INDIRECT TAX

amicus

October 2024 / Issue – 160

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An e-newsletter from
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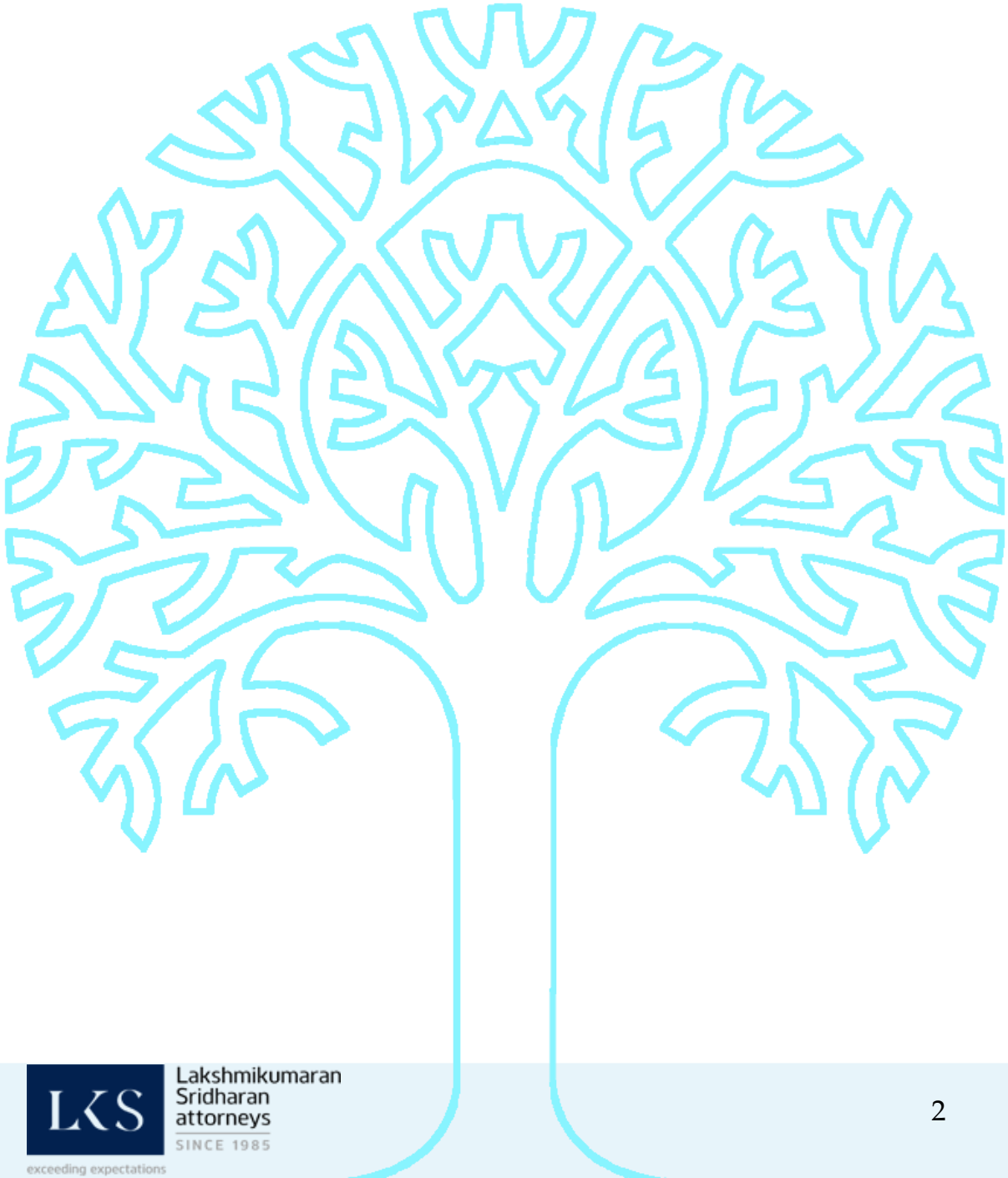

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Goods & Services Tax (GST)

Notifications and Circulars

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Notifications and Circulars

Central Goods and Services Tax Rules, 2017 amended to enforce recommendations of 54th GST Council Meeting

The Central Goods and Services Tax Rules, 2017 ('**CGST Rules**') have been amended *vide* Notification No. 20/2024-Central Tax, dated 8 October 2024 pursuant to the amendments made *via* Finance (No. 2) Act, 2024 and the recommendations of the 54th GST Council Meeting. While some of the changes came into force from the date of the abovementioned notification, a number of changes have come into force from 1st of November. A detailed analysis of each change along with comments from the **LKS Indirect Tax Team** is available here.

GST clarifications issued in October 2024

The Central Board of Indirect Taxes and Customs (CBIC) has issued five circulars in October 2024 to clarify various issues, based on the recommendations of the 54th GST Council Meeting. Few of these circulars also explain number of CGST notifications issued to implement the recommendations. The salient points as covered in the Circulars Nos. 234/28/2024-GST to 238/32/2024-GST are highlighted below.

Clarifications for services:

- Affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions. GST applicable @ 18%.
- Affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, is taxable.
- Ancillary/incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., are covered under composite supply of transport of goods. The method of invoicing will not generally alter the nature of the composite supply of service.
- DGCA approved flying training courses by Flying Training Organizations again approved by the DGCA, where completion certificate is mandatory, are exempt.
- Film distribution, where the distributors grant the theatrical rights to the exhibition centers has been

regularized for the period from 1 July 2017 to 30 September 2021 on 'as is where is' basis.

- Import of services by foreign airlines from a related person, when made without consideration, regularized after granting exemption.
- Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/industrial complex forms part of composite supply and is eligible for same tax treatment as the main supply of construction service.
- Specified support services provided by an electricity transmission or distribution utility regularized after granting exemption.
- Transportation of passengers by helicopter on seat-sharing basis is taxable @ 5% while charter of helicopter is liable to GST @ 18%.

Clarifications for goods:

- Car seats classifiable under HS 9401 are liable to GST @ 28% prospectively from 10 October 2024.
- Extruded/Expanded savoury food products (other than un-fried or un-cooked snack pellets) is now liable to GST @ 12% just like *Namkeen.*
- Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways are classifiable under Heading 8415 of the Customs Tariff Act, 1975.

Other clarifications

- *'As is / As is, where is basis' mentioned in various Circulars clarified* – Payment at lower rate shall be treated as tax fully paid, in case of two competing entries with different tax rates. No refund of tax paid at a higher rate. Regularization is not applicable in situations where no tax was paid although competing entries had prescribed tax rates.
- Rectification of orders issued under Section 73, 74, 107 or 108 where ITC is now available as per the new retrospective provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, extending time-limits for availing ITC in certain cases – Procedure notified and explained.
- Waiver of interest or penalty or both relating to demands under Section 73, for FYs 2017-18, 2018-19 and 2019-20 – Procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A notified.

Ratio Decidendi

Input Tax Credit is available on construction of 'plant' for letting out

The Supreme Court has 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 was of the view that if the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the Central Goods and Services Tax Act, the building could be held to be a plant, and consequently taken out of the exception carved out by clause (d) of Section 17(5) to Section 16(1). It may be noted that the challenge to the constitutional validity of clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act, 2017 was however held as not established.

For the purpose of availability of ITC, the Court observed that there are two exceptions in clause (d) of Section 17(5) for exclusion from blocked ITC - where goods or services or both are received by a taxable person to construct an immovable property consisting of a 'plant or machinery', and where goods/services/both are for the construction of an immovable property not 'on his own account'. On the second exclusion, the Apex Court was of the view that construction cannot be said to be on a taxable person's 'own account' if it is intended to be sold or given on lease or license. Further, the Supreme Court observed that the expression 'plant or machinery' as used in Section 17(5)(d) is not defined under the Central Goods and Services Tax Act, 2017, and that the expression 'plant and machinery' and 'plant or machinery' cannot be given the same meaning.

Relying upon its earlier Larger Bench decision in the case of *Karnataka Power Corporation*, which had laid down the 'functionality test', the Court held that a building can also be treated as a plant, which is excluded from the purview of the exception carved out by Section 17(5)(d), as it will be covered by the expression 'plant or machinery'. However, it stated that each case will have to be tested on merits as the question whether an immovable property or a building is a plant is a factual question to be decided. [*Chief Commissioner* v. *Safari Retreats Private Ltd.* – Judgement dated 3 October 2024 in Civil Appeal No. 2948 of 2023, Supreme Court]

Refund of IGST on exports – CGST Rule 96(10) declared ultra vires IGST Section 16

The Kerala High Court has declared that Rule 96(10) of the CGST Rules, as inserted by notification No.53/2018-CT dated 9 October 2018 w.e.f. 23 October 2017, is *ultra vires* the provisions of Section 16 of the Integrated GST Act and is unenforceable on account of being manifestly arbitrary. The Court hence directed that no proceedings should be taken to recover any IGST that had already been refunded to the petitioners-assessee in the writ petitions by applying the provisions of Rule 96(10) for the period between 23 October 2017 and 8 October 2024. Holding so, the Court in this regard observed that the deletion of the said Rule by Notification No. 20/2024-Central Tax with effect from 8 October 2024 is prospective and does not deal with cases where the refund of IGST was either denied or is proposed to be denied on account of the provisions contained in Rule 96(10).

The High Court for this purpose noted that the working of Rule 96(10) of the CGST Rules had resulted in hostile discrimination amongst exporters who opted to apply for a refund under Section 16(3)(a) read with Rule 89 of the CGST Rules and those who opted to apply for a refund in the manner contemplated by Section 16(3)(b) read with Rule 96. It was held that the working of Rule 96(10) created a restriction not contemplated by Section 16 of the IGST Act, on the right to refund. [*Sance Laboratories Private Limited* v. *Union of India* – 2024 VIL 1160 KER]

Registration need not be cancelled for violation of Rule 86B restricting ITC utilization – Rule 86B having no statutory backing appears to be ultra vires

The Himachal Pradesh High Court has observed that Rule 86B of the CGST Rules, 2017 has no statutory backing and appears to be *ultra vires* the provisions of the HPGST Act, 2017. The Court in this regard noted that the Department had not answered in the reply to the assessee-petitioner's contention that Rule 86B is not backed by any statutory provision. As per Rule 86B, a registered person is not to use the amount available in the Electronic Credit Ledger to discharge his liability towards output tax in excess of 99% of such tax liability in certain cases.

Observing that the amount available in Electronic Credit Ledger of the assessee was his own money, which was used to discharge his tax liability, the High Court held that no prejudice would be caused to the Department since the tax liability towards output tax stood discharged. The Court was

accordingly of the view that it was unnecessary for the Department to cancel the GST registration which was a disproportionate punishment. As per the High Court, the Department could have considered any other penalty which is more proportionate to the violation of the law.

Further, directing restoration of the registration, the Court was also shocked to see that the extreme penalty of the nature of cancellation of GST registration was imposed on a business on the basis of a 'prima facie' investigation. According to the Court, the Department ought to have waited for the investigation to be completed before imposing the drastic penalty of cancellation of registration. [*A.M. Enterprises* v. *State of Himachal Pradesh* – 2024 VIL 1033 HP]

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

The Delhi High Court has answered in negative the question as to whether Rule 86A of the CGST Rules, 2017 permits the Revenue 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. According to the Court, when Rule 86A(1) refers to the ITC available in the ECL of a taxpayer (which the Commissioner or the officer authorized by him has reason to believe has been fraudulently availed or is ineligible), it refers to the amount that is lying to the credit of the taxpayer in his ECL. Relying upon plain interpretation of the statute, the Court 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.

The High Court for this purpose also concurred with the view of the Gujarat High Court in *Samay Alloys India (P) Ltd.* v. *State of Gujarat* and the Telangana High Court in *Laxmi Fine Chem* v. *Assistant Commissioner*. Calcutta High Court in *Basanta Kumar Shaw* v. *Asst Commissioner* and Allahabad High Court decision in *R.M. Dairy Products LLP* v. *State of U.P.*, were differed with. [*Best Crop Science Pvt. Ltd.* v. *Principal Commissioner* – 2024 VIL 1047 DEL]

It may be noted that the Gujarat High Court has in another case recently also held that if no input tax credit is available in the ledger, the blocking of the Electronic Credit Ledger under Rule 86A and insertion of a negative balance is wholly without jurisdiction and illegal. [*PMW Metal and Alloys Pvt. Ltd.* v. *Union of India* – 2024 VIL 1079 GUJ]

Further recently, the Standing Counsel for the Revenue department has also stated before the Orissa High Court that there is no provision enabling negative entry in electronic ledger regarding ITC in respect of a registered dealer. [*Amit Metaliks Company* v. *Joint Commissioner* – 2024 VIL 1158 ORI]

Demand proceedings finalized under Section 73 cannot be reopened under Section 74 unless SCN alleges fraud, etc.

The Allahabad High Court has held that if the proceedings under Section 73 of the CSGT Act, 2017, for wrong availment of ITC, were finalized, they cannot be reopened except the case where the ITC was wrongly availed or utilized due to fraud or any willful mis-statement or suppression of facts to evade tax. The High Court in this regard noted that for deriving the jurisdiction to initiate proceedings under Section 74, the adjudicating authority must expressly mention in the SCN that he is *prima facie* satisfied that the person has wrongly availed or utilized ITC due to some fraud or a willful mis-statement or suppression of facts to evade tax and that must be specifically spelled out in the show cause notice.

Quashing the SCN and the consequent proceedings, the Court noted that Section 74 proceedings were without jurisdiction as the SCN did not make even a whisper of the fact that the assessee had wrongly availed or utilized ITC due to any fraud, or willful mis-statement or suppression of facts. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*HCL Infotech Ltd.* v. *Commissioner* – 2024 VIL 1062 ALH]

Refund of IGST on exports when amount not included in GSTR-1 – Gujarat HC allows manual processing of refund

The Gujarat High Court has allowed manual processing of the refund of IGST in case of exports in the case where the the assessee-exporter paid IGST on exports but due to an inadvertent error not included the same in the GSTR-1 return. The High Court directed the Department to manually process the refund as the automated system did not permit rectification of the GSTR-1 error. The assessee was however held not entitled to interest for delayed refund as the error was on the part of the assessee. [*Bajaj Herbals Pvt. Ltd.* v. *Deputy Commissioner* – 2024 VIL 1065 GUJ]

Right to appeal not taken away if entire amount demanded in Section 129(3) order paid

The Gauhati High Court has held that the right of the assessee to file an appeal cannot be taken away merely because he has paid the entire amount demanded in the *orders* passed under Section 129(3) of the CGST Act, 2017. In the opinion of the High Court, Section 129(5), which stipulates that upon payment of the entire amount as referred to in Section 129(1), all proceedings in respect to the notice specified in sub-section (3) shall be deemed to be concluded, would apply only when pursuant to a SCN (notice) issued under Section 129(3) the entire amount is paid. It was noted that Section 129(5) only refers to the *notice* and not to the *order*, though Section 129(3) also refers to an order to be passed within 7 days from the date of service of such notice. The Court for this purpose also perused Sections 107 and 129 and observed that there is no bar in filing appeal if the entire demand as stated in the order passed under Section 129(3) has been paid. [*TNS Express Pvt. Ltd.* v. *State of Assam* – 2024 VIL 1069 GAU]

Recovery of tax during an investigation when is illegal – Department's contention of deposit after self-ascertainment when wrong

The Karnataka High Court has declared illegal the recovery of tax from the assessee during an investigation in a dispute where the Department had contended that the voluntary deposit was made by way of self-ascertainment under Section 74(5) of the CGST Act, 2017. The High Court in this regard observed that if the Department was of the view that payment was on self-ascertainment by the assessee, the proceedings were to terminate on acceptance of self-ascertainment or if the amount fell short of what was payable, the Department could issue notice under Section 74(7). It was however noted that in the dispute, the SCN indicated that the notice issued under Section 74(1) was for a fresh and complete adjudication and thus the State itself was estopped from contending that there was self-ascertainment. Directing refund of the amount recovered, the Court also noted that as adjudication was still to conclude and notice under Section 74(1) of the CGST Act was already issued, the question of going back to the stage of 74(5) does not arise. The Court for this purpose also noted that the element of voluntariness, which is *sine quo non* for self-

ascertainment, was absent in the case considering the subsequent affidavits and the averments made in the petition. [*Kesar Colour Chem Industries* v. *Intelligence Officer* – 2024 VIL 1072 KAR]

No IGST on ocean freight even on FOB imports when IGST paid on value of goods including freight and insurance

The Gujarat High Court has held that when the notification itself is struck down, the Department cannot insist for levy of IGST on the amount of ocean freight in case of transaction FOB basis also. The Court in this dispute concurred with the assessee while it held that once the IGST is paid on value of goods including the freight, cost and insurance, it would not make any difference between the transactions is on CIF basis or FOB basis. The Revenue department had submitted that in case of import of goods on FOB value, the importer is liable to pay IGST on the amount of ocean freight, as the Apex Court and the Gujarat High Court in the earlier decision in the case of Mohit Minerals had held that there cannot be any levy of IGST on transaction of CIF value. [*BLA Coke Pvt. Ltd.* v. *Union of India* – 2024 VIL 1076 GUJ]

Provisional attachment cannot extend beyond one year from date on which it was first made

The Kerala High Court has declared that provisions of Section 83 of the CGST/SGST Acts do not contemplate or authorise the issuance of a fresh order of attachment after the period specified in Section 83(2) of the CGST/SGST Acts. The Court was of the view that provisional attachment under Section 83 cannot extend beyond a period of one year from the date on which it was first made. Provisions of Section 83(2) of the CGST Act, 2017 read with the provisions of Rule 159 of the CGST Rules, 2017 were relied upon for this purpose. Calcutta High Court decision in the case of *Amazonite Steel Pvt. Ltd.* v. *Union of India* on the similar issue and the Gujarat High Court decision in *Shrimati Priti*, where an almost identical provision in the Gujarat Sales Tax Act was interpreted, were disagreed with by the Kerala High Court here.

The High Court in this regard though observed that Revenue department may be justified in contending that it is necessary that the law is equipped to deal with persons who engage in activities which would result in wrongful loss of revenue to the State Exchequer, it was of the view that it is not the duty of the Court to change the plain meaning of the statute and concede

to the Department a right or authority which was never in the contemplation of the Legislature. [*Ali K.* v. *Additional Director General* – 2024 VIL 1091 KER]

Principles of natural justice prima facie violated if notice for blocking of credit ledger given by non-competent authority, even though order subsequently issued by competent authority

The Rajasthan High Court has held that *prima facie* there is utter violation of principles of natural justice when notice regarding blocking of electronic credit ledger under Rule 86A of the CGST Rules, 2017, was given by Joint Commissioner who was not competent to take decision, whereas, the order was passed by the Deputy Commissioner, who was a competent authority but who did not give notice, nor heard the assessee. The High Court in this regard also observed that even though the provisions do not incorporate principles of natural justice, the authority, who is vested with the statutory power take a decision whether debit should be allowed or not, is obliged to hear the affected person by giving him notice. The Department's submission that that the authority, who gave opportunity of hearing, collected material and forwarded the same to the competent authority fulfills the requirement of principles of natural justice, was not accepted by the Court. Blocking of the electronic credit ledger of the assessee was thus kept in abeyance. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Sumetco Alloys Private Limited* v. *Deputy Commissioner* – 2024 VIL 1105 RAJ]

Location of supplier is determined by place of business from which supply made and not the place of bank account where payment received

The Delhi High Court has held that the location of the supplier of services is determined by the place of business from which the supply was made, and not the bank account in which the payment was received. It was hence held that merely because the remittances were received in the Bangalore office's bank account would not alter the location of the supplier, which was the Delhi branch that provided the services. The Court in this regard noted that the Integrated GST Act, 2017 defines the 'location of the supplier of services' with reference to the place of business for which the registration is obtained, and not the bank account. It also noted that the IGST Act while defining the expression 'export of service' in Section 2(6) though lays

emphasis on the payment for such service being received by the 'supplier of service', Section 2(6)(iv) does not tie the receipt of payment to a particular bank account.

The High Court hence rejected the submission that notwithstanding provision of services by the Delhi office and amounting to an export of service, since the payment was received by the Bangalore office, the claim for refund was rightly negated since the payment for such service was not received by the asserted supplier. [*Cable and Wireless Global India Private Limited* v. *Assistant Commissioner* – 2024 VIL 1113 DEL]

Authorisation of officers – Initiation of enquiry or issuance of summons is not initiation of proceedings for Section 6(2)(b)

The Kerala High Court has held that the initiation of an enquiry or the issuance of summons under Section 70 of the CGST/SGST Acts cannot be deemed to be the initiation of proceedings for the purpose of Section 6(2)(b) of the Acts. The Court while distinguished various decisions of the Patna High Court, Gujarat High Court and Jharkhand High Court, relied upon the Allahabad High Court decision in the case of *G.K Trading Company* v. *Union of India* and also held that CBIC Circular dated 5 October 2018 is not in tune with the clear meaning of the statutory provisions of Section 6(2)(b) as elaborated by the Allahabad High Court.

In the present case the CGST authorities had initiated enquiry regarding non-payment of GST and had directed the production of certain records, which was followed by summons issued under Section 70 of the CGST Act leading to the recording of certain statements. The State Authority also subsequently initiated proceedings under Section 74 read with Section 122(1). The assessee had pleaded that the initiation of proceedings under Section 74 by the State Authority cannot be sustained in law in the light of the provisions contained in Section 6 of the CGST/SGST Acts. [*K.T. Saidalavi* v. *State Tax Officer* – 2024 VIL 1130 KER]

Addition of additional place of business in registration certificate – NOC from property owner is not required and absence thereof cannot be a ground for cancellation

The Punjab & Haryana High Court has observed that at the stage of amending the registration, certificate of registration

and for incorporating additional place of business, no proof or consent letter or NOC from the property owner is required to be produced. The Court in this regard noted that there is no provision under Rule 8 and Rule 19 of the CGST Rules to submit NOC or consent letter from the property owner along with the proof of address at the stage of adding additional place of business.

Allowing the writ petition filed by the assessee, the Court also noted that the assessee's registration was earlier amended, and he was doing business from the said additional place. The High Court observed that if there is a civil dispute between the landlord and the tenant (even in respect of initial registration), the State Government or its authorities cannot be expected to take sides or initiate action to benefit one of the parties. The Court was also of the view that the grounds for cancellation cannot be added into the provisions of Section 29(2) of the CGST Act as there is no inclusive clause to the said section. [*Crystal Beverages* v. *Superintendent* – 2024 VIL 1150 P&H]

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Natural justice – Personal hearing – Receipt of reply to SCN is not grant of 'opportunity of hearing'

The Madhya Pradesh High Court has rejected the contention of the Revenue department that the phrase 'opportunity of hearing' in Section 74 of the CGST Act, 2017 does not include the opportunity of 'personal hearing'. Department's view that the expression 'opportunity of hearing' is fulfilled if reply to show cause notice is received, was thus rejected. The Court in this regard noted that the Legislature while prescribing the statutory form had visualized different stages for the purpose of 'personal hearing' - One stage is when the reply is submitted, and the other stage is date, venue and time of the personal hearing.

Interpreting Section 74(4) while taking note of the use of word 'or', the Court also held that opportunity of hearing is required to be given, even in those cases where no such request is made but adverse decision is contemplated against such person. [*Rean Watertech Private Limited* v. *State of Madhya Pradesh* – 2024 VIL 1031 MP]

Customs

Notifications and Circulars

- Rice exports – Export duty removed on certain categories while MEP removed for non-basmati white rice
- Imports under Free Trade Agreements with third party invoices clarified
- Digitization of specified procedures relating to customs bond warehousing
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Notifications and Circulars

Rice exports – Export duty removed on certain categories while MEP removed for non-basmati white rice

The Ministry of Finance has removed export duty on rice in the husk (paddy or rough) falling under TI 1006 10 90; husked (brown) rice covered under TI 1006 20 00; and rice parboiled falling under TI 1006 30 10 of the Customs Tariff Act, 1975. The Nil rate has come into effect from 22 October 2024. Notification No. 46/2024-Cus., dated 22 October 2024 for this purpose amends Notification No. 27/2011-Cus. It may be noted that the export duty was earlier reduced from 20% to 10% for these products with effect from 27 September 2024.

Further, the requirement of Minimum Export Price (MEP) for export of non-basmati white rice (semi-milled or wholly milled rice, whether or not polished; Other), falling under ITC (HS) Code 1006 30 90, has been removed with effect from 23 October 2024. Ministry of Commerce has issued Notification No. 37/2024-25, dated 23 October 2024 to amend the entry in Chapter 10 of the Schedule II of ITC(HS) 2022.

Imports under Free Trade Agreements with third party invoices clarified

The Central Board of Indirect Taxes & Customs ('**CBIC**') has issued Instruction No. 23/2024-Customs on 21 October 2024 to clarify certain issues on difficulties being faced in import clearances where third party invoicing, allowed under provisions of Free Trade Agreement ('**FTA**'), has been used. It has been stated that both, the information being sought in relation to originating status of the product and the process of verification in terms of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('**CAROTAR**'), must be consistent with the trade agreement. The Instruction in this regard notes that the CAROTAR does not necessitate the importer to provide any commercially confidential information pertaining to the third-party, nor does it require the seller or issuing authority to use a specific currency for declaration of value in the invoice or Certificate of Origin.

Further, it is stated that even if Rule 5(5) of the CAROTAR permits proper officer to deny a preferential duty claim without sending the Certificate of Origin for verification, the same shall

not prevail over conflicting provisions of the FTA, if any. It is also clarified that the benefit under the FTA should not be rejected unless it is demonstrated that the value addition does not meet the threshold prescribed, and that merely pointing that the value addition is artificially inflated is not enough to reject the claim.

Digitization of specified procedures relating to customs bond warehousing

The CBIC has introduced a Warehouse Module on ICEGATE, for facilitation of ease of doing business with respect to Public, Private and Special Warehouses under Sections 57, 58 and 58A of the Customs Act, 1962, respectively. With the introduction of the same, the following aspects relating to warehousing have been moved to an online procedure for facilitating trade:

- online filing of an application for obtaining a Warehouse License.
- online submission and processing of requests for transfer of warehoused goods to another person and/or another warehouse, and
- uploading Monthly returns for the Customs Bonded Warehouse.

The authorised signatory of an applicant can login to the ICEGATE portal and submit the application online along with accompanying documents. Further, the Circular 19/2024-Cus., dated 30 September 2024 provides a detailed step-wise procedure under Annex-A to the Circular for transfer of warehouse goods using the online portal. However, till operationalization of the portal for such transfers, the physical form under Regulation 3 to Warehouse Goods (Removal) Regulation, 2016 will continue to operate. Further, monthly filings prescribed under Circular 25/2016 dated 08.06.2016, will also move to the online portal in due course. In the meanwhile, physical forms of such filings are to be scanned and uploaded on the portal.

India-UAE CEPA – Retrospective issuance of certificates of origin clarified

The CBIC has issued the Instruction No. 21/2024-Cus., dated 16 October 2024 clarifying that where preferential treatment has not been claimed or the claim has not been extended at the time of import, the importer does not lose the right to claim such benefit at a future date. The importer can, upon submission of a retrospectively issued valid Certificate of Origin ('**COO**') within the stipulated time, claim the benefit, as long as the authenticity of the COO and origin of goods are not

disputed. Further, the Instruction clarifies that the requirement to upload the COO on e-Sanchit will not apply where COOs have been issued retrospectively, post importation of the goods. This Instruction also clarifies that minor procedural discrepancies should not be seen as countering the intent of extending substantive benefits under the FTA.

RoDTEP – Mandatory filing of Annual RoDTEP Returns

The DGFT has mandated for all exporters, who wish to claim benefit under RoDTEP Scheme, to file the details of the inputs used for manufacturing of the export goods along with taxes/duties incurred for the same. This requirement of filing Appendix 4RR is only for those exporters who's total RoDTEP claim exceeds INR One crore in a financial year across all the Tariff Items. As per DGFT Public Notice No. 27/2024-25, dated 23 October 2024 which inserts Para 4.94 in the FTP Handbook of Procedures, the exporter must file ARR by 31st March of the next financial year and in case of failure, RoDTEP benefit will be denied. It is also stated that the exporter must also maintain the records of the remission claims for 5 years either in digital or physical form and produce as and when demanded. The provisions also provide for the payment of composition fees in case any exporter fails to file Appendix 4RR by 31 March 2025.

RCMC not required for claiming benefit under RoDTEP, RoSCTL and Drawback schemes

The DGFT has clarified that in order to claim benefit under RoDTEP (Remission of Duties and Taxes on Export Products), RoSCTL (Rebate of State and Central Taxes and Levies) and the Duty Drawback schemes, which are remission-based schemes, the requirement of RCMC (Registration-Cum-Membership Certificate) is not applicable. Trade Notice No. 19/2024-25, dated 4 October 2024 issued for the purpose clarifies that the exporters can claim the benefits under these schemes without obtaining an RCMC.

Import/re-import of exhibits and samples – No requirement of authorization or registration under Import Monitoring Systems

The DGFT has clarified that import authorization or registration under Import Monitoring Systems is not required in respect of import/re-import of exhibits and samples for demo, display, exhibition and participation in fairs in India and abroad. As per DGFT Trade Notice No. 20/2024-25, dated 7 October 2024, such imports will be regulated under provisions of Para 2.60 of the FTP Handbook of Procedures.

SCOMET – Appendix 10M amended to include more items under GAICT of SCOMET items

The DGFT has amended Appendix 10 M to the HBP, 2023, to increase the number of SCOMET items covered under the list (wherein intra-company transfer is permissible without a SCOMET license by GAICT authorization holders). With this amendment by DGFT Public Notice No. 26/2024-2025 dated 7 October 2024, the coverage of items under GAICT Policy for export/re-export of items, including software and technology under SCOMET Category 8 has been expanded and new items have been brought under the liberalized policy to facilitate the Intra Company Transfer of SCOMET items to only the countries listed in Table 1 of Para 10.15 of HBP 2023. GAICT stands for 'Global Authorisation for Intra-Company Transfer'.

Procurement of Acetic Anhydride by AA holder from SEZ – NOC from Drug Controller and Narcotics Commissioner not required

In terms of Paragraph 4.08(ii) of HBP, an Advance Authorisation holder is required to obtain a No Objection Certificate (NOC) endorsed by the Drug Controller and Narcotics Commissioner of India, for procurement from units located in SEZ

The DGFT has issued Policy Circular No. 08/2024-25, dated 11 October 2024 to clarify that this requirement is not applicable where Acetic Anhydride is procured by an AA holder from an SEZ unit, against a Certificate of Supplies, provided that the item is manufactured by a unit operating inside SEZ.

Ratio Decidendi

EOU – Department cannot be permitted to raise eyebrows on decision of Development Commissioner

The Telangana High Court has answered in negative the question whether the Revenue department can be permitted to raise eyebrows on the decision of the Development Commissioner. According to the High Court, considering the CESTAT decision in the case of *Ginni International Ltd.* which was approved by the Supreme Court, coupled with the *ratio decidendi* of the Apex Court's decision in the case of *Virlon Textile Mills Ltd*., it can be safely held that the revenue cannot go beyond or behind the decision of the Development Commissioner. Dismissing the Revenue department's appeal, the High Court was also unable to read any such power in Section 3(1) of the Central Excise Act, 1944 and Rule 100(A) of Central Excise Rules, 1944 as relied upon by the Department. The Department had contended that the Development Commissioner had wrongly allowed DTA sale after bunching of products not following within the six-digit mandate. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Sanghi Spinners I Ltd.* – 2024 (10) TMI 1058 - Telangana High Court]

Catalyst 3850 series Ethernet Switches are eligible for concessional BCD under Notification No. 57/2017-Cus.

The CESTAT Mumbai has held that 'Catalyst 3850 series Ethernet Switches', classifiable under Tariff Item 8517 62 90 of the Customs Tariff Act, 1975, are eligible to concessional Basic Customs Duty (BCD) in terms of Sl. No. 13 of Notification No. 11/2014-Cus. and Sl. No. 20 Notification No. 57/2017-Cus. The Tribunal was of the view that there were sufficient grounds provided by the assessee-appellants to demonstrate that the imported Catalyst 3850 series switches were of 'enterprise switch' and are not a 'carrier grade switch', as they did not meet the various criteria as provided under the 'Essential requirements' laid down by the government authorities like Technical Engineering Centre and as elaborated in the arguments made by the assessee. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Cisco Commerce India Pvt. Ltd.* v. *Commissioner* – Final Order No. A/86011-86081/2024, CESTAT Mumbai]

FTA benefit not deniable only for unapproved correction in Country-of-Origin certificate – Doctrine of substantial compliance followed

Relying upon the doctrine of substantial compliance, the CESTAT Chennai has allowed the benefit of ASEAN FTA in a case involving an alteration / correction in the Country of Origin certificate which did not satisfy the provisions of procedure 9 of operational certification procedures for the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement Between the Government of Member States of the Association of South East Asian Nations (ASEAN) and the Republic of India) Rules, 2009.

The importer had earlier produced the COO without an endorsement stamp / seal 'issued Retroactively', but later produced COO with an endorsement stamp / seal 'issued Retroactively'. As per the provisions, the correction / alteration made on the certificates should have been approved and certified by an official of the Issuing Authority authorized to sign the certificate, whereas there was no such authentication in the present case. Allowing the importer's appeal, the Tribunal also noted that there was no other taint on the validity of the certificate. [*Devendran Coal International Pvt. Ltd.* v. *Commissioner* – 2024 VIL 1360 CESTAT CHE CU]

Term 'manufacture' in exemption notifications subjected to IGCR conditions, must be interpreted only in terms of IGCR Rules

The CESTAT, New Delhi while dealing with eligibility of the assessee to avail exemption benefit under Notification 50/2017-Cus., has observed that the term 'manufacture' used at Sl. No. 512 of the notification, must be interpreted in view of the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 ('**IGCR**').

In the said case, the assessee was importing raw materials for manufacture of Lithium-ion battery packs while availing concessional rate of Basic Customs Duty at Sl. No. 512. The Department rejected the claim holding that said entry was limited to import of inputs used in the 'manufacture' of 'Lithium-ion batteries' only and no other goods, such as battery packs which were the final products of the assessee.

It was held that the term 'manufacture' at Sl. No. 512 ought to be interpreted in accordance with IGCR, wherein the Rules only require emergence of a new distinct product as a result of manufacturing. The term 'manufacture' cannot be interpreted to only mean the 'final product'. Since the assessee was undertaking manufacture of 'Lithium-ion batteries' even as an

intermediate product, same would qualify as manufacture in terms of IGCR. Further, it observed that there was no requirement at Sl. No. 512 that manufactured 'lithium-ion battery' ought to be the finished product for the assessee to avail exemption. [*XOR Technologies Ltd.* v *Principal Commissioner* – 2024 VIL 1243 CESTAT DEL CU]

Router Line Cards for network routers are not classifiable under CTI 8517 62 90

The CESTAT New Delhi has set aside the order of the Principal Commissioner classifying the Router Line Cards [MPC7E MRATE IRB 10G/40G 100 QSFP28-MPC-L3 Line Cards] under Tariff Item 8517 62 90 of the Customs Tariff Act, 1975. The Tribunal in this regard relied on the decision of *Vodafone India Limited* v. *Principal Commissioner* [Appeal No. 52287 of 2019 decided on 20 September 2022]. The classification of the said goods under TI 8517 69 30 by the importer-assessee was thus held to be maintainable. The goods were imported for the main equipment Juniper Routers MC960 and MX480 and were considered by the assessee to be parts and components essential for the functioning of the main equipment. The assessee-importer had therefore classified them under TI 8517 69 30 and availed the benefit of exemption from payment of Basic Customs Duty under Notification dated 1 March 2005 at Serial No. 13N. ***The importer was represented by Lakshmikumaran and Sridharan Attorneys here.*** [*Vodafone Idea Limited* v. *Principal Commissioner* – 2024 (10) TMI 636 - CESTAT New Delhi]

Central Excise, Service Tax and VAT

Ratio decidendi

- Venture Capital Funds rendering services of asset management are not liable to service tax – *Supreme Court*
- Rebate claim – Non-filing of declaration, ARE-2 and input-output ratio when is not fatal – *Bombay High Court*
- Sabka Vishwas (LDR) Scheme – Benefit not deniable even if penalty amount mentioned in declaration while the same was not quantified – *Gujarat High Court*
- Travel agent service is provided to sub-agents/customers and not to airlines – Use of phrase 'inclusive of all taxes' not automatically means that tax recovered – *CESTAT New Delhi*
- Exemption not denial for use of inputs other than those stipulated if notification does not use words 'wholly', 'entirely', or 'exclusively' – *CESTAT New Delhi*
- Investment in mutual funds is not 'service' under the Finance Act, 1994 – *CESTAT New Delhi*
- Cenvat credit – Restrictions under second proviso to Rule 3(4) are not applicable to input service credit received through ISD invoices – *CESTAT Chandigarh*

Ratio Decidendi

Venture Capital Funds rendering services of asset management are not liable to service tax

The Supreme Court has dismissed the Special Leave Petitions filed by the Revenue department against a Karnataka High Court decision wherein the High Court had set aside the CESTAT Order which had held that a Venture Capital Fund ('**VCF**') set up as a Trust is a 'distinct entity' separate from its contributors/investors. Disregarding the doctrine of mutuality of interest, the Tribunal had held that a VCF was rendering taxable services of portfolio or asset management to its contributors for a consideration on which service tax was liable. The High Court had found untenable the Tribunal's view that since trust is treated as a juridical person under SEBI, there is no reason why it should not be treated as a juridical person for taxation. The Court was of the view that the assessee acted as a 'pass through', wherein funds from contributors were consolidated and invested by the investment manager and hence the doctrine of mutuality must apply. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys before the Supreme Court.*** [*Commissioner* v. *India Advantage Fund* – Order dated 4 October 2024 in SLP (Civil) Diary No. 36360/2024, Supreme Court]

Rebate claim – Non-filing of declaration, ARE-2 and input-output ratio when is not fatal

In a case of rebate claim on exports, where the assessee had not filed the declaration, Form ARE-2 and the input-output ratio, as specified under Notification No. 21/2004-C.E. (N.T.), the Bombay High Court has held that the benefit of rebate is not deniable if conditions like export of goods, receipt of foreign exchange, actual verification of input-output ratio, etc., are fulfilled. It was noted that the assessee had made a claim of rebate only *qua* excise duty on chassis which bore a number, and that the said number of chassis was correlated with the invoice received by the assessee from the seller and the export invoices of buses exported by them.

The Court hence was of the view that in the present case verification of input-output ratio was though not submitted before the export of goods, the same could be verified post export. According to the Court, the non-filing of declaration, and input-output ratio cannot be treated as a condition to be

satisfied, on the non-fulfillment of which rebate claim is to be rejected.

The High Court in this regard also noted that the declaration was filed by the assessee for earlier exports which must be available with the Department. In respect of ARE-2, the Court noted that the Department can verify, based on post export documents, what was required to be mentioned in the said form and necessary undertaking could be given by the assessee. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Volvo Group India Pvt. Ltd.* v. *Union of India* – 2024 VIL 1016 BOM CE]

Sabka Vishwas (LDR) Scheme – Benefit not deniable even if penalty amount mentioned in declaration while the same was not quantified

The Gujarat High Court has allowed assessee's writ petition in a case where the assessee's declaration under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was rejected as the amount of penalty was nowhere quantified or proposed in the show cause notice. The petitioner-assessee had filed the declaration in respect of show cause notice proposing to impose penalty and had mentioned the amount of penalty in the declaration. Allowing the petition while remanding the matter for adjudication of Form SVLDRS-1, the Court held that merely because the assessee had shown the amount of proposed penalty mentioned in the show cause notice would not make the declaration as ineligible under the Scheme. It in this regard also noted that the show cause notice was pending adjudication when the scheme was introduced as on 30.06.2019, which was cut-off date as per the SVLDRS. Further, relying upon CBIC FAQ Nos.1 and 48, the Court was of the view that the scheme is applicable to any show cause notice for penalty/late fee, irrespective of whether it is under adjudication or appeal. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Ultratech Cement Ltd.* v. *Union of India* – 2024 VIL 1086 GUJ ST]

Travel agent service is provided to sub-agents/customers and not to airlines – Use of phrase 'inclusive of all taxes' not automatically means that tax recovered

The CESTAT New Delhi has upheld the contention of the assessee, a travel agent, that it was not providing any service to the airlines while booking tickets and hence there was no question of commission received from airlines being inclusive of service tax. Further, the Tribunal was of the view that the service

was in fact rendered by the assessee, an IATA travel agent, to the sub-agents and to the customers of the airline tickets, and not by the sub-agents to the assessee, while commission received from the airlines was for the service rendered to sub-agents by the assessee. Reliance in this regard was placed on Madras High Court decision in the case of *Airlines Agents Association* v. *Union of India* and the CESTAT Larger Bench decision in the case of *Kafila Hospitality*, as the Tribunal held that the commission received by the assessee from the airlines had direct nexus with the services rendered by the assessee to the sub-agents. Definition of 'air travel agent' and 'taxable service' and provisions of Section 67 of the Finance Act, 1994 relating to valuation for the purpose of levy of service tax, were also considered by the Tribunal while it observed that the requirement of the inclusion clause (including the commission received from airlines) existed only because the airline was not considered as the service recipient of air travel agent service.

In respect of commission received from the airlines, it was also held that unless an amount has been specifically recovered as tax, the use of phrase 'full compensation' or 'inclusive of all taxes' in the Passenger Sales Agency Agreement between the assessee (travel agent) and the airlines, would not automatically mean that tax has been recovered. Rejecting the Department's contention that the Agreement included service tax also under the renumeration clause, the Tribunal was of the view that 'full compensation' can only mean that the assessee would not claim any amount over and above the amount of commission paid by the airlines for sale of ticket and other allied services. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Riya Travel & Tours (India) Pvt. Ltd.* v. *Additional Director General* – Final Order No. 58616-58642/2024, dated 25 September 2024, CESTAT New Delhi]

Exemption not denial for use of inputs other than those stipulated if notification does not use words 'wholly', 'entirely', or 'exclusively'

The CESTAT New Delhi has held that the benefit of exemption under Sl. No. 172A of Notification dated 17 March 2012 and Sl. No. 70A of Notification dated 1 March 2011 to Polyester Staple Fiber when manufactured by plastic scrap is not deniable even when some other inputs, popcorn waste – agglomerate from waste of plastic and products classifiable under Chapter 54 (yarn and textile), are also used. Relying upon various Court and Tribunal decisions, the Tribunal observed that the notifications did not stipulate that the final product must be manufactured 'wholly', 'entirely', or 'exclusively' from a particular raw material, and that the benefit is not deniable merely because

apart from using 90 per cent PET bottles scrap, the assessee was using popcorn scrap in manufacture of PSF. Further, allowing the benefit, the Tribunal also observed that 'popcorn' is a recycled PET plastic waste material, and it can be said that recycled PET is akin to plastic waste. The Department's contention that 'popcorn' is recycled PET and not plastic waste was thus rejected by the Tribunal while it also observed that purpose of the notification was to help in recycling of plastic waste. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*RPG Industrial Products P. Ltd.* v. *Additional Director General* – Final Order Nos. 58643-58644/2024, dated 25 September 2024, CESTAT New Delhi]

Investment in mutual funds is not 'service' under the Finance Act, 1994

The CESTAT New Delhi has allowed assessee's appeal in a case involving non-reversal of proportionate Cenvat credit availed on common input services also used in relation to 'redemption of mutual funds' by considering it to be 'trading of goods', which was an exempted service in terms of Section 66D(e) of the Finance Act, 1994. Relying upon precedents, it was held that the activity of subscription and redemption of the units of mutual funds cannot be said to be an activity of sale and purchase of the securities and therefore not be an 'exempted service'.

Further, it was also held that the activity of investment in mutual fund cannot be termed as 'service' under the Finance Act. The Tribunal in this regard observed that the department failed to substantiate that the investment in mutual fund by the assessee involved a 'service' rendered by a service provider to a service recipient. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Siegwerk India Pvt. Ltd.* v. *Commissioner* – 2024 VIL 1242 CESTAT DEL ST]

Cenvat credit – Restrictions under second proviso to Rule 3(4) are not applicable to input service credit received through ISD invoices

The CESTAT Chandigarh has held that the second proviso to Rule 3(4) of the Cenvat Credit Rules, which restricts the utilization of credit in respect of inputs or input services used in the manufacture of final products cleared after availing specific exemption (area-based exemption), is not applicable to the common input services received by the ISD and distributed to the assessee through invoices issued by the ISD. According to the Tribunal, restriction imposed by the said proviso is not applicable here because the common input services received by ISD are not used directly in manufacturing of the goods but are covered under the inclusive part of the definition of 'input

service'. CESTAT Chennai decision in the case of *Godrej Consumer Products Ltd*., was relied upon for the purpose.

Further, the Tribunal also reiterated that the Department does not have jurisdiction to question the correctness of credit distributed by ISD from the recipient i.e. the assessee who is merely availing the credit based on invoices issued ISD. Dismissing the Department's appeal, the Tribunal also noted that services like advertisement, manpower recruitment, market research etc., were used by all the units and no input service was exclusively utilized in the assessee's units in Guwahati availing area-based exemption. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys.*** [*Commissioner* v. *Brillion Consumer Products Pvt. Ltd.* – 2024 VIL 1227 CESTAT CHD CE]

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