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Untangled indirect tax web in automotive sector – Whether proposed PLI scheme will do justice?

By **Bhavya Jindal, Hetal Chauhan and Shivam Mehta**

The automotive industry is a major contributor to the Indian economy. Currently, it is the fourth largest automotive sector in the world and is expected to come under top 3 automotive sectors in the world by 2026. The sector also accounts for about 15% of the country's total tax collections.

Growth of the auto sector in India is leading to emergence of new and more complicated issues with respect to indirect taxes. As an industry with multitude of components and parts, the automotive industry is particularly under the scanner of taxmen.

Generally, auto parts which are solely or principally to be used with motor vehicles classified under Chapter Heading 8708 are subject to basic customs duty @15%, subject to any exemption (if applicable). However, certain parts which are classified in other Chapters, say Chapter 84 or Chapter 85 are subject to basic customs duty as per their respective tariff rates. The major challenge for OEMs is to appropriately classify these products under Customs Tariff schedule and accordingly, pay appropriate customs duty. Broadly speaking, there was a difference in the basic customs duty in respect of auto components depending upon their classification which had an impact on the legal as well as financial aspects.

In Budget 2021, Government has taken a step to resolve the disputes regarding classification of auto parts. Government has increased the tariff rate of basic custom duty on certain goods falling under certain Chapters such as under Chapters 84 and 85 and granted exemptions to parts which are suitable for use in applications other than motor vehicles. The idea to grant exemptions to such goods seems to be to neutralize the tax rates in respect of products falling under these chapters, which are not meant for the automotive sector. To illustrate, tariff rate of relays classified under sub-heading 8536 41 has been increased from 10% to 15% in the Budget 2021. Simultaneously, exemption has been provided under Notification No. 50/2017-Cus. for all the goods classified under said sub-heading, other than those suitable for use in motor vehicles of specified heading.

Through the above amendment, though Government has clarified its intent to tax auto parts at higher rate, nevertheless, it has become imperative to understand the scope of the exemption entry *vis-a vis* meaning of the expression 'suitable for use in motor vehicle'. Doubt remains as to whether the exemption entry will also cover in its ambit products which have multiple applications but ends up being incorporated in the motor vehicle. The question which pops up is as to whether the importer must trace the end use of its supply of auto components to its customers.

Additionally, other unresolved disputes have emerged from decisions of Courts, which have

once again opened the pandora's box of classification of auto parts and thereby, created doubts regarding basic customs duty rate applicable on such parts.

Recent Supreme Court decision in the case of *Westinghouse Saxby*, though is delivered in respect of parts of railway locomotives but will have a far-reaching impact on classification of parts of motor vehicles as well. The Apex Court while classifying the part of locomotive, applied the 'sole or principal use' test and held that if an item is solely or principally used with the articles of Section XVII (say, railway locomotives or motor vehicles), then the product is classifiable as part of the vehicle even if it is excluded from chapter notes relevant to classification of railway locomotives, motor vehicles etc.

It is important to clarify that above discussed principle of classification will be relevant not only for customs duty but also GST rate since rules of interpretation, Sections Notes and Chapter Notes as appearing in Custom Tariff are also applicable to GST rate notification. For instance, parts of motor vehicles classifiable under Chapter 87 attract IGST at the rate of 28%; whereas the parts which are not classifiable under Chapter 87 generally, attract a lower rate of 18% or in some cases even lesser GST rate. Resultantly, considering the rate arbitrage, importers and domestic suppliers of such parts, whether supplying directly to an automobile manufacturer or in after sales market, will need to revisit the classification adopted by them.

While the above taxation issues in the auto sector persists, Government is undertaking all the necessary steps to incentivize investors to set up manufacturing facility in the automotive sector in India. To promote domestic manufacturing in India, around INR 57,042 crore financial outlay over a 5-year period has been approved for automobiles and auto component sector under the Production Linked Incentive (PLI) scheme for enhancing manufacturing capabilities and exports. This scheme has not been notified yet, however Government will come up with the scheme soon.

Fulfilment of certain thresholds will be required for a claimant to qualify for PLI scheme that will offer maximum incentives in the form of cash back on incremental sales. Currently, it has been proposed to give cashback ranging from 2% to 12% of incremental sales and exports revenue given by automobile players. Presently, under the notified PLI scheme for Pharmaceuticals sector, cashback ranging from 3%-10% is given of the net incremental sales revenue over the base year.

However, just like every coin has two sides, everything will not be rosy for automotive sector with the mere introduction of incentives. Disruptions in supply chain and logistics might build up as shift in operations to India from outside in the background of PLI may take a long period of time due to the quality and volumes offered at the international level.

Even though Government has introduced various incentives including PLI scheme to encourage the investors to set up domestic manufacturing in automotive sector, in the background of various unresolved indirect tax disputes involved in the sector, hesitation by the investors to enter into this sector is bound to grow, more particularly owing to the potential higher quantum involved in such disputes. While increase in customs duty on auto parts and various schemes introduced by the Government including PLI scheme with an objective to promote domestic manufacturing is a welcome

move, it is also imperative to bring more clarity on potential tax issues to enable domestic industry to settle in the long run. Intent is undoubtedly clear and positive, but one needs more action to develop the faith of investors in the automotive sector. It is hoped that sooner than later, the same will be restored by active participation of the Government.

[The authors are Article Assistant, Associate and Partner, respectively, in GST Advisory practice at Lakshmikumaran & Sridharan Attorneys, Gurugram]

Goods and Services Tax (GST)

Notifications and Circulars

Dynamic QR Code for B2C supplies – Penalty for non-compliance waived till 30 June 2021: Waiver of penalty for non-compliance of the Dynamic QR Code provisions has been extended for the period from 1 December 2020 till 30 June 2021, subject to the condition that the person liable to implement such code complies from 1 July 2021. It may be noted that earlier penalty was waived for such non-compliance for the period from 1 December 2020 to 31 March 2021, subject to the condition that the said person complies from 1 April 2021. Notification No. 89/2020-Central Tax, dated 29 November 2020 has been amended for this purpose by Notification No. 6/2021-Central Tax, dated 30 March 2021.

Ratio decidendi

Provisional attachment – Conditions prescribed by statute must be strictly followed: Observing that the power to order a provisional attachment of the property of the taxable person including a bank account, under Section 83 of the HPGST Act [equivalent to CGST Act] is draconian in nature, the Supreme Court has held that the conditions prescribed by the statute for a valid exercise of this power must be strictly fulfilled. The Court was of the view that before ordering a provisional attachment, the Commissioner must form an opinion based on tangible material that the assessee is likely to defeat the demand and therefore the provisional attachment is necessary for the purpose of protecting the interest of the government revenue. It noted that 'necessity' postulates that the interest of the revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. Further, observing that under Rule 159(5) of the HPGST Rules, 2017, the person whose property is attached is entitled to an opportunity of being heard, the Court rejected the Revenue department's contention that opportunity of being heard was at the discretion of the Commissioner. It also rejected the contention that merely

because proceedings were pending/concluded against another taxable entity (on invoices of whom the assessee had claimed ITC), the powers of Section 83 could also be attracted against the assessee-appellant. Allowing the appeal of the assessee, the Court also noted that since the final order under Section 74 was passed, the provisional attachment must come to end. [*Radha Krishan Industries* v. *State of Himachal Pradesh* – Judgement dated 20 April 2021 in Civil Appeal No 1155 of 2021, Supreme Court]

Section 74(5) not a statutory sanction for amount collected prior to final determination of liability: The Madras High Court has allowed a writ petition filed seeking refund of the payments made on the day of investigation and on subsequent days. The petitioner had contended that the payments were not voluntary as required under Section 74(5) of CGST Act but were made under coercion. The Court observed that Section 74(5) and 74(6) provide an opportunity for the assessee or the revenue to ascertain proper amount of tax, interest and penalty with acceptance by the proper officer even before the issuance of show cause notice. The Court was of the view that assessee merely signing a statement, admitting tax liability under stress of investigation, and making payments on the basis of such statement cannot lead to self-ascertainment. Relying on the decision of *Clear Trip Pvt. Ltd.* v. *UOI* [2016 VIL 794 BOM ST] and guidelines formulated in the case of *Bhumi Associate* v. *Union of India* [2021 VIL 117 GUJ], the Court allowed the refund of the amount collected through DRC-03 before determination of liability. [*Shrinandhidhall Mills India Private Limited* v. *Senior Intelligence Officer* – 2021 VIL 271 MAD]

No requirement to pay IGST on Ocean freight, however refund of such IGST already paid to await final decision of Supreme Court: The Orissa High Court has directed the department to not require the petitioner to pay IGST on ocean freight until further orders. However, it was clarified that refund of IGST already paid on ocean freight will be available only on the basis of the final decision of the Supreme Court yet to be passed. Direction was sought for non-payment of GST on ocean freight in lieu of the Supreme Court Order passed in *Union of India* v. *Mohit Minerals Pvt. Ltd*. The Court observed that no interim order was passed by the Supreme Court for staying operations of the said order and the subsequent judgement in the case of *Bharat Oman Refineries Ltd.* v. *Union of India*. [*Indian Farmers Fertilizers Co-operative Ltd.* v. *Union of India* – 2021 VIL 282 ORI]

Recovery of interest on delayed payment of tax – Form DRC-07 and not DRC-01 to be issued: Relying upon Section 50 of the CGST Act, 2017 read with Rule 142(1)(a) of the CGST Rules, 2017, the Gujarat High Court has held that DRC-01 cannot be issued for recovery of the amount towards interest on delayed payment of tax. It noted that according to Section 75(12), if there is any amount of interest payable on tax and which had remained unpaid, the same must be recovered under the provisions of Section 79. Further, relying on Rule 142(5), the Court held that the notice should have been issued in Form GST DRC 07 and should specify the amount of tax, interest and penalty payable by the person chargeable with tax. The impugned order issued in GST DRC 01 was hence ordered to be quashed. [*Rajkamal Builder Infrastructure Private Limited* v. *Union of India* – 2021 VIL 240 GUJ]

Summons under Section 70 is not notice under Rule 159(5): The Madras High Court has held that summons issued under Section 70 of the CGST Act cannot be construed as a notice

affording an opportunity of hearing to the assessee, in terms of Rule 159(5) of the CGST Rules, 2017. Observing that the summons was in connection with the investigation initiated against the assessee, the Court held that the Department cannot take umbrage under the summons to be construed as a notice under Rule 159(5). [*Senior Intelligence Officer* v. *KPN Travels India Ltd.* – 2021 VIL 241 MAD]

Mere existence of some discrepancies cannot lead to conclusion of undisclosed turnover: The Allahabad High Court has held that once the revenue authority accepted, even if impliedly, that the transaction were covered by regular invoices and those details had been uploaded on the web portal by issuing e-way bills, merely because there existed certain discrepancies, the transaction cannot be said to be one falling under the category of undisclosed turnover. The Court was of the view that to hold that there was discrepancy in the account is different and lighter charge than to hold that the assessee had not disclosed or concealed part of its turnover. The High Court also noted that the invoice is a primary evidence of the transaction and that unless the revenue authority disputes its genuineness, it cannot be lightly overlooked. [*Jai Maa Jwalamukhi Iron Scrap Supplier* v. *State of Uttar Pradesh* – Judgement dated 17 March 2021 in Writ Tax No. 614 of 2020, Allahabad High Court]

Debit note is always connected to invoice – Amendment in Section 16(4) not material: The Gujarat AAR has held that just because the words 'invoice relating to such' connected to 'debit note pertains' was omitted by the Finance Act, 2020, it does not mean that the relation of the debit note with the invoice has been cut off. The AAR was of the view that the omission does not mean that the year in which the debit note was issued will be considered as the 'financial year' as per amended Section 16(4) of the CGST Act, 2017. Relying on the definition of 'debit note', Section 34(3) and the particulars to be provided in a debit note, it held that irrespective of the amendment, the fact remains that a debit note is always connected to the invoice and issued in relation to change in value of an invoice. The Input Tax Credit (based on debit notes) was hence denied on limitation. [In RE: *I-Tech Plast India Pvt. Ltd.* – 2021 VIL 205 AAR]

Date of issue of voucher is 'time of supply' of goods or services for which it is redeemed later: The Tamil Nadu Appellate AAR has held that the time of supply of gift vouchers / gift cards by the retailer of gold jewellery to the customers is the date of issue of such vouchers. Holding that gold voucher (representing the underlying future supply of gold jewellery) would be taxable at the time of issue of the voucher, the AAAR observed that the interpretation does not result in double taxation as transfer of gold subsequently will not be subject to tax at the time of redeeming the voucher for gold. The Appellate Authority was also of the view that the applicable rate of tax would be as applicable to that of the goods in the present case. It noted that since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer. [In RE: *Kalyan Jewellers India Ltd.* – 2021 TIOL 12 AAAR GST]

Services by cab aggregator – GST liability on pick-up services, services by associated partner, etc.: The Karnataka AAR has held that the pick-up charges paid to the owner / driver by the cab aggregator after collecting from the passengers through the e-commerce platform, are liable to GST. The Authority noted that applicant (cab aggregator) is the supplier of such service, in terms of Section 9(5) of the CGST Act,

2017 and that since the driver needs to pick up the passenger before starting of the radio taxi service, the pick-up service is incidental to the main service of transportation of passengers by the drivers. The AAR also held that the support services provided to the applicant by Associate Partners nominated in each district, are not part of the services of transportation of passengers through the e-commerce operator and hence are not covered under Section 9(5) of the CGST Act 2017. It was also held that the amount received from drivers/owners towards bidding and service charge collected for facilitating the payment of goodwill amount to drivers was liable to GST @ 18%. [In RE: *Kou-Chan Technologies Pvt. Ltd*. – 2021 VIL 191 AAR]

Subsidized shared transport facility provided to employees is not supply of service: The Uttar Pradesh AAR has held that the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, is not supply of service by the company to its employees. The Authority was of the view the activity was not related to the principal business of the applicant (software development) and therefore, was neither in the course of the business of the applicant nor incidental/ ancillary to the principal business activity. It also observed that the said activity was not a factor which would take the business activity of the applicant forward. The said facility was being provided by a third-party vendor and for making payment to the third-party vendor, the applicant would deduct subsidized amount from the salaries of employees and bear the balance cost itself. The applicant was also not availing credit of input tax paid. [In RE: *North Shore Technologies Private Limited* – 2021 VIL 170 AAR]

ITC available on free supply of tables and chairs to school under CSR activity: Observing that the applicant was compulsorily required to fulfil its Corporate Social Responsibilities (CSR) under the Companies Act, 2013, the Uttar Pradesh AAR has held that credit of input tax on free supply of various goods such as tables, chairs to the school building would not be barred under the clause (h) of Section 17(5) of CGST Act, 2017 as gifts. It noted that the expenditure was incurred for the purpose of complying with the requirements of Company Law and was in the course of the business of the applicant. However, it declined the ITC on goods and services used for construction of school building which was capitalized in the books of accounts. In this regard, the Authority noted that clause (c) and (d) of Section 17(5) restricted the credit of GST paid to the extent of capitalisation. [In RE: *Dwarikesh Sugar Industries Limited* – 2021 VIL 168 AAR]

Non-returnable sinking fund collected by RWA from members is advance for service and liable to GST: The Karnataka AAR has held that the amounts collected by a non-profit making Residents Welfare Association, formed by individual apartment/flat owners, towards Sinking Fund amount to advances meant for future supply of services to members. Relying upon the definition of 'consideration' and noting that there existed no bye law to state that the balance amount of the sinking fund will be refunded to the members after utilizing the same in future, the AAR held that the amounts that are not returnable can be termed as 'advances' and not 'deposits'. AAR also held that the service is covered under SAC 9995 as 'Services of Membership Association' and is taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate). [In RE: *Olety Landmark Apartment Owner's Association* – 2021 TIOL 104 AAR GST]

Customs

Notifications and Circulars

India-Japan CEPA – Deeper tariff concessions notified: Effective rate of duty on certain imports from Japan under the India-Japan Comprehensive Economic Partnership Agreement has been reduced to 'zero', except for all goods covered under Tariff Item 84082020 and sub-heading 870840 of the Customs Tariff. Notification No. 69/2011-Cus. has been amended for this purpose by Notification No. 20/2021-Cus, dated 30 March 2021 with effect from 1 April 2021.

India-Mauritius CECPA effective from 1 April 2021 – Rules of Origin and tariff notification notified: The CBIC has notified the Customs Tariff (Determination of Origin of Goods under Comprehensive Economic Cooperation and Partnership Agreement between the Republic of India and the Republic of Mauritius) Rules, 2021. These rules have come into force from 1 April 2021 and will govern the preferential rate of duty for import of goods from Mauritius to India. Notification No. 38/2021-Cus (N.T.), dated 31 March 2021 has been issued for the purpose. Further, Notification No. 25/2021-Cus., dated 31 March provides for effective rate of duty for specified imports originating from Mauritius.

IGST and Compensation Cess exemption on imports by EOUs or under Advance Authorisation or EPCG scheme extended: The exemption from payment of IGST and Compensation Cess on goods imported under the Advance Authorisation Scheme or the Export Promotion Capital Goods (EPCG) Scheme or by the Export Oriented Units, has been extended up to 31 March 2022. Notifications Nos. 19/2021-Cus., dated 30 March 2021 and 23/2021-Cus., dated 31 March 2021 have been issued for the purpose.

Timeline under Customs Section 46 for filing Bill of Entry relaxed for short haul vessels/flights: Section 46 of the Customs Act, 1962 as amended by the Finance Act, 2021 requires an importer to file Bills of Entry (BE) before the end of preceding day of arrival of vessel/aircraft/vehicle carrying the imported goods at Customs port/station at which the goods are to be cleared for home consumption or warehousing. However, the CBIC has amended the Bill of Entry (Electronic Integrated Declaration) Regulations, 2018 and Bill of Entry (Forms) Regulations, 1976 *vide* Notifications Nos. 34 and 35/2021-Cus (N.T.), both dated 29 March 2021 allowing filing of BE latest by end of the day of arrival of the vessel/aircraft/vehicle in case of short haul vessels/flights. Further, Circular No. 8/2021-Cus., dated 29 March 2021 also clarifies that in respect of imported goods arriving at seaports, 'consigned country' [Bangladesh, Maldives, Myanmar, Pakistan and Sri Lanka] will refer to the country from where the goods have been consigned by the exporter of such goods by way of Bill of Lading. Such benefit cannot be extended in cases of transshipment.

Verification of identity of exporters, importer or Customs broker – New Regulations notified: Customs (Verification of Identity and Compliance) Regulations, 2021 have been notified on 5 April 2021 to provide for verification of persons who are newly engaging in import or export activity (after introduction of these Regulations). These regulations will also apply in case of persons who may have engaged in import or export activity or availed or claimed the

benefits mentioned in sub-clause (a) to (f) of Section 99B(3)(i) of the Customs Act, 1962 or engaged as a Customs Broker in such activity or in availing or claiming such benefits prior to the commencement of these regulations. Persons selected for verification must furnish number of specified documents on the Common Portal within prescribed time. It may be noted that the regulations also provide for physical verification of the address by the proper officer. These regulations notified by Notification No. 41/2021-Cus. (N.T.), dated 5 April 2021 also provide for a penalty for contravention of the provisions.

Copper and Aluminium – Mandatory registration of imports of certain products: A new policy condition has been inserted in Chapters 74 and 76 of the ITC (HS), 2017 whereby Import Policy of the goods falling under specific HS codes has been amended from 'free' to 'free subject to compulsory registration under the Non-Ferrous Metal Import Monitoring System ('**NFMIMS**')'. The annexure to the Notification No. 61/2015-20, dated 31 March 2021 issued for the purpose, also provides the specific HS codes for which registration will be mandatory under NFMIMS. The importers of goods covered under these specific HS codes are required to submit advance information of import consignments and will have to obtain a registration number before the arrival of the consignment.

Pharmaceuticals and drugs – Implementation of Track and Trace System for export consignments extended to 1 April 2022: The DGFT has extended the exemption from maintenance of data under Para 2.90A(vi) of the Foreign Trade Policy 2015-20 till 1 April 2022. Consequently, the relevant data for drugs manufactured by SSI or non-SSI units will have to be maintained on the prescribed Central Portal after 1 April 2022. Public Notice No. 46/2015-20, dated 30 March 2021 has been issued for the purpose.

Non-Preferential Certificate of Origin – Electronic applications through Common Digital Platform: The electronic platform for Certificate of Origin is being expanded beyond Preferential Certificate of Origin to facilitate electronic application for Non-Preferential Certificates of Origin ('**CoO (NP)'**). Applications for CoO (NP) may also be submitted through e-CoO platform w.e.f. 15 April 2021. However, there shall be a transition period for CoO (NP) issuing agencies to on-board this common digital platform and hence the existing procedure of submitting paper CoO applications directly to the designated issuing agency shall also be in operation in parallel. As per DGFT Trade Notice No. 48/2020-21, dated 25 March 2021, submission and issuance of CoO (NP) by the issuing agencies through their paper-based system may continue up to 31 July 2021 or until further orders.

Ratio decidendi

Bill of Entry amendment in manual form when ICES portal not supports such amendment: In a case involving erroneous mention of GSTIN in the Bill of Entry, the Madras High Court has allowed manual correction. The Petitioner's request for amendment of GSTN in Bill of entry as per Section 149 of the Customs Act was earlier rejected by the Custom authorities due to the reason that once the data is transmitted to GSTN, ICES would not be able to amend the details. The petitioner was unable to claim the input tax credit in respect of IGST paid on such imports. Relying upon Section 149, the court allowed making amendment in Bill of Entry after relevant documentary evidences are placed to prove the plea of erroneous mention of GSTN numbers in Bill of entry. The Court further stated that it is incumbent upon the authorities to ensure the technology is kept up to date and to put in place measures to facilitate seamless exchange of data. The Court directed that till such

mechanism is placed, the amendment of such documents must be considered manually. [*Hindustan Unilever Limited* v. *Union of India* – 2021 TIOL 865 HC MAD CUS]

Seizure – Extension of period for issuance of SCN is conditional upon reasons being recorded and intimated to assessee prior to expiry of original period: In a case involving seizure of goods for mis-declaration of country of origin, the Madras High Court has held that an extension of the period for issuance of show cause notice is conditional upon reasons being recorded and such reasons being intimated to the assessee, prior to the expiry of the original period of six months. It held that the argument, that extension of time may be intimated post-extension, was contrary to the express language of the provision as well as its scheme, post amendment of Section 110(2) of the Customs Act, 1962 by the Finance Act, 2018. The Court noted that though the provision does not say that such reasons be supplied to the assessee, it observed that the provision is clear to the effect that the intimation of extension be conveyed to the concerned assessee during the original period of seizure. It was of the view that such intimation must be accompanied by the reasons on the basis of which the extension has been granted. [*Kannan Ramdurai Iyer* v. *Commissioner* – 2021 TIOL 633 HC MAD CUS]

Customs authorities have inherent power to process refund claims in case of SEZ clearances: Observing that under Section 30 of the SEZ Act 2005, goods removed from SEZ to DTA are chargeable to customs duties and the excess duty paid as Customs duty can only be claimed as refund under Section 27 of the Customs Act 1962, the CESTAT Ahmedabad has held that the Customs authorities have inherent powers under the Customs Act to process such refunds. Further, it also noted that Rule 47(5) of the SEZ Rules, 2006 empowers the Customs officers to issue refund claims. The refund claims were earlier rejected by the Department primarily on the grounds of eligibility to refund and power to refund under SEZ Act. [*Suchi Fasteners Pvt. Ltd.* v. *Commissioner* – 2021 VIL 134 CESTAT AHM CU]

Refund not deniable for delay in filing when vital documents seized by DRI: The Madras High Court has held that the application for refund of Special Additional Duty (SAD) cannot be rejected based on the limitation period as prescribed under the relevant notification when the vital documents itself including the Bills of Entry were seized by Directorate of Revenue Intelligence. Accordingly, the High Court remanded back the matter to pass a fresh order of refund of amounts paid by the petitioner at time of import, if the petitioner has otherwise satisfied other requirements of the Notification No. 102/2007-Cus as amended by Notification No. 93/2008-Cus. [*Kaamdaa Impex & Others* v. *Commissioner* – 2021 VIL 248 MAD CU]

Paper import – 'Stock lot' clarified: The Madras High Court has set aside the seizure and detention of the imported paper alleged to be of 'stock lot'. As per DGFT Trade Notice No. 8/2020-2021, the paper consignment is qualified to be a 'stock lot' if papers of different descriptions are bundled together. The department had categorised the imported paper as falling under different heads only based on GSM dimensions. Allowing the writ petition of the importer, the High Court noted that the concept of GSM did not figure anywhere in sub-heading 4810 13 of the Customs Tariff Act, 1975 and that it was patently illegal. The Court was of the view that when DGFT uses a word, it means just what it chooses it to mean - neither more nor less. [*Jayasakthi Papers* v. *Commissioner* – 2021 TIOL 770 HC MAD CUS]

Classification of parts and accessories of toys in Chapter 95 – Relevance of Chapter Note 3 relating to sole or principal use: The United Kingdom's Upper Tribunal (Tax and Chancery Chamber) has upheld the decision of the First-tier Tribunal (FTT) that the clothing and wigs used with dolls and stuffed toys should be classified as parts and accessories of stuffed toys within sub-heading 9503 00 41. The clothing and wigs had slits in them to allow the tail and protruding ears of the bears (stuffed toys) to be pulled through them. The FTT had concluded that the fact that the clothing items and wigs were suitable for use with dolls did not prevent their being principally suitable for use with stuffed toys. Relying on Chapter Note 3 to Chapter 95 of the Combined Nomenclature adopted under Article 1 of EC Regulation 2658/1987, the Upper Tribunal was of the view that it was not necessary to resort to General Interpretative Rule 3 for the purposes of classification here and that an article can have a principal use with items in only one heading or subheading. Note 3 directs that parts and accessories which are solely or principally suitable for use with articles which fall within Chapter 95 must be classified with those articles. The Upper Tribunal was also of the view that reference to 'parts and accessories' in the sub-heading 9503 00 29 (relating to dolls) may extend beyond parts and accessories which are suitable for use 'solely or principally' with dolls. The Tribunal hence dismissed the plea that the purpose of Note 3 was to mandate a comparison at chapter level and that Note 3 operates only to assist the classification of items as between headings in different chapters of the CN. [*Build-a-Bear Workshop UK Holdings Limited* v. *Commissioner, HMRC* – Decision dated 29 March 2021 in Appeal Numbers UT/2020/0051 and 0054, UK's Upper Tribunal Tax and Chancery Chamber]

Central Excise, Service Tax and VAT

Ratio decidendi

Cenvat credit available on workmen compensation insurance policy – Assessee and not the workmen being the actual beneficiary: The Larger Bench of the CESTAT has held that the workmen compensation insurance policy taken by the assessee-manufacturer under the provisions of the Workmen Compensation Act, 1923 is not excluded by clause (C) of Rule 2(l) of the Cenvat Credit Rules, 2004. Relying upon the Madras High Court decision which had overruled the CESTAT Order in the case of *Ganesan Builders Ltd*., the Larger Bench held that the view expressed by the Tribunal in its decision in the case of *Hydus Technologies India* lays down the correct position in law. It observed that the workmen were not the beneficiaries of the policy but it was the assessee and therefore, the benefit

of the insurance flowed directly to the assessee themselves and not to individual employees. It noted that the insurance covered the liability of the assessee against any potential claim under Sections 3 and 4 of the Workmen Compensation Act. [*Dharti Dredging and Infrastructure Ltd.* v. *Commissioner* – 2021 TIOL 223 CESTAT HYD LB]

Voluntary statements cannot constitute pre-show cause notice consultation: The Delhi High Court has held that voluntary statements cannot constitute pre-show cause notice consultation as envisaged in the paragraph 5 of the CBIC Master Circular dated 10 March 2017. The Court in this regard noted that in consultation there is back and forth between parties concerned with the consultative process while a voluntary statement is a one-way dialogue made before an authority which does not take a decision. Further, noting that the show cause notices were issued by the officer of the rank of Additional Director General, it held that voluntary statements made by the officials of the assessee before the Senior Intelligence Officer would not constitute a pre-show cause notice consultation. [*Omaxe New Chandigarh Developers Pvt. Ltd.* v. *Union of India* – 2021 TIOL 820 HC DEL ST]

Notice demanding service tax for service to separate juridical entity outside India not exempt from pre-SCN consultation: The Delhi High Court has held that the question as to whether the services rendered by the assessee to two separate juridical entities outside India will be exigible to tax, will fall within the realm of adjudication and not within the excepted category (prevention case), for the purpose of pre-show cause notice consultation. The Court also observed that the allegation that the petitioner company did not deliberately register itself with the concerned authority for the purposes of service tax and consequently, evaded payment of service tax were matters which will get sorted out if the Department is able to obtain necessary information on the true nature of the services, etc. It was of the view that merely emphasizing, in the counter-affidavit and the sur-rejoinder, that this was a case that falls in the first exception, i.e., 'prevention', would not take it out of the purview of the CBIC Master Circular dated 10 March 2017. [*Back Office IT Solutions Pvt. Ltd.* v. *Union of India* – 2021 TIOL 867 HC DEL ST]

Refund of service tax to SEZ unit – Conditions of Notification No. 12/2013-ST not material when substantial conditions in SEZ Act fulfilled: Relying upon Telangana and Andhra Pradesh High Court's decision in the case of *GMR Aerospace Engineering Limited* the CESTAT Chennai has set aside the rejection of service tax refund claim to a SEZ unit under Notification No. 12/2013-ST. The Tribunal was of the view that rejection of refund claim, stating that refund is time barred as well as the classification of services was different or that the services were not specified services, was not sustainable. The Telangana High Court had held that notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding whether a SEZ unit qualifies for exemption. CESTAT Mumbai decision in the case of *Cybercam Datamotive Information Ltd.* holding that conditions prescribed in the notification cannot be applied to deny refund when substantial conditions prescribed in the SEZ Act have been fulfilled, was also noted. [*ATC Tyres Pvt. Ltd.* v. *Commissioner* – 2021 VIL 106 CESTAT CHE ST]

Cenvat credit on prefabricated building parts, etc. for creating clean room – Credit available as 'inputs': The CESTAT Delhi has allowed Cenvat credit on prefabricated building parts, walls, panels, etc. used for creating 'clean room' required for manufacture of pharmaceutical products. The Tribunal in this regard observed that clean room is necessary for maintaining

proper temperature and hygiene as well as keeping the RH factor in control, and without it manufacture of dutiable medicines is not possible. Noting that under Rule 2(k) of the Cenvat Credit Rules, 2004, inputs meant, 'all goods used in the factory of manufacturer of final products', the assessee was held entitled to Cenvat credit on the items in dispute as 'inputs'. [*Syncom Formulations (I) Ltd.* v. *Commissioner* – 2021 VIL 140 CESTAT DEL CE]

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave
New Delhi -110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park, Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Phone : +91-80-49331800
Fax:+91-80-49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune-411 001.
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2nd Floor, Kanak Building
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