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INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ITC CANNOT BE DENIED TO A GENUINE RECIPIENT IN CASE OF RETROSPECTIVE CANCELLATION OF THE SUPPLIER'S GST REGISTRATION

Facts of the case

- M/s. Gargo Traders (Taxpayer) claimed an input tax credit (ITC) on purchases made from Global Bitumen (Supplier).
- In respect of the aforesaid purchases, the Taxpayer made the payment to the Supplier through their bank account.
- Pursuant to the inquiry, the Tax Authorities observed that the Supplier from whom the Taxpayer had purchased goods is fake and non-existing and based on the allegation of fake ITC availed by the Supplier, the Tax Authorities had cancelled the Supplier's GST registration with retrospective effect from 13 October 2018. Consequently, the Tax Authorities sought to deny the Taxpayer's claim of ITC on purchases from the Supplier and recover the same along with interest and penalty.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Calcutta High Court.

Contentions of the Taxpayer

- The Taxpayer has furnished copies of various documents such as a tax invoice, debit note, e-Way Bill, transport invoice and Taxpayer's bank statement. Such documents substantiated that the Taxpayer has purchased and received the aforesaid goods and paid consideration to the Supplier by banking channels.
- Reliance was placed on the following judgements:
  - *M/s. LGW Industries Ltd.& Ors. Vs. Union of India & Ors. [2021 (12) TMI 834- Calcutta High Court]*
  - *Balaji Exim Vs. Commissioner, CGST & Ors. [2023 (3) TMI 529 - DELHI HIGH COURT]*
- As regards the contention of the Tax Authorities that fake ITC was claimed by the Supplier, it was contended that the same cannot be a valid reason to reject the Taxpayer's refund application unless it is established that the Taxpayer has not received the goods or made payment for such procurements.
- The transactions in question are genuine and valid and the Taxpayer had diligently verified the genuineness and identity of the Supplier. Further, at the time of procurement, the Supplier was shown to be registered on the GST portal.

Contentions of the Tax Authorities

- The transaction between the Taxpayer and the Supplier took place in November 2018 whereas the GST registration of the Supplier was cancelled with retrospective effect from 13 October 2018, which was also accepted by the Supplier.
- Considering the above, the precedents sought to be relied upon by the Taxpayer are distinguishable, and hence, inapplicable to the present case.

Observations and Ruling by the Hon'ble High Court

- At the time of procurement of goods, the Supplier was registered as a taxable person under the GST law. Further, the Taxpayer has paid consideration for such procurements to the Supplier, and this is not a case where there is collusion between the Taxpayer and the Supplier.
- Without proper verification, it cannot be deemed that the Taxpayer had failed to fulfil its statutory obligations before entering the aforesaid transaction.
- The Tax Authorities are merely focusing on the retrospective cancellation of the Supplier's GST registration, without considering the documents furnished by the Taxpayer.

- Accordingly, the Tax Authorities were directed to consider the Taxpayer's grievance afresh after considering the documents furnished by the Taxpayer and pass a speaking and reasoned order after giving an opportunity of being heard.

  [M/s. Gargo Traders Vs. The Joint Commissioner, Commercial Taxes (State Tax) & Ors. [2023 (6) TMI 533 - Calcutta High Court], dated 12 June 2023]

TAX AUTHORITIES CANNOT BE EXPECTED TO CARRY OUT A 'SUO MOTO' PROCEEDING WITHOUT ANY COOPERATION FROM THE ASSESSEE

Facts of the case

- M/s. Seoyon E-HWA Summit Automotive India Pvt. Ltd. (Taxpayer), registered under the GST law, was issued a Show Cause Notice (SCN) and other Notices for discrepancies in GST returns and imposition of tax, interest, and penalty in Form ASMT-10 and GST-DRC-01A.
- Subsequently, the assessment proceedings were initiated by the Tax Authorities. The Taxpayer appeared before the Tax Authorities and assured that they will submit all the relevant records by a specified date, which was not complied with.
- Consequently, the Tax Authorities completed the assessment proceedings based on the information available to them and passed an order (Impugned Order) confirming the aforesaid notices.
- Subsequently, the Taxpayer filed an application for rectification of errors under Section 161 of the Central Goods and Services Tax Act, 2017 (CGST Act) which was rejected on the grounds that no information was given by the Taxpayer to justify any error.
- Aggrieved by the above, the Taxpayer filed a writ petition before the Hon'ble Madras High Court.

Contentions of the Taxpayer

- There cannot be any variations in the input tax credit (ITC) claimed and reversed as the returns filed in GSTR 3B contains a detailed breakup of the ITC claimed, whereas the return in Form GSTR 2A is filed by the suppliers of the Taxpayer and Form GSTR 9 is auto-populated and contains brief details of ITC. The Tax Authorities have erred in asking for information and issuing the aforesaid notices.
- The Tax Authorities can self-examine the particulars furnished in the returns that may have the information sought and conclude the proceedings suo motu, without expecting the Taxpayer to supply relevant information.

Observations and Ruling by the Hon'ble High Court

- The issue of merits relates to the availment and reversal of ITC. However, the same was not examined by the Hon'ble High Court.
- It is for the Taxpayer to have responded to the notices and furnish information as sought by the Tax Authorities and try to reconcile its claim of ITC.
- Despite being provided with sufficient opportunities prior to the finalisation of assessment to justify its claim of ITC, the Taxpayer had failed to cooperate with the Tax Authorities during any of the proceedings (viz., assessment or rectification proceedings).
- As regards the Taxpayer's contention that the Tax Authorities should have suo moto examined the particulars accompanying the returns without expecting the Taxpayer to supply the same, it was held that it is unrealistic to expect the same from the Tax Authorities and it is not for an assessee who has not even made a solitary attempt to co-operate or assist the Tax Authorities in the assessment proceedings.
- Given the above, the writ petition is dismissed, and the Impugned Order is upheld, rejecting the rectification application filed by the Taxpayer.

  [M/s. Seoyon E-HWA Summit Automotive India Pvt. Ltd. Vs. Deputy Commissioner, Chennai, [2023-VIL-361-MAD], dated 6 June 2023]

CUSTOMS

LEGISLATIVE UPDATES

NOTIFICATION

REDUCTION IN THE RATE OF BASIC CUSTOMS DUTY (BCD) ON EDIBLE GRADE SOYA-BEAN / SUNFLOWER OIL

Effective 15 June 2023, Notification no:48/2021-Customs dated 13 October 2021 inter alia stipulating the applicable BCD rate on edible grade Soya-bean/ Sunflower oil is amended as under:

Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
1507 90 10	Soya-bean oil, edible grade	17.5%	12.5%
1512 19 10	Sunflower oil, edible grade	17.5%	12.5%

[Notification no:39/2023-Customs dated 14 June 2023]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

EXEMPTION UNDER NOTIFICATION NO:45/2017-CUSTOMS AND NOTIFICATION NO:50/2017-CUSTOMS IS NOT APPLICABLE TO THE TRANSFER OF GOODS FROM FREE TRADE AND WAREHOUSING ZONE (FTWZ) TO THE DOMESTIC TARIFF AREA (DTA)

Facts of the case

- M/s. Baker Hughes Oilfield Services India Pvt. Ltd. (Taxpayer) is engaged in the supply of mining/ support services to oil and gas exploration and production companies. For this, the Taxpayer imports equipment from outside India (in Domestic Tariff Area (DTA) at a concessional rate of customs duties under Sl. no:404 of Notification no:50/2017-Customs dated 30 June 2017 (Notification 50/2017), based on the Essentiality Certificate (EC) issued by the customers.
- EC provided by the customers is subject to the condition that the imported equipment would be exported post-completion of the contract. However, in cases where it is envisaged that the said equipment will be required for other contracts, the imported equipment is intended to be exported to a Logistics Service Provider (LSP) located in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) upon completion of the contract. Further, in respect of such exports (from DTA to the SEZ/FTWZ), the Taxpayer would not claim any duty incentives/ benefits.
- Subsequently, at the time of requirement of such equipment in another contract, the Taxpayer would re-import the same into the DTA and claim the benefit of concessional rate of duty under Sl. no:404 of Notification 50/2017.
- Sl. no:5 of Notification no: 45/2017-Customs dated 30th June 2017 (Notification 45/2017) provides an exemption from payment of Basic Customs Duty, Integrated Goods and Service Tax (IGST) and GST Compensation Cess (Cess) on re-import of goods from outside India, subject to the following conditions:
  - The importer re-imports the same equipment which was exported earlier
  - The importer is not a 100% Export Oriented Unit (EOU) or a unit in FTWZ
  - The equipment is not imported from any licensed warehouse under Customs Act, 1962 (Customs Act)
  - The equipment does not fall under the Fourth Schedule of the Central Excise Act 1994.
- The Taxpayer intends to claim the benefit of the aforesaid exemption in respect of the re-import of equipment.
- In view of the above, the Taxpayer applied for an Advance Ruling to determine its eligibility to claim an exemption under Notification 45/2017.

Contentions of the Taxpayer

- Notification 45/2017 seeks to exempt goods from payment of customs duties in case of re-import of previously exported goods. Further, in the case where the exporter had availed incentive at the time of exports, the same may need to be surrendered at the time of re-imports. However, the purpose of the aforesaid notification is not to impose customs duties at the time of re-imports. Hence, the Taxpayer would be entitled to claim the benefit of exemption under the notification.
- The concept of duty exemption on re-import i.e., clearance from SEZ to DTA has been contemplated under the SEZ law as well as Rule 48 of the Special Economic Zone Rules, 2006 (SEZ Rules). As a result, once the equipment is brought into the FTWZ without availing any drawback or export incentives, and is subsequently, re-imported in the same form into the DTA, even under the SEZ laws, the transaction should be treated as re-import.
- Circular no:21/2019 dated 24 July 2019 (Circular) clarifies that even a movement of goods from India to outside India (not being a supply and without availing any export incentives) shall be entitled to exemption under residuary entry at Sl. no. 5 of Notification 45/2017 on subsequent re-imports considering that the activity of sending/ taking specified goods out of India is neither a ‘supply’ nor a ‘zero-rated supply’.
- Accordingly, in the present case, when the equipment is sent from DTA to LSP (i.e., FTWZ), the transaction would not be treated as ‘supply’ and no export incentives will be claimed by the Taxpayer. Thus, the re-import of such equipment in DTA should be considered as re-imports from FTWZ to DTA and hence, entitled to the benefit of exemption under Notification 45/2017.
- Neither Notification no:45/2017-Customs nor Rule 48(3) of the SEZ Rules specifies the nature of the transaction under which goods should be procured in SEZ, except for the condition that no export incentives are availed during their admission in the SEZ.
- Notification 50/2017 does not impose any conditions for the re-export of goods, but the re-export of goods is carried out solely to fulfil the contractual obligations with the customer. Therefore, the proviso to Notification 45/2017 is not applicable to the present case.
- The Taxpayer would re-import the equipment under a fresh EC from the respective contractor, and claim, the benefit under Sl. no:404 of Notification 50/2017 and the benefit of exemption in respect of IGST under Sl. no:5 of Notification 45/2017. Given that the Taxpayer has already paid IGST @ 12% at the time of original imports, denying the benefit of Notification 45/2017 would result in double taxation on the same equipment.

Contentions of Tax Authorities

- The Tax Authorities contended that the Circular was issued in a different context and does not apply to the Taxpayer's situation. The Circular specifically pertains to goods exported earlier for exhibition purposes or on a consignment basis, whereas the Taxpayer intends to export the imported equipment to LSP in FTWZ for warehousing purposes, until the start of the next contract.
- Furthermore, the Taxpayer has not provided information regarding the nature of transactions with the contractors/units in FTWZ. Therefore, any reliance on the Circular cannot be considered.
- Temporary holding of goods by FTWZ units cannot be equated with the compliance of the condition of export for the purpose of re-export in terms of Customs notification and subsequent re-import to DTA.

Observation and ruling by the AAR

- The condition of re-exporting the equipment after importation and availing exemption under Notification 50/2017 is a contractual obligation condition and not a condition provided in the aforesaid notification.
- The exemption provided under Notification 45/2017 is applicable to goods that have been exported and would not apply to goods that have been warehoused, as in the current case.
- Transfer of goods from FTWZ to DTA or vice versa does not fall under the definition of 'import' under Section 2 of the Special Economic Zones Act, 2005 (SEZ Act). Hence, the activity in the present case cannot be treated as ‘import’ or ‘re-import’ under the SEZ Act or the Customs Act. Consequently, the same is not covered under Section 7 of the SEZ Act and hence, not eligible to claim exemption.
- As per Rule 18(5) of the SEZ Rules, the units in FTWZ hold the goods for dispatches (and Exports) as per the owner’s instructions. In the present case, the units in FTWZ would be exporting goods to DTA, on which, the Taxpayer intends to claim an exemption under Notification 45/2017. However, the re-imported goods, which have been previously exported by FTWZ units in FTWZ to DTA, render Notification No. 45/2017-Customs inapplicable.
- The transfer of goods from a unit or developer in an SEZ to the DTA does not fall under the definition of ‘import’ or ‘procure’ under the SEZ Act, and hence, transfers from SEZ to DTA cannot be treated as ‘re-imports’ for application of procedures and conditions as applicable in the case of normal re-import of goods from outside India.
- The goods have been exported by the units in FTWZ, which renders Notification 45/2017 inapplicable to the present case.

  [AAR-Delhi, M/s. Baker Hughes Oilfield Services India Pvt. Ltd. [CAAR/Del/09/2023], dated 28 April 2023]

SERVICE TAX

JUDICIAL UPDATES

SEZ UNIT CANNOT BE DENIED EXEMPTION FROM SERVICE TAX ON TECHNICAL GROUNDS OF LIMITATION

Facts of the case

- M/s. Lupin Ltd. (Taxpayer) is inter alia engaged in the manufacture and export of pharmaceutical products from its SEZ unit. The head office of the Taxpayer is situated in DTA and is registered as an Input Service Distributor (ISD).
- The Taxpayer filed multiple applications to claim a refund of Service tax paid on input services received by the SEZ unit (refund application) under Notification no:12/2013-ST dated 1 July 2013 (Notification).
- The Adjudicating Authority, while partially allowing the refund applications rejected the balance amounts of INR 52.16 Mn and INR 5.01 Mn respectively which pertain to Service tax distributed by the ISD on the grounds that the refund applications were time-barred. Consequently, the Taxpayer filed an appeal before the Appellate Authority which was rejected.
- Subsequently, the Taxpayer filed an appeal before CESTAT which remanded the matter with the following directions to the Adjudicating Authority:
  - Verification of the date of payment of Service tax.
  - Examining whether the refund applications are filed within the prescribed time limits.
  - Where delayed refund applications were filed, whether such delay can be condoned.
- The Adjudicating Authority, vide the Order in Original, again rejected the refund applications on the ground that the same is barred by limitation. Against this, the Taxpayer again filed an appeal before the Appellate Authority which was rejected.
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT.

Contentions of the Taxpayer

- As per Section 51 of the SEZ Act, the SEZ Act is a special statute which overrides all other statutes.
- Reliance was placed on various judicial precedents including **CCEST Vs. Reliance Industries Ltd. [2019 (26) GSTL 34 (Tri. Ahmd.)]**, wherein a similar issue was involved, contended that the time limit of one year given in the Notification should be considered from the date of issuance of ISD invoices because Service tax attributable to the SEZ unit on common input services procured by ISD can only be ascertained after ISD issues invoices for distributing the common input services.

Contentions of the Tax Authorities

- Reliance was placed on ***J.J. Meridian Industries Ltd. Vs. CCE [2015 (325) ELT 417 (SC)] and CCE, Trichy Vs. Rukmani Pakkwell Traders [2004 (165) ELT 481 (SC)]*** contend that an exemption notification must be construed strictly and the doctrine of approbation and reprobation should be applicable.
- Whether to condone delay or not is a matter of discretion and the CESTAT should not interfere unless the order is

arbitrary or unjust. Reliance was placed on Sonali Steels & Alloys (P) Ltd. **Vs. Union of India [2000 (123) ELT 493 (Mad.)], Goyal Traders Vs. Commr. of C. Ex., & Cus. Ahmedabad [2001 (136) ELT 1401 (Tri. Mumbai)] and Bombay Pharma Products Vs. Collector (Customs), Bombay [1988 (34) ELT 691 (Tri.)].**

- The Notification was declared as non-existent in **GMR Aerospace Engineering Ltd. Vs. Union of India [2019 (31) GSTL 596] and SRF Ltd. Vs. Commissioner of Cus., C. Ex., & S.T. LTU, New Delhi [2022 (64) GSTL 489 (Tri. Del.)]** and hence, the present appeal should be dismissed.

Observations and Ruling of CESTAT, Delhi

- The Adjudicating Authority misconstrued the observations of this Tribunal. The condonation of delay was rejected as no new grounds were given by the Taxpayer for re-consideration. The grounds on which a party may seek condonation of delay cannot change with the passage of time. The Adjudicating Authority has taken a restrictive approach while considering the condonation of delay.
- The SEZ Act is a special statute enacted for the establishment of SEZs providing special benefits in the form of exemptions for export promotion. On a perusal of Section 26 of the SEZ Act read with Section 51 and Rule 31 of SEZ Rules, 2006, it is clear that the SEZ Act overrides the charging sections of other fiscal legislations. Hence, no legal sanctity to levy any duty or tax on the SEZ units exists. The intention of the legislature while granting such exemption was to ensure that the SEZ units function burden free.
- The issue in the present case is no more res integra and has already been decided in the following judicial precedents:
  - **GMR (supra), SRF Ltd. (supra) and DLF Assets Pvt. Ltd. Vs. CST, Delhi [2021 (45) GSTL 176 (Tri.)]** wherein it was held that the Notification issued under Section 93 of the Finance Act, 1994 cannot be enforced to determine whether a SEZ unit qualifies for exemption.
  - A similar issue was involved in ***Reliance (supra)*** wherein it was held that the SEZ unit can claim the refund of service tax in respect of common input services only after the ISD distributes the service tax pertaining to common input service as only after issuance of invoices by ISD, the SEZ unit can ascertain the tax liability for common input services.
- The general principle of interpretation of an exemption notification is that it must be construed strictly and the same is inapplicable to the present case on account of the following:
  - SEZ units are exempt from payment of various taxes and duties under the main statute.
  - Once the Taxpayer is eligible to claim a refund and the substantive conditions are complied with, the time limit for claiming the Notification is a procedural requirement which must be construed liberally and the same cannot be the basis to deny a refund claim.
- The exemption given to SEZ units is intended to be absolute which is evident from para 3 (II) of the Notification which provides for ab-initio exemption.
- Emphasis was also given to the following judicial precedents:
  - **Suksha International Vs. Union of India [1989 (39) ELT 503]**, wherein it was held that the interpretation restricting the scope of a beneficial provision shall be avoided to not restrict a benefit which a policy gives otherwise.
  - **Formica India Vs. Collector (CE) [1995 (77) ELT 511]**, wherein it was held that once a party is held entitled to a benefit under a notification on complying with the requirements of the concerned rule, the proper course was to permit them to do so rather than denying them the benefit on technical grounds that the time to do so has elapsed.
- The Order in Original and the Impugned Order are unsustainable in nature. Given the above, the appeal is allowed, and the aforesaid orders are set aside.

[M/s. Lupin Ltd. Vs. CCGST & CE, Ujjain, [TS-277-CESTAT-2023-EXC], dated 23 March 2023]

FOREIGN TRADE POLICY (FTP)

LEGISLATIVE UPDATES

NOTIFICATION

AMENDMENT IN IMPORT POLICY AND POLICY CONDITION OF COPRA

The import policy of Copra under ITC(HS) code 12030000 is revised where imports from State Training Enterprise are restricted.

[Notification no:11/2023 dated 14 June 2023]

PUBLIC NOTICE

AMENDMENT IN APPENDIX 2X OF THE FTP

Appendix 2X of the FTP containing list of countries exempted from testing for presence of AZO Dyes in Textiles and the Textile article is modified to exclude the People's Republic of China and include the United Kingdom.

[Public Notice no:14/2023 dated 14 June 2023]

NEWS FLASH

"Gameskraft tax case: Centre to appeal against HC order"

https://www.financialexpress.com/business/brandwagon-gameskraft-tax-case-centre-to-appeal-against-hc-order-3125172/

[Source: Financial Express, 14 June 2023]

"Centre to come up with pre-filled GST return forms by year-end: Report"
https://www.business-standard.com/economy/news/centre-to-come-up-with-pre-filled-gst-return-forms-by-year-end-report-123061200183_1.html

[Source: Business Standard, 12 June 2023]

"GST Council likely to vet CBIC's plan for additional validations in return filing to check evasion"
https://economictimes.indiatimes.com/news/economy/policy/gst-council-likely-to-vet-cbics-plan-for-additional-validations-in-return-filing-to-check-evasion/articleshow/101081789.cms

[Source: Economic Times, 18 June 2023]

"Aggregate state GST collections growth to moderate to 12-14 per cent in FY24: Crisil"
https://economictimes.indiatimes.com/news/economy/finance/aggregate-state-gst-collections-growth-to-moderate-to-12-14-per-cent-in-fy24-crisil/articleshow/100996860.cms

[Source: Economic Times, 14 June 2023]

"CBIC To Assign Risk Rating to GST Registration Applications, Taxmen to Cross-Verify Documents"
https://www.outlookindia.com/business/cbic-to-assign-risk-rating-to-gst-registration-applications-taxmen-to-cross-verify-documents-news-294889

[Source: Outlook, 15 June 2023]

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