Tax Snippets

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Key Case Law Alert

Notifications

Central Board of Indirect Taxes and Customs ("CBIC") CBIC increases Special Additional Excise Duty on Diesel to Rs. 11.50 per litre

Notification 37/2022-Central Excise dated 1 November 2022 has been issued to amend Notification No. 04/2022-Central Excise dated 30 June 2022, in order to increase Special Additional Excise Duty **("SEAD")** on Diesel to INR 11.50 per litre.

SAED on Petroleum Crude Production reduced & increased on Aviation Turbine Fuel

Notification 36/2022-Central Excise dated 1 November 2022 has been issued to reduce Special Additional Excise Duty on production of Petroleum Crude to Rs. 9,500 per tonne and increases Special Additional Excise Duty export of Aviation Turbine Fuel to Rs. 5 per litre.

CBIC notifies export duty exemption to specified varieties of Rice

Notification No. 55/2022-Customs dated 31 October 2022 has been issued to provide export duty exemption to specified varieties of Rice [Rice in husk (paddy or rough); Husked (brown) rice; Semi-milled or wholly-milled rice, whether or not polished or glazed(other than Parboiled rice and Basmati rice); Organic Non-Basmati Rice] subject to the prescribed condition(s).

Restriction on export of Sugar extended till 31.10.2023

Notification No. 40/2015-2020 dated 28 October 2022 has been issued to amend Notification No. 10/2015-2020 dated 24 May 2022, in order to extend the restriction on export of Sugar (Raw Sugar; Refined Sugar and White Sugar) from 31 October 2022 to 31 October 2023. This restriction is not applicable to Sugar being exported to EU and USA under CXL quota and Tariff Rate Quota.

Export of Wheat Flour (Atta) allowed against Advance Authorization

Notification No. 39/2015-2020 dated 9 October 2022 has been issued to amend Notification No. 3-/2015-20 dated 27 August 2022 to the extent to allow export of Wheat Flour (Atta) against Advance Authorization, and by Export Oriented Units (EOUs) and units in SEZs. The Wheat Flour for such export has to be produced from imported wheat and without procurement of domestic wheat. Additional procedural conditions have also been prescribed.

CBIC increases basic customs duty on imports of platinum

Notification No. 52/2022-Customs dated 3 October 2022 has been issued to increase basic customs duty on imports of platinum.

CBIC increases AIDC on imports of platinum and Rhodium

Notification No. 53/2022-Customs dated the

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3 October 2022 has been issued to increase Agriculture Infrastructure and Development Cess **("AIDC")** to 1.5% on import of Platinum and Rhodium.

Instruction No. 25/2022- Customs

Dated 3 October 2022 has been released by the CBIC reaffirming that Instruction No. 01/2022 – Customs dated 5 January 2022, pursuant to the various representations received from the field and trade regarding the divergent practices pertaining to the classification of 'automobile parts', would remain valid.

Instruction No. 01/2022 was issued after the judgement of M/s Westinhouse Saxby Farmer and held that each case of classification of parts, would have to be decided on the individual case of merits, and not basis the judgment of Westinhouse Saxby by the Supreme Court [which apply only to the goods in that given facts and circumstances of the judgement]. Instruction No. 25/2022 now further clarifies that the earlier instruction still remains valid even when a review has been filed in the Supreme Court against the above judgement bearing Review Petition Civil No. 802/2022.

Caselaws

Loreal India Pvt. Ltd. V. Union of India and Ors. (Delhi High Court in Writ Petition (C) 12557 / 2022 judgment dated 06.10.2022)

The Petitioner, Loreal, challenged Section 171 of the Central Goods and Service Tax Act, 2017 along with Rules 126, 127 and 133 of the Central Goods and Service Tax Rules, 2017 as unconstitutional, ultra vires, and violative of Articles 14, 19(1)(g), 265 & 300A of the Constitution of India. Various arguments were advanced by the Petitioner wherein it submitted that the application filed by the Secretary, NAA, to the Standing Committee seeking initiation of proceedings under Section 171 was not a valid initiation of proceedings for the purpose of examining whether there was any profiteering or not. It was submitted that NAA was not netting the benefit of the rate reduction because it had extended the benefit of the rate reduction to some products as against those where the petitioner had not extended the benefit of the rate reduction to the subject products by way of a commensurate reduction in prices. The Petitioner submitted that even though in some products they have not been able to grant a commensurate reduction in prices, they have tried to pass on the benefit by way of an increase in the weight of the product. It was urged that an increase in customs duty on certain products should be excluded.

The Hon'ble Court noted that under Section 171, any benefit of a reduction in the rate of taxes or benefit of an input tax credit on any supply of goods or services can only be by way of a commensurate reduction in prices. It was further held that Section 171 is not a charging or a taxing provision. On the contrary, it is an incidental provision in the CGST / SGST Acts for the purpose of ensuring that eliminating the cascading effect of taxation on the consumer is achieved. It was stated that the provision ensures that any benefit of a rate reduction of taxes or ITC benefit is passed on to the recipient without the middleman taking advantage of the government forgoing their taxes for the end consumer. Thus, the Hon'ble High Court was of the *prima facie* view that the post-sale discount had not been granted on account of the GST rate reduction and, therefore, did not qualify as a commensurate reduction in prices as required under Section 171. The Hon'ble Court observed that the interest amount directed to be paid by the Department along with the penalty proceedings and investigation by the NAA in respect of other products sold by Loreal ought to be stayed till further orders.

Nayana Premji Savala v. Union of India & Ors. (Bombay High Court Writ Petition No 3247 of 2022 judgment dated12.10.2022)

The Petitioner is the Liquidator of the Company - Swire Oilfield Services India Private Limited, which is in liquidation. Swire Oilfield was engaged in providing Cargo Carrying Units/ containers on rental basis

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to its customers. The said containers were not owned by the Company but were taken on lease from another company vide a Lease Agreement. As per the said Lease Agreement, Swire Oilfield was permitted to sub-lease the containers to a third party. Thereafter, the Company sub-leased the containers on hire for consideration and entered into a lease agreement with the lessee- CU Inspection India Pvt. Ltd. and discharged VAT on the lease rental / hire earned by it. However, the service tax department sought service tax on the sub-leasing of cargo containers.

The Hon'ble High Court noted that the Company had transferred the 'right to use' the containers to the lessee along with the possession and the effective control over the said containers, to the exclusion of the Company. Thus, the relationship between the Company and the lessee did not fall under the definition of taxable service under Section 65 (105)(zzzzj) of the Finance Act, 1994. It was observed that Section 65 (105)(zzzzj) would apply only where a service is provided in relation to supply of tangible goods, without transferring the right of possession and effective control. It further referred to Article 366(29A)(d) of the Constitution of India and noted that the transfer of right to use the goods is a deemed sale, which is subject to Sales Tax / VAT and consequently, under Section 2(24) of the Maharashtra Value Added Tax Act, the term "sale" includes the "transfer of the right to use" any goods for any purpose and for consideration. Thus, on a harmonious reading of Section 2(24), 2(28) read with Section 3 of the MVAT Act, VAT is applicable on "transfer of right to use" goods within the State of Maharashtra. It was also held that the sale of goods and services is mutually exclusive and both VAT and service tax cannot be levied on the same transaction.

M/s Ultratech Nathdwara Cement Ltd. v. C.C. Jamnagar (Prev) (CESTAT, Ahmedabad Bench Customs Appeal No. 45 of 2012 Judgment dated 20.10.2022)

An application was filed by the Appellant in view of the Order passed by NCLT approving a resolution plan for the company M/s. Binani Cement Limited in favour of M/s. Ultratech Nathdwara Cement Limited, which is the resolution applicant. The Applicant submitted that, as per the resolution plan approved by NCLT, no dues exist against the applicant. Therefore, since the demand involved in the order was not recoverable by the department, the appeal becomes infructuous. The Applicant submitted that it has not filed an application for continuance of the proceeding in terms of Rule 22 of the CESTAT Procedure Rules, 1982. The Department contended that the Appellant became insolvent and therefore, the appeal needs to be abated. If at all, the Applicant wishes to continue the proceedings before the Tribunal, an application should have been made within a period of 60 days from the date of the declaration of the Assessee as insolvent. However, no such application has been filed and they cannot continue the proceeding before the Tribunal.

The Tribunal held that Rule 22 is applicable only in cases when the Assessee is adjudicated as insolvent or in the case of a company when it is wound up. In the present case, the Applicant, being a company, has not been wound up whereas, it was revived under the insolvency resolution process as per the NCLT order. Moreover, there is only a change of name of the company from M/s. Binani Cement Limited to M/s. Ultratech Nathdwara Cement Limited in terms of the certificate of incorporation pursuant to the change of name issued by RoC. Therefore, the Company has not been wound up and it is an on-going company. Hence, rule 22 is not applicable. It was further observed that the Department has no proper guidelines as to what stand is to be taken in a case where the IBC proceedings are in progress before NCLT/NCLAT or at a higher forum. Thus, it directed the Central Board of Indirect Taxes and Customs (CBIC) to consider issuing guidelines or procedures for handling cases before the Tribunal in which an IBC proceeding has been brought against the Assessee company.

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Seema Gupta v. Union of India (Delhi High Court W.P. No. 10986 / 2022 Order dated 27.09.2022)

The writ petition was filed challenging Clause (A) (b) of the Notification No.04 / 2022 - Central Tax (Rate) dated 13.07.2022 by way of which the exemption granted by Notification dated 28.07.2017 for renting of residential accommodation is no longer available to tenants who are registered under GST. The challenge was made on the ground that Clause (A) (b) of Notification No. 04 / 2022 is *ultra vires* Article 14 of the Constitution of India and also beyond the powers conferred under the GST Act, 2017. The amendment particularly affected those who are doing their business as a proprietary concern, like the Petitioner. Denial of exemption solely on the basis that the tenant is registered under GST is not based upon any intelligible differentia and the said differentia has no rational relation to the object sought to be achieved.

The Hon'ble Court held that rental of a residential dwelling to a proprietor of a registered proprietorship firm who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of the business of his proprietorship firm and such renting is on his own account and not that of the proprietorship firm, shall be exempt from tax under Notification No.04/2022-Central Tax (Rate) dated 13.07.2022.

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