# Tax Snippets

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## Key Case Law Alert

### Notifications

#### Central Board of Indirect Taxes and Customs ("CBIC") extends concessional import duties on specified edible oils till 31 March 2023

**Notification No. 46/2022 dated 31 August 2022** has been issued to amend Notification No. 48/2021-Customs dated 13 October 2021 and Notification No. 49/2021-Customs dated 13 October 2021, to extend the existing concessional import duties on specified edible oils (such as crude and refined soya, sunflower, palm oil etc.) up to 31 March 2023.

#### CBIC extends Anti-Dumping Duty on Jute products originating from Nepal and Bangladesh

**Notification No. 26/2022-Customs (ADD) dated 31 August 2022** has been issued to extend the levy of anti-dumping duty on jute products originating in Nepal and Bangladesh up to 31 December 2022.

#### Export Policy of Wheat or Meslin Flour (Atta), Maida, Samolina (Rava/Sirgi), Wholemeal atta and resultant atta amended to 'Prohibited'

**Notification No. 30/2015-2020 dated 27 August 2022** has amended the Export Policy of Items under HS Code 1101, stipulating that export policy of Items [wheat or Meslin Flour (Atta), Maida, Samolina (Rava/Sirgi), Wholemeal atta and resultant atta] under HS Code 1101 is amended from 'Free' to 'Prohibited'. However, the export of above items, shall be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their Government.

#### CBIC increases road and infrastructure cess on export of Diesel

**Notification No. 28/2022-Central Excise dated 31 August 2022** has been issued to increase the road and infrastructure cess on export of Diesel to INR 1.5 per litre

#### Special Additional Excise Duty on export of Diesel increased to Rs. 12 per litre

**Notification No. 27/2022-Central Excise dated 31 August 2022** has been issued to increase the Special Additional Excise Duty on export of Diesel to Rs. 12 per litre.

#### CBIC increases Special Additional Excise Duty on production of Petroleum Crude

**Notification No. 26/2022-Central Excise dated 31 August 2022** has been issued to increase the Special Additional Excise Duty on production of Petroleum Crude to Rs. 13,300 per tonne.

#### Applicability of GST on services provided by IRDAI to Insurance intermediaries

**Circular bearing reference number IRDAI/**

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**GA&HR/CIR/MISC/172/8/2022 dated 11 August 2022** has been issued by Insurance Regulatory and Development Authority of India to instruct that all insurance intermediaries are advised to ensure that any payment made to the Authority towards fees / charges etc., paid / payable on or after 12 August 2022 shall be made along with GST @ 18%. It further stated that the instructions in respect of Service Tax / GST for the earlier period will be issued separately.

## Caselaws

### Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs (Supreme Court of India Civil Appeal No. 7667 / 2021 judgment dated 26.08.2022)

The Civil Appeal was filed against the judgment of the National Company Law Tribunal **("NCLT"),** New Delhi wherein it allowed the appeal filed by the CBIC and set aside the directions of the NCLT requiring the CBIC to release the warehoused goods to the possession of the Appellant without seeking the custom dues. It was held by NCLAT that:

- The goods lying in the customs bonded warehouse were not the Corporate Debtor's assets as they were neither claimed by the Corporate Debtor after their import, nor were the bills of entry cleared for some of the said goods
- The 'imported goods', which are subject to levy of Customs, stand on a different footing as payment of customs duty is a consequence of importing the goods rather than a liability on the Corporate Debtor to pay it.
- The Appellant cannot stand at a better footing than the Corporate Debtor and cannot take possession of assets which the Corporate Debtor itself could not have obtained.
- That the Customs Act is a complete Code which provides that warehoused goods cannot be released until the import duties are paid.
- On the issue of priority of IBC over the Customs Act, the NCLAT held that the issue did not arise in the present case, as the goods in question were imported prior in time to the initiation of the CIRP.

The Hon'ble Supreme Court held the provisions of IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC, the CBIC only has a limited jurisdiction to assess / determine the quantum of customs duty and other levies. The CBIC does not have the power to initiate recovery of dues by means of sale / confiscation, as provided under the Customs Act. It was further held that after such assessment, the CBIC has to submit its claims (concerning customs dues / operational debt) in terms of the procedure laid down before the adjudicating authority. Lastly, it was held that the IRP / RP / liquidator can immediately secure goods from the CBIC to be dealt with in terms of the IBC.

### M/s. Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes And Ors. (Supreme Court of India Civil Appeal No. 8673 – 84 of 2013 judgment dated 02.08.2022)

In the present case, the Hon'ble Supreme Court was dealing with the issue, "whether, service tax could be levied on Composite Works Contracts prior to the introduction of the Finance Act, 2007, by which the Finance Act, 1994 came to be amended to introduce Section 65 (105) (zzzza) pertaining to Works Contracts?" It is worth noting that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in of *Commissioner, Central Excise and Customs, Kerala Vs. Larsen and Toubro Limited, (2016) 1 SCC 170* wherein after considering the entire scheme of levy of service tax pre-2007 and post-2007, it was held that on indivisible works contracts, for the period prior to introduction of Finance Act, 2007, service tax was not leviable under Finance Act, 1994 and that the works contracts on which the service tax was levied under the Finance Act, 1994 is distinct from contracts of service. However, the Ld. Additional Solicitor

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General submitted that the judgment in L&T needs to be re-considered and the matter should be referred to the Larger Bench.

The Hon'ble Supreme Court held that the judgment in L&T has stood the test of time and has never been doubted earlier. It was held that the said decision has been followed consistently by the Supreme Court as well as by various High Courts and the Tribunals and if the prayer made on behalf of the Revenue to reconsider and/or review the judgment in the case of L&T is accepted, it will affect so many other assesses. Further, such a practice may unsettle the law, which has been consistently followed since 2015 onwards. Thus, it was held that the judgment in L&T has been correctly decided and does not call for a reconsideration insofar as the period prior to 01.07.2007 is concerned.

**S.J. Enterprises & Anr. V. Union of India (Bombay High Court W.P. No. 39 / 2022 judgment dated 05.08.2022)**

The Appellant filed the writ petition against the actions of the Customs Authorities to encash the Bank Guarantee furnished by the Petitioner before the expiry of the statutory period available for filing an appeal.

In the present case, the Customs Authority passed an order against the Petitioner and on the day of serving the Order, the Assistant Commissioner of Customs sought encashment of the Bank Guarantees furnished by the Petitioner in order to cover the demands raised by the Department. In response to the communication received from the Assistant Commissioner of Customs, Petitioner's bank transferred the amounts to the Customs Authorities. The Hon'ble High Court observed that the Petitioner was entitled to file an appeal against the said Order before the Customs, Excise and Service Tax Appellate Tribunal within three months from the date of the communication of the order and held that the Customs Authorities recovered the amounts by way of encashment of Bank Guarantees, even before the petitioner could file an appeal against the said order, by adopting coercive measures.

It further relied on the Board's Circular No. 984/08/2014-CX dated 16.09.2014 which presupposes grant of a reasonable time to the assessee for instituting an appeal against the Order, together with the pre-deposit of a stipulated amount. It further relied on its earlier decision in *Ocean Driving Centre versus Union of India & Ors.* and had held that the authorities cannot encash the Bank Guarantee given by the assessee before the expiry of the statutory period available for filing an appeal. Thus, the Hon'ble High Court quashed the letter / order issued by the Customs Department to Petitioner's bank seeking encashment of the Bank Guarantee furnished by the petitioner and directed the Customs Department to restore the Petitioner's Bank Guarantee and maintain status quo ante till the disposal of the appeal instituted by the Petitioner.

**M/s Johnson Matthey Chemical India Pvt. Ltd. V. Assistant Commissioner CGST (Customs, Excise and Service Tax Appellate Tribunal, Allahabad Defect Diary No. 701942022 Order dated 23.08.2022)**

The issue in the present matter was whether the Appellant is entitled to make the pre-deposit of duty, payable under the old Central Excise regime, as per the requirement of section 35F of the Excise Act by debiting the Electronic Cash Ledger and Electronic Credit Ledger, under the CGST regime?

The Appellant had filed this appeal against the Order passed by the Commissioner (Appeals), Allahabad wherein it rejected the Appeal on the ground that the Appellant had not made the pre deposit as per section 35F of the Central Excise Act, 1944. It was submitted by the Appellant that it has made the requisite pre-deposit of total 10% in following manner:

- before the first appellate authority, 7.5% of disputed amount was deposited by way of reversal in GSTR-3B
- additional amount of 2.5% for filing the appeal before the Tribunal was deposited vide DRC-03 challan.

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The Hon'ble Tribunal noted that as per the provisions of section 41 of CGST Act, credit lying in the electronic Credit Ledger can be utilised only for self-assessed output tax. It further relied on the Judgment of the Hon'ble Orissa High Court in *M/s Jyoti Construction vs. Deputy Commissioner of CT & GST 2021(10) TMI-524* and held that mandatory deposit under section 35F of Excise Act cannot be made by way of debit in the Electronic Credit Ledger maintained under CGST Act.

### Commissioner of Service Tax, Delhi v. Quick Heal Technologies Limited (Civil Appeal No. 5167 of 2022-Supreme Court)

The Supreme Court has dismissed the appeals filed by the Commissioner of Service Tax seeking to levy service tax to the tune of over Rs 56 crores on Quick Heal Technologies Ltd for its sale of anti-virus software during the period 2012-2014.

The Court held that as the sale of software in CDs/DVDs is a sale consideration for goods, service tax is not leviable on the same transaction on the ground that updates are being provided to the customer. The End User License Agreement giving the end customer the license to use the software is a transfer of right to use goods and is a "deemed sale" as per Article 366(29A)(d) of the Constitution.

Referring to the decision of the *Supreme Court in Tata Consultancy Services v. State of Andhra Pradesh, (2005) 1 SCC 308*, a bench held:

*Once a lumpsum has been charged for the sale of CD (as in the case on hand) and sale tax has been paid thereon, the revenue thereafter cannot levy service tax on the entire sale consideration once again on the ground that the updates are being provided. We are of the view that the artificial segregation of the transaction, as in the case on hand, into two parts is not tenable in law. It is, in substance, one transaction of sale of software and once it is accepted that the software put in the CD is "goods", then there cannot be any separate service element in the transaction. We are saying so because even otherwise the user is put in possession and full control of the software. It amounts to "deemed sale" which would not attract service tax".*

The bench affirmed the finding of the Customs Excise and Service Tax Appellate Tribunal (**CESTAT**) that service tax is not applicable to the retail sale of packaged software and dismissed the appeals filed by the revenue against the CESTAT ruling in favour of QuickHeal.

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