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Taxing times ahead for textile sector?

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The textile sector has recently been in news for various good reasons. The Government is leaving no stone unturned in providing conducive ecosystem to explore the textile industry's competitive and comparative advantage. The Textile Ministry has recently launched Mega Integrated Textile Region and Apparel Parks ('**MITRA'**) scheme to build mega textile parks and has also extended Rebate of State and Central Taxes & Levies ('**RoSCTL'**) scheme for exports of apparel/garments and made-ups till March 2024. With the introduction of production-linked incentive ('**PLI'**) scheme for Man-Made Fibre ('**MMF'**) fabrics, MMF garments and technical textiles, the sector is expected to soar to new heights.

Given that the textile sector is one of the largest employers in India, it is now poised to become the largest exporter as well. While the large players in the sector may have reasons to cheer, it is to be seen if the above referred schemes can benefit MSMEs. In this article, we intend to highlight the possible consequences arising out of the changes that have been carried out in the GST rates of textiles and textile articles.

GST rate rejig

The Notifications[1] issued by CBIC last month have essentially implemented a uniform rate of GST of 12% across the MMF textile value chain with effect from 1 January 2022. Additionally, the entries in the notification have been aligned with the Customs Tariff so as to overcome the confusion over mismatch between Chapter Headings as per Tariff and the description in the notification. The Government seems to have increased the rate of tax on MMF textile value chain with an intention to correct the inverted tax structure. According to the tax administration, higher rate of tax on inputs leads to accumulation of input tax credit ('**ITC'**) and consequently higher refunds to taxpayers. Thus, there was a need for correction of inversion, which would also ensure that the revenue collection figures are not distorted.

While the Government intends to support the industry by resolving the problem of accumulation of ITC, thereby reducing compliance burden of taxpayers who seek refund of the credits so accumulated, the manner in which the issue has been approached by the authorities seems to cast doubt on Government's virtuous intentions. The issue goes back to the discussions in 39th GST Council meeting held on 14 March 2020, wherein a few recommendations of the Fitment Committee were placed before the Council. One of recommendations of the Fitment Committee was to increase the rate of GST on MMF, MMF yarn, fabrics, garments, made-ups and associated services.

Interestingly, the above suggestion was put forth before the Council based on the recommendations of a Committee of Officers on Revenue Augmentation, which was constituted for a completely different purpose. The recommendation of these committees may have been accepted by the Council considering the

[1] Notification Nos. 14/2021- I.T.(R) dt. 18.11.2021 and 15/2021- I.T.(R) dt. 18.11.2021

relief that the industry was to get from the menace of rate inversion, but the Council in its wisdom must also have considered adverse implications that the industry may face from such a short-sighted approach.

Taxing the untaxed

Historically, majority of the textile products were exempted from payment of Central Excise duty and VAT while a few others were chargeable to a concessional rate of duty of 2%. In fact, the fabrics below retail sale price of Rs.1,000 were subjected to indirect tax under GST for the first time. The raw materials used in the manufacture of these products were leviable to duty or tax. Thus, these products have been suffering from significant amount of embedded taxes as there were no options for its offset/refund prior to implementation of GST.

The industry therefore expected some solution for these hurdles under GST regime. However, to everyone's surprise, the Government came up with a novel idea of restricting refund of unutilized ITC. Once the refund of unutilized ITC was allowed for the sector with a rider of lapsing[2] ITC accruing upto July 2018, another roadblock by way of restriction in allowing refund of ITC on input services was implemented retrospectively, which has also been affirmed by the Hon'ble Supreme Court[3]. All these impediments have adversely impacted the sector by adding up taxes into the product cost at every stage of supply chain.

Impact of rate hike

Now, with the upcoming hike in tax rates, the Government seems to have passed the buck to the industry for collecting embedded taxes from the customers instead of approaching the authorities. The industry too would pass on the effect of the hike to their customers to maintain their already dwindling profit margins. The effect of this rate hike would therefore add to inflationary pressure, which the central bank is trying to contain.

The textile sector, unlike other industries is majorly disintegrated, unorganised and dominated by MSMEs. Thus, increase in tax rates may have significant impact on the working capital requirement and cash flow. According to the *Working Capital Index, 2021 by J.P.Morgan*[4], the apparel and accessories industry has experienced one of its most challenging years in recent memory as the widespread lockdowns due to pandemic kept stores shut and disrupted supply chains.

Certain textile associations have urged Government to reconsider the proposed hike in GST rates on textiles and apparels from 5% to 12%. Several representations have been made to the Government pointing out that the increase in rate of GST will only alleviate the concern of a small percentage of the players in the sector. Considering the gravity of the matter, the Textile Ministry has also approached the GST Secretariat seeking to maintain status quo on rates by restoration of 5% GST and for making any change only after discussions with the Ministry and the stakeholders.

Way forward

Inverted tax structure is a genuine problem and hiking the rate of finished products across the board is clearly not the solution as it would only add to the burden of a Covid-battered sector. The Government needs to adopt a pragmatic approach of easing tax rates of the raw materials that goes into the manufacture of MMF value chain. MMF are primarily made using polymers emerging from by-products of petroleum, natural gas or using certain naturally

[2] Notification No. 21/2018- I.T.(R) dt. 26.07.2018
[3] UoI & Ors. Vs VKC Footsteps India Pvt. Ltd. [2021-VIL-81-SC]
[4] https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/jpmc-working-capital-index-2021.pdf

occurring polymers. Cutting down on GST rates on primary inputs used in the manufacture of MMF may not adversely impact Government's revenue as the excess taxes collected by them is subsequently required to be refunded to the industry.

In the alternative, the GST Council may also revisit on its controversial stand of restricting refund only in respect of inputs as it goes against the objective of neutralizing the effect of taxes across the value chain. This would go a long way in resolving the problem of other sectors, including footwear industry, that are struggling from tax inversion. The textile sector must continue to make representations and approach the Ministry for ensuring that the industry is not adversely impacted due to skewed tax policies.

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Goods and Services Tax (GST)

Notifications and Circulars

Form GST DRC-03 – Amendments: Form GST DRC-03 will also be now referred as 'intimation of tax ascertained through Form GST DRC-01A'. Further, as per amendments by Notification No. 37/2021-Central Tax, dated 1 December 2021, said Form will include inspection, scrutiny, intimation of tax ascertained through Form GST DRC-01A, mismatch (Form GSTR-1 and Form GSTR-3B) and mismatch (Form GSTR-2B and Form GSTR-3B) as causes of payment. Also, a column has been inserted for payment of fees through Form GST DRC-03. These amendments are part of the ninth amendment in the Central Goods and Services Tax Rules, 2017 this year.

Service supplied by restaurants through e-commerce operators clarified: The Central Board of Indirect Taxes and Customs ('**CBIC**') has recently clarified on various aspects of GST laws in respect of supply of restaurant service through e-commerce operators ('**ECO**'). According to Circular No. 167/23/2021-GST, dated 17 December 2021, ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services supplied through them on which it pays tax in terms of Section 9(5) with effect from 1 January 2022. The Circular also states that ECO shall pay the entire GST liability, on any restaurant service supplied through them including by an unregistered person, in cash, i.e. without utilisation of ITC. It is advised that ECO raises separate bill on restaurant service in cases where ECO also provides other supplies to a customer under the same order.

Ratio decidendi

Budgetary support scheme – Claim for period prior to registration under the scheme when correct: The Sikkim High Court has allowed the assessee's claims for budgetary support under a 'Scheme of Budgetary Support under Goods and

Services Tax' regime in a case where the Revenue department had earlier denied the same on the ground that the claims were made for the period prior to the registration. The petitioner was issued a unique ID ('**UID**') registration number on 31 October 2018 whereas they have claimed for budgetary support for the period prior to the issuance of UID in terms of Notification dated 5 October 2017 which mandatorily required pre-registration. Allowing the writ petition, the Court noted that failure to register the petitioner's eligible unit and issue the UID was the failure of the Revenue department and that there was no fault of the assessee. [*Glenmark Pharmaceuticals Limited* v. *Union of India* – 2021 VIL 821 SIK]

Refund claims – Circular No. 125/44/2019-GST not applicable for manual filings: The Bombay High Court has held that CBIC Circular No. 125/44/2019-GST, dated 18 November 2019 would not apply to an application for refund which is filed manually. Noting the Rule 97A of the Central Goods and Services Tax Rules, 2017, the Court held that the circular cannot affect or control the statutory rule or derogate from it. Observing that the Rule 97A started with a non-obstante clause, it held that despite Rule 89 providing for electronic filing of applications for refund on the common portal, any reference to electronic filing of an application on the common portal shall include manual filing of the said refund application. [*Laxmi Organic Industries Ltd.* v. *Union of India* – 2021 VIL 833 BOM]

Release of goods on payment of fine permissible even during pendency of confiscation proceedings: The Bombay High Court has held that the intent of Section 130(2) of the Central Goods and Services Tax Act, 2017 is to provide an option to the owner to redeem the goods before he is divested of his ownership and while the process of adjudication is going on. The Court in this regard dissected the said section using the present continuous words 'officer adjudging it' and the words 'owner of the goods', while comparing it with sub-section 130(7) which used the words 'confiscated goods'. According to the Court, incorporation of Section 130(2) over and apart from Section 130(7) was an indication that even before the owner is divested of his ownership, he must have an option to pay fine in lieu of confiscation. It also observed that absence of the use of the words 'provisional release' or non-reference to Section 67(6) was not determinative of the intent of the section.

The High Court held that to obtain the release of the goods or conveyances, while the adjudication proceedings are continuing, the taxpayer needs to pay only the fine and not the tax, penalty and charges thereon. Observing that the words 'be liable' in Section 130(3) only conveys a possibility of attracting the obligation and not an imperative obligation, shorn of fair procedure, the Court was of the view that the tax, penalty and charges are to be paid after adjudication. Dismissing the review petition filed by the Revenue department, the Court also held that fine in lieu of confiscation needs to be calculated only based on market value as defined under Section 2(73) and not on the maximum retail price. [*State Tax Officer* v. *Y. Balakrishnan* – 2021 VIL 828 KER]

Limitation for appeal under Section 107 – Date of upload on GSTN portal is not the sole criteria: The Bombay High Court has held that the period of limitation for the purpose of filing an appeal under Section 107(1) of the CGST Act, 2017 would commence from the date of service upon the petitioner of the scanned copy of the impugned assessment order (say by email) and not from the date when the impugned assessment order is uploaded on the GSTN portal. Submission of the assessee that except for communication of the impugned assessment order on the GSTN portal, all other communications are to be disregarded, was

found to be fallacious and too far-fetched. The Court also noted that Rule 108 of the CGST Rules, 2017 prescribed that the appeal was to be filed electronically, but had not prescribed that the same was to be filed only after the impugned assessment order was uploaded on GSTN portal online. [*Meritas Hotels Pvt. Ltd.* v. *State of Maharashtra* – 2021 VIL 861 BOM]

Jurisdiction – Reasoning of Supreme Court's decision in case of Canon India not applicable to State tax officers: The Allahabad High Court has held that the analogy and reasoning of the Supreme Court decisions in *Syed Ali* and *Canon India* would arise and apply, to officers of the 'Central tax', only. The Court was of the view that the reasoning would not apply to functioning of officers of the 'State tax' who may draw their function-jurisdiction from simple sub-delegation under an administrative order issued by the 'Commissioner' with reference to his powers to sub-delegate granted under Section 5 of the U.P. GST Act, without any gazette notification of such order. The writ petition challenging the *ex-parte* adjudication order passed by the Deputy Commissioner was thus dismissed. [*Maa Geeta Traders* v. *Commissioner* – 2021 VIL 836 ALH]

Non-filing of returns – Postal notice not valid, procedure under Rule 68 for electronic notice to be followed: Show cause notice through registered post was issued to the petitioner for default in filing return. The adjudication proceedings were initiated and order was passed without issuing electronic notice as envisaged under Rule 68 of the CGST Rules, 2017. The validity of postal notice was in dispute. Observing that it was a settled principle of law that if an enactment or legislation prescribes a particular procedure to conduct business affairs, then it has to be followed, the Uttarakhand High Court directed the authority to comply with Rule 68 and reconsider the matter of the petitioner. [*Jabir Hasan* v. *Assistant Commissioner* – 2021 VIL 806 UTR]

Liquidator appointed by NCLT, performing functions under IBC, 2016, to be granted GST registration: The petitioner was appointed as an Interim Resolution Professional ('**IRP**') under IBC, 2016. However, since it was not possible to revive the company during the period of corporate insolvency resolution process, committee of creditors passed a resolution for liquidation of the company. Hence, NCLT appointed the IRP as a liquidator for completing the process of liquidation. GST Registration for sale of assets was denied on the ground that the liquidator did not apply in accordance with Notification No. 39/2020-Central tax which requires only to RP/ IRP to take the registration but does not obligate the liquidator to take the registration. Department also raised the contention of delay. The Court observed that when the assets in liquidation are to be sold on standalone basis, it is required for the liquidator to obtain registration under GST. The Court further stated that the authority concerned did not distinguish between IRP/RP and liquidator, both have different functions. Thus, the Court directed the department to grant registration and to stop raising hyper-technical objections. [*Nirav Tarkas, Liquidator of Stratus Foods Private Limited* v. *Office of Chief Commissioner* – 2021 VIL 843 GUJ]

ITC not available of tax paid for surrender of rights in a leasehold industrial plot: The Gujarat AAR has held that applicant-lessee shall not be eligible for availment for Input Tax Credit ('**ITC**') of the GST amount paid by the lessor on transfer of leasehold rights of an industrial plot. The lessor had paid tax on the services of agreeing to surrender/relinquishing its rights in the leasehold property for long run. Observing

that the tax paid pertained to land leased to the applicant for the purpose of construction of civil structures, administrative block/ factory, etc., the AAR held that the ITC would not be available due to the bar under Section 17(5)(d) of the CGST Act, 2017. It noted that land stood expressly excluded from plant and machinery and that legislature hence intended to not allow ITC in respect of services pertaining to land received by a taxable person for construction of an immovable property. The Authority was also of the view that capitalising an expenditure under 'Plant and Machinery' in the balance sheet, was immaterial. [In RE: *GACL-NALCO Alkalies & Chemicals Private Limited* – 2021 VIL 432 AAR]

GST liable on premium of group medical insurance policy recovered from non-dependent parents of employees and retired employees and on provision canteen facility, free of cost or on recovery of nominal charges: The Madhya Pradesh AAR has held that premium of group medical insurance policy recovered by the company from the non-dependent parents of employees and retired employees shall fall within the ambit of supply and is liable to GST. Observing that the service was in connection with or incidental or ancillary to the main business of the applicant, the Authority held that the applicant would be eligible for the ITC on such premium paid. Similarly, the AAR was of the view that GST would be applicable on recovery of nominal amount for availing the facility of canteen at the refinery. It was held that the said transaction would be covered under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business of the applicant. The ITC was however denied on such service observing that the GST was mandatorily payable @ 5% without the facility of ITC. The applicant was also held liable to payable GST on the amount recovered from its employees towards telephone charges at actuals, canteen services provided to the employees without charging any amount (free of cost) and on notice pay received from employee. [In RE: *Bharat Oman Refineries Limited* – 2021 VIL 429 AAR]

Housing society not eligible to take ITC of works contract services received for repairs, renovations, etc.: The Applicant was a cooperative housing society registered under the Maharashtra State Co-operative Societies Act, 1960. The applicant society had appointed a contractor for carrying our major repairs, renovations and rehabilitation work for the society. The contractor had charged service charges along with the GST for carrying out the works contract service. The advance ruling was sought to determine whether the applicant could be eligible to obtain the ITC of such GST charged by contractor under the provisions of Section 16 (1) of the CGST Act, 2017. The Maharashtra AAR, relying upon provision of Section 2(17)(e) of the CGST Act, 2017, held that the applicant was making provisions of the facilities/benefits to its members and was not providing works contract services to its members and was hence debarred from taking ITC under the provisions of Section 17(5)(c) of the CGST Act, 2017. [In RE: *Mahavir Nagar Shiv Srushti Co-operative Housing Society Limited* – 2021 VIL 418 AAR]

Port and terminal handling facility eligible to ITC on services procured for operation and maintenance of diving support vehicles and security patrol vessels: The applicant was engaged in the business of operating a port and terminal handling facility at a port in Gujarat for receipt of crude oil and other feedstock as well as for evacuation of various finished products of the crude oil refinery. The Gujarat AAR held that the applicant could be entitled to avail input tax credit in respect of the services procured for the

operation and maintenance of Diving Support Vehicle ('DSVs') owned by them and used by it for supplying port and terminal handling services, and services procured for hiring and for operation and maintenance of Security Patrol Vessel ('SPVs') used by it for supplying port and terminal handling services. In this regard, the Authority observed that the services supplied by the contractors to the applicant was not limited merely to 'repair and maintenance' to vessels. It noted that the essence and substance of the contracts was that the services supplied by the contractors was pertaining to enable the discharge of liquid cargo into the sub-sea pipelines. Further, the services of security patrolling cum pollution was checked by way of operation and manning and maintenance of DSVs and SPVs respectively by qualified crew. [In RE: *Sikka Ports & Terminal Ltd*. – 2021 VIL 437 AAR]

Construction of rehabilitation and resettlement colony not part of composite supply of mining services: The Madhya Pradesh AAR has held that construction of Rehabilitation and Resettlement colony ('R&R colony'), by the Applicant, would not be taxed as a part of composite supply of mining service. The Authority noted that construction of R&R colony service was not in any way in combination with mining service and that both the services were not depend on one another. It also observed that terms of payment of each service were mentioned separately in the agreement and invoices of the services were also raised separately. Construction of R&R colony was held as covered under the definition of Works Contract Service. The applicant was also held eligible to avail ITC of tax paid to the sub-contractor on such works contract services. [In RE: *Adani Enterprises Ltd.* – 2021 VIL 451 AAR]

Customs

Notifications and Circulars

RCMC available through common digital platform: The Directorate General of Foreign Trade has developed a new online common digital platform for issuance of Registration Cum Membership Certificate (RCMC) / Registration Certificate (RC). The platform will provide an electronic, contact less single window for RCMC related processes and is functional from 6 December 2021. However, it may be noted that the existing procedure of submitting applications directly to the designated issuing authority shall also be in operation in parallel till 28 February 2022 on until further orders. DGFT Trade Notice No. 27/2021-22, dated 30 November 2021 issued for the purpose also states that already registered exporters and importers can avail the services using the same login/credentials.

Ratio decidendi

DRI officers cannot stall assessment proceedings by a proper officer: The Madras High Court has held that it is not a part of the duty or function of the DRI officers to stall an assessment proceeding by a 'proper officer' designated under the Customs Act and the Notification No. 40/2012-Cus. (NT). In a dispute involving alleged mis-declaration of classification in case of import of areca nut, the Court held that there must be a proper determination as to whether there is prohibition of the imported goods and that this exercise can be carried only by a 'proper officer'. It was of the view that merely because the DRI officers have powers to investigate, it by itself will not mean that they can insist on a 'hands off approach' by a competent officer who have been given the powers to assess Bill of Entry filed by an importer. Elaborating further, the Court held even if the jurisdictional officer of the DRI felt that the import was without proper licence and that there was an attempt to import prohibited goods, it is his duty to merely inform the assessing officers to safeguard the Revenue's interest. [*Unik Traders* v. *Additional Commissioner* – 2021 TIOL 2270 HC MAD CUS]

Late fee for filing delayed Bill of Entry when not imposable – Court notes absence of provisions for purging of B/E: The Madras High Court has set aside the order imposing fine/ late fee for delayed filing of Bill of Entry ('B/E'), in terms of Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 ('Regulations') and Section 46(3) of the Customs Act, 1962. The appellant had filed the second B/E after the B/E initially (where the department had raised certain queries) filed got purged in the Customs system due to lapse of time. The Court noted that the provisions of the Customs Act and the Regulations 2018 do not contemplate purging of B/E. It observed that the expression 'purging' was neither found in the Customs Act nor in the Regulations. The High Court also noted that after filing of the first B/E, there was lockdown due to the second wave of Covid-19. It held that it was fit case where the department ought to have exercised the discretion judiciously by granting waiver. [*Heilsa Meditec LLP.* v. *Commissioner* – 2021 VIL 867 MAD CU]

'Gears' for use in manufacture of transmission assembly in motorcycles classifiable under Heading 8483 and not under 8714: The CESTAT Mumbai has held that gears, goods for use in manufacture of components and systems for assembly in motorcycles are classifiable under 'toothed wheels, chain sprockets and other transmission elements presented separately' corresponding to Tariff Item 8483 9000 and not under Heading 8714 of the Customs Tariff Act, 1975, covering 'parts and accessories of vehicles of Heading 8711 to 8713' which covered 'motorcycles'. The Tribunal was of the view that 'parts and accessories' in Chapter 87 is intended to cover those parts which can directly be assembled as vehicles. It noted that the imported goods were not solely or principally employable only for the production of 'motorcycles' and, except for familiarity with the business activities of the importer or the elaboration in the invoice, were not easily ascribable to usage in motor vehicles. [*Hero Motorcorp Limited* v. *Commissioner* – 2021 VIL 697 CESTAT MUM CU]

LCD with inseparable PCB classifiable under Heading 9013: Relying upon the Supreme Court decision in the case of *Secure Meters*, the CESTAT Mumbai has held that LCD attached with inseparable PCB is classifiable under Tariff Item 9013 80 10 of the Customs Tariff Act, 1975 and eligible for benefit of Notification No. 24/2005-Cus. The Revenue department had sought to distinguish the Apex Court decision

contending that since the LCD was fitted with inseparable PCB and were required for manufacturing car audio assembly, the goods were classifiable under TI 8522 90 00. Allowing assessee's appeal, the Tribunal noted that there was nothing on record to show that the imported goods were solely meant for use as part of the car audio/ video assembly. CESTAT's earlier decision in the case of *Samsung Electronics India Pvt. Ltd.* was also referred. [*Harman International (I) Pvt. Ltd.* v. *Commissioner* – 2021 VIL 681 CESTAT MUM CU]

Valuation – Documents received from foreign customs when not acceptable: Observing that the documents received from Belgium Customs were neither signed nor authenticated and were also full of numerous discrepancies, the CESTAT Ahmedabad has reiterated that no presumption can be raised about its truthfulness. Allowing the appeals, the Tribunal also noted that there was no evidence of extra remittance transaction value. Charges of misdeclaration of value and quantity were hence held as not sustainable. The Tribunal also noted that the transfer of funds from one entity to another entity in India cannot have any bearing on the concept of related person with regard to the provisions of the Customs Act and the Valuation Rules made there under. [*NPT Papers Pvt. Ltd.* v. *Commissioner* – 2021 VIL 677 CESTAT AHM CU]

Central Excise, Service Tax and VAT

Ratio decidendi

Service tax on interchange fee – Supreme Court delivers a split judgement: The Supreme Court of India has delivered a split decision in the case of levy of service tax on interchange fee received/retained by the bank issuing the credit card. According to Hon'ble Justice K.M Joseph, the activity would squarely fell within Section 65(33a)(iii) of the Finance Act, 1994 for the period prior to 1 July 2012 and is hence liable to service tax. Hon'ble Justice S. Ravindra Bhat however disagreed with the view that the issuing bank provided a separate service. He was of the view that the role of the issuing bank in the service provided by the acquiring bank to the merchant establishment was part of a single unified service falling under clause (iii) of Section 65(33a) and it cannot be broken up into its components and classified as separate services for classification and be liable to service tax separately again. It may however be noted that both the Hon'ble Judges were of the view that amount received by the issuing bank, as interchange income or fee, is not towards interest. [*Commissioner* v. *Citi Bank N.A.* – Judgements dated 9 December 2021 in Civil Appeal No(S). 8228 of 2019 and Ors, Supreme Court]

Proportionate reversal of Cenvat credit – Non-filing of declaration or filing before wrong authority not material: The CESTAT Hyderabad has held that reversal of proportionate amount of Cenvat credit by the assessee involved in manufacture of both excisable and exempted

goods meets the obligations of the assessee under Rule 6(1) (of not taking credit of inputs and input services used in exempted goods) and Rule 6(2) (of maintaining separate accounts) of the Cenvat Credit Rules, 2004. The Tribunal was also of the view that such reversal was also sustainable under Rule 6(3A) for the period post 1 April 2008 and under Finance Act, 2010 (for the period prior to 1 April 2008). Revenue's objection to accepting such reversal as the assessee had not made the required declaration before the Superintendent (for the period after 1 April 2008) and before the Commissioner (declaration filed before Deputy Commissioner for period before April 2008), was termed hyper-technical. According to the Tribunal, the substantial benefit cannot be denied on such technicality. Similarly, Revenue's argument that interest on credit reversed was paid much later, was rejected. [*Nava Bharat Ventures Ltd.* v. *Commissioner* – 2021 TIOL 759 CESTAT HYD]

Show cause notice demanding amount under Cenvat Rule 6(3) not sustainable: The CESTAT Hyderabad has held that just as no assessee can be compelled to maintain separate records under Rule 6(2) of the Cenvat Credit Rules, 2004, no assessee can be compelled to pay an amount under Rule 6(3). Setting aside the show cause notice demanding amount under Rule 6(3), the Tribunal observed that the obligations under Rule 6 were in the form of various alternatives and the assessee is free to choose any option. It noted that there is no mechanism either in the Cenvat Credit Rules or in the Central Excise Act, 1944 to enforce any of the options or one of the options on the assessee. The Tribunal also noted that if the assessee does not choose any of the options and still avails Cenvat credit, such irregularly availed credit can be recovered under Rule 14. [*Nava Bharat Ventures Ltd.* v. *Commissioner* – 2021 TIOL 759 CESTAT HYD]

Service transactions between merging companies from date of effect of merger to order of competent authority, not liable to service tax: The CESTAT Delhi has held that transactions between the merging companies between the effective date of the merger and the date of merger order of the competent Court, partake the character of mutuality and are no longer taxable under Finance Act, 1994 for the purpose of service tax. Observing that the tax deposited by the merging companies during the intervening period, *ipso facto* becomes 'revenue deposit', the Tribunal held that on such revenue deposit, interest must be paid in terms of Section 11BB of the Central Excise Act, from end of three months from the date of refund claim. Department's contention that prior to producing the order of NCLT before the Revenue Authority, different companies cannot be treated as one, was thus rejected. [*Commissioner* v. *Dalmia Cement (Bharat) Ltd.* – 2021 VIL 661 CESTAT DEL ST]

'Input services' definition – Exclusive part of definition overrides main definition and inclusive part: The CESTAT Ahmedabad has held that exclusive part of the definition of 'input services' in the Cenvat Credit Rules, 2004 supersedes or overrides the main definition and the inclusive part of the said definition. Noting that the exclusive part came at the end of the definition and not before the inclusive part, the Tribunal was of the view that if anything is covered in the exclusive part it remains excluded irrespective of the fact that the same was specifically included in the main definition or the inclusive part. The Cenvat credit of Works Contract Service used for repair of factory premises was thus denied. [*Rishabh Plast Industries* v. *Commissioner* – 2021 VIL 670 CESTAT AHM ST]

Sabka Vishwas (LDR) Scheme – Credit of payments made under head of interest and penalty, available: The Punjab and Haryana High Court has held that the assessee is entitled for credit of amount deposited before the show cause notice, under the head of interest and penalty while quantifying the amount payable under the Sabka Vishwas (Legacy Dispute Resolution) Scheme. The Court rejected the Revenue department's view that the amount paid under the head of tax dues (and not under the head of interest and penalty) can only be adjusted during calculation of tax while granting relief under the amnesty scheme. The High Court observed that Section 124(2) of the Finance (No. 2) Act, 2019 while using the term 'any amount paid' does not distinguish between the amounts paid under different heads. Allowing the writ petition, the Court also noted that had the petitioner remitted the entire amount towards tax, the department would have given credit of entire amount and interest liability would have been waived off as well. [*Schlumberger Solutions Pvt. Ltd.* v. *Commissioner* – 2021 TIOL 2238 HC P&H ST]

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41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh -160026
Phone : +91-172-4921700
E-mail :lschd@lakshmisri.com

GURUGRAM
OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon-122001
Phone : +91-124-477 1300
E-mail : lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)
3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone : +91-532-2421037, 2420359
E-mail : lsallahabad@lakshmisri.com

KOCHI
First floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam Kochi-682016
Phone : +91-484 4869018; 4867852
E-mail : lskochi@laskhmisri.com

JAIPUR
2nd Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur - 302 015
Phone : +91-141-456 1200
E-mail : lsjaipur@lakshmisri.com

NAGPUR
First Floor, HRM Design Space,
90-A, Next to Ram Mandir, Ramnagar,
Nagpur - 440033
Phone: +91-712-2959038/2959048
E-mail : lsnagpur@lakshmisri.com