Tax Snippets

Shardul Amarchand Mangaldas

June 2023

Key Case Law

Notification

E-invoicing mandatory from 01 August 2023 for taxpayers having aggregate turnover exceeding five crores

Notification No. 10/2013-Central Tax dated 10 May 2023 has mandated e-invoicing for taxpayers having aggregate turnover exceeding five crores with effect from 1 August 2023.

Benefit of Amnesty Scheme for settlement of default in export obligation by Advance authorisation or EPCG license holder to be availed by 30 June 2023

Policy Circular Notice 2/2023-DGFT has been introduced laying down the procedure for applying for amnesty scheme for one-time settlement of default in export obligation by Advance Authorisation and EPCG license holders. The last date of application is 30 June 2023.

Caselaws

Central GST Delhi – III v. Delhi International Airport Ltd. (Supreme Court of India in Civil Appeal No. 8996 of 2019 judgment dated 19.05.2023)

The Assessees had entered into joint venture arrangement / agreements with the Airports Authority of India (AAI), where they had agreed to undertake some activities enjoined upon the AAI under the AAI Act, for the purpose of operation, management, and development of the airports (OMDA). The Assessees was authorised by various notifications issued by the Central Government under Section 22A of the AAI Act, to collect a "development fee" for every departing domestic and international passenger at the concerned airports for a period of 48 months. The Commissioner of Service Tax issued Show Cause Notices demanding payment of tax on the development fee collected by the Assessees for various periods. This demand was later confirmed. Assessee filed an appeal before the CESTAT which was allowed and it was held that the development fee collected was not liable to service tax levy. Against this, an appeal was filed before the Hon'ble Supreme Court.

The Hon'ble Supreme Court held that the "User Development Fee" (UDF) levied and collected by the airport operation, maintenance, and development entities from passengers departing the concerned airports, is a statutory levy, and thus, it is not subjected to levy of service tax under the provisions of the Finance Act, 1994. While holding in favour of the Assessee, it was held that there is a distinction between the charges, fee and rent collected under Section 22 of the AAI Act and the UDF levied and collected under Section 22A of the AAI Act is in the form of a 'tax or cess' (after relying on its earlier decision in Consumer Online Foundation vs Union of India, (2011) 5 SCC 360) collected for financing the cost of future projects. It was also held that there was no consideration for the services provided by the Assessee-entities to the customers, visitors, passengers, and vendors, etc.

In this Issue

It was observed by the Hon'ble Supreme Court that that as a part of the Union's economic policies, the upgradation and renovation of airports are funded through UDF, which is a statutory levy and although this amount is not deposited in a government treasury, it does not mean that it is not a statutory levy or compulsory exaction. Merely because the funds are kept in an escrow account and their utilization is monitored separately, it does not undermine the public nature of the funds in any manner. The bench further observed that to attract levy of service tax, a taxable service has to be provided to a recipient by a service provider, for consideration. In the absence of any nexus to any service rendered, an amount charged, or value of service or goods provided without a consideration, would not be a taxing incident.

M/s Tata Motors Ltd. v. The Deputy Commissioner of Commercial Taxes (Apl.) & Anr. (Supreme Court of India in Civil Appeal No. 1822 / 2007 judgment dated 15.05.2023)

The Assessee is a dealer of TATA Vehicles. Under the dealership agreement, the Dealer / Assessee is obliged to provide replacement of warranty goods sold to the customer. The Dealer is required to replace the defective parts of the automobile free of cost to the customers. In order to avoid delay, the Dealer, on behalf of the manufacturer, Tata Motors, collects a defective component from the customer and replaces it with the parts in the stock purchased from the manufacturer. This defective component is returned back to Tata Motors from whom the dealer had purchased the same in the first place. Tata Motors, thereafter, issues credit notes, crediting the running account of the Dealer which is maintained for sale transactions, at the price at which the good was initially sold to the Dealer. The Sales Tax Department sought to levy tax on this turnover of the Assessee.

The Hon'ble Supreme Court held that a credit note issued by an automobile manufacturer to a Dealer of automobiles, in consideration of the replacement of a defective part done by the dealer pursuant to a warranty agreement, is exigible to sales tax. The Hon'ble Court held that when a dealer replaces a defective part of the automobile by a spare part maintained in its stock or when the same is purchased by the dealer from the open market, in such situations, the credit note issued in the name of the dealer is a valuable consideration for transfer of property in the spare part made by the dealer to the customer. The same constitutes a "sale" under both the Central Sales Tax Act as well as the respective sales tax legislations of the States under consideration (Rajasthan in this case). Thus, the Assessee-Dealers are liable to pay sales tax on the said transaction. The Hon'ble Court further held that merely because the Dealer acts as an intermediary on behalf of the manufacturer pursuant to a warranty and receives a recompense in the form of a credit note, the same cannot escape its liability to pay tax under the Sales Tax Acts. It was also clarified that the judgment in *Mohd. Ekram Khan & Sons vs CTT, (2004) 6 SCC 183* does not apply to a case where the Dealer has simply received a spare part from the manufacturer of the automobile so as to replace a defective part under a warranty collateral to the sale of the automobile.

M/s DEN Networks Ltd. v. State of Bihar and Ors. (High Court of Judicature at Patna, in Civil Writ Jurisdiction Case No. 24647 / 2019 judgment dated 18.05.2023

The Petitioner is a Multi System Operator (MSO) who was liable to pay entertainment tax under the Bihar Entertainment Tax Act, 1948. As the proprietor, the Petitioner has the ultimate control over the transmission of programs, which he receives from a satellite and, through the Local Cable Operators (LCO), broadcasts to the subscribers. In a previous round of litigation, the Petitioner was before the High Court when an Assessment Order was passed based on the number of set-top boxes recorded in the Petitioner's register. The Hon'ble Court found that the Assessing Officer has extracted money from the Petitioner by resorting to a special mode of recovery without even identifying the subscribers for the purpose of levying. The Assessment Orders were quashed and the Assistant Commissioner was directed to redo the assessment. While remanding the matter, it was observed that there is no expression on the

In this Issue

interparty merits and that all issues would be left open for consideration before the Assessing Authority. Under the remand proceedings, the Petitioner raised the issue of the state having been denuded of the power to levy and collect taxes after the 101st Amendment to the Constitution. Entry 62 of List II to the Seventh Schedule of the Constitution of India, which is the field of legislation conferring the power to tax on the state. After the 101st Constitutional Amendment, the state has absolutely no power to continue with the levy as per the Act of 1948. The 101st Amendment also brought in the Goods and Services Tax regime. The matter reached before the Hon'ble High Court wherein it was held that the repeal and the saving clause provided under the BGST Act do not inure to the benefit of the state since the enactment and the levy made by it cannot be sustained after the 101st Amendment. It was observed that the 101st Constitution Amendment Act substituted Entry 62 of List II to the extent that the power to levy and collect entertainment tax was bestowed only upon local self-government institutions and not the state.

In this Issue

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