of the sale to non-members cannot be held to be a banking activity of the assessee. High Court stated that the activity of establishing a fair price shop clearly fell within the scope of By-law No. 3(b)(2) under the by-laws of the society. High Court also stated that the directives issued by the Government of Tamil Nadu, as communicated by the Registrar of Cooperative Societies were binding on the assessee-society. High Court stated that the assessee herein is entitled to distribute the items under the PDS, as it is one of the allied activities of the society and is bound by the directives of the Government.

High Court thus held that the activity done by the assessee-society cannot be truncated from the activities of the credit society and therefore the Revenue erred in not granting the benefit of the deduction under section 80P(1) r.w.s. 80P(2)(a)(i) to the assessee.

High Court thus ruled in favour of the assessee.

LD/67/89

The Commissioner of Income Tax
Vs.
M/s Trident Minerals.
October 10, 2018

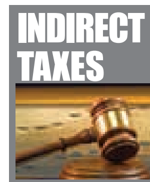
Merger of another firm with the assessee does not disentitle the assessee from claim under section 10B on ground of change in ownerships.

The assessee is a partnership firm and a 100% Export oriented unit [EOU] engaged in the business of production, manufacture and export of iron ore. Assessee commenced production and manufacture in AY 2008-09. KMMI is a sister concern of assessee engaged in the same business of manufacture, production and export of iron ore and it was also granted a 100% EOU status in November 2006 by SEZ. KMMI merged with the assessee concern and return of income was filed for AY 08-09 by claiming deduction under section 10B. AO held that since there was a merger and that the assets of KMMI Exports were taken over by Trident Minerals (assessee), deduction under section 10B was not allowable. As per Revenue, the deduction claiming undertaking cannot be formed by the transfer to a new business, machinery or plant previously used for any purpose CIT(A) as well as ITAT ruled in favour of the assessee, aggrieved by which the Revenue filed an appeal before the Karnataka High Court.

High Court observed that Section 10B(9) as per which deduction is disallowed if there was a transfer of ownership or beneficial interest in the undertaking, was omitted w.e.f. 01.04.2004. Similarly sub-section 9A as per which deduction under section 10B can be allowed when the firm is succeeded by a company, was also omitted w.e.f. 01.04.2004. High Court stated that since the limitations specified in sub-sections 9 and 9A did not exist, the conclusion of the AO that deduction under section 10B of the Act cannot be granted on the merger of firms is not correct.

High Court observed that as per CBDT circular no. 1 of 2013, it was clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed for the unexpired period subject to fulfilment of prescribed conditions; and violation of those conditions in the instant case were not disputed by the Revenue.

High Court therefore held that the deduction claim under section 10B made by the assessee after its merger with sister concern was correct. High Court thus ruled in favour of the assessee.



GST

LD/67/90

Sonodyne International Pvt. Ltd
Vs.
Commissioner of CGST, Mumbai East
(CESTAT-MUM)
October 18, 2018

Tribunal held that mere maintenance of records and reflection in ST-3 Returns of Cenvat credit in respect of input services, which is otherwise refundable to SEZ unit, so as to let the department know about Cenvat credit lying with such SEZ unit, does not amount to "taking"/availment of Cenvat credit by SEZ unit.

Facts:

The appellant, SEZ unit, discharged service tax liability under the reverse charge and claimed refund

of the same in terms of Notification No. 17/2011-ST dated 1.3.2011 and Notification No.40/2012-ST dated 20.6.2012, in terms of which the input services, utilised by the SEZ developer, for the authorised operations, are exempt from payment of service tax. Department rejected refund claim on the ground that inasmuch as the appellant had reflected the said service tax in their ST-3 returns, they have availed the Cenvat credit of service tax so paid by them and as such, the condition of the notification i.e. not taking Cenvat credit of service tax paid on specified services, stands violated by them. While rebutting revenue's contentions, appellant submitted that they have merely maintained a record of the service tax so paid by them in respect of various input services and the total amount of such service tax was reflected by them in their ST-3 returns so as to let the department know that the total service tax availed by them is to that extent. The so called credit of service tax does not stand utilised by them, thus satisfying the conditions of the notification. Thus, the question to be decided in present appeal was as to what exactly is the meaning of the expression "taken" appearing in sub-clause (g) of Explanation (2) appended to the notification in question.

Held:

Hon'ble Tribunal noted that a mere maintenance of an account showing the total quantum of service tax paid by the assessee cannot be held to be the availment of Cenvat credit. The mere entries in such records which are not even prescribed in the statutory records, cannot lead to the inevitable conclusion that the assessee has taken the credit. Similarly, the reflection of such account in the ST-3 Returns so as to let the department know about the total service tax quantum earned by the assessee will also not amount to the fact that as if the assessee has taken and utilised the credit. Tribunal categorically found that not only that the appellant in their subsequent ST-3 Returns has again shown the opening balance of such account maintained by them as zero and has reflected the total service tax earned by them in that period. Thus, it was held that the appellant cannot be said to have availed Cenvat credit of service tax paid by them.

Further, the Tribunal observed that the lower authorities in their impugned orders have nowhere disputed the fact that such amount of service tax reflected by the appellant in their ST-3 Returns was utilised by them. The condition of the notification is that no Cenvat credit would be availed by the assessee. Such availment cannot be held to be there unless such service tax accumulated in the accounts of the assessee-appellant stands utilised by them. Accordingly, it was held that such accumulated service tax so paid by the appellant is liable to be refunded to them in terms of the notification in case the assessee-appellant has not availed the credit and utilised the same. The underlying crux of the notification is that the double benefit of availment and utilisation of the Cenvat credit as also for refund of the same should not be granted to SEZ unit.

LD/67/91

A V R Storage Tank Terminals Pvt. Ltd.

Vs.

CCT Visakhapatnam GST

(CESTAT-HYD)

September 20, 2018

Tribunal held that the benefit of Cenvat credit of common services such as security, lift maintenance etc. cannot be denied partially, merely for the reason that other entities located in the same premises also benefited from such services.

Facts:

Appellant, inter alia, claimed Cenvat credit on in respect of input services of security agency and lift maintenance services for which all the invoices were raised on appellant along with service tax paid by them. Revenue contended that since the other two firms located within the same office complex enjoyed benefit of the said services, appellant is entitled to only 1/3rd of the total amount of service tax paid on these two services, although other two entities have not paid for such services.

Held:

Tribunal noted that it is not undisputed that the appellant hired these services and paid for them along with the service tax. Given the nature of these

services, others running their business from the same complex would have also benefited from them. This enjoyment is like the enjoyment of one's porch light by the passersby. It does not dilute the utility of these services by the appellant or their nexus with their output services. Further, the Tribunal found that there is no rule under which the Revenue can vivisect and partly deny the credit on these services simply because somebody else also incidentally benefited from them. The entire service has been hired by the appellant and has been paid for and the entire tax has been borne by the appellant. Accordingly, tribunal held that there is no reason to deny the benefit of CENVAT credit of service tax paid by appellant on these services and set aside impugned demand.

Service Tax

LD/67/92

Zenith Birla India Ltd.
Vs.
CCG ST MUMBAI-III
(CESTAT-MUM)
October 4, 2018

When the service tax liability is demanded by the department on the basis of scrutiny of the service tax returns, trial balance, ledger and final accounts maintained by the assessee, in terms of proviso to Section 78 of Finance Act, 1994, the amount of penalty is restricted to 50% of the amount of service tax demand.

Facts:

During the period December 2013 to March 2015, the appellant did not discharge service tax liability under the reverse charge mechanism. Subsequently, while scrutinising the records maintained by the appellant, department pointed out non-payment, such default was made good by appellant along with the payment of interest. The lower Adjudicating Authority as well as the First Appellate Authority held that penalty under section 78 should be equal to entire amount of the service tax liability paid by the appellant. However, appellant has assailed the impugned order on the ground that in the absence of fulfilment of the ingredients such as fraud, collusion, wilful mis-statement, etc., with intent to evade payment of service tax, the provision of Section 78 of Finance Act, 1994 cannot be invoked for imposition of equal amount of penalty.

Held:

On the basis of Audit Report issued by the department, Hon'ble Tribunal found that the objections were raised by the department on the basis of service tax returns, trial balance, ledger and final accounts maintained by the appellants. Tribunal noted that during the period covered under dispute, when the assessee maintains specified records, the proviso appended to Section 78 of the Act, mandates that imposition of penalties should be restricted to 50% of the determined amount of service tax. Accordingly, Tribunal held that since the statutory provisions are clear about the quantum of penalty, in case of maintenance of records by the assessee, in present case, the equal amount of penalty imposed by the authorities is unwarranted. The Tribunal, therefore, reduced the quantum of penalty under section 78 to 50% of the amount of service tax confirmed in the adjudication order.

VAT

LD/67/93

Commissioner of Value Added Tax, Delhi
Vs.
Otis Elevator Company (India) Ltd.
November 26, 2018

Supply of goods from Mumbai to Delhi to execute works contract held as not being interstate sales under CST Act.

The question of law to be dealt in the instant case is whether the supply of goods from Mumbai to Delhi to execute works contract, constitutes an inter-state sales under the Central Sales Tax Act, 1956 (CST). The assessee is engaged in the business of supply, erection, commissioning and installation of lifts/elevators in various classes of places including residential buildings, government offices and hospitals. It is also a registered dealer under the provisions of Delhi Sales Tax Act, 1975. It, however, has its manufacturing facilities at Mumbai, where its components are produced. The Mumbai unit

also stores the products so manufactured. The Delhi Sales Tax Authorities sought to assess transaction for three distinct periods covering AY 2002-2003, 2003-2004 and 2004-2005.

The adjudicating authority/Revenue held that the contracts were indivisible work contracts, title of each of the elevators passed onto the customer upon payment, and that for the purposes of dispute resolution, the Courts of Delhi had exclusive jurisdiction. The Commissioner ruled in favour of the Revenue, aggrieved by which the assessee approached the VAT Tribunal, which by its common order set aside the orders of the First Appellate Authority. Tribunal held that the goods were appropriated to the contract, which was concluded in Mumbai, upon acceptance of the offer/placing orders.

High Court observed that placement of an order by the agent for procurement of the lifts in this case was merely an offer and it was upon its acceptance and further steps taken by the supplier than an offer crystallises into a binding promise or contract which took place in Mumbai. High Court observed that the appropriation took place undoubtedly in Mumbai. High Court placed reliance on ruling in *Thyseenkrupp Elevator (India) Private Ltd. Vs. Assistant Commissioner of Commercial Taxes & Anr. [W.P.No. 13607/2017]*, decided by the Karnataka High Court on 24th April, 2018.

High Court thus ruled in favour of the assessee.

Excise

LD/67/94

Vasantham Outdoor Advertising Pvt. Ltd

Vs.

Commissioner of Central Excise, Madurai

(CESTAT-MAD)

August 13, 2018

Tribunal held that services of renting of hoardings for display of advertisement cannot be said to get covered within the purview of 'advertisement agency services', merely because tax entry for advertising services extends to any connected service relating to advertisement display / exhibition.

Facts:

Appellant, engaged in providing services of advertising agency, were also engaged in renting of hoardings. Department contended that amounts received for such renting activities would also be chargeable to service tax under the category of 'advertising agency services', as otherwise the statutory provision relating to that levy on "any connected service relating to advertisement display/exhibition" would become absolutely meaningless. Being aggrieved, the appellant filed present appeal.

Held:

Tribunal noted that appellant was only renting out the hoardings which were either owned by them or leased to them, to various advertising agencies. There is no allegation that appellant had themselves made, prepared, displayed or exhibited any advertisings on their own. There is no dispute that the advertisements which may have appeared on the hoardings are those that were prepared by the concerned advertising agencies and certainly not by the appellants. The appellants have only rented out these hoardings to the concerned advertising agency. Further, Tribunal noted that though the definition of "Advertising Agencies" under erstwhile law, does include the phrase "any service connected with", discernibly, this phrase has to be read in keeping with the *principle of ejusdem generis*. Where a law lists specific class of persons or things and then refers to that in general, the general statements only apply to the same kind of persons or things specifically listed out. Relying on various decisions of Hon'ble Supreme Court, Hon'ble Tribunal held that it is evident that "any service connected with" the making, preparation, display or exhibition of the advertisement must obviously be a service of the same nature or generis. When the category of service concerns and involves creativity; and even specifically seeks to include "advertising consultant", it would be too farfetched to bring in renting of hoardings

within the scope of such service. It was also noted that in *Chaya Lakshmi Creations Pvt. Ltd. Vs. CST Chennai - 2017 (8) TMI 1117– CESTAT,* where renting of space for display of advertisements at various places of theatre complex in the form of hoardings etc. was addressed, it was held that the said activities cannot be regarded as "Advertising Agency Service". Accordingly, Tribunal set aside impugned demand and allowed the appeal.

Customs

LD/67/95

M/s Harisiddh Shipping Agency
Vs.
Union of India & Ors.
November 22, 2018

Department's action of placing assessee's name under 'Alert' list thereby preventing future clearances of Bill of entry, held as impermissible.

The petitioner firm is registered as Customs broker. The petitioner has prayed for direction to the respondents to remove "Alert" inserted against the petitioner in its electronic system. The petitioner has also challenged several show cause notices issued by the Customs Authorities calling upon the petitioner why certain late fine charges with penalty should not be recovered from the petitioner. As per Revenue, the assessee, in order to avoid late payment charges, filed "Regular Bill of Entry" but showed the same in system as "Advance Bill of Entry". As a result, Custom's system treated these as advance and assessment was completed accordingly.

Revenue placed assessee's name in its electronic system under "Alert" and subsequently issued as many as 18 show cause notices (SCNs) in the month of May 2018 imposing certain late fine charges under section 46 of Customs Act, 1962 along with penalty under section 117. Assessee filed writ petition praying for the reversal of "Alert" and has also challenged the Show cause Notices issued against him.

High Court stated that the assessee needed to respond to the show cause notices and cooperate in the process and High Court held that there was no ground to quash these notices in exercise of writ jurisdiction. High Court observed that the action of department in placing assessee's name in the 'Alert' was on account of unpaid late fine charges which is the subject matter of show cause notices and secondly, consequences on account of name of agency being placed in the 'Alert' list would be that all future clearances of such agency would not be made unless the amount demanded by the department is paid up. High Court noted that the Revenue sought recovery of amount coercively by blocking the assessee's future clearances and stated that there cannot be recovery coercively made even before the demand is confirmed. High Court therefore directed the Revenue to delete assessee's name from "Alert" list.

High Court thus dismissed the writ petition stating that the Adjudicating Authority shall decide issues independently, based on the material that may be brought on record.

Transfer Pricing

LD/67/96

Firmenich Aromatics Production (India) Pvt. Ltd.
Vs.
Assistant Commissioner of Income Tax
November 13, 2018

Export transaction to AEs cannot be compared with domestic sales to unrelated entities due to huge differences in volume, geographical markets, etc.; TPO's CUP method rejected and assessee's TNMM method accepted.

The assessee is engaged in the business of manufacturing of aromatic ingredients, natural and synthetic perfumery, flavouring and derivatives. For AY 2013-14, the assessee entered into various international transactions like import or raw material, export of finished goods, reimbursement of expenses, availing