



Indirect Tax

May, 2024

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01

Advance Rulings & Judgements

Hon'ble CESTAT held that royalty paid on final products manufactured by importer cannot be added to the transaction value to determine custom duty on import of raw material.

Brief Facts

- M/s. Page Industries ('Appellant') is the sole distributor of the brand owned by M/s Jockey International USA and Speedo International, U.K. The Appellant entered into a Trade Mark License Agreement with both companies for products distributed and manufactured in India. The Custom Authorities alleged that royalty and advertisement cost should be added to the transaction value of the imported goods.
- The Adjudicating authority vide impugned order confirmed the demand along with interest, redemption fine and penalty. Aggrieved by the order, appellant filed the appeal.

Observations

- Hon'ble CESTAT observed that royalty is being paid on the final products which are manufactured and cleared by the Appellant under the brand name of jockey. And what is imported by the Appellant is raw materials that are used in the manufacture of these final products so the royalty has nothing to do with the products being imported and hence the claim of the Appellant that royalty cannot be added to the products imported by them is justified.
- Hon'ble CESTAT further observed that the advertisement expenses incurred by the Appellant cannot be added to the transaction value of imported goods because such expenses incurred by the Appellant is a post import activity incurred on its own account and not for discharge of any obligation of the seller under the term of sale.

Decision

- The Impugned Order passed by the adjudicating authority is set aside and consequential relief to be allowed in accordance with law.

[Page Industries Vs. Commissioner of Customs [(2024) 17 Centax 299 (Tri.-Bang) dated 13 March 2024]

Bombay High Court allows petition of assessee assailing SCN to levy GST on ocean freight of coal imported on FOB basis.

Brief Facts

- The petitioner challenged a Show Cause Notice ('SCN') issued by the Assistant Commissioner of Sales Tax, "C" Division Mumbai, directing the petitioner to levy GST on Ocean freight as they were engaged in importing coal on FOB basis;
- The notice was primarily challenged on the grounds of lack of jurisdiction, citing the striking down of the relevant notification by the Gujarat High Court in the case of Mohit Minerals Pvt. Ltd. v. Union of India.

Observations

- Hon'ble High Court observed that the case of Mohit Minerals Pvt. Ltd. involved both categories of contract namely CIF and FOB, which was noted in the judgment of the High Court of Gujarat. The Court on such facts, declared the revenue's decision ultra vires of the IGST Act. Supreme Court subsequently upheld the decision;
- Hon'ble High Court further observed that once the notification itself has been declared as ultra vires and the same has been upheld by the Supreme Court, the notification in no manner was available to the State Authorities to be applied as it would amount to applying an illegal notification.

Decision

- The petition was allowed, setting aside the show cause notice;
- The petitioner, having made payment of tax under protest, would be entitled to seek a refund with the interest @7% per annum.

[Agarwal Coal Corporation (P.) Ltd. vs. Assistant Commissioner of State Tax - (2024) 17 Centax 343 (Bom.)]

Calcutta High Court held that Pre deposit of 20% is not applicable on disputed amount of interest.

Brief Facts

- M/S Evergreen Construction, Durgapur Private Limited ('Petitioners') aggrieved by the Interim Order, wherein petitioners were directed to deposit 20% of disputed remaining unpaid interest within a time frame filed, the present writ petition before the Calcutta High Court.

Observations

- Hon'ble High court observed that as per Clause (a) of section 112(8) of CGST act 2017 requires the registered taxpayer to pay the tax, interest, fine, fee and penalty in full arising from the impugned order which is subject matter of appeal as admitted by him. However, clause (b) of Section 112(8)(b) of the Act clearly restricts the pre-deposit amount to 20% of the remaining amount of tax in dispute and does not speak of interest;
- Hon'ble High Court further noted that the discretion to be exercised by the court should be in terms of the statute and, therefore, the condition imposed by the learned Single Bench to deposit 20% of disputed remaining unpaid interest calls for interference.

Decision

- Appeal allowed and that portion of the order passed directing the petitioners to pay 20% of the remaining interest set aside;
- Recovery proceedings to remain in abeyance till writ petition is heard and disposed off.

[Evergreen Construction vs. The Commissioner of Commercial Taxes of West Bengal [TS-220-HC(CAL)-2024-GST]

Holding of shares by holding company in subsidiary company cannot be classified as supply of service for purpose of GST

Brief Facts

- M/s. Metro Cash and Carry Pvt. Ltd. ('Petitioner') filed a petition seeking the quashing of Show Cause Notices issued by relevant GST authorities, which proposed to levy of GST on the activity of holding equity capital by the parent company in the Petitioner company;
- Petitioner argued that such a levy was illegal and without jurisdiction and relied on the judgment of High Court of Karnataka in the case of M/s. Yonex India (P.) Ltd. v. Union of India.

Observations

- Hon'ble High Court observed that merely because the parent company holds shares in its subsidiary i.e., the petitioner, the said circumstance cannot be classified, treated or construed as 'supply of service' for the purpose of GST;
- Hon'ble High Court also relied on the judgment of Karnataka High Court in the case of M/s. Yonex India Private Limited and noted that controversy involved in the present petition is directly and squarely covered by the said judgement.

Decision

- The impugned Show Cause Notice are without jurisdiction or authority of law and therefore quashed.

[Metro Cash and Carry Pvt. Ltd. vs. State of Karnataka - (2024) 17 Centax 389 (Kar.)]

Gujarat Authority for Advance Ruling ('GAAR') held that SEZ can procure services from DTA without payment of tax under Reverse charge mechanism ('RCM') by furnishing LUT or Bond.

Brief Facts

- M/s Waaree Energies Limited ('Applicant'), is engaged in the manufacture of solar modules and are registered as an 'SEZ unit';
- The Applicant avails services such as Goods Transport Agency (GTA), Legal services from Advocate, Security Services, Bus Hiring for employees (specified services) from Domestic Tariff Area ('DTA') for their SEZ unit;
- Applicant filed the present Advance Ruling Application before the GAAR on whether applicant being an SEZ unit is required to pay GST under RCM on services procured from DTA.

Observations

- GAAR observed that FAQs on GST issued by CBIC clarifies that SEZ has to pay IGST under RCM on supplies procured from DTA. However, under Notification No. 37/2017 – Central Tax, a unit in DTA can supply services to a unit in SEZ without payment of IGST subject to furnishing of LUT to the jurisdictional commissioner;
- GAAR further observed that in a similar issue, Tax Research Unit ('TRU'), CBIC, New Delhi clarified that SEZ would be a deemed supplier in such a case and accordingly would be required to fulfil condition of furnishing of LUT for procuring services without payment of IGST. Clarification issued by TRU though given to specific SEZ and is not a circular, rationale of the same can be borrowed;

- GAAR also noted that similar view was also taken in the order of Maharashtra Appellate Authority of Advance Ruling in the case of M/s Portescap India P Ltd.

Decision

- GAAR held that applicant being an SEZ unit is not required to pay GST under RCM subject to furnishing of LUT or bond as specified in Notification No. 37/2017 – Central Tax.

[Waree Energies Ltd [TS-217-AAR(GUJ)-2024-GST]

02

GST Clarifications and Updates

GST Advisory on Self – Enablement for e-Invoicing dated 3 April 2024.

- GSTIN has issued an advisory for self-enablement for e-Invoicing for the registered persons whose turnover exceeds 5 crores in the financial year 2023- 2024.
- Accordingly, the registered persons exceeding the threshold limit of 5 crores will be required to generate e-Invoice from the next financial year, i.e., from 1st April 2024 onwards.
- For the registered taxable persons who meets the threshold criteria but have not yet been enabled on the portal. Now, they can self – enable for e-Invoicing by visiting <https://einvoice.gst.gov.in> and start reporting e-Invoice on Invoice Registration Portals.
- It may also be noted that the same is applicable on the registered taxable persons whose turnover exceed the prescribe threshold limit in any of the preceding Financial Years.

GST Advisory on Auto-Population of HSN Summary from e-Invoices into Table-12 of GSTR-1 dated 09 April 2024

- GSTIN has issued an advisory regarding introduction of a new feature that auto-populates the HSN Summary from e-invoices into Table-12 of GSTR-1.
- Accordingly, auto-drafting of HSN data can be made directly into Table-12 based on e-Invoice Data.
- It is advised to reconcile the data with the available records before final submission. Any discrepancies or errors should be manually corrected in Table-12 of GSTR-1.

Notification No. 09/2024- Central Tax dated 12th April 2024.

- The Commissioner, on the recommendation of the GST Council, has extended the time limit for furnishing the details of Outward Supplies in FORM GSTR-1 for the tax period March-2024 vide notification no. 09/2024.
- Accordingly, the registered persons can furnish their outward supplies in FORM GSTR-1 till 12th April 2024 for the tax period March 2024.

03

Foreign Trade
Policy Updates

Directives regarding submission of digitized ANFs, Appendices etc.

In adherence to the Directorate General of Foreign Trade's commitment to facilitating exports and imports, emphasizing efficient, transparent, and accountable delivery systems, significant efforts have been directed towards digitising a substantial number of the Aayat Niryat Forms (ANFs) and Appendices pursuant to the Foreign Trade Policy.

Therefore, applications pertaining to said ANFs and Appendices must be exclusively submitted online via the DGFT Website (<https://dgft.gov.in>), eliminating the necessity for physical or soft copies of these documents.

[Trade Notice No. 01/2024- DGFT dated 2 April 2024]

04

Compliance
Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in May 2024
1	Monthly Return Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period April 2024- 11 th May 2024
2	Monthly Return Form GSTR-3B	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for QRMP Scheme	Monthly	20 th day of succeeding month	For Tax Period April 2024- 20 th May 2024
3	Invoice Furnishing Facility ('IFF') (QRMP Scheme)	Optional Facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1 st day to 13 th day of succeeding month	For Tax Period April 2024 - 1 st to 13 th May 2024

4	Form GST PMT-06 (Monthly Payment of Tax)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25 th of succeeding month	For Tax Period April 2024 – 25 th May 2024
5	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period April 2024- 13 th May 2024
6	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period April 2024- 10 th May 2024
7	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period April 2024- 10 th May 2024

NOIDA

(Delhi NCR - Corporate Office) A-109, Sector - 136,
Noida - 201304, India
T: +91 120 2598000

GURUGRAM

001-005, Emaar Digital Greens Tower-A 10th Floor, Golf
Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI

Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand
Lights, Chennai - 600006 T: +91 44 46549201

PUNE

3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune Central
Mall, Shivajinagar, Pune - 411005, India

www.nangia-andersen.com | query@nangia-andersen.com

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Follow us at :   

DELHI

(Registered Office) B-27, Soami Nagar, New Delhi -
110017, India T: +91 120 2598000

MUMBAI

4th Floor, Iconic Tower, URMI Estate, Ganpat Rao
Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 4474 3400

BENGALURU

Prestige Obelisk, Level 4, No 3 Kasturba Road,
Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN

1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001,
Uttarakhand, India T: +91 135 271 6300