not be completed. High Court noted that a specific period of limitation prescribed for completion of original block assessments for the search proceedings is within two years, applying this two years period to block assessment proceedings after remand of matter, was not a feasible interpretation. The general provision of two years was provided with one important objective regarding to catering to a situation where upon search, if new material is found, already completed assessments can be revisited.

High Court held that the only provision that prescribed a period of limitation in respect of remands at the relevant time in this case is Section 153(2A). High Court held that the period of limitation prescribed for completion of remand (nine months) constituted a special provision, which applies to every class of remand regardless whether they originate from assessments/re-assessments/revisions or search and seizure assessments. High Court thus held that the completion of block assessment proceedings by the impugned order dated 22.12.2017 was clearly beyond the period of limitation, which ended on 31.12.2016.

High Court thus quashed the block assessment order and its consequential orders and thus ruled in favour of the assessee.

Wealth Tax

LD/67/74

Devineni Avinash

Vs.

The Principal Commissioner of Income Tax

October 11, 2018

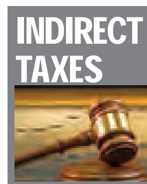
Execution of Development Agreement on vacant land does not make it stock-in-trade so as to exclude it from Wealth Tax levy.

The assessee had filed his return of wealth, for the AY 2009-10. Assessee had purchased urban land in July 2007 and a development agreement related thereto was entered into by assessee immediately. Assessing officer held that the same was to be considered while calculating wealth and wealth tax thereon. As per the assessee the immediate execution of development agreement showed assessee's intention to carry on business and therefore the said vacant land would not fall within the definition of an "asset" under the Wealth Tax Act. The Commissioner (Appeals) as well as ITAT ruled in favour of the Revenue, aggrieved by which the assessee filed an appeal before Andhra Pradesh and Telangana High Court.

High Court observed that the purchase of property by the assessee was an isolated transaction, and they had not carried on any business either before or thereafter. Only purchasing a property under profitable bargain with the desire to sell the property would not justify assessee's intention of starting a venture in the nature of business or trade.

Filing of return under Form No ITR-2 and not in Form No.ITR-4 was also an indication whereby the subject land was treated as an investment / capital asset, and not as stock-in-trade under the head 'current assets'. If assessee had intended to use the land for the purpose of carrying on business, it would have been shown the same as 'stock-in-trade' under the head 'current assets' and not as immovable property under the head 'fixed assets'. Merely because assessee entered into a Joint Development Agreement with a builder, the same would not itself amount to treatment of subject land as stock-in-trade.

High Court thus ruled in favour of the Revenue.



GST

LD/67/75

Apex Company Vantage India Pvt. Ltd.

Vs.

CCT

(CESTAT-HYD)

June 14, 2018

Tribunal held that refund claim of accumulated CENVAT credit, filed in terms of Rule 5 of CENVAT Credit Rules, 2004, needs to be debited in the books of accounts at the time of filing refund claim and violation of said condition would lead to rejection of refund claim.

Facts:

Appellant exporter filed refund claim of accumulated CENVAT Credit in terms of Rule 5 of CENVAT Credit Rules, 2004 (CCR, 2004). The entry for refund claim was recorded by the appellant in their books of account, not at the

time of filing of refund claim but subsequently. Department rejected the refund claim on the ground that appellant had not debited the CENVAT credit amount from their books of accounts at the time of making the claim as stipulated under erstwhile notification which dealt with safeguards, conditions and limitations to which refund claim under Rule 5 of CCR, 2004 was subjected to. Even, the First Appellate Authority dismissed appeal filed by the appellant. Being aggrieved, the appellant filed present appeal before the Tribunal. They pleaded that they were under mistaken belief that the debit in their books of accounts had to be done after one year from the end of the quarter for which the refund claim has been filed. Further, though these details were mistakenly not entered in ST-3 returns, but they had subsequently filed revised returns rectifying the defects.

Held:

Hon'ble Tribunal found that the notification lays down that the amount claimed as refund of CENVAT amount should be debited before applying for the refund and the appellant had not done so. They have debited the amount, but much later and thereby they violated the condition 2(h) of the notification. Tribunal held that the Rule or the notification does not provide the flexibility to the officers or the Tribunal to relax condition 2(h) of the notification and thereby rejected present appeal by upholding impugned order.

Service Tax

LD/67/76

M/S Indian Institute of Technology

Vs.

Commissioner of Service Tax

(CESTAT-DEL)

July 06, 2018

Tribunal held that when assessee educational institution made payments to the overseas vendors towards online subscription of various educational resources, being in the capacity of representative of consortium of various educational institutions, no service tax liability would arise under reverse charge as such activity is meant for education and not in relation to any business or commerce.

'Training and placement charges' collected by educational institution from its students as part of fee structure are not liable to service tax under category of 'manpower supply services'.

Facts:

The appellant is an institute of national importance established by the Institutes of Technology Act, 1961, an Act of Parliament, for fostering excellence in education. The Ministry of Human Resources Development (for short 'MHRD') set up the 'Indian National Digital Library in Engineering Sciences and Technology Consortium' (INDEST) and the appellant, was designated as the Consortium Headquarters to coordinate its activities. The Consortium enrolls engineering and technological institutions as its members and subscribe to electronic resources for them at discounted rates of subscription and favourable terms and conditions. The Ministry provides funds required for subscription to electronic resources for various centrally-funded Government institutions. The benefit of consortia-based subscription to electronic resources is not confined to its core members but is also extended to all educational institutions under its open-ended proposition. With the aim of subscribing to various electronic educational resources at highly discounted rates for the benefit of its members, the consortium enters into subscription agreement with the resource owners. Department took a view that appellant is receiving Online Information and Database Access or Retrieval Services (OIDAR) from the overseas vendors and thus, liable to pay service tax under reverse charge mechanism. Further, service tax was demanded under category of manpower supply services in respect of 'training and placement charges' collected by appellant from its students.

Held:

Hon'ble Tribunal found that in terms of erstwhile Taxation of Services (Provided from outside India and Received in India) Rules, 2006, the recipient based services were taxable only when they are received by a recipient located in India for use in relation to business or commerce. It was categorically found that the OIDAR services were received by the appellant, not in relation to business or commerce, but were meant for use in education only. Further, Tribunal noted that said services were received by appellant as representative of all

the educational institutions. Accordingly, Tribunal held that appellant is not liable to pay service tax under reverse charge for payments made to overseas vendors for various subscriptions taken by consortium.

As regards demand under manpower supply services, Tribunal noted that said training and placement charges were collected by appellant from its students as a part of their fee structure. Neither the appellant is a commercial concern nor did they provide services to any commercial concern. Further, Tribunal held that issue is squarely covered in the case of *Motilal Nehru National Institute of Technology vs. CE & ST, Allahabad – 2015 (40) S.T.R. 375 (Tri. – Del.)* Therefore, Tribunal set aside impugned demand under manpower supply services.

LD/67/77

SETH CONSTRUCTION
Vs.
CCGST MUMBAI (SOUTH)
(CESTAT-MUM)
August 02, 2018

Tribunal held that once the assessee engaged in providing taxable as well as exempted services, reverses the CENVAT credit attributable to exempted services, no proceedings can be initiated against the assessee for payment of 8%/10% reversal of value of exempted services under Rule 6(3) of CCR, 2004.

Facts:

Appellant, provider of works contract services, discharged service tax liability in some cases and availed benefit of exemption notification in other cases. Since the appellant provided both taxable as well as exempted service, department proceeded against it under Rule 6 of the CENVAT Credit Rules, 2004 for payment of amount of 8% / 10% of the value of exempted service. After issuance of show-cause notice, the appellant had reversed the CENVAT credit availed by it in respect of the exempted service provided it, by availing the exemption benefit under Notification dated 20.06.2012 and also paid the interest at the appropriate rate. Thereafter, the proposals made in the show-cause notice were dropped by the Adjudicating Authority. Being aggrieved, revenue preferred appeal before first appellate authority wherein the first appellate authority confirmed the CENVAT credit demand along with interest and appropriated the amount already reversed by the appellant towards such confirmed demand and also imposed penalty. Being aggrieved, appellant has filed present appeal. The issue before Tribunal for consideration was whether upon reversal of CENVAT credit on the exempted service along with interest, can the department proceed further for recovery of amount as contemplated under Rule 6 of CENVAT Credit Rules, 2004 and impose penalties on the appellant.

Held:

Hon'ble Tribunal held that the present dispute is no more *res integra* in light of its own decision in *Order No. A/85944-85946/2018 dated 02.04.2018* in the case of *Ahmednagar Zilla Prathamik Shikshak Sahakari Bank Ltd. & Ahmednagar Shahar Sahakari Bank Ltd. vs. Commissioner of Central Excise, Aurangabad - 2018 (4) TMI 1330-CESTAT Mumbai*. In the said decision, reliance was placed on *Nagar Urban Cooperative Bank Ltd. vs. Commissioner of Customs, Central Excise and Service Tax, Aurangabad-CESTAT-MUM* and it was held that the option available to the assessee to reverse proportionate CENVAT credit, once exercised by the assessee, the demand cannot be confirmed for recovery of the value of the exempted service provided by the assessee. Accordingly, it was held that since on the date of passing of the impugned orders, there were no outstanding liability recoverable from the appellants, the demand of amount in terms of Rule 6(3) of the rules cannot be sustained. Relying on the same, Tribunal allowed present appeal by setting aside order of first appellate authority.

LD/67/78

M/s SMP Constructions Pvt. Ltd.
Vs.
Commisssioner of Central Excise and Service Tax
(CESTAT-AHM)
August 01, 2018

Where assessee avails benefit of abatement notification in some contracts (wherein he has not availed CENVAT Credit), the benefit of abatement notification cannot be denied

merely because in some other contracts (where assessee discharged service tax liability on entire value of contract), the assessee has availed the CENVAT Credit. The abatement notification is not required to be applied in a uniform manner across all contracts undertaken by it.

Facts:

Appellant is engaged in providing the service of "Commercial or industrial construction services". While taking benefit of abatement notification stipulating non-availment of CENVAT credit as pre-condition for claiming abatement, out of total contracts undertaken by appellant, in some contracts they paid service tax on the 100% of gross value without availing the abatement and availed CENVAT credit. In some of the contracts, they paid the duty on 33% of the gross value after abetment of 67% and did not avail the CENVAT credit. The case of the department is that since the appellant in respect of some of the contracts availed CENVAT credit and discharged the service tax on 100% gross value of the service, they cannot opt for abatement notification for remaining contracts and thereby, is liable to pay service tax on entire value of contract.

Held:

Hon'ble Tribunal noted that the Notification is not applicable in case where the CENVAT credit in respect of inputs or capital goods or input services used for providing such taxable service has been taken. Tribunal held that when the condition of the said Notification was complied with qua a particular contract, merely in some of the contract the appellant had availed the CENVAT credit, has no effect on the services where the benefit of abetment notification was availed. Tribunal noted that the issue is no more *res-integra* in light of the decision in *Bharat Heavy Electrical Ltd. Vs. CCE-2014 (34) STR 430 (T-Mumbai) 2012-TIOL-348-CESTAT-MUM* and *Afcons Infrastructure Ltd. Vs. CCE - 2016-TIOL-1818-CESTAT-MUM* wherein it was held that there is no stipulation in the notification that the option to avail/ non-avail CENVAT credit has to be exercised uniformly in respect of all the contracts executed by the assessee. It is for the assessee to choose which formulation he wants to follow in a given contracts.

LD/67/79

Shyam Mani, Umesh Nigam
Vs.
Commisssioner of CGST and Central Excise, Mumbai (CESTAT-MUM)
June 20, 2018

Penalty under section 78A of Finance Act, 1994 i.e. penalty for offences by Directors etc., cannot be imposed in cases where period under dispute is before 10.05.2013.

Facts:

The short issue for consideration before the Tribunal in present appeal was whether penalty under section 78A of Finance Act, 1994, providing for imposition of penalty for the offences by the Directors, etc., can be imposed in cases where period under dispute is prior to enactment of said Section 78A w.e.f. 10.05.2013?

Held:

Hon'ble Tribunal held that in present appeal, during the disputed period, Section 78A was not incorporated in the statute and the same was inserted by Finance Act, 2013 with effect from 10th May 2013, thus, the provisions of Section 78A cannot be invoked for imposition of penalty on the employees for the offence committed by the company. It was noted that similar view was taken in *Dato Seri Shahril Shamsuddin vs. Commissioner of Service Tax, Mumbai - II -2016-TIOL-559-CESTAT-MUM* and the penalty on the employees of the company under section 78A, was set aside.

Excise

LD/67/80

Mangalam Alloys Limited
Vs.
The Commissioner of Central Excise, Ahmedabad
September 05, 2018

Input Credit denial by CESTAT on the ground of no actual movement of goods, which the assessee failed to satisfactorily rebut, upheld by the High Court.

The assessee is a manufacturer of goods and availed credit on inputs received from two suppliers namely two of the suppliers of such

inputs, namely, M/s. Goodluck Empire, Bhavnagar and M/s. Jenil Empire, Bhavnagar, about which the revenue noticed certain clandestine Transactions. CESTAT noted that Revenue had obtained a report from the RTO suggesting that the twelve invoices pertained to goods stated to have been transported by vehicles which were incapable of carrying the quantity of such inputs.

Regarding such discrepancies, CESTAT neither found any satisfactory explanation from suppliers' statements nor from assessee's side. Assessee merely stated that goods were ordered on FOR basis and therefore transportation of goods was responsibility of the supplier and not assessee. CESTAT affirmed revenue's contention that goods were not physically received by the assessee and CENVAT credit therefore could not be claimed.

High Court noted that when the RTO report strongly suggested that the vehicles in which the goods were stated to have been transported were incapable of doing so, the burden would be on the assessee to dislodge these primary findings particularly when the report of the RTO was not challenged. Assessee's stand that it had ordered goods on FOR value and therefore was not obliged to explain the manner of transportation was too simplistic in background of facts on record.

High Court rejected assessee's contentions that CESTAT's conclusions were based on drawing presumptions or adverse inference. High Court thus upheld the order of CESTAT and thus ruled in favour of the Revenue.

INTERNATIONAL TAXATION

Transfer Pricing

LD/67/81

Cairn India Limited

Vs.

The Assistant Commissioner of Income Tax, Gurgaon

October 24, 2018

Redeemable Preference shares issued to associated enterprise of assessee can't be categorised as loans.

An addition on account of arm's length price on notional interest regarding investment made through 0% Redeemable Preference Shares by the assessee in its subsidiary company based in Jersey was made by the Transfer Pricing Officer. Transfer Pricing Officer observed that the assessee raised a loan of ₹ 1, 345 crore from SBI for one of its projects and however on the same day, made an investment in the subsidiary by way of the Redeemable Preference Shares. The Transfer Pricing Officer characterised the same as an unsecured loan to the subsidiary. ITAT remitted the matter back to Transfer Pricing Officer noting that litigation on similar issue for immediately preceding year was pending in case of the same assessee. The Delhi High Court, however, held that ITAT was incorrect in doing such remission and that it should have proceeded to decide the issue on merits since it did not involve elaborate fact finding. High Court thus directed ITAT to hear the matter again.

ITAT noted Section 80 of Companies Act makes detailed provisions for the issue by a company of redeemable preference shares which *inter alia* provide that no such share shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of share capital made for the purpose of redemption. ITAT also relied on from the Delhi High Court ruling in the case of *Globe United Engineering and Foundry Co. Ltd [44 Comp. Cases 347]* wherein it was held that Preference Shares / Optionally Fully Convertible Debentures are not 'loans'.

ITAT observed that in AY 2012-13, preference shares were redeemed by the AE and redemption was accepted by the Revenue. Accordingly, ITAT concluded that re-characterisation of the transaction was erroneous and the resultant transfer pricing adjustment was unwarranted. Further with respect to addition of 'notional interest', ITAT stressed on importee of 'Real Income' theory and stated that real income meant profits arrived at on commercial principles subject to provisions of the Act.