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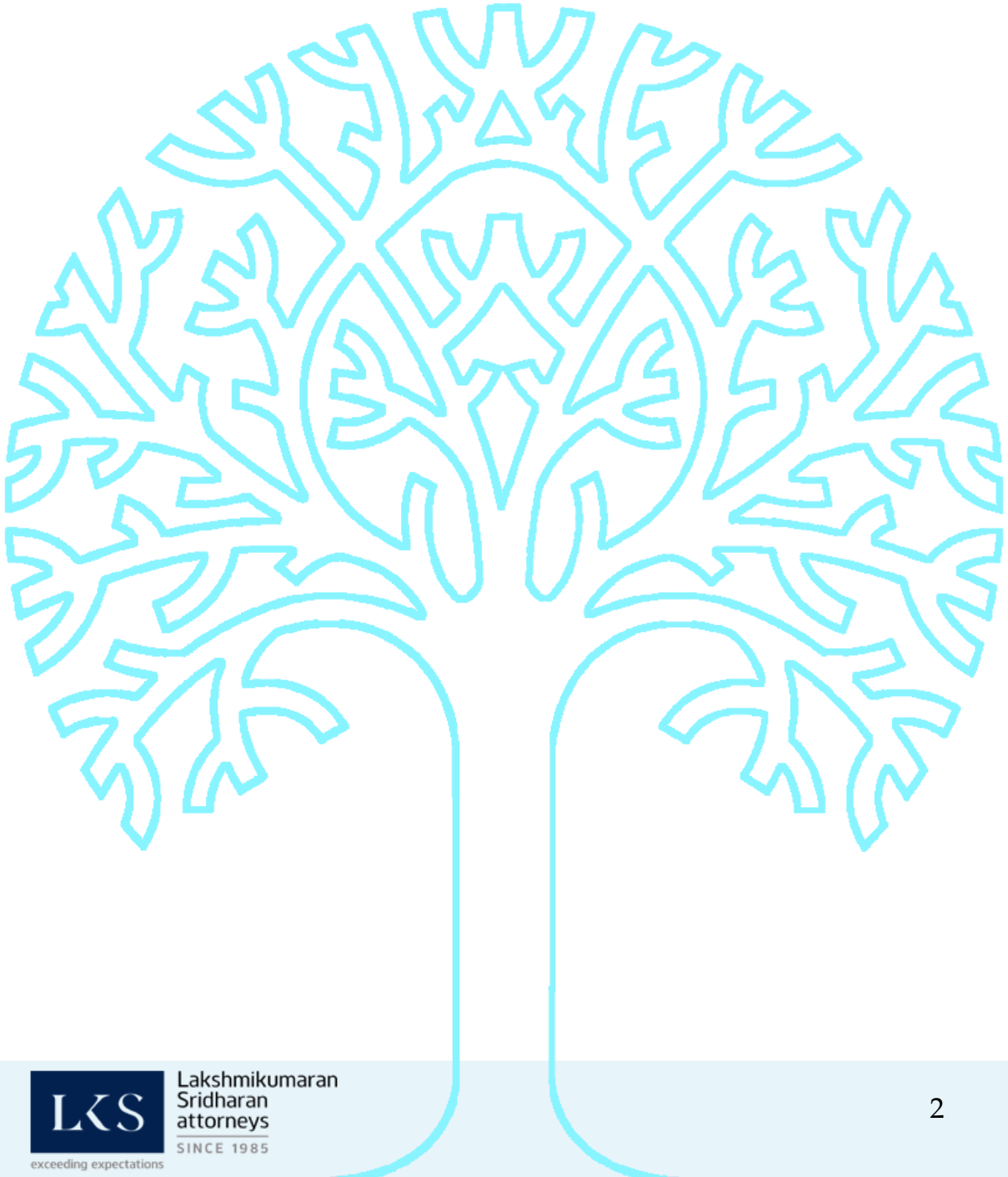

Article

Restaurant services at specified premises: Past continues to haunt

By **Shubham Vijay and Devang Kaimathiya**

The applicable rate on restaurant services is ascertained based on the 'declared tariff' of the hotel. This GST rate is then applied to the transaction value to ascertain the GST liability. It is a classic case wherein GST rate on one service depends on what you declare to charge for some other service. The article in this issue of Indirect Tax Amicus discusses inconsistent in application of the concept of 'declared tariff' that have caused significant hardships for taxpayers in this sector. The authors discuss the genesis of the concept of 'declared tariff', concept of 'declared tariff' under the GST law, and recent changes including way forward for the industry. They analyse the changes after the 55th GST Council Meeting but observe that disputes for past periods are likely to continue. According to them, the CBIC should issue a clarification for the past period to resolve the ambiguity between 'declared tariff' and 'value of supply'.

Restaurant services at specified premises: Past continues to haunt

By Shubham Vijay and Devang Kaimathiya

Under the GST law, restaurant services are taxable either at the rate of 5 per cent (without ITC) or 18 per cent (with ITC), depending on whether the said services are provided at 'specified premises' or not. The expression 'specified premises' has been defined to include such premises where the 'declared tariff' of any unit of hotel accommodation is INR 7,500/- or above.

This implies that the applicable rate on restaurant services is ascertained based on the 'declared tariff' of the hotel. This GST rate is then applied to the transaction value to ascertain the GST liability. It is a classic case wherein GST rate on one service depends on what you declare to charge for some other service.

Plight of the restaurant service providers:

There is a long-standing dispute between the GST authorities and the restaurant service providers which revolves around the interpretation of the expression 'declared tariff'. The inconsistent application of the concept of 'declared tariff' by the GST authorities has caused significant hardships for taxpayers in ascertaining their GST liabilities for restaurant services.

In simple terms, the 'declared tariff' can be understood to mean such rates which are displayed by hotels on tariff cards, website or at the reception for customers.

However, in numerous instances, the GST authorities have equated the 'value of supply' of accommodation unit with its 'declared tariff'. This has sparked disputes in cases where the restaurant service providers have charged INR 7,500 or above for any accommodation unit, without considering the frequency of such transactions. That is, even if there is a single transaction or handful transactions in a year where the service provider has provided accommodation unit at INR 7,500/- or above, the GST authorities are contending this to be the declared tariff and consequently raising a demand of GST at the rate of 18 per cent instead of 5 per cent, which is applicable to the restaurants having declared tariff below INR 7,500/-. This has created tax uncertainty for businesses, as the prices of hotel accommodation are dynamic in nature and depends on the demand in the industry. The hike in prices of hotel

accommodation may be on account of multiple factors such as festivals, big events, etc.

Further, disputes have also arisen in situations where the value charged for the accommodation unit falls below INR 7,500/-, however additional charges, i.e., charges for breakfast, cab and other ancillary charges, cause the total bill to exceed INR 7,500/-.

Moreover, it is common practice on various online booking platforms to display exorbitant price (more than actual tariff of the hotel) and then offer a handsome discount to customers in order to attract them to avail services through their platform. However, the GST authorities are considering the value displayed upfront as the 'declared tariff', without factoring these discounts.

In all such cases, amongst others, the GST authorities are seeking recovery of differential 13 per cent of GST from the restaurant service providers.

Genesis of the concept of 'declared tariff':

In the erstwhile indirect tax laws, hotel accommodation services were treated to be a luxury and therefore, these services were subject to the Luxury Tax levied by States. Under these legislations, it was mandatory for the hotels to conspicuously display their certificate of registration and applicable tariff rates at their place of business. Further, they were also required to report their tariff rates to the relevant authorities on annual basis.

Pertinently, the rate of Luxury Tax was ascertained on the basis of the tariff rates declared by the hotels. This rate was then applied to the receipts from hotel accommodation services to compute the Luxury Tax liability.

'Declared tariff' under the GST law:

Even after the inception of GST law, the applicable rate of GST on the hotel accommodation services as well as restaurant services has remained linked to the declared tariff of the hotels, with the rate being determined based on this declared tariff. This GST rate is then applied to the transaction value to compute the quantum of GST liability.

However, unlike the state laws on Luxury Tax, **the GST law did not specify the regulatory requirements with regards to the declared tariff. As a result, it was no longer necessary for the hotels to display their certificate of registration and applicable tariff rates at their place of business.**

Further, while the term 'declared tariff' was defined under the GST law, there was no clarity as to what would fall under

the purview of 'declared tariff'. To address the same to some extent, the CBIC came with a Circular, wherein it was clarified that tariff declared anywhere, i.e., on websites or tariff cards or displayed at the reception, will be considered as the declared tariff.

However, as discussed above, there is no requirement under GST law for the hotels to display tariffs in the first place. Further, considering demand for hotel accommodation services is often seasonal and occasion-based, and prices fluctuate accordingly, hoteliers find it difficult to set a tariff for the entire financial year.

Declared tariff – A bane for hotel industry?

Shortly after the inception of the GST law, the Government realized that the taxability of hotel accommodation services on the basis of declared tariff is causing a lot of hardships for both end customers and hoteliers.

It was observed that the prices of hotel accommodation are dynamic in nature due to frequent changes in demand in the industry. During off-seasons, the hotels provide heavy discounts on their declared tariffs to the end customers. This leads to a situation where the consideration towards the hotel accommodation continues to drop down, however, the rate of GST remains unaffected. Consequently, this makes the hotel accommodation services costlier to the end customers and affects the hotel industry.

As such, it was realized that it is impractical to levy GST on the basis of the declared tariff, as it is an outdated concept for determination of price for the hotel accommodation. Further, it was observed that the concept of 'declared tariff' no longer exists in the GST law and the hoteliers have to still comply with an additional requirement of declaring tariff, which is no longer possible due to dynamic pricing in the industry.

Accordingly, in the **28th GST Council Meeting**, it was recommended that the term 'declared tariff' to be substituted with the words 'value of supply' in the rate entry pertaining to hotel accommodation services to address key challenges as discussed above.

Contrastingly, no such amendment was introduced in the rate entry for restaurant services, wherein the same problem persisted as the accommodation services. This resulted in the continued application of the concept of 'declared tariff' for the purpose of ascertaining applicable rate on restaurant services. Consequently, the problems associated with the concept of 'declared tariff' persisted in case of restaurant services.

Recent changes and way forward:

Considering the challenges discussed hereinabove, in the **55th GST Council Meeting**, it was recommended to make suitable changes in the definition of 'specified premises' w.e.f. April 2025. These changes intend to link the tax rate on restaurant services to the value of supply of accommodation unit, rather than the declared tariff. In addition, it was recommended to provide an option to the service providers to pay tax on the restaurant services at the rate of 18 per cent (with ITC), irrespective of value of supply of accommodation unit, by giving a declaration at the beginning of the financial year or upon registration.

However, even after the above changes come into effect for future, disputes with respect to the declared tariff raised by the GST authorities for past periods are likely to continue.

In absence of any clarification on this issue, the taxpayers will most likely choose to pay tax at the rate of 18 per cent from 1 April 2025, as this would completely mitigate the possibility of disputes from the department on the taxability and they would be eligible to avail ITC in this option.

However, this could result in an increase in the tax incidence and consequently cost for the end customers. To counter this, it is important that the CBIC issues a clarification for the past period to resolve the ambiguity between 'declared tariff' and 'value of supply'. Such a clarification would not only reduce unnecessary litigation but also expedite the resolution of pending litigation on this issue. Further, considering the financial implications, a timely resolution will go a long way in fostering growth and sustainability for the industry while also keeping a check on the cost to the end customers.

Note: *On 27 March 2025, the CBIC has issued FAQs, clarifying that for the past period, tax will be based on the 'declared tariff,' covering all amenities without discount while from 1 April 2025, 'specified premises' will be based on the value of supply, i.e., the transaction value of the unit of accommodation. This shift is clarified to align with the industry's move to dynamic pricing, ensuring greater tax certainty.*

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Goods & Services Tax (GST)

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Notifications and Circulars

Amnesty scheme under Section 128A for interest and penalty – Rule 164 amended to relax payment of tax for period not covered under the scheme

The Central Board of Indirect Taxes and Customs (CBIC) has on 27 March 2025 amended Rule 164 of the Central Goods and Services Tax Rules, 2017 to amend the provisions relating to procedure and conditions for closure of proceedings under Section 128A of the Central Goods and Services Tax Act, 2017 in respect of demands issued under Section 73 *ibid*. Sub-rule (4) of Rule 164 has been amended for this purpose to insert the word 'related to period mentioned in the said sub-section and' after the words 'after payment of the full amount of tax'.

However, it may be noted that an Explanation has also been inserted in said sub-rule to state that refund shall not be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior to the commencement of the Central Goods and Services Tax (Second Amendment) Rules, 2025, i.e., the present change, in case the notice/order had included demand of tax partially for the period not covered under the scheme. Changes have also been made in sub-rule (7) by inserting a second proviso relating to withdrawal of appeals only relating to the period covered under the scheme. Further, CBIC Circular No. 248/05/2025-GST, dated 27 March 2025, has also been issued to clarify the said position.

It may be noted that the Circular also states that cases where tax was paid through Form GSTR 3B prior to issuance of demand notice and/or adjudication order before 1 November 2024, shall also be eligible for the benefit.

Restaurant services supplied at specified premises – CBIC issues FAQs in respect of new regime effective from 1 April 2025

The CBIC has issued certain FAQs in respect of new regime for restaurant services provided at specified premises, which will come into effect from 1 April 2025. The new regime will replace the notion of 'declared tariff' with 'value of supply', i.e., the transaction value. It has been clarified that:

- With effect from 1 April 2025, specified premises is a premises from which 'hotel accommodation' services,

valuing more than INR 7,500 per unit per day has been supplied in a FY.

- Supplier of hotel accommodation service, whether an existing registrant or a new applicant, has also been given an option to declare the premises as 'specified premises'.
- GST to be liable @ 18% for restaurant services from specified premises, otherwise @ 5% without ITC.
- For the period prior to 1 April 2025, 'declared tariff' means charges for all amenities provided in the unit of accommodation given on rent for stay, but without excluding any discount on published charges.
- Declaration has to be filed between 1st January and 31st March of the financial year preceding the financial year for which the registered person intends to declare the premises as 'specified premises'.
- For new businesses, declaration must be filed within 15 days of obtaining acknowledgement (ARN) of the application for registration.
- 'Opt-in' declarations will be valid till 'opt-out' declaration is filed.
- Timelines are to be strictly adhered to. The status on 31st March, would be taken as the final declaration.
- Status of premises as 'specified premises' or 'not a specified premises' cannot be changed during the financial year.
- Declaration can be submitted by e-mail or by post and can be filed before jurisdictional GST authorities.
- Separate declarations need to be filed for separate premises.
- Revised definition of 'specified premises' is also applicable for determining the rate applicable on catering services.

Ratio Decidendi

Notice or order is authentic only if it is physically/digitally signed by Proper Officer

The Telangana High Court has reiterated that a notice or final order can become legal or bear authenticity on its forehead only when it is physically/digitally signed by the Proper Officer. Dismissing the contention of the Revenue department who had contended that since Section 73/74 of the CGST Act is silent about the requirement of digital/physical signature, any such requirement in DRC-01 and DRC-07 can be ignored, the Court held that once there exists a specific column earmarked for the signature, the said requirement becomes a statutory requirement. Department's reliance on Section 160 of the CGST Act to submit that assessment proceedings cannot be invalidated on technical grounds, was also rejected by the Court here. The Court was also of the view that since prescribed Forms as per Rule 142 of the CGST Rules need signature, such requirement must be held to be mandatory. It may be noted that Department's reliance on GSTN Advisory dated 25 September 2024 which stated that show cause notices and orders do not require digital signature as they can only be issued by the officers by logging into the portal with their digital signatures, was also rejected. The Court in this regard observed that it was not pointed out that the advisory had any statutory backing or was an executive instruction issued under any enabling provision. It was also noted that Section 3 of the Information Technology Act, 2000 makes it obligatory for the Proper Officer to put his signature and that Section 3A of the IT Act does not insulate the notice/order if it does not contain signature. [*Bigleap Technologies and Solutions Pvt. Ltd.* v. *State of Telangana* – 2025 VIL 200 TEL]

ITC allowed when invoice wrongly mentioned Mumbai office GSTN instead of Delhi GSTN of assessee

The Delhi High Court has allowed an assessee's writ petition in a case where the Input Tax Credit was denied to them on an invoice which had wrongly mentioned its Mumbai office GSTN instead of its Delhi office GSTN. The Court in this regard noted that assessee's name was correctly mentioned in the invoice, and that the Department had admitted that no other entity had claimed the ITC on the purchases. Allowing the ITC, the Court also noted that substantial loss would be caused to the assessee

if the credit is not granted for such a small error by a supplier. [*B Braun Medical India Pvt. Ltd.* v. *Union of India* – 2025 (3) TMI 774 - Delhi High Court]

Delayed filing of annual returns – Amnesty scheme benefit is available even if belated return filed before 1 April 2023

Taking note of the Amnesty Scheme introduced by waving the late fees in excess of INR 10,000, in case of delayed filing of GSTR-9 for specified Financial Years, the Kerala High Court has set aside the late fees in case where the return was filed even before the date of effect of the Amnesty Scheme, i.e., before 1 April 2023. Allowing the writ petition, the Court observed that such a differential treatment between taxpayers who filed their returns, belatedly but before the notification came in, and those who filed within the period prescribed by the notification, was improper. Relying upon precedents, the Court observed that since the intention behind the notifications was to encourage the taxpayers to file their returns, a person cannot be put to prejudice merely because he filed the returns prior to the date fixed in the Notification. [*Thiruvalla Glass & Plywoods* v. *Superintendent* – 2025 VIL 196 KER]

Appeal to Appellate Authority – Date of uploading of order-in-original on GST portal is relevant

In this case, an order was served to the assessee on 30 September 2022. The assessee filed a manual appeal and deposited an amount in the electronic cash ledger on 22 December 2022. The manual appeal was received by the Department on 20 January 2023. Meanwhile, the order-in-original was uploaded on the GST portal on 17 January 2023. Accordingly, the assessee filed an online appeal on 13 April 2023 and paid the pre-deposit amount through GST APL-01. The appeal was dismissed stating procedural delay. The Madhya Pradesh High Court has allowed assessee's writ and observed that there was no failure on the part of the assessee in filing the appeal within the prescribed period of limitation as well as depositing the mandatory pre-deposit amount in accordance with Section 107(6b) of the CGST Act, 2017. It was noted that an appeal through electronic mode could not be filed and a pre-deposit of 10% of amount could not be made until and unless the impugned order was uploaded on the GST portal. It was held that there was no error in depositing the amount in GST Electronic Cash Ledger and submitting the appeal through speed post. The High Court here was also of the view that the appeal should not be dismissed merely due to

a procedural delay, especially when the assessee had made an effort to comply with the statutory requirements, including the payment of pre-deposit, etc. [*Laxman Das Jaisinghani* v. *Union of India* – 2025 VIL 244 MP]

Returns filing – Limitation of 60 days in CGST Section 62(2), relating to date of best judgement assessment, is directory

The Madras High Court has held that the limitation of 60 days period prescribed under Section 62(2) of the CGST Act, 2017 is directory in nature and if the assessee was not able to file the returns for the reasons beyond his/her control, the delay can be condoned and the assessee can be permitted to file the returns after payment of interest, penalty and other applicable charges. According to the Court, the right to file the returns cannot be taken away stating that the assessee had not filed any returns within 60 days from the date of best judgment assessment order. It was of the view that if the authority is satisfied with the sufficiency of the reasons, they can condone the delay and permit the assessee to file the returns.

Allowing the petition, the Court also noted that the legal right of the assessee to file the returns cannot be taken away if the best judgment assessment order is passed on the earlier date, then what is available with the Department. It was noted that the Department had more than 5 years to pass the best judgement assessment order, and the assessee had plus 60 days to file the returns. [*TVL. Uthapuram Kanmoi Pasana Vivasaigal Sangam* v. *Commissioner* – 2025 VIL 261 MAD]

Refund of additional IGST paid on exports is not deniable even if same paid after exports

The Madras High Court has held that the refund of additional IGST paid by the assessee-exporter on the exports, subsequently, i.e., after exports, cannot be denied. The Department's contention that since the price was revised after exports, the refund should only be limited to the amount of IGST as declared in the shipping bill, was thus rejected. The Court in this regard noted precedents wherein it was observed that if the substantive compliance and the factum of export is not in dispute, procedural requirements should be interpreted liberally. Similarly, the Department's submission, that CBIC Circular No. 40/2018-Cus. was only for one-time relief, was also rejected. The Court in this regard noted that the Bombay High Court has applied the circular and held that merely due to non-compatibility of the data between the two portals (GSTN and ICEGATE), refund cannot be denied. Rejecting the Revenue department's writ appeal, the Court also noted that

there was no dispute that the goods were exported, and that the assessee had paid the disputed amount of IGST. [*Commissioner* v. *Vedanta Ltd.* – 2025 VIL 203 MAD]

Service of notice – HC suggests Revenue department to not only upload on common portal but also to send email to assessee

In a case where the notices were not placed under the heading 'notice and orders' on the common portal but were placed under the heading 'additional notices and orders' therein, the Patna High Court has suggested the Revenue department to consider not only putting the notice on the common portal, but to adopt one more method and also simultaneously sending an email to the registered email address of the assessee. Seeking an answer to the question as to whether assessee is required to go on and examine the common portal every day, the Court was curious as to why while putting the notice on the common portal, in order to facilitate the assessee to know about the placement of the notice on the common portal, an E-mail be not sent simultaneously on the registered e-mail address of the assessee. [*Lord Vishnu Construction Pvt. Ltd.* v. *Union of India* – 2025 VIL 239 PAT]

Refund of inverted duty pertaining to period prior to 13 July 2022 is not affected by Notification No. 9/2022-CT(R) of said date

The Gujarat High Court has reiterated that Para 2(2) of the CBIC Circular dated 10 November 2022, providing that the restriction contained in Notification No. 9/2022-Central Tax (Rate), dated 13 July 2022 will apply to all the refund applications filed after said date, even though they pertain to a period prior to the date of notification, is wholly arbitrary, discriminatory and *ultra-vires* Section 54 of the CGST Act and violate Article 14 of the Constitution of India. Observing that the notification expressly stated that it would apply prospectively, that too from 18 July 2022, the Court held that refund pertaining to period prior to 13 July 2022 cannot be affected by such notification. Allowing the writ petition, the Court also noted that the refund application was filed within the prescribed time limit. [*Patanjali Foods Ltd.* v. *Union of India* – 2025 VIL 213 GUJ]

SCN cannot be issued under Section 73 to deny refund granted after adjudication when no appeal was filed against refund sanction order

In a case where against the assessee's refund application there was an adjudication by which the refund application was

accepted and the refund was sanctioned/granted, the Gujarat High Court has held that no show cause notice can be issued by the Department subsequently to take away the benefits of a quasi-judicial order in the assessee's favour. The Court in this regard also noted that no appeal under Section 107 or Revision under Section 108 of the CGST Act, 2017 was preferred by the Revenue department challenging the adjudication of the refund application and the consequent refund-sanction order. The Order-in-Original by which the subsequent show cause notice was adjudicated was thus held as illegal and unsustainable. The Order in- Original was thus quashed and set aside. [*Patanjali Foods Ltd.* v. *Union of India* – 2025 VIL 213 GUJ]

1. Seizure – Notice required to be given to affected person for extension of seizure period

2. Section 67 of the CGST Act and Section 110 of the Customs Act are *pari materia*

The Delhi High Court has held that Section 67 of the CGST Act, 2017 is *pari materia* to Section 110 of the Customs Act, 1962. The Court in this regard noted that both the Acts are fiscal Acts; seizure of goods and documents is provided for in both the acts; such seizure is only on the basis of a 'reasonable belief'; seizure of goods would have serious repercussions on the person whose goods are so seized; and that the seizure is for the limited purpose of securing the interest of the concerned authorities to conduct their proceedings.

Relying upon the Supreme Court decision in the case of *I.J. Rao*, pertaining to seizure under Customs law, the High Court here held that the affected person is entitled to a notice of the proposal for extension of the seizure prior to the expiry of six months and is also entitled to be heard on the said proposal. It was also of the view that 'sufficient cause' in said provision cannot mean a reason known only to the concerned officials for extending the period of seizure, to the detriment of the affected person.

Further, allowing assessee's petition, the Court also held that the fact that Rule 140 of the CGST Rules, 2017 provides for release of goods on a provisional basis does not obliterate the proviso to Section 67(7), including the need for showing 'sufficient cause' for extending the period. Considering various facts of the dispute, the Court noted that when the relevant documents themselves were not made available completely, it is difficult to accept the contention that the same could have formed 'sufficient cause' for the purpose of extending the period of seizure. [*Kashish Optics Ltd.* v. *Commissioner* – 2025 VIL 214 DEL]

Bona fide error in DRC-03 is not fatal – Proper Officer to rectify or reject such intimation, thus enabling taxpayer to correct

In a case where the intimation in DRC-03 contained a *bona fide* error in the financial year mentioned therein and there was in fact no such liability for the said wrongly mentioned financial year, the Kerala High Court has observed that it was open to the proper officer to reject the said application immediately and thus enable the taxpayer to identify the mistake and correct it. The Court noted that until the issuance of notice under Section 73 of the CGST Act, the statute permits the assessee to correct such *bona fide* errors by a self-verification of the assessment and payment of liability.

The case involved identification of wrongly availed ITC by the assessee themselves and reversal of same while filing intimation under DRC-03. The financial year was, however, wrongly mentioned in the said intimation, which led to confirmation of demand along with interest and penalty for the year for which the ITC was reversed.

According to the Court, if the records do indicate that there was a *bona fide* mistake while determining the tax liability, which is evident from the records available in the portal, it is open for the proper officer to rectify such an order rather than impose liability. The Department was directed to reconsider the rectification application against the order imposing demand. [*Lotus Pharmaceuticals* v. *Assistant State Tax Officer* – 2025 VIL 259 KER]

Job work – Proceedings under Section 129 are correct when Rules 45 and 55 regarding issuance of proper challan are not complied

The Allahabad High Court has held that proceedings under Section 129 of the CGST Act, 2017 are correct when requirements under Rules 45 and 55 of the CGST Rules, 2017 are not complied with. The goods in question were found at different destination, from the destination mentioned in the accompanying documents. The assessee contended that instead of getting the goods unloaded at its business premises, the same were sent to the place of job-worker. However, the Court noted that various descriptions as required under Rule 55 were not mentioned on the challan and the same was incomplete. [*Famus India* v. *State of UP* – 2025 VIL 233 ALH]

Principles of natural justice, even if not enshrined in the provisions, are required to be followed during adjudication

Deciding on the question as to what extent does the Central Goods and Services Tax Act, 2017 permits reading in the principles of natural justice, the Kerala High Court has rejected the contention of the Revenue department that the principles of natural justice need not be followed during an adjudication under the provisions of the CGST Act. The Court in this regard observed that the rule of natural justice is the tenet of every adjudication proceeding, a violation of which renders the proceeding void. The High Court was of the view that it cannot be held that unless the said principle is specifically extended under plenary legislation or the rules framed under it, the insistence of the principles is not mandatory. On the facts of the case, the Court observed that it was imperative for the proper officer to grant an opportunity of cross-examination to the assessee, as the entire basis for the formation of an opinion of guilt against the assessee was the statements of third parties as recorded by the proper officer. It may be noted that cross-examination of co-noticees was, however, denied. [*Joint Commissioner* v. *Nishad K.U.* – 2025 VIL 224 KER]

Input Tax Credit – Rule 36(4) was constitutionally and legally valid even prior to 1 January 2022 – Non-enforcement of Section 43A is immaterial

The Gauhati High Court has held that Rule 36(4) of the Central Goods and Services Tax Act, 2017 is constitutionally and legally valid irrespective of the non-enforcement of Section 43A of the CGST Act, 2017. The Court noted that while Rule 36 is in relation to the eligibility of a registered person who can avail of ITC by furnishing required documents, Section 43A defined procedure for furnishing returns for availing input tax credit, and thus both were distinct from each other. The Court was of the view that Rule 36(4) derives its power from Section 16 of the CGST Act, 2017 which deals with the eligibility and conditions for taking input tax credit. It was thus held that Rule 36(4) is valid as it falls within the scope of the general power conferred by Section 164(2) of the CGST Act to make rules, irrespective of the fact that Section 43A was never notified for enforcement. The assessee had contended that Rule 36(4) had no constitutional or legal validity before 1 January 2022 when Section 16(2)(aa) was inserted. [*High Tech Ecogreen Contractors LLP* v. *Joint Director* – 2025 VIL 193 GAU]

Commercial Tax Officer, being an authorized officer under Section 6 of the KGST Act, is the proper officer under Section 4 of the IGST Act

The Karnataka High Court has held that Commercial Tax Officer, being an authorized officer under Section 6 of the Karnataka GST Act, is the proper officer under Section 4 of the Integrated GST Act, 2017. The High Court in this regard noted that Section 4 of the IGST Act unequivocally mandates that the officer under Section 6 of the KGST Act would be the proper officer under Section 4 of the IGST Act, and that only an exception to the norm would require a separate notification by the Government. It was also noted that the Government of India had not issued any notification carving out an exception declaring someone else to be the proper officer. The assessee had in the case challenged the order for confiscation and consequent auction notice of the confiscated material on the ground that they were without jurisdiction. [*SLM Stationery* v. *Union of India* – 2025 VIL 225 KAR]

Railways – Expression to be given expansive meaning; definition under Indian Railways Act, 1989 cannot be imported into GST notification

The Madras High Court has held that the definition of 'railway' under the Indian Railways Act, 1989 cannot be imported into the GST notifications, as the legislature has not expressly incorporated the definition from the Railways Act. The Court hence allowed the benefit of concessional rate of GST (12%) under Sl. No. 3(v)(a) of the Notification No. 11/2017-Central Tax (Rate) in a case where the assessee was assigned a works contract by Rail Vikas Nigam Limited (RVNL) for doubling of track, construction of roadbed, minor bridges, platforms, buildings, and other infrastructure. The said entry of the notification provided for the concessional rate of 12% for composite supply of works contract services pertaining to railways. The Court for this purpose also noted that the expression 'Railway' employed in the said notification was with reference to an industry / utility rather than qualifying a specific entity *viz*., 'Indian Railway'. It was also of the view that the use of the expression 'pertaining to' showed that the legislation intended to give an expansive meaning to the expression 'Railway'. [*STS-KEC(JV)* v. *State Tax Officer* – 2025 VIL 191 MAD]

Fruit based drinks – Mere presence of carbon dioxide cannot classify the subject goods under water or carbonated water

The Gauhati High Court has upheld the classification of certain fruit pulp or fruit juice based drinks under Tariff Item 2202 99 20 of the Customs Tariff Act, 1975 and not under sub-heading

2202 10. The Court observed that Revenue never proceeded to treat the subject products to be 'water' or products which are akin to water. The Department's submission that merely because the product contained carbonated water, it is to be treated under classification 'water' or 'aerated water', was held as completely fallacious. Doctrine of common parlance was also relied upon by the Court while it noted that the subject goods were sold in the market as fruit-based drinks or drinks containing fruit pulp or fruit concentrate. The Court for this purpose also upheld the reliance placed by the assessee on the Food Safety Standards Regulation and held that the tests results from the State Laboratory cannot be set to be unreliable. It may be noted that the period involved in the dispute was prior to 1 October 2021 when the notifications were issued to put the said goods under 28% GST slab. Upholding coverage under 12% GST, the Court held that the notifications were not applicable retrospectively. [*X'SS Beverage Co.* v. *State of Assam* – 2025 (3) TMI 549-Gauhati High Court]

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Customs and FTP

Notifications and Circulars

- FTA imports – CAROTA Rules amended to substitute 'certificate' for 'proof' of origin
- Camera modules of mobile phones – BCD rate clarified
- RoDTEP scheme extended for exports under AAs and by EOUs and SEZ units, till 5 February 2025
- RoDTEP – Date for filing Annual RoDTEP Return for FY 2023-24 extended till 30 June 2025

Ratio decidendi

- No IGST under Section 3(7) of Customs Tariff Act on reimports after repairs abroad – Repair and refurbishing is supply of 'service' and not 'goods' – *Delhi High Court*
- Drawback, MEIS and ROSL – Overvaluation of exports – Customs can only determine/revise the assessable value but not the FOB value – *CESTAT New Delhi*
- Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616 – *CESTAT Mumbai*
- Areca nut is 'roasted' if moisture content is less than 10%, 'raw' if moisture content is between 10% to 15% – *Madras High Court*
- Re-exports of goods found unfit – Requirement of examination, before changing the shipping bill from free to drawback, is merely a procedural formality – *Madras High Court*
- Valuation – Enhancement based only on voluntary payment of differential duty, without a speaking order, is not sustainable – *CESTAT New Delhi*
- Advance authorization – Customs tariff classification is not relevant for allowing exemption if imported material covered in AA – *CESTAT New Delhi*
- Shipping Bills and Bills of Entry cannot be clubbed and assessed together to determine differential duty, except in certain exceptions – *CESTAT New Delhi*

Notifications and Circulars

FTA imports – CAROTA Rules amended to substitute 'certificate' for 'proof' of origin

In line with the amendments made in Section 28DA of the Customs Act, 1962 by the Finance (No. 2) Act, 2024, the Ministry of Finance has now amended the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('**CAROTAR'**). Notification No. 14/2025-Cus. (N.T.) dated 18 March 2025 has been issued to substitute the word 'certificate' with the word 'proof' in Rules 2(1)(f), 3(1)(c)/(d), 3(1)(d)(i)/(ii)/(v), 3(2), 6(1) and 6(1)(a)/(b) of the CAROTAR. Thus, the list of documents which can be submitted to establish or prove origin has been expanded to reflect the change in the recent Free Trade Agreements.

Camera modules of mobile phones – BCD rate clarified

The Central Board of Indirect Taxes and Customs (CBIC) has clarified that when a camera module is imported as an integrated assembly, it shall continue to attract the concessional basic customs duty rate as prescribed in entry at S. No. 5A of Notification No. 57/2017-Cus. As per Circular No. 8/2025-Cus., dated 24 March 2025, however, where the components of a camera module are imported individually (not as a complete assembly), they shall attract the applicable BCD rate. The Circular in this regard notes that the camera module for use in manufacturing of cellular mobile phones has an essential character of the camera and should be classified as camera module in terms of Rule 3(b) of the General Rules of Interpretation (GRI) of the Harmonised System.

RoDTEP scheme extended for exports under AAs and by EOUs and SEZ units, till 5 February 2025

The Ministry of Commerce has extended the benefit under Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to exports of products manufactured by Advance Authorisation holders, Export Oriented Undertakings and by units in Special Economic Zones, till 5 February 2025. As per Notification No. 66/2024-25, dated 20 March 2025, the benefit will not be available to such exports from 6 February 2025 onwards.

RoDTEP – Date for filing Annual RoDTEP Return for FY 2023-24 extended till 30 June 2025

The Directorate General of Foreign Trade (DGFT) has extended the last date of filing Annual RoDTEP Return for the exports pertaining to Financial Year 2023-24. The ARR can now be filed till 30 June 2025. Similarly, the grace period has also been extended by 3 months till 30 September 2025.

Ratio Decidendi

No IGST under Section 3(7) of Customs Tariff Act on reimports after repairs abroad – Repair and refurbishing is supply of 'service' and not 'goods'

The Delhi High Court has held that Notification No. 36/2021-Cus., amending Notification No. 45/2017-Cus., insofar as it purports to levy an additional levy over and above the IGST imposed under Section 5(1) of the IGST Act, 2017, by adding the words '….tax and cess' is unconstitutional and *ultra vires* the IGST Act. Quashing the notification to the aforesaid extent, the Court also declared the Explanation to clause (d), as introduced by the said notification, as invalid. Consequently, CBIC Circular No. 16/2021-Cus. was also quashed.

The transaction was of initial export of parts of aircraft and aircraft to Maintenance, Repair and Overhaul service providers abroad and receiving them in India after repairs and refurbishments. Revenue department had demanded IGST under Section 3(1) of the Customs Tariff Act, 1975 read with proviso to Section 5(1) of the IGST Act, 2017, on reimport of such goods.

The High Court, however, observed the following.

- The transaction was of supply of service under Entry 3 of Schedule II of the CGST Act, 2017 and will be covered under 'import of services'.
- Not a Department's case that the transaction relating to the subject goods amounted to a composite or a mixed supply.
- It was impermissible for the Revenue department to either review or revisit the characterization of the subject transaction.
- Department had no power to subject a supply or import of service to a tax under the Customs Tariff Act, 1975 in the garb of levying an additional duty.
- Entry 83 of List I of the Seventh Schedule to the Constitution does not confer Revenue the authority to levy a duty on import of service, which is clearly not the legislative field or subject of that entry.
- Section 3(7) of the Customs Tariff Act, 1975 is a collection mechanism as opposed to an independent levy.
- Word 'services' is absent in the proviso to Section 5(1) of the IGST Act and thus, the Legislature deliberately

refrained from providing for levy of an integrated tax on import of services as part of an additional levy.

- Neither the Customs Act nor the Customs Tariff Act envision a levy of duty on services *per se*.
- Levy of additional duty even after the transaction has been subjected to the imposition of a tax treating it to be a supply of service would be unconstitutional.
- The Department's argument on Aspect Theory (existence of two separate and distinguishable taxable events) is not sustainable.
- Amendment to Notification No. 45/2017-Cus. by Notification No. 36/2021-Cus. is not clarificatory. Mere use of terms like 'Explanation' or 'removal of doubt' neither results in an automatic validation of an amendment nor makes it clarificatory.
- The Supreme Court's decision in *Mohit Minerals* in which it was held that a tax on a supply of service which already stands included by legislation as a component of a composite supply of goods would not be sustainable, was relied upon.

The importer was represented by Lakshmikumaran & Sridharan Attorneys here. [*Interglobe Aviation Ltd.* v. *Principal Commissioner* – TS 161 HC 2025 (DEL) CUST]

Drawback, MEIS and ROSL – Overvaluation of exports – Customs can only determine/revise the assessable value but not the FOB value

In a dispute involving alleged overvaluation of exports, where the Department had sought to recompute the export benefit such as drawback, MEIS and ROSL, the CESTAT New Delhi has held that Customs officers are not empowered to revise the FOB value of the goods. According to the Tribunal, the Customs officers can change the assessable value but not the FOB value of exports. It was of the view that the consideration or the transaction value cannot be modified by any stranger to the contract, including any officer. Allowing the exporter's appeals, the Tribunal for this purpose observed that all the three export incentives in dispute- drawback, MESI and ROSL are to be paid as a percentage of FOB value, as per the notifications issued by the Central Government under the Customs Act and the FT(D&R) Act, and no Customs officer has the power to order that they should instead be paid as a percentage of any other value. It was also noted that Bank realization certificates were already received in these exports. [*JBN Apparels Pvt. Ltd.* v. *Commissioner* – 2025 VIL 361 CESTAT DEL CU]

Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616

The CESTAT Mumbai has held that Crimp Pumps, one of the components of 'Nasal spray device' which is used for dispersal of medicaments which work on the principle of spray forming mechanism, are classifiable under Heading 8413 of the Customs Tariff Act, 1975 and not under Heading 9616 *ibid.* The Tribunal noted that scope of Heading 8413 is large enough to cover all types of pumps and other similar appliances, irrespective of its application in dispersal of medicament liquid or other use, while the scope of Heading 9616 is restricted to scent sprays, toilet sprays which are cosmetics in nature and items such as mounts, heads, powder-puffs and pads which are essential for its application. Explanatory Notes to both the headings were also relied upon by the Tribunal while it allowed assessee-importer's appeal. It was also noted that spray mechanism including 'crimp pump' cannot be brought under entirely different category of goods as the one specifically provided for 'cosmetics and toilet sprays'. Further, classification of parts of crimp pump was also held as not covered under TI 3926 90 91 nor under TI 3926 90 99. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Glenmark Pharmaceuticals Limited* v. *Commissioner* – 2025 VIL 332 CESTAT MUM CU]

Areca nut is 'roasted' if moisture content is less than 10%; 'raw' if moisture content is between 10% to 15%

The Division Bench of the Madras High Court has dismissed the appeals filed by the Revenue department observing that as per the parameters fixed by the Authority for Advance Rulings, if the moisture content is between 10% and 15%, the areca nut would be considered as a raw areca nut, and anything below the said category would be considered as roasted areca nut. The Court in this regard noted that the AAR Ruling had attained finality as a co-ordinate bench of the Court had declined to interfere with the said findings of the AAR. [*Commissioner* v. *Universal Impex* – 2025 (3) TMI 396-Madras High Court]

Re-exports of goods found unfit – Requirement of examination, before changing the shipping bill from free to drawback, is merely a procedural formality

The Madras High Court has allowed assessee's writ petition in a case where the exporter-assessee had sought to amend the shipping bill from 'free' to that for 'drawback'. The case

involved re-export of goods (black pepper) which were found not fit for human consumption after relevant tests. The Court rejected the contention of the Revenue department that since the assessee had filed a fresh shipping bill, the goods were not examined and therefore it may not be proper to allow the change of free shipping bill to drawback shipping bill to avail the benefit of duty drawback. It was noted that the imported goods were not allowed to be taken outside the customs area and therefore the question of the imported consignments being re-examined once again before the re-export would have been merely a procedural formality, as the Department had already subjected the goods to test. The High Court was also of the view that since the goods had been re-exported, the procedural irregularities in complying with the requirements of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, cannot be pressed against the assessee. [*G.T. India Private Limited* v. *Commissioner* – 2025 (3) TMI 749-Madras High Court]

Valuation – Enhancement based only on voluntary payment of differential duty, without a speaking order, is not sustainable

The CESTAT New Delhi has held that re-assessment and enhancement of the value of the imported goods without passing any speaking order but based on the fact that the differential duty was voluntarily paid by the importer-assessee, is not sustainable. Relying upon various precedents, the Tribunal observed that the mere acceptance of the re-assessed value and payment thereof will not be sufficient to confirm the allegations of undervaluation. Observing that the burden still rests on the Department to prove the said allegations, the Tribunal held that in case the burden is not discharged, the statement of the assessee or the payment of differential duty will not be a sufficient waiver on part of the assessee to contest the re-assessment. Accordingly, it was of the view that the mere waiver will not get covered under the admission as termed by statute in Section 17(5) of the Customs Act, 1962.

In terms of non-speaking order, the Tribunal observed that no verification/examination/testing of goods was done by the proper officer to incur reasonable doubt about accuracy of the transaction value, no enquiry as required under Rule 12 of Valuation Rules was conducted, and no exercise as required under Section 17(4) was undertaken. [*Seafox Impex* v. *Commissioner* – 2025 VIL 304 CESTAT DEL CU].

Further, the CESTAT Chandigarh has also reiterated that the enhancement of value, solely on the basis of coerced consent letters, DGoV Circular and in the absence of contemporaneous

import data, is legal and valid. [*Century Metal Recycling Ltd.* v. *Commissioner* – 2025 VIL 314 CESTAT CHD CU]

Advance authorization – Customs tariff classification is not relevant for allowing exemption if imported material covered in AA

The CESTAT New Delhi has held that customs tariff classification of the imported materials is not relevant for allowing exemption from customs duty against the Advance Authorizations, where such imported materials were covered for import in the AAs issued by the DGFT to the importer. It was also held that Customs authorities cannot deny the benefit of the Advance Authorization Scheme on the grounds of the proposed change in customs tariff classification of the imported goods, where the Export Obligation Discharge Certificate has been issued by the DGFT. The Tribunal in this regard observed that the customs authorities, if had been of the opinion that the assessee-importer had violated any of the terms and conditions of the licences, the matter should have been referred to the licensing authority for appropriate action rather than demanding duty in the inputs/raw materials. [*Svam Toyal Packaging Industries Pvt. Ltd.* v. *Principal Commissioner* – 2025 VIL 292 CESTAT DEL CU]

Shipping Bills and Bills of Entry cannot be clubbed and assessed together to determine differential duty, except in certain exceptions

The CESTAT New Delhi has held that two or more Shipping Bills cannot be assessed together to determine the duty or to demand differential duty. Observing that nothing in the Customs Act requires that a single Shipping Bill must be filed for all the goods indicated in a Bill of Lading, the Tribunal held that the exporter was thus fully within their rights and committed no error in filing two or more Shipping Bills in respect of the goods exported in a single vessel. The case involved export of iron ore and the Department had alleged that the exporter had deliberately divided the goods in different shipping bills to avail export duty exemption with respect to some shipping bills. The Tribunal, however, noted the exceptions like Project Imports and where several goods which together constitute disassembled or unassembled article are sought to be cleared. [*Disha Realcon Pvt. Ltd.* v. *Commissioner* – 2025 VIL 213 CESTAT DEL CU]

Central Excise, Service Tax and VAT

Ratio decidendi

- Cenvat credit – Provision for lapsing of credit under Rule 11(3) is applicable only for situation listed in clause (ii) of Rule 11(3) – *Madras High Court*
- Rate of interest on refund of amount deposited during investigation – Section 11BB and not Section 35FF when applicable – *CESTAT New Delhi*
- Printed thermal ATM rolls are classifiable under Chapter 49 and not Chapter 48 of the Central Excise Tariff Act – *CESTAT Chennai*
- Classification of goods – Presence of more than certain quantity of other substances does not necessarily make the product lose its individuality – *CESTAT Mumbai*

Ratio Decidendi

Cenvat credit – Provision for lapsing of credit under Rule 11(3) is applicable only for situation listed in clause (ii) of Rule 11(3)

The Madras High Court has held that Cenvat credit cannot be treated as lapsed in situations covered under clause (i) of Rule 11(3) of the Cenvat Credit Rules, 2004. Observing that there was a semi-colon between clauses (i) and (ii), it was held that sub-clause (i) of sub-rule (3) of Rule 11 will have to be treated as distinct and separate from sub-clause (ii). Argument of the Department that sub-clause (ii) should be read integrally with sub-clause (i) was thus rejected. It was held that since sub-clause (ii) alone provides for lapse of Cenvat credit, provision on lapse of credit would not be applicable in respect of the situation covered by sub-clause(i). Single-Judge decision allowing the writ petition filed by the assessee in a case involving rebate claim on exports, was thus upheld. Clause (i) covered situations where the assessee opts for an exemption from central excise duty while clause (ii) covered situations of absolute exemption. [*Assistant Commissioner* v. *Valli Textile Mills* – 2025 VIL 209 MAD CE]

Rate of interest on refund of amount deposited during investigation – Section 11BB and not Section 35FF when applicable

The CESTAT New Delhi has rejected the contention of the assessee that the amount which it had deposited during investigation must be treated as 'Revenue deposit' and neither as service tax nor as pre-deposit under Section 35F of the Central Excise Act, 1944. The Tribunal however set aside the order impugned before it which had allowed interest under Section 35FF, while it remanded back the matter to examine and sanction refund under Section 11B along with interest under Section 11BB.

Relying upon the Supreme Court decision in the case of *ITC Ltd.* v. *Commissioner* [2019 (368) E.L.T. 216 (S.C.)], the Tribunal noted that the amounts paid during investigation were appropriated towards the demand of service tax, and had there been no appeal or further orders, the amount would have been service tax. It was also noted that on appeal, the Tribunal allowed the appeal and set aside the demand, i.e., the modification of the assessment as per the orders of the lower authorities was reversed by the Tribunal and as a consequence, the assessee became entitled to

get a refund as per Section 11B. It was also observed that merely because service tax already paid by the assessee is adjusted towards pre-deposit to be paid, it does not become pre-deposit. [*Essjay Telecom and IT Services Private Limited* v. *Commissioner* – 2025 (3) TMI 743-CESTAT New Delhi]

Printed thermal ATM rolls are classifiable under Chapter 49 and not Chapter 48 of the Central Excise Tariff Act

The CESTAT Chennai has held that the printed thermal paper rolls are to be classified under Tariff Item 4901 99 00 and not under TI 4811 90 99 of the Central Excise Tariff Act, 1985. The Tribunal for this purpose relied on the Supreme Court decision in *Gopsons Papers Ltd.*, which had held that where the printing is not merely incidental but essential to the primary use of the product, the goods are to be classified under Chapter 49 as 'products of the printing industry'. The assessee had subsequent to import, printed the logo, name and address/ advertisement matter of the bank/customer and after the process of slitting, cutting to size and packaging, effected clearances as 'ATM Rolls'. Allowing the appeal, the Tribunal noted that the pre-printed thermal paper rolls are meant for printing by ATM and certain parts of the printed matter already existed on the said Thermal paper rolls. It was observed that except for this printed matter such rolls have no other use, and if Rule 3(a) of the General Rules for Interpretation of the Central Excise Tariff is applied, the most specific description shall be preferred over general description paper rolls. [*Mas Computer Forms-Unit II* v. *Commissioner* – 2025 VIL 310 CESTAT CHE CE]

Classification of goods – Presence of more than certain quantity of other substances does not necessarily make the product lose its individuality

The CESTAT Mumbai has observed that only by establishing presence of more than certain quantities of substances in a particular product, the individuality of the product would not be necessarily lost. The dispute involved classification of certain spice mixes, whether under Chapter 09 or under Chapter 21 of the Central Excise Tariff. It was held that the essential characteristics of the product were not lost despite the presence of more than the required quantity of other items not mentioned in Heading 0910. [*Commissioner* v. *Pravin Masalewale* – 2025 VIL 357 CESTAT MUM CE]

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