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CGST Rule 96(10) and its inadvertent consequences

By **Nitum Jain**

There is no doubt that the GST regime has not seen a rule so debated as Rule 96(10) of the Central Goods and Services Tax Rules, 2017 ('**CGST Rules, 2017**'). This provision has seen conflicting interpretations, several retrospective amendments and multiple challenges before the High Courts. One may think that after so much brouhaha, the final amended rule will be free from controversy. Unfortunately, the rule still has a long way to go. Some shortcomings which still persist are discussed in the succeeding paragraphs.

Scope of 'person'

To begin with, the rule creates a restriction on refund of IGST paid on exports when 'a person' or his supplier has availed specified benefits. The term 'a person' brings with it a set of problems in cases where the exporter himself avails benefit such as Advance Authorisation ('**AA**') scheme and Export Oriented Unit ('**EOU**') scheme. The term 'person' is defined under the Central Goods and Services Tax Act, 2017 ('**CGST Act**') to include a company, firm, etc. or in another words, refer to the entity itself. On the other hand, the benefit of AA/ EOU scheme could be availed by units of one registration of a company and not others. Does this drafting error lead to the conclusion that the other registrations of such company are ineligible to claim refund of IGST paid on exports?

Considering the intention of the restriction and the State-wise registration system of GST, the provision can be reasonably interpreted to mean that the restriction will apply only to that registration which actually availed the benefit under the AA/ EOU scheme. In other words, if AA is obtained by Company X and imports made without payment of IGST thereunder are used to make exports by Company X's registration in Rajasthan, it can be said that the restriction under Rule 96(10) will be limited to the refunds of Rajasthan registration only.

Besides, this interpretation does not in any manner militate against the ethos of the restriction. The restriction is in response to the possibility that if inputs are procured without tax, other credits will be used to pay IGST on exports of the finished goods which results in such credits being converted into cash by way of refund. In case of multiple registrations, only that registration which has availed import benefits can use the refund of IGST paid option in this manner. Even if an assessee diverts IGST-free imported goods to other registrations, there would be a deemed supply on which full tax is payable, whereby the inward benefit would get nullified.

Multiple units under same registration

Having discussed the issue in the context of the restriction of Rule 96(10) across multiple registrations, we may now move on to the application of the restriction in case of multiple units in the same registration.

For instance, one registration of Company X has two units in Haryana, one of which is an EOU unit, wherein both units undertake exports. By operation of Rule 96(10) of the CGST Rules, the

restriction on refund of IGST paid on exports will apply not only on exports made by the EOU but also to exports by the other unit in the Domestic Tariff Area ('**DTA**'). Thus, even if the DTA unit never availed any benefits on the inputs, it will still be covered under the restriction.

Applying the provision at unit-level may not be possible as the GST regime does not make any distinction between transactions at a unit level when the units belong to the same registration. While the Foreign Trade Policy and the customs regime have created checks and balances in both the AA scheme and the EOU scheme to ensure that inputs imported without payment of IGST are not diverted by the eligible unit to other units; there is still a requirement for a mechanism under the GST regime for segregation of unit-level transactions to limit the restriction under Rule 96(10) to any particular unit. Thus, the application of the restriction on exports by the DTA unit in the above example is an inadvertent but unavoidable consequence of how the provision stands today.

Way forward

One possible solution to this problem could be to have a system of making one-to-one correlation between inputs on which benefits have been availed and the exports made of the finished goods made therefrom. However, this would entail a major compliance burden on both the assessee and the tax authorities, which makes this a Catch-22 situation.

With the proposed amendment to Section 16 of the IGST Act by the Finance Bill, 2021, the option of payment of IGST on exports will soon be limited to certain notified supplies and the significance of these shortcomings will be substantially reduced. However, due to such shortcomings of the option of paying IGST on exports and, even before the amendment, the option to export under LUT/ bond and claiming refund of unutilized credit is a more popular option amongst the export community.

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Goods and Services Tax (GST)

Notifications and Circulars

Suspension/Cancellation of GST registration – CBIC notifies SOPs for CGST Rule 21A(2A): Central Board of Indirect Taxes and Customs ('**CBIC**') has notified standard operating procedures for implementation of the provision of suspension of registrations under sub-rule (2A) of Rule 21A of the Central Goods and Services Tax Rules, 2017. Said Rule provides for suspension of the GST registration when on comparison of GSTR-3B and GSTR-1, significant differences or anomalies are seen indicating contravention of the provisions of the CGST Act or the rules made thereunder. Circular No. 145/01/2021-GST, dated 11 February 2021, issued for the purpose, provides guidelines for implementation of the provision till the time an independent functionality for Form REG-31 is developed on the portal.

J&K – 100% GST linked incentive to be provided under New Central Sector Scheme for Industrial Development of Union Territory of J&K: The Ministry of Commerce and Industry has on 19 February 2021 notified a new Central Sector Scheme for Industrial Development of Union Territory of Jammu & Kashmir. The Scheme which will be effective from 1 April 2021 till 31 March 2037, provides for Capital Investment Incentive (CII), Capital Interest Subvention (CIS), Goods & Services Tax Linked Incentive (GSTLI) and Working Capital Interest Subvention (WCIS) to all manufacturing units (except those which manufacture certain products as provided in the negative list) and service sector units for services listed in the positive list. Under GSTLI, all eligible units will be granted Goods & Services Tax Linked Incentive equal to 100% of gross payment of GST, i.e. GST paid through cash and input tax credit for a maximum period of 10 years. However, it may be noted that GST paid on exported goods or services will not be counted towards eligible incentive amount. According to the Press Release of the Ministry, the scheme is not a reimbursement or refund of GST but gross GST is used to measure eligibility for industrial incentive to offset the disadvantages that the UT of J&K face.

Ratio decidendi

E-way bill need not be cancelled if transportation of goods not takes place within 24 hours of its generation: The Allahabad High Court has held that the Rule 138(9) of the CGST Rules, 2017 does not prescribe that the dealer should necessarily cancel the e-way bill if no transportation is made within 24 hours of its generation. It noted that the said rule does not provide any consequence that may follow if such cancellation does not take place. The goods were transported 4 days after generation of the e-way bill and the department was of the view that the e-way bill was re-used. The High Court also held that if the e-way bill had not been cancelled within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place. The penalty was set aside observing that no inquiries were made by the tax authorities to establish evidence on whether the goods were transported on an earlier occasion with the same e-way bill. [*Anandeshwar Traders* v. *State of U.P. and others* – 2021 TIOL 240 HC ALL GST]

Penalty equivalent to tax not imposable for lapses in e-way bill of tax-paid goods: In a case where the validity of the e-way bill expired before the tax-paid goods could reach the destination and the petitioner-assessee did not approach the portal within the valid time, the Tripura High Court has held that the department exceeded its jurisdiction by imposing penalty equivalent to the tax payable. Observing that the assessee had already paid tax, the Court set aside the order of penalty. It was of the view that the breach which falls under Section 122(xiv) of the CGST Act, 2017, the penalty is fixed at INR 10,000 and that the penalty for an amount equivalent to tax is for the incidents when the tax is sought to be evaded or not deducted under Section 51, etc. The petitioner was directed to pay a sum of INR 10,000. [*Sri Gopikrishna Infrastructure Pvt. Ltd.* v. *State of Tripura and others* – 2021 TIOL 121 HC TRIPURA GST]

No detention on mere suspicion of mis-classification of goods: The Kerala High Court has held that mere suspicion of mis-classification of goods cannot be a basis for detention under Section 129 of the CGST Act, 2017. It was held that the inspecting authority can only detain the goods if the goods described in the transportation document are entirely different from the goods being transported, i.e., where the two goods can never be perceived as the same by ordinary persons endowed with reasonable skills of

cognition and comprehension. The description of the goods in the invoice and the e-way bill was 'fruit drinks' whereas the department was of the view that it had to be actually described as 'aerated soft drinks with added flavours'. The detention order was also set aside in another case where the goods were classified in the bill of supply and e-way bill as *papad* whereas the department considered the goods as un-fried fryums. [*Podaran Foods India Private Limited* v. *State of Kerala and others* – 2021 VIL 30 KER]

Arrest – Clubbing of offences of four different entities – Person committing offence: The Bombay High Court has rejected the plea of the petitioner that the input tax credit alleged to be wrongly availed by four distinct business establishments cannot be clubbed together to cross the threshold of INR 5 crores as provided in Section 132(1)(i) of the CGST Act. The petitioner had relied upon definition of 'person' under Section 2(84) of the CGST Act. The Court noted that as per material available on record, *prima facie*, not only was the petitioner alone responsible for the activities of the four firms and the entire KYC details and other information for registration of the said firms pertained only to the petitioner, but the petitioner had indulged in *prima facie* fake claims regarding addresses of the said four firms. The writ petitions were accordingly dismissed. [*Yogesh Jagdish Kanodia* v. *State of Maharashtra* – 2021 VIL 85 BOM]

ITC not deniable if GSTR-3B is filed but TRAN-1 not filed: Relying on the Punjab & Haryana High Court decision of *Adfert Technologies Pvt. Ltd. and Ors.* v. *Union of India and Ors*, the Jammu & Kashmir High Court has held that the assessee-petitioner cannot be deprived of the benefit of claiming the credit lying in its account on the stipulated date only on the basis of procedural or technical wrangles that one form TRAN-1 was not filled by the petitioner particularly when the petitioner has reflected the said credit in its return GSTR-3B. The petitioner had instead of submitting TRAN-1 form for claiming transitional credit, submitted GSTR-3B within the prescribed period. The Court directed the department to permit the petitioner to submit the form TRAN-1 either electronically or manually. [*Neptune Plastics* v. *Union of India & others* - 2021 VIL 98 J&K]

ITC not available on construction of jetties as not covered under 'plant and machinery': The Gujarat Authority for Advance Ruling ('**AAR**') has held since jetties were civil structures and were not classifiable as plant and machinery, the input tax credit of GST paid for construction of the LNG jetties is not available. The Authority also answered in negative the question as to whether the jetties would be covered within the expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it. It observed that the primary condition for a structure to be a 'foundation' was that it is required to be a concrete structure made of stones, bricks, cement etc., which should be located below the ground and provide support to the structure/building constructed above it. In contrary, jetties were civil structures constructed high above the sea shore and extended into the deep sea, stationed on pillars or plinths. [In RE: *Swan LNG Pvt. Ltd*. – 2021 VIL 24 AAR]

No ITC on sewage treatment plant, fire-fighting system, cable, etc.: The Haryana AAR has held that input tax credit is not available to the assessee-applicant on supply and installation of sewage treatment plant and fire-fighting system, supply of cable for transmission of electricity, supply of other material such as PCC Poles, structural steel, cable end kit, HDPE pipes, and for laying of cable and electrical installations for transmission of electricity. The Authority held that these goods or services were covered under the scope of works contract as stated in Section 17(5)(c) of the CGST Act, 2017.

Further, the explanation to Section 17(5)(d) includes additions to the extent of capitalisation in the ambit of construction and in the instant case, the applicant had constructed a building and the goods were added to the building already constructed. It was held that since sewage plant was attached to civil structure, therefore it would not come under the term 'plant and machinery'. Lastly, it observed that the said goods were attached to the walls or building so imbedded in the earth for the permanent beneficial enjoyment of the building. The ITC was held not eligible in accordance with Section 17(5)(c) and Section 17(5)(d) of the CGST Act, 2017. [In RE: *Synergy Global Steel Pvt. Ltd.* – 2021 VIL 59 AAR]

Charges recovered by Head Office from Branch Office in lieu of maintenance services qualify as supply: The Haryana AAR has held that the charges in lieu of maintenance services recovered by the Head Office from the Branch Office would qualify as supply of service by the HO to BO by the virtue of Entry 2 of Schedule I of the CGST Act. The Authority also ruled that the ISD mechanism was applicable only for the services and not for the goods, and hence the applicant was required to distribute GST credits on services by the way of ISD mechanism while the GST credits relating to goods could be distributed by way of normal registration mechanism. The applicant had centrally procured various goods/ services directly used for transportation services at its corporate office Haryana under 'Bill-to-Ship-to' model wherein goods/services were delivered to branch offices though ownership remained with HO. For the same, HO had entered into a maintenance agreement with its BOs to recover the amount on cost plus mark-up basis. [In RE: *TATA SIA Airlines Limited* – 2021 VIL 49 AAR]

Interest for delay in delivery covered under 'toleration of an act': The Haryana AAR has held that the consideration charged in the form of interest for delay in delivery of goods would qualify as supply under GST. The Authority noted that there was a written contract between the applicant and the supplier wherein the supplier was availing benefit of enhanced period for the delivery of goods. The activity was held as supply of service under the GST law by the virtue of Entry 5(e) of Schedule II of the CGST Act as the supplier was under an obligation to pay interest for such delayed delivery which was tolerated by the applicant. The Authority noted that for an activity to fall under the ambit of Entry 5(e) of Schedule II, there must be an agreement with benefit and obligation and there must be a toleration of an act. [In RE: *Haryana State Warehousing Corporation* – 2021 VIL 56 AAR]

UK VAT – Free education service where funding provided by government, is supply for consideration: The United Kingdom's Upper Tribunal Tax and Chancery Chamber has held that the provision of education and /or vocational training provided free of charge to students by a corporation and funded by grants from government funding agencies is a 'supply of services for consideration' for the purposes of Article 2(1)(c) of Principal VAT Directive. Going through the grant agreements, the Tribunal concluded that there existed direct link between the grants coming into the corporation and the free courses provided by it to the students. It though noted that the funding was not specific to any particular course, did not reflect the specific costs of any particular course, and did not identify the particular students who would take those courses but, stated that the law does not require such a degree of specificity. [*Colchester Institute Corporation* v. *Commissioner HMRC* – Decision dated 22 December 2020 in Appeal number: UT/2019/0006. UK's Upper Tribunal Tax and Chancery Chamber]

Customs

Notifications and Circulars

Job work and out-sourcing for manufacture on job work allowed on goods imported under IGCR Rules, 2017: Central Board of Indirect Taxes ('**CBIC**') has issued Notification 9/2021-Cus. (N.T.), dated 1 February 2021 to give effect to the draft amendment of May 2019 to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (**'IGCR Rules, 2017'**). The amended Rules allow job work activity on imported goods and out-sourcing for manufacture of goods on job-work. Rule 6A has been inserted explaining procedure for allowing job work on imported goods. The maximum period for which the goods can be sent to the job-worker is six months from the challan date. Further, imported capital goods can now be cleared after being used for the specified purpose on payment of duty, along with interest, on the depreciated value, following the straight-line method, at the specified rates.

IGST refund in case of mismatch between GSTR-1 and GSTR-3B – Interim solution extended for shipping bills filed between 1 April 2019 till 31 March 2021: CBIC has extended the interim solution as stated in its Circular No. 12/2018-Cus., in respect of IGST refunds where there is a mis-match between GSTR-1 and GSTR-3B, to shipping bills filed from 1 April 2019 till 31 March 2021. As per Circular No. 4/2021-Cus., dated 16 February 2021, the corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports in terms of the Circular and the actual IGST amount paid on exports of goods for the period April 2019 to March 2020 and April 2020 to March 2021 needs to be furnished by 31 March 2021 and 30 October 2021, respectively.

IGST refund in case of invoice mismatch – Officer interface available on payment of fees: Facility of officer interface to resolve issues pertaining to invoice mismatch (error code SB-005) leading to blocking of IGST refunds will now be available on permanent basis, subject to payment of INR 1000 by the exporter. Necessary amendments for this purpose have also been made in the Levy of Fee (Customs Documents) Regulations, 1970. It may be noted that facility of officer interface for correlation and verification of the claim was earlier available only for shipping bills filed till 31 December 2019. As per Circular No. 5/2021-Cus., dated 17 February 2021, the exporter can now avail the facility of correction of invoice mis-match errors in respect of all past shipping bills, irrespective of its date of filling.

Coal Import Monitoring System postponed to 1 April 2021: The Coal Import Monitoring System ('**CIMS**') shall now be effective from 1 April 2021 and the facility of online registration is available from 15 February 2021. DGFT Notification No. 56/2015-2020, dated 28 January 2021 has amended Notification No. 49/2015-20, dated 22 December 2020 for this purpose. It may be noted that CIMS was to come into force from 1 February 2021 and requires importers to submit advance information in an online system and obtain an automatic registration number, after paying prescribed registration fees.

Food Import Entry Points – General Notes in Import Policy revised: New sub paragraph (D) has been added under paragraph 4 of the General Notes regarding Import Policy (Schedule I in ITC(HS) 2017) listing out the Authorised Officers to handle food import clearance at 150 food import entry points for items listed against

1515 HS codes of ITC(HS) 2017. 150 food import entry points cover 27 sea ports, 15 airports, 31 land customs stations and 77 inland customs depots. DGFT Notification No. 57/2015-2020, dated 10 February 2021 has been issued for the purpose.

IEC provisions under Chapters 1 and 2 of Foreign Trade Policy revised: The updation in the Import Export Code ('**IEC**'), in addition to the existing application process for IEC, will now be done online. An IEC holder must ensure that the details in IEC is updated electronically every year during the April-June period. Even in case there are no changes, the same also needs to be confirmed online. According to the revised provisions, an IEC shall be de-activated, if it is not updated within the prescribed time. However, a deactivated IEC can be activated on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the Foreign Trade Policy. An IEC may also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system is timely addressed, failing which the IEC shall be deactivated. DGFT Notification No. 58/2015-2020, dated 12 February 2021 amends specified paragraphs of Chapters 1 and 2 of Foreign Trade Policy 2015-20 for this purpose.

B-17 bond – Proprietor of EOU when cannot provide surety: CBIC has clarified that in case of B-17 bond executed by EOU/STP/EHTPs in capacity of proprietorship or partnership firm, surety cannot be given by Proprietor/partner himself. It states that such sureties must be given by an independent legal entity other than the Proprietor/ Partner of the concerned Proprietorship/ Partnership EOU firm. Circular No. 3/2021-Cus., dated 3 February 2021 relies upon an earlier clarification of the Board in respect of independent directors of limited companies (EOUs).

High Speed Rail Projects to be covered under Project Imports: An amendment has been made in Notification No. 42/1996-Cus. to include high speed rail projects under Project Import Scheme. Consequentially imports for high speed rail projects will attract 5% Basic Customs Duty ('**BCD**'). Further, Project Import Regulations,1986 have been amended to nominate National High-Speed Rail Corporation Ltd. as the sponsoring authority for high speed rail projects. Notifications Nos. 9/2021-Cus. and 10/2021-Cus., both dated 1 February 2021 have been issued for the purpose.

SEZ – Inspection of duty-free goods on de-bonding and filing of B/E on DTA clearance of imported goods: The Ministry of Commerce & Industry, Department of Commerce, SEZ Division has clarified that the IT/ITES SEZ Unit which want to de-bond can opt for simple payment of duty without inspection of duty-free goods subject to the condition that they produce all relevant import and other documents of goods to establish their identity and to avoid requirement of physical inspection of such goods. NASSCOM's suggestion that considering the short shelf life and high depreciation value for IT assets, the government should consider one-time waiver of custom duty, seems to have been rejected. Further, as per SEZ Instruction No. 105, dated 5 February 2021, Bill of Entry is required to be filed in case where an IT/ITES units wishes to clear in DTA goods earlier imported into SEZ after paying applicable duty.

Ratio decidendi

Correction of mistake or error in self-assessed bill of entry is permissible: The Bombay High Court has held that amendment in the self-assessed bill of entry is permissible under Section 149 read with Section 154 of the Customs Act, 1962 which deals with amendment of bill of entry and correction of clerical or

arithmetical mistakes, respectively. According to the Court, the only condition in such scenario was that the amendment shall be allowed only on the basis of the documentary evidence which was in existence at the time of clearance of the goods. The High Court noted that the Supreme Court in the case of *ITC Ltd.* v. *Commissioner* had stated that in case any person is aggrieved by any order, including an order of self-assessment, he must get the order modified under Section 128 or '*under other relevant provisions of the Customs Act*'. [*Dimension Data India Pvt. Ltd.* v. *Commissioner* – 2021 TIOL 224 HC MUM CUS]

Exemption – Words 'required to manufacture' not contemplate actual use: The Karnataka High Court has held that the term 'required to manufacture' used in Notification No. 30/1997-Cus., relating to Advance licence, contemplates possible or intended use and not actual use. The Court was of the view that thus the material need not be directly used in the manufacture of the resultant product and proof of actual use was not a condition attached to the said exemption notification. [*Commissioner* v. *Aditya Birla Nuvo Ltd*. – 2021 VIL 47 Kar CU]

Provisional attachment of bank account cannot be continued beyond one year: The Bombay High Court observed that the terms 'provisional' and 'attachment' appearing under Section 110 of the Customs Act 1962, when read in conjunction, can only mean 'temporary attachment'. It was further observed that sub-section (5) of Section 110 provides a definite timeline of six months and an extension of further six months for provisional attachment of bank account. Accordingly, it was held that provisional attachment of bank account beyond the limitation period of one year was unlawful in terms of Section 110. [*Goodmatric Export Pvt. Ltd.* v. *UOI* – 2021 (1) TMI 871-BOM HC]

Penalty under Section 114A – Word 'or' cannot be interpreted as 'and': The Karnataka High Court has held that the word 'or' in Section 114A of the Customs Act, 1962 cannot be interpreted as 'and'. The Court was of the view that use of expression 'or', which is disjunctive between duty or interest, and further use of words 'as the case may be' suggest that the provision refers to two different persons and two different situations - one in which a person will be liable to duty and another where may be liable to pay interest only. It noted that the Section 114A contains a positive condition about levy of penalty equal to duty or interest and does not contain any negative condition. It was also held that CBIC Clarification dated 20 September 2002 cannot be contrary to the to the plain language of the provision. [*Commissioner* v. *Sony Sales Corporation* – 2021 TIOL 425 HC KAR CUS]

Demurrage charges not payable when goods seized/detained by Customs authorities: Differing from the dictum of the Delhi High Court in the case *Trip Communication Pvt. Ltd.* v. *UOI* [2014 (302) ELT 321], the Madras High Court has held that an assessee is not liable to pay rent or demurrage charges when the goods are seized or detained by the Customs department. The Court was of the view that such charges should not be charged for the period of departmental proceedings in terms of Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009. The Customs department was also directed to issue detention certificate. It observed that it was the practice of the authority to issue certificate when the circumstances warrant and when directed by the Court. [*MGG Trading Pvt. Ltd.* v. *Addl. Commissioner* – 2021 (2) TMI 311-MAD HC]

Refund of light dues paid twice due to system error not barred by limitation: The Kerala High Court has held that Section 19 of the Lighthouse Act, 1927 cannot be resorted to withhold an erroneous double payment or dual payment of

Light Dues made by a citizen due to a system error or failure. The Court observed that since the State will be unduly enriched by such erroneous or forced or inadvertent payments, defense of limitation cannot be claimed by the State. [*Seashore Ship Agencies. Pvt. Ltd.* v. *UOI & Ors.* – 2021 VIL 65 KER CU]

Appeal against provisional assessment order is not premature: The CESTAT Chennai has set aside the Order of the Commissioner (A) which had in-turn dismissed the appeal against the provisional assessment order. The Commissioner (A) had observed that appeal was premature since the order challenged was a provisional assessment. The Tribunal was of the view that rejection of appeal by the Commissioner (Appeals) holding that it was an appeal against provisional assessment, was against the settled positions of law. [*Rashtriya Ispat Nigam Ltd.* v. *Commissioner* – 2021 TIOL 58 CESTAT MAD]

Seizure – Waiver of SCN by importer is no ground for not following procedure under Section 110: The CESTAT Mumbai has held that the urgency shown by the assessee, by waiver of show cause notice, cannot restrict the revenue department from following the procedure prescribed under Section 110 of the Customs Act, 1962. In this case, the assessee had demanded early disposal of the proceedings and had waived the requirement of show cause notice. The Court noted that fifteen months had elapsed since the issue of the investigation report and the matter had not been adjudicated. [*S.G. International* v. *Commissioner* – 2021 VIL 36 CESTAT Mum CU]

Valuation – Related person – Evidence of influence in declared price required before review: The CESTAT Chennai has held that the declared prices cannot be reviewed without any evidence to the effect that the relation between the appellant and the foreign supplier has influenced the declared price or to the effect that there was a flow back of money from the importer to the related foreign supplier. The Tribunal noted that where neither the reviewing authority nor the Commissioner (Appeals) produced evidence to show that the prices were influenced by their relation or there was certain amount of flowback to the foreign supplier, the transaction value could not be rejected. [*Hanil Automotive India Pvt. Ltd.* v. *Commissioner* – 2021 TIOL 61 CESTAT MAD]

Central Excise, Service Tax and VAT

Ratio decidendi

Single transaction is covered under definition of 'casual trader': The Supreme Court has rejected the contention of the revenue department that since the definition of 'casual trader' envisages occasional transactions of business involving buying and selling of goods, i.e., the plurality of transactions was a condition precedent for treating a trader as a 'casual trader', a single transaction of purchase of a motor vehicle will not bring a person within the said definition. The Court was of the view that the Legislature could not have intended that a person making 2 or 3 transactions should be treated as a 'casual trader', but a person making only one transaction should be treated at par with regular

traders. It noted that in construing a statutory provision, words in the singular are to include the plural and *vice versa*. Rajasthan Tax on Entry of Motor Vehicle into Local Areas Act, 1988 provided a lower limitation period for passing assessment order for casual traders. [*Commercial Taxes Officer* v. *Bhagat Singh* – 2021 VIL 15 SC]

CERA cannot audit a private entity: The Bombay High Court has held that in view of the mandate of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service, Act 1971, Central Excise Revenue Audit ('**CERA**') cannot be extended to call for audit of a private entity. The High Court rejected the plea of the revenue department that since CERA is authorised to conduct the audit of the department and as part of the said audit examination of the records of the private company can be examined to ascertain whether the Government is getting its due share by way of indirect taxes deposited by the private company and therefore private company is bound to provide all records and documents called for by CERA. [*Kiran Gems Private Limited* v. *Union of India* – 2021 VIL 58 BOM]

Sabka Vishwas (LDR) Scheme - Accounting methodology cannot stand in way of substantive relief: The Madras High Court has held that accounting methodology cannot and must not dictate or stand in the way of substantive relief that is otherwise available to an assessee. It observed that accounting standards and methods are only formulated to aid proper recording of transactions and have limited relevance in deciding upon a substantive issue. The assessee had deposited certain amounts as tax and interest even before issuance of SCN. The department however, while computing liability under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, omitted the amount earlier paid as interest as same was paid under different head. Allowing the writ petition, the Court observed that the petitioner must not be made to suffer on account of apportionment which is an irrelevant fact. [*Vamsee Overseas Marine Private Limited* v. *Commissioner* – 2021 VIL 118 MAD ST]

Sabka Vishwas (LDR) Scheme – Statement by Director during enquiry is admission of liability: The Bombay High Court has reiterated that for eligibility under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the quantification need not be on completion of investigation by issuing show-cause notice or the amount that may be determined upon adjudication before the cut-off date. The Court observed that to be eligible under the under the category of investigation, enquiry or audit, all that is required is a written communication which will mean a written communication of the amount of duty payable including a letter intimating duty demand or duty liability admitted by the person concerned during inquiry, investigation or audit. It noted that the Director of the petitioner had made a statement before Superintendent (Prev.) CGST & C.Ex, about the liability which broadly corresponded to the figure disclosed in the declaration. [*Jai Sai Ram Mech & Tech India P. Ltd.* v. *Union of India* – 2021 VIL 122 BOM ST]

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GURUGRAM
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Corporate Office Tower,
Ambience Island,
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PRAYAGRAJ (ALLAHABAD)
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