Lexport Interpreting India for commerce
New Delhi: K-1/114, First Floor, Chittaranjan (C.R.) Park, New Delhi – 110019, India
t: +91-11-2651-0505 / 1505
e: mail@lexport.in

MONTHLY INDIRECT TAX NEWSLETTER

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Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from Trade & Indirect Taxes and Customs.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport

ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

OUR LEGAL TEAM

Srinivas Kotni
Akshay Kumar
Tanmay Singh

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HIGH COURT

Trelleborg India Pvt. Ltd. vs. State of Karnataka [(2024) 20 Centax 355]

Pursuant to the National Company Law Tribunal's order dated June 13, 2017, Trelleborg Sealing Solutions (India) Pvt. Ltd. ('Amalgamating Company') amalgamated with Trelleborg India Pvt. Ltd. ('Amalgamated Company'). Consequently, the GST registration of the Amalgamating Company was cancelled effective from November 29, 2021.

Despite the cancellation, the Amalgamating Company received a pre-show cause notice pertaining to the tax period from FY 2017-18 to FY 2019-20. In response, the Petitioner informed the department on the Amalgamation. Unsatisfied with the response, the department proceeded to issue the SCN to the Amalgamating Company.

The Hon'ble Karnataka High Court, relying on the ruling of Hon'ble Supreme Court held that once a company amalgamates and ceases to exist, proceedings cannot continue against the Amalgamating Company. The Hon'ble High Court further held that the tax authorities can pursue proceedings against the appropriate entity, as permitted by law.

Indian Medical Association (WP(C)/ 23853/2023)

Mutuality principle does not restrict taxability of activities/ transactions of association with its members.

The HC upheld the constitutional validity of the amendment imposing GST on transactions between associations and their members. The court confirmed that Section 7(1)(aa) of the CGST Act, introduced by the Finance Act, 2021, is within legislative competence and does not violate fundamental rights under the Indian Constitution. However, it held that the amendment should be applicable prospectively from 1 January 2022.

Shobikaa Impex Private Limited (W.P/13263/2022)

Procedural irregularity cannot bar legitimate export incentives
The HC has set aside the order demanding tax, interest, and penalty towards ineligible refund of the IGST paid on exports claimed under Rule 96 of the CGST Rules as against the refund of the accumulated ITC under Rule 89 of the CGST Rules, on the premise that procedural irregularity should not take away legitimate export incentives. Based on the SC's judgment in the case of Auriaya Chamber of Commerce, the HC ruled that legitimate export incentives must be granted to exporters competing in the international market.

K N R Srirangam Infra Pvt. Ltd. V. State Tax Officer (2024) 21 Centax 385 (Mad.)

Assessee would be liable to pay tax only when it would raise invoice for payment of amount in annuities.

The petitioner entered into a Hybrid Annuity Model (HAM) contract with NHAI. The contract involves both construction and operation and maintenance (O&M) of highways. Payments under the contract are staggered, with 40% paid during the construction phase in five installments, and the remaining 60% paid over 14 years in 30 annuities.

The core of the dispute was whether the petitioner was liable to pay GST on the entire value of the contract immediately upon completion of the work or only as per the staggered payment terms outlined in the contract with NHAI.

The court held that under the HAM contract, the time of supply for GST purposes is determined by the date of invoice issuance or the date of payment receipt, whichever is earlier. The court emphasized that if no invoice is raised, the tax liability does not arise immediately upon completion of the work.

It was held that assessee was engaged in construction of highway project for NHAI and 40 per cent of consideration was received during execution of work and remaining 60 per cent of consideration was to be received annually over next 14 years, assessee was not liable to pay tax on entire value of work at first instance and it would be liable to pay tax only when it would raise invoice for payment of amount in annuities in respect of balance 60 per cent of work done or receive same.

Standard Chartered Bank v. Principal Commissioner - 2024 VIL 699 TEL

Taking transitional credit at branch office and not at registered office having centralized registration, is not wrong

The Telangana High Court has allowed writ petition of the assessee in a case involving transfer of Transitional credit by the branch in Telangana to its registered office having centralised registration (under service tax regime) in Maharashtra after filing return TRAN-1 in Telangana portal.

The assessee-petitioner had faced problems in filing return electronically because of technical glitch in the GST portal of Maharashtra and had hence filed the return in the Telangana GST portal.

The Court in this regard noted that the registration number / PAN of the petitioner was same nationwide and that Section 140(1) of the CGST Act, 2017 not mandates filing of return only in the GST portal of Maharashtra. It was also noted that the credit was transferred on the very same day to the Maharashtra office/portal and the case was covered under the last proviso to Section 140(8). Further, it was observed that the Department could not establish that there was any prohibition/bar in filing the return in GST portal of Telangan and that the Revenue suffered any loss because of the aforesaid action of the assessee. It may be noted that the Court reiterated that if the portal was not functional or having technical glitch and because of that the assessee was compelled to file return in the portal of Telangana, the assessee cannot be saddled with demand, interest and penalty.

M/s. Nanhey Mal MunnaLal vs. Additional Commissioner and Ors [Writ Tax No. 1036 of 2022 dated 04 July 2024]

No penalty imposed for discrepancy in the date on the E-way Bill and Tax Invoice.

Honourable High Court of Allahabad has set aside the impugned order after reviewing the case and the records. The Honourable Court noted that the discrepancy in the date on the E-way Bill and Tax Invoice was a minor typographical error rather than an indication of intent to evade tax. Further, the Honourable Court noted that this error does not establish the necessary mens rea

for imposing a penalty, as the intention to evade tax is a critical component for such imposition. The Honourable Court referenced its earlier decision in M/S Cavendish Industries Ltd. v. State of U.P where it was held that a typographical mistake, without evidence of intentional tax evasion, should not lead to penalties. The Honourable Court emphasized that imposition of penalties requires more than just minor errors and must be supported by concrete evidence of intent. Considering that both the selling and purchasing dealers are registered under GST and their registrations are active, as confirmed by the petitioner and not disputed by the respondents and considering that the issues were based on conjectures rather than solid evidence, the Honourable Court found no grounds to attribute tax evasion to the petitioner. Thus, the Honourable Court set aside the impugned order, allowed the writ petition, and directed the refund of any amounts deposited by the petitioner in compliance with the impugned order within one month.

CENTRAL EXCISE AND CUSTOMS TAX APPELLATE TRIBUNAL

SRI SAI COMMUNICATIONS V COMMISSIONER OF CENTRAL TAX (2024) 21 CENTAX 471 (TRI.-HYD)

Credit can't be denied since reflection of ITC under 'duties and taxes' head is not irregularity.

Assessee was engaged in providing cable tv service as multi system operator (MSO). Assessee paid service tax in respect of receipts from cable tv subscription charges, advertisement charges, cable tv service and sale of space or time, had by utilizing

CENVAT credit availed on input service tax. CENVAT credits were, inter alia, disallowed holding that it was irregularly availed and utilized.

Hon'ble CESTAT held that assessee had maintained proper books of accounts in ordinary course of business in electronic form (tally software), which was permissible under Service Tax Rules, 1994 read with board circular no.137/26/2007-cx.4 dated 01.01.2008. Further, assessee after getting its books of accounts audited by a chartered accountant, had regularly filed audit reports along with balance sheet and profit & loss account with Income Tax Department. Also, assessee had regularly taken CENVAT credit of input service tax in its books of accounts after making payment to service providers. Such aggregate input service tax, including cess, reflected in trial balance, being debit balance as on 31st march under re-grouped account head 'duties and taxes'.

Reflection of input tax credit under head 'duties and taxes', had created confusion in department. Assessee had taken service tax credit regularly within prescribed period from date of invoice as prescribed under rule 4 read with rule 9 of CENVAT Credit Rules, 2004. Impugned order set aside with consequential relief.

Gottumukkala Satyanarayana Raj *V.* Commissioner of Central Tax, Visakhapatnam GST (2024) 21 Centax 464 (Tri. - Hyd)

Demand based on third-party information without proper investigation or evidence, issued beyond normal period, not sustainable against a small sub-contractor with no intentional evasion established.

Assessee was engaged in the business of civil contracts and not registered with Department, rendering services in respect of construction of roads and canals and other irrigation works to Government bodies as a sub-contractor.

A Show cause notice was issued on basis of data collected from Income Tax Department. There was a failure on part of Department to conduct any investigation to arrive at conclusion on basis of nature of service and consideration received. Only part of demand was confirmed against Assessee on grounds of non-production of copy of work order, while a major portion of demand was dropped on production of work orders.

Assessee's claim that copy of work order was not available readily and that nature of work was same in all cases not to be brushed aside, more so, when no enquiry was conducted at end of service recipient.

CESTAT held that, show cause-notice issued on 30-12-2020 for period 2015-16 to 2016-17 clearly beyond normal period especially when intention to evade payment of service tax on part of assessee was not established. Assessee, being a small sub-contractor could not be said to possess knowledge of intricate nuances of service tax law. Tribunal consistently holding that demands raised on basis of third-party information, without proper evidence, not sustainable. Extended period not invokable under such circumstances. Accordingly, the Impugned order was set aside.

AUTHORITY OF ADVANCE RULING

M/s Roppen Transport Services Pvt. Ltd. [Advance Ruling No. KAR ADRG 36/2024]

Karnataka AAR held that 'Rapido' qualifies as an e-commerce operator - liable to pay GST

Rapido (The Applicant) provides a technology platform for booking 2/3-wheel rides through third-party drivers. The Applicant earns revenue in the form of subscription charges from drivers. The passengers make payment of the fare directly to the driver and the Applicant is not involved in the settlement of this payment.

The AAR held that the 'Rapido' app facilitates fare negotiation and ride logistics through the mobile app. Given this, the AAR held that the Applicant qualifies as an ECO in terms of Section 2(45) of the CGST Act.

Furthermore, AAR held that services provided by independent cab drivers through the 'Rapido' app are squarely covered under the notified category of services for which ECO is liable to pay tax under Section 9(5) of the CGST Act.

Additionally, the AAR held that the services of ride monitoring should be classified under security consulting services and attracts a 18% GST rate.

Bridge Federation of India - 2024 VIL 142 AAR

Organising physical card game of Bridge, played for money, is not liable to GST

The West Bengal AAR has held that the applicant, who is organizing a tournament of physical / offline card games of

'Bridge' when played for money, cannot be held to be a supplier of 'specified actionable claim' and therefore is not liable to pay GST. The Authority was of the view that even it is held that playing of bridge against money qualifies to be 'specified actionable claim', the applicant cannot be held to be engaged in supply of specified actionable claim by organizing the tournament of bridge where contribution of money was deposited in a common pool and the applicant does not lien over this money or money's worth contributed by players.

Panasonic Life Solutions India Prioate Limited - 2024 VIL 140 AAR

Transfer of title of goods stored in FTWZ unit to DTA unit is covered under para 8(a) of Schedule III to CGST Act.

The Tamil Nadu AAR has held that the activity of the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ, will get covered under para 8(a) of Schedule-III of the CGST/TNGST Acts, 2017. Further, the Authority also held that with the amendment to Explanation of Section 17(3) of the CGST Act, 2017 by the Finance Act, 2023 proportionate reversal of ITC of common inputs/capital goods/services availed, if any, is required to be made by the applicant-assessee.

Gottumukkala Satyanarayana Raj *V.* Commissioner of Central Tax, Visakhapatnam GST (2024) 21 Centax 464 (Tri. - Hyd)

Demand based on third-party information without proper investigation or evidence, issued beyond normal period, not sustainable against a small sub-contractor with no intentional evasion established.

Assessee was engaged in the business of civil contracts and not registered with Department, rendering services in respect of construction of roads and canals and other irrigation works to Government bodies as a sub-contractor.

A Show cause notice was issued on basis of data collected from Income Tax Department. There was a failure on part of Department to conduct any investigation to arrive at conclusion on basis of nature of service and consideration received. Only part of demand was confirmed against Assessee on grounds of non-production of copy of work order, while a major portion of demand was dropped on production of work orders.

Assessee's claim that copy of work order was not available readily and that nature of work was same in all cases not to be brushed aside, more so, when no enquiry was conducted at end of service recipient.

CESTAT held that, show cause-notice issued on 30-12-2020 for period 2015-16 to 2016-17 clearly beyond normal period especially when intention to evade payment of service tax on part of assessee was not established. Assessee, being a small sub-contractor could not be said to possess knowledge of intricate nuances of service tax law. Tribunal consistently holding that demands raised on basis of third-party information, without proper evidence, not sustainable. Extended period not invokable under such circumstances. Accordingly, the Impugned order was set aside.

Maharashtra Metro Rail Corporation Ltd. (2024) 21 Centax 482 (A.A.R. - GST - Mah.)

18% GST will be applicable on leasing services provided by Maharashtra Metro Rail Corporation

Applicant is a Government Company that floated tender calling for bids for allotment of commercial space. Applicant seeks advance ruling on whether;

Applicant is eligible for exemption under Sr. No. 41 of Notification no. 12/2017-Central Tax (rate) dated 28-6-2017 ('exemption notification')?

If not, whether 18% GST will be applicable on the leasing services provided to service recipient?

Held: For applicability of exemption entry No. 41 of 12/2017-Central tax (rate) dated 28-6-2017, it is necessary that purpose of 'Land use' is for "parking lots, stations and for commercial use". Therefore, it is very clear that plots cannot be used for any industry neither for any financial business. In instant case, bare shell structure is suitable for commercial use. However, considering airport in vicinity, aforesaid structure is best suited for hospitality sector and institutional use. Therefore, conditions of aforesaid entry are not fulfilled by applicant in this transaction. Therefore, applicant is not liable for exemption under aforesaid notification and 18% GST will be applicable on leasing services provided by applicant.

ARTICLES

1. GST Council To Rationalize Rates Of Inverted Duty Structure

In this article, our Managing Partner Mr. Srinivas Kotni and Junior Associate, Mr. Tanmay Singh highlights the inconsistency in treating input goods and services differently under the CGST Act, advocating for uniform treatment to eliminate the cascading effect of the inverted tax structure.

Click on the below link to read the article:

https://shorturl.at/WG0kY

END OF THE NEWSLETTER

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