. [*Mumbai Travel Retail Private Limited* v. *Commissioner* – 2025 (5) TMI 778-CESTAT Chennai]

Central Excise, Service Tax and VAT

Ratio decidendi

- Supply on trial basis for 2 years with an option to purchase at the end when constitutes 'sale' under P&H VAT – *Punjab & Haryana High Court*
- Rebate – Output duty rebate on exports is available even if drawback also claimed – No double benefit – *Bombay High Court*
- Renting of immovable property service – 'Plant' not covered under Section 65(90a) and Section 65(105)(zzzz) of Finance Act, 1994 – 'Includes' in Explanation to Section 65(105)(zzzz) to be read as 'means' – *CESTAT Mumbai*
- Cement sold to institutional/industrial buyers in packaged form with RSP is eligible to Sl. No. 1A of Notification No. 4/2007-C.E. – *CESTAT New Delhi*
- Service to foreign universities/foreign group entities for enrolment of students in foreign universities is not covered under 'intermediary services' – *CESTAT New Delhi*
- DTA clearance by EOU by utilizing SFIS scrips held by the buyer is permissible – *CESTAT Mumbai*

Ratio Decidendi

Supply on trial basis for 2 years with an option to purchase at the end when constitutes 'sale' under P&H VAT

In a case where the goods were supplied on trial basis for a period of 24 months with an option to decide to purchase the goods at the end of two years trial period, the Punjab & Haryana High Court has upheld the VAT Tribunal's decision that such delivery of goods constituted 'sale'. The Tribunal for this purpose also noted that the supply agreement between the assessee and the other company referred to the terms of the payment and installments after a period of 24 months, which amounted to deferred payment, as per the definition of 'sale' under Section 2(zf) of the Punjab Value Added Tax Act, 2005. Dismissing the appeals, the Tribunal also noted that the goods were not returned till date. The Court's earlier decision in the case of *GE Capital Transportation Financial Services Ltd.* v. *State of Haryana*, wherein the company had entered into agreement for lease of vehicles, was distinguished. [*Global Mobile Infrastructure Pvt. Ltd.* v. *Union Territory* – 2025 VIL 490 P&H]

Rebate – Output duty rebate on exports is available even if drawback also claimed – No double benefit

The Bombay High Court has held that rebate of output excise duty paid by the manufacturer-exporter on its exports is available even if the exporter also claims Duty Drawback on the inputs used in such exports. The Court noted that two benefits each were available to the manufacturer-exporter on output and input side – On output side, export without payment of duty and rebate of output excise duty; on input side, rebate of input excise duty and duty drawback. Thus, the Department's contention of double benefit was rejected by the Court while it observed that if relief is claimed only once on the output side and once on the input side then the same would not amount to a double benefit. According to the Court, a double benefit would arise only when a manufacturer/exporter claims multiple input side benefits or multiple output side benefits.

The Court also noted that the assessee had reversed the amount of Cenvat credit availed by it in the inputs that were used in the manufacture of exported goods and thus correctly availed the input side drawback at the All-Industry Rate under the category of 'Cenvat facility not available'. It was also observed that there

was no express bar under Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/2004-C.E.(N.T.), to deny the rebate of duty paid on the exported goods on the grounds that drawback was claimed on inputs or accumulated Cenvat credit was utilised for payment of excise duty on the exported goods. Supreme Court's decision in *Spentex Industries Ltd.* was relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Indorama Synthetics (I) Ltd.* v. *Union of India* – 2025 (4) TMI 1596 - Bombay High Court]

Renting of immovable property service – 'Plant' not covered under Section 65(90a) and Section 65(105)(zzzz) of Finance Act, 1994 – 'Includes' in Explanation to Section 65(105)(zzzz) to be read as 'means'

The CESTAT Mumbai has held that the Explanation to sub-clause (zzzz) of Section 65(105) of the Finance Act, 1994, providing that various properties cataloged thereunder should be considered as 'immovable property', cannot be construed to widen the ambit and scope of the main section/clause including Section 65(90a) in respect of 'Renting of immovable property service'. Observing that the Explanation considered only a 'building', 'land', 'facilities relating thereto', the Tribunal was thus of the view that no other property can be included therein for consideration as 'immovable property'. The Department had demanded service tax on alleged renting of plant and machinery.

Allowing assessee's appeal, the Tribunal also observed that the phrase 'includes' in the Explanation can be interpreted to read as 'means' in specific circumstances. It was noted that no specific categorization was provided in the main statute and though the Explanation used word 'includes', certain exclusion category of properties was also carved out therefrom. According to the Tribunal, thus, the legislative intent that the scope of the main section for understanding the meaning of 'immovable property', should only be confined to those prescribed properties, which are itemized in the said Explanation, was manifest. Supreme Court's decision in *South Gujarat Roofing Tiles Manufacturers Association* [(1976) 4 SCC 601] was relied upon.

Further, the Tribunal was also of the view that the assessee alone could not be treated as the absolute owner for liability under 'Renting of immovable property service', since the equipment supplied by two parties were involved in setting up of the plant facilities. In respect of the plant not being immovable property, the Tribunal noted that the life of the plant was much more than the period of contracts and that the agreement also required the assessee to dismantle and remove the plant from the premises

within a specified period of time. It was thus observed that the equipment were not permanently attached to the earth and seized to be considered as 'immovable property'. ***The assessee was represented by V. Sridharan, Senior Advocate and Co-founder LKS, along with Team LKS.*** [*Inox Air Products Ltd.* v. *Commissioner* – 2025 VIL 630 CESTAT MUM ST]

Cement sold to institutional/industrial buyers in packaged form with RSP is eligible to Sl. No. 1A of Notification No. 4/2007-C.E.

The CESTAT New Delhi has held that cement sold to institutional/industrial buyers in packaged form with retail sale price (RSP) printed on it is eligible to Sl. No. 1A of Notification No. 4/2007-C.E.. The Department had alleged that the assessee in the case of non-trade sales (clearance to government agency) had wrongly availed the benefit of Sl. No. 1A of the Notification No. 4/2007-C.E., as the goods had RSP on it. It was the Department's contention that the duty should have been paid under Sl. No. 1C of the said notification instead. Rejecting the Departments view, the Tribunal noted that as per the notification it was to be seen whether the goods were cleared in packaged or unpackage form, and that the controversy was not the applicability/mandate of affixing RSP. It was thus held that Sl. No. 1C, which talked about clearance in unpackaged form, would not be applicable once goods were cleared in packaged form. The Tribunal in this regard also noted that as per the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, the goods sold to industry/institute do not need to have RSP but if RSP is printed, there is no statutory bar prohibiting the same. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Jaypee Rewa Plant* v. *Commissioner* – 2025 VIL 735 CESTAT DEL CE]

Service to foreign universities/foreign group entities for enrolment of students in foreign universities is not covered under 'intermediary services'

The CESTAT New Delhi has held that services rendered by the assessee to the foreign universities/foreign group entities, in respect of enrolment of students in foreign universities, do not fall under the category of 'intermediary services'. According to the Tribunal, the assessee was thus eligible for the benefit of 'export of services', as it also satisfied the criteria as per Rule 6A of the Service Tax Rules, 1994.

Rejecting the Department's contention of coverage as intermediary service in respect of agreements with foreign universities, the Tribunal noted that the assessee provided

promotional and marketing services, which were altogether independent activities from providing education and admitting students for pursuing the courses. Also, considering various clauses of the agreements, the Tribunal noted that the service provider (assessee) and the recipient of service (foreign university) were working on principal-to-principal basis and hence, the assessee was not 'facilitating' any service of the university to the students so as to fall within the definition of 'intermediary services'. It was also noted that the final decision of admitting a student was that of the foreign university.

Further, in respect of agreements with foreign group entities also, the Tribunal rejected the Department's contention that the assessee was only facilitating the provision of services by foreign group entities to latter's clients, i.e., foreign universities. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Sannam S-4 Management Services India Pvt. Ltd.* v. *Commissioner* – TS 386 CESTAT 2025(DEL) ST]

DTA clearance by EOU by utilizing SFIS scrips held by the buyer is permissible

The CESTAT Mumbai has answered in positive the question as to whether payment of duty by an 100% EOU, by debiting the SFIS scrips of the buyers for clearance of final product in DTA, should be treated as payment of duty for the purpose of applicability of Notifications Nos.52/2003-Cus. and 22/2003-C.E. Deciding the appeal on remand from the Bombay High Court, the Tribunal noted the provisions of the Central Excise Act, 1944 and the relevant notifications issued therein along with the Foreign Trade Policy and held that payment of duty by utilising SFIS scrips is to be treated as fulfilment of the obligation of an assessee 100% EOU for payment of applicable duty. Various case laws holding that utilization of scrips is not exemption but payment of duty, were relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Brinton Carpets Asia Private Limited* v. *Commissioner* - 2025 (5) TMI 1461 - CESTAT Mumbai]

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