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MONTHLY INDIRECT TAX NEWSLETTER

OCTOBER 2024

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
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HON'BLE SUPREME COURT RULINGS

1. State Of U.P. vs M/S. Lalta Prasad Vaish and Sons 2024 INSC 812

Supreme Court on Wednesday held that 'industrial alcohol' comes within the meaning of 'intoxicating liquor' under Entry 8 of List II (State List) of the Constitution and hence, States can regulate the same

The Dispute was regarding the regulation of industrial alcohol, which was not intended for human consumption. Under Entry 8 of the State List, States have the power to legislate on the manufacture, possession, transport, purchase, and sale of "intoxicating liquors." However, Entry 52 of the Union List and Entry 33 of the Concurrent List gave the Centre regulatory authority over industries declared by Parliament to be in the public interest. While the Concurrent List allows both Parliament and state legislatures to enact laws on shared subjects, central laws take precedence over state laws in cases of conflict.

Explaining the purpose of the non-obstante and subjugation clause, the Court noted that it was crucial to note that Clause (1) of Article 246 stipulated that the power of Parliament to make laws with respect to entries in List I was "notwithstanding" not just the power to make laws with respect to matters in the Concurrent list but also the power to make laws with respect to matters in the State List.

A combined reading of the non-obstante clause and the subjugation clause along with the use of the phrase "exclusive power" means only one thing, that when there is a conflict between the entries in List I and List II, the power of Parliament supersedes, the Bench remarked.

2. Commissioner of Central Tax Bangalore Versus India Advantage Fund (2024) 23 Centax 150 (S.C.)

Venture Capital Trust Fund receiving contributions for further investments from institutional investors not liable to service tax under Banking and other financial services because of doctrine of mutuality and also because said Fund was not a juridical person.

In this case, institutional investors (contributors) had contributed money to VCT Fund, managed by an investment manager and acting as a 'pass through', wherein funds from contributors were consolidated and further invested. Demand of service tax on contributions received by VCT was confirmed under aforesaid services by lower authorities and upheld by CESTAT. In impugned order, High Court had reversed CESTAT decision by holding that VCT was not liable to levy of service tax under aforesaid services as no service was provided by VCT to contributors. It was held that contributors and VCT could not dissected in two different entities as contributors' investment was held in trust by VCT without making any profit and without providing any service to contributors. Money and funds, as contributed by contributors, were property of VCT and asset management service, if any, was rendered by VCT to itself only. Holding

that VCT was not a juridical person under Finance Act, 1994 and applying doctrine of mutuality, High Court had set aside imposition of service tax under aforesaid services.

On filing SLP by Revenue with Supreme Court - Since there was no merit in SLP filed by Revenue, same was to be dismissed.

HON'BLE HIGH COURT

3. J.K. Papad Industries and Anr vs. Union of India and Ors TS-568-HC(GUJ)-2024-GST

Expression 'as is where is' basis means that status of payment of GST adopted by the assessee will prevail

The company was engaged in manufacturing and sale of unfried fryums. Considering that fryums were papad, the company classified unfried fryums under Tariff heading 1905, attracting nil rate of GST under Entry No. 96 of the exemption notification. The company also obtained an advance ruling from AAAR which upheld the classification adopted by the company.

Subsequently, CBIC *vide* circular dated January 13, 2023, clarified that snack pellets such as fryums will be classified under tariff Heading 19059030 and attract GST at 18%. Subsequently, CBIC issued another circular which clarified that the rate of GST on un-cooked/un-fried extruded snack pellets falling under Tariff Heading 1905 was reduced from 18% to 5% with effect from July 27, 2023. It was further clarified that issues pertaining to past period will be regularised on 'as is where is' basis.

The revenue authorities, however, interpreted 'as is where is' basis, to be read in the context of classification which ought to be ascribed to it under the law and accordingly issued an SCN to the company proposing to levy GST at 18% for the period before July 27, 2023.

The Hon'ble High Court of Gujarat ("**Gujarat HC**") held that the revenue authorities have misinterpreted the expression 'as is where is' basis. 'As is where is' basis means that whatever status of payment of GST had been adopted by the assessee for the past period will continue to prevail. If the assessee had claimed their product to be exempt from GST, they cannot be subjected to levy of GST in order to regularise their past returns. Basis this, Gujarat HC quashed the SCN issued to the company.

4. Veremax Technologie Services Ltd vs. The Assistant Commissioner of Central Tax TS-602-HC(KAR)-2024-GST

Common SCN issued for multiple tax periods 'fundamentally flawed' and contravenes CGST Act

A common SCN was issued to the petitioner under Section 73 of the CGST Act for multiple tax periods 2017-18, 2018-19, 2019-20 and 2020-21. Aggrieved, the petitioner filed a writ petition before the Karnataka High Court ("**Karnataka HC**") contending that clubbing multiple tax periods in a single notice is impermissible.

The Karnataka HC highlighted that Section 73(10) of the CGST Act mandates a specific time limit from the due date for furnishing the annual return for the financial year to which the tax dues relate. The law stipulates that particular actions must be completed within a designated year, and such actions should be executed in accordance with the provisions of the law. The ratio laid down by the Hon'ble Supreme Court in the matter of *State of Jammu and Kashmir and Ors vs. Caltex (India) Ltd.*, – where an assessment encompasses different assessment years, each assessment order can be distinctly separated and must be treated independently, is squarely applicable in the present case.

Basis the above, the Karnataka HC held that the SCN issued by the adjudicating authority is fundamentally flawed. The practice of issuing a single, consolidated SCN for multiple assessment years contravenes the provisions of the CGST Act and thereby, quashed the SCN.

5. Barkataki Print and Media Services vs. Union of India TS-588-HC(GAUH)-2024-GST

Notification extending time limit to issue orders for F.Y. 2018-19 and 2019-20, quashed
The time limit to pass an order under Section 73(10) of CGST Act for F.Y. 2018-19 and 2019-20 was extended by way of Notification No. 56/2023 – CT dated December 28, 2023, ("**Notification**"). The said Notification was challenged wherein the petitioner challenged orders passed under Section 73(10) of the CGST Act, on the ground that the Notification is *ultra vires* the CGST Act. The petitioner contended that the condition precedent for issuance of Notification in exercise of the powers under Section 168A of the CGST Act were not fulfilled as there were neither recommendations of the GST Council nor any *force majeure* event.

Considering the petitioner's submissions, the Hon'ble Guahati High Court ("**Guahati HC**") held the Notification to be *ultra vires* Section 168A of the CGST Act. The Guahati HC observed that as mandated under Section 168A of the CGST Act, the Notification was issued without the recommendations of the GST Council ("**GST Council**"). The Notification had a false statement claiming that a recommendation was made where, in fact no such recommendation existed prior to issuance of the Notification. In such circumstances, there is a colourable exercise of power by the Government in issuing the Notification.

The Guahati HC further observed that there is a difference between 'no recommendation made' and 'effectiveness of the recommendation'. The fact that it is not binding does not mean the Government can act without a recommendation of the GST Council. Moreover, Section 168A of the CGST Act empowers the Government to extend time limit in case of *force majeure*. The Guahati HC observed that the GST Council had no occasion to consider existence of *force majeure*, therefore the Notification would also be seen as being issued without the *force majeure* condition. Hence, neither condition prescribed under Section 168A of the CGST Act were fulfilled for issuance of the Notification, thereby holding the Notification to be invalid.

HON'BLE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

6. Siegwerk India Pvt. Ltd. Versus Commissioner of Central Goods & Service Tax, Alwar (2024) 23 Centax 118 (Tri.-Del)

Redemption of mutual fund units is not "trading of goods" and does not qualify as exempted service requiring reversal of CENVAT credit; extended period of limitation not invokable for raising such demand.

Assessee invested surplus funds in mutual funds and claimed it was not exempted service requiring reversal of CENVAT credit. Department demanded reversal treating it as "trading of goods" which is exempted service.

HELD: Redemption of mutual fund units is not "trading of goods" as units cease to exist on redemption and no transfer of title takes place. Activity of investment in mutual funds cannot be termed as "service" under Finance Act, 1994. Extended period of limitation not invokable as assessee had bona fide belief about non-applicability of reversal provisions. Accordingly, the Demand was set aside.

ARTICLES

1. Analysis Of The Supreme Court Judgement In The Safari Retreats Private Limited Case

In this article, our Managing Partner Mr. Srinivas Kotni and Junior Associate, Mr. Tanmay Singh highlights that the Supreme Court's Safari Retreats judgment allows businesses to claim Input Tax Credit (ITC) on buildings if they serve essential business functions, meeting the "functionality test."

Click on the below link to read the article:

https://shorturl.at/illYy

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