Tax Snippets

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Key Case Law Alert

Notifications

- **COVID-19 vaccine exemption from Basic Custom Duty ("BCD") till 31/03/23 vide Notification No. 01/2023–Customs** under this notification the Central Government will exempt the COVID-19 Vaccine from basic Custom Duty from the 14th of January, 2023 till the 31st of March, 2023.

- **Central Board of Indirect Taxes and Customs ("CBIC") amends Notification No. 57/2000 – Customs, dated 8/05/2000, substituting the duty from 6.1% to 9.35% for Gold, vide Notification No. 09/2023–Customs,** shall come into effect from the 2nd of February, 2023.

- **Amendment in Circular No.29/2020-Customs dated 22/06/2020** has been issued by CBIC to allow for the transhipment of Bangladesh export cargo to third countries via Delhi Air Cargo.

- **CBIC exempts BCD on Ship/Vessel breaking activity, vide Notification No. 13/2023-Customs,** this notification shall come into effect from the 24th of February, 2023.

- **Amendment in Special Additional Excise Duty on production of Petroleum Crude and export of Aviation Turbine Fuel ("ATF"), vide Notification No. 08/2023-Cemtral Excise dated 15th February, 2023,** the Notification reduces the Additional Excise Duty on Petroleum Crude from Rs. 17,000 per tonne to Rs. 4,350 per tonne while increasing the duty on ATF from Rs. 4 per litre to Rs. 1.5 per litre.

- **Exemption of CNG compressed with Biogas or Compressed Biogas ("CBG") from so much of the duty leviable on amount of Goods and Service Tax ("GST") paid on CBG, vide Notification No. 05/2023-Central Excise,** the Notification subjects the exemption to the following three conditions;
  - Maintain detailed records regarding the quantum of Biogas or CBG blended with CNG, along with the value thereof, at the registered premises;
  - Submit a reconciliation statement, certified by the statutory auditor to the jurisdictional Commissioner of Central Excise by the 10th of the month following the quarter; and
  - Pay the short-paid duty of excise along with applicable interest after such reconciliation.

- **Amendment of Special Additional Excise Duty on Diesel, vide Notification No. 07/2023,** the Notification changes the duty to Rs. 1 per litre.

- **One time relaxation for furnishing additional fee to cover excess imports affected under the Export Promotion Capital Goods Scheme ("EPCG"), vide**

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Notification No. 58/2015-2020, this notification allows a one-time relaxation in procedure for acceptance of fees for excess duty utilisation under the EPCG Scheme.

Caselaws

M/S Wipro Limited India v. Assistant Commissioner of Central Taxes (Karnataka High Court, Writ Petition No. 16175 of 2022)

The Petitioner supplied goods to ABB Global Industries and Services Private Limited, but mistakenly used the GSTIN number of a separate entity, ABB India Limited, on the invoices. To remedy the situation, the Petitioner filed a writ petition to direct to allow access to the GST Portal and rectify form GSTR-1 for FY 2017-18 to 2019-20 for the affected invoices. This would enable the recipient to claim tax credit even though the time limit under Section 16(4) of the CGST Act had passed. The Petitioner cited Circular No.183/15/2022-GST dated 27.12.2022, which allows taxpayers to rectify bona fide and inadvertent errors in forms and returns. The circular outlines the procedure for such cases, including those from FY 2017-18 and 2018-19, which also applies to FY 2019-20. The Revenue countered that the circular only applies to FY 2017-18 and 2018-19 and therefore should not apply in this case. As a result, they argued that the petition has no merit and should be dismissed.

The Petitioner's appeal was granted by the High Court, which noted that the Circular dated 27.12.2022 permits rectification of inadvertent errors made by individuals while submitting forms and returns under the GST law. The Court considered the Petitioner's mistake of mentioning an incorrect GSTIN number of the recipient in its invoices to be a genuine mistake. Consequently, the Court held that the Petitioner was justified in approaching the Court, and the Circular was applicable to this case. The Court also noted that Paragraph 4 of the Circular provides a clear procedure for rectifying such mistakes. Accordingly, the Court directed the Revenue to follow the procedure outlined in Paragraph 4 of the Circular. Although the Circular is only intended for FY 2017-18 and 2018-19, the Court took a justice-oriented approach and allowed the Petitioner to benefit from the Circular for FY 2019-20 as well. This was because the errors made by the Petitioner were identical in nature for the previous years.

Dishman Pharmaceuticals and Chemicals Ltd v. CST Service Tax (CESTAT Ahmedabad, Service Tax Appeal No. 474 of 2012)

The Appellant is a manufacturer and exporter of bulk drugs. They avail the services of both foreign and Indian banks to realize export proceeds from buyers outside India and receive funds in domestic Indian currency. The Indian Bank pays a commission to the foreign bank for this service, which is then reimbursed by the Appellant. The Revenue demanded service tax on the reimbursement of charges made by the Appellant to the Indian Bank for the services provided by the foreign bank on a reverse charge basis. The issue at hand was whether the Appellant is required to pay service tax on a reverse charge basis for the charges paid by them in respect of the foreign currency transaction between the Indian Bank and the foreign bank. The Appellant argued that they did not have a contract with the foreign bank and therefore had no direct dealings with them. They further stated that the service charges were paid by the Indian Bank to the foreign bank as per their existing arrangement, and the Appellant had no involvement in this process. The Appellant contended that in this case, the Indian Bank was the recipient of the services provided by the foreign bank, and therefore, the Appellant was not liable to pay service tax for the same.

The Appellant relied on Circular No. 20/2013-14-ST-I (issued by the Commissioner of ST-I, Mumbai T.N. on 10.02.2014), which analyzed URC 522 (Uniform Rules for Collection) and UCP 600 (Uniform Customs & Practice for Documentary Credits) and summarized their implications. The Circular observed that there is an implicit agreement between the Indian

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Bank and the foreign bank, whereby the foreign bank recognizes the Indian Bank as the sole entity responsible for receiving their services and collecting the charges associated with them. Typically, the exporter or importer in India is unaware of the fees charged by the foreign bank. Therefore, in such cases, the Indian Bank is considered the service recipient and is responsible for paying the service tax under Section 66A of the Finance Act, 1994. The Circular further emphasized that to be regarded as a recipient of service, a person must know who the service provider is and have an agreement, whether written or oral, to receive the service. Considering the relevant provisions of URC 522 and UCP 600 and the specifics of the case, the CESTAT determined that the foreign bank provides services to the Indian bank.

Arvind Goyal CA vs. Union of India and Ors. (Delhi High Court in WP 12499 of 2021 judgment dated 19.01.2023)

The Petitioner had challenged the search operation as unlawful and contended that the concerned officers could have no reason to believe that any goods liable for confiscation were lying on the Petitioners' premises. The Petitioner contended that the GST officers had no power to seize any cash in the exercise of their powers under Section 67(2) of the CGST Act. Further, the power under Section 67(2) of the CGST Act to seize goods could be exercised only if the goods were liable for confiscation. The documents, books, or things could be seized only if they are useful or relevant to any proceedings under the CGST Act. The Petitioner urged that currency is excluded from the definition of goods and thus, cannot be seized. The currency is also not useful or relevant for conducting any proceedings, and therefore, there is no question of seizing currency in the exercise of Section 67(2) of the CGST Act. The Department contended that the officers had merely "resumed" cash. Therefore, it cannot be considered a seizure.

The Hon'ble High Court noted that the Department was unable to point out any provision in the CGST Act that entitles any officer of GST to merely "resume" assets. Clearly, the Petitioners had not handed over the cash to the concerned officers voluntarily. Thus. the action taken by the officers was coercive. The Hon'ble High Court had observed that the powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied. Thus, the Hon'ble High Court ruled that there is no provision in the CGST Act that would allow for the forcible removal of currency from the premises of any person.

Hewlett Packard India Sales Pvt. Ltd. vs Commissioner of Customs (Import), Nhava Sheva (Supreme Court in Civil Appal No. 5373 of 2019 judgment dated 17.01.2023)

In this case, 'All ¬in ¬One Integrated Desktop Computer' imported by Hewlett Packard India Sales Pvt. Ltd. was classified under 'Tariff Item 8471 50 00'. However, these were classified under 'Tariff Item 8471 30 10' by the Custom Authorities, which was later confirmed by the Assistant Commissioner of Customs and Commissioner of Customs (Appeal). These findings were further affirmed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Thus, in appeal, the issue considered by the Hon'ble Supreme Court was regarding the correct classification of Automatic Data Processing Machines which are popularly known as 'All¬in¬One Integrated Desktop Computer'.

The Hon'ble Court noted that the adjudicating authorities, especially the Commissioner of Customs (Appeal), in their orders, have extensively referred to online sources such as Wikipedia to support their conclusion. The Hon'ble Court noted that, in Commissioner of Customs, Bangalore v Acer India (P) Ltd. (2008) 1 SCC 382, it was observed that Wikipedia is an online encyclopaedia and information can be entered therein by any person and as such it may not be authentic. Thus, it cautioned the courts and adjudicating authorities against use of 'wikipedia' for legal dispute resolution. On facts, the Bench observed that the Goods

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are not portable and allowed the appeal by setting aside the impugned orders which classified the Concerned Goods under 'Tariff Item 8471 30 10.

Black Box Limited Versus Commissioner of Central Excise & ST, Ahmedabad-iii (CESTAT, Ahmedabad Service Tax Appeal No. 572 of 2012-DB judgment dated 04.01.2023)

The Appellant was dealing in Electronic and Telecom equipment. In its business, the Software was embedded in the telecom equipment systems of EPABX. On scrutiny of the Balance Sheet of the Appellant, it was revealed that the Appellant has shown a certain amount as "Software Activation" income and it had collected the charges from their customers in connection with after sales of goods i.e. equipment / software. The Appellant was issued three show cause notices as to why the activity of selling software should not be treated as taxable services under the category of "Business Auxiliary Services" under Section 65 of the Finance Act, 1994 and consequently, the service tax should not be demanded under Section 73(1) along with interest.

The Appellant contended that service tax is levied when taxable service is provided by the service provider to his client(s). The purchase of goods from the appellant is not a service and such customer / buyer of goods cannot be treated as a recipient of service. The Appellant is not a provider of service, but only a seller of goods liable to Sales Tax / VAT which is paid. The Appellant urged that a transaction of sale of software is clearly a sale of "goods" within the meaning of the term as defined in the CST Act and Gujarat Value Added Tax Act 2003.

Thus, the issue raised was whether the Appellant is liable to pay service tax on "Software Activation Charges" under the taxable services of "Business Auxiliary Services".

The Hon'ble Tribunal held that the "activation charges" of equipment/ software features are covered under the activity of sales of goods and not covered under the provisions of "Service". It was observed that if the software, whether customized or non-customised, satisfies the Rules as "goods", it will also be "goods" for the purpose of Sales tax. Goods may be tangible properties or intangible ones. It would become goods provided it has the attributes having regard to its utility; capable of being bought and sold; and capable of being transmitted, transferred, delivered, stored, and possessed. Thus, the Hon'ble Tribunal held that service tax is not payable on the software activation charges.

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