the acts of an assessee in discharging his entire tax liability bear fruits, a regulatory mechanism in the form of Sec.234 F has been inserted in the statute book and the same cannot be termed as illogical; Nothing has been submitted by the assessee which shows how the Section is manifestly arbitrary for it to be struck down; Assessee's argument that a 'quid pro quo' is a necessary element for such levy of a fee under section 234F, was rejected by the High Court.

Transfer Pricing

LD/68/153, [ITAT Pune: ITA 1810/PUN/2019], TDK Electronics AG Vs. The Asst. Commissioner of Income Tax, 26/02/2020

Assessee filed objections before the DRP in January 2019, with a one day delay, which delay was not condoned by the DRP; DRP directed to dismiss assessee's objection stating it as time barred vide its direction dated September 2019; The AO passed final assessment order in October 2019 under section 144C(13); ITAT observed that as per Section 144C(3)(b), AO was required to complete the assessment on the basis of draft assessment order if no objections are received within the period specified, which was not followed by the AO; AO completed the assessment under a wrong provision, i.e. under a wrong subsection of Section 144C and ITAT thus held that the final assessment order of October 2019 was time barred and '*ex consequenti null and void*'.

LD/68/154, [ITAT Mumbai: ITA 5228/Mum./2016], The Income Tax Officer Vs. General Mills India P. Ltd., 14/02/2020

Mumbai ITAT allowed economic adjustment on account of excess expenditure on account of Advertising and Marketing. Ratio of such expense to operating income was 21% in case of assessee whereas it was 0.87% in case of comparables; ITAT observed that TPO had allowed 50% of adjustment claimed for past AY 2007-08 and also for another AY 12-13, the CIT(A) had granted similar relief, which was not challenged by the Revenue. ITAT held that such expense could not be termed as international transaction in absence of agreement with the AEs. ITAT noted that such expenditure was incurred with an intention to increase the sale and that the assessee was the sole beneficiary of the expenditure.

LD/68/155, [ITAT Delhi: ITA 909/Del/2016], Nokia Solutions and Networks India Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax, 27/02/2020

For AY 11-12 and AY 12-13, Delhi ITAT noted that cost of marketing team should be bifurcated based on revenue of AE from its operations in India vis a vis revenue generated by the assessee from its sales to third party vendors. ITAT stated that provision of telecom support services and warranty support services have to be clubbed together and holds that the discussion for warranty support services shall apply to telecom technical support services mutatis mutandis. Advance Pricing Agreement of assessee with CBDT shall also apply to consecutive four rollback years commencing from the financial year 2009-10 to 2012-13. TP adjustment regarding provision of marketing support services, telecom technical services and warranty support services was deleted by ITAT.

GST

LD/68/156, [2020 – TIOL -554- HC], M/s Phoenix Rubbers vs. The Commercial Tax Officer 03/02/2020

For cancellation of registration under section 29(2)(C) of the CGST Act, the requirement of continuous default of failure to file 6 months return should exist, both on the day of issuing the notice of cancellation as well as on the date of passing the order. If before passing the said order the assessee files few returns so as to bring down the said default below 6 months, the order cancelling registration cannot be said to be within the purview of Section 29(2)(c) of the CGST Act and is liable to be set aside.

LD/68/157, [2020-TIOL-486-HC-KERALA-GST], SUTHERLAND MORTGAGE SERVICES INC Vs. THE PRINCIPAL COMMISSIONER OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CENTRAL GST AND CENTRAL EXCISE AND ORS 03/02/2020

In cases involving determination of question as to

whether there is liability to pay tax on goods and services in India, the Authority of Advance Ruling can decide issues concerning place of supply since the scope of Section 97(2)(e) is wide enough to include among other things the issue relating to determination of place of supply.

CUSTOMS

LD/68/158; [Bombay High Court: Customs Appeal No 42 of 2019], Commissioner of Customs Vs. Lynx Express Private Limited, 27/01/2020

Air Courier Cell and Intelligence Unit had issued a show cause notice after substantial quantity of gold concealed in various packages was seized; Revenue had suspended the license of the assessee to act as an Authorised Courier, which was set aside by CESTAT; Assessee made a representation to the Chief Commissioner under Regulation 14(2) which was rejected and so two appeals were filed by assessee before CESTAT, one against the order in original and one against rejection of representation; While CESTAT entertained the appeal against the Order-In-Original, assessee had withdrawn the appeal challenging the rejection of representation; High Court rejected Revenue's argument that CESTAT shouldn't have entertained appeal against order in original; High Court noted that what is provided in Regulation 14(2) is a representation and ultimately the remedy of appeal is available under the Customs Act, 1962 and rejection or otherwise of such representation will not take away the jurisdiction of the Tribunal to entertain the appeal from Order-In-Original.

LD/68/159, [Madras High Court: W.P. 24244 of 2013], Nana Desi Ainnurruvar Vs. The Commissioner of Customs (Appeals), 19/12/2020

As per Section 117, penalty is to be imposed where there is failure to comply or where there is a violation in law. Assessee had failed to file the relevant bank realisation certificate / extensions from Reserve Bank of India in time and Revenue was justified in issuing the notice for penalty. However High Court acknowledged that exporters do face difficulties in realization of export proceeds and that imposition of such penalty may result in denial of export incentive indirectly in several cases. High Court therefore held that penalty under section 117 of Customs Act is not to be imposed for all cases where there is a delay in producing bank realisation certificate and considering that this was not a fit case for imposition of penalty as there is a realisation of the export proceeds.

EXCISE

LD/68/160, [2020-TIOL-404-CESTAT-MAD], M/s Lotte India Corporation Ltd. Vs. The Commissioner of GST and Central Excise (A), 29-01-2020

The expression "Total Cenvat Credit" used in sub-rule 3A of Rule 6 of CENVAT Credit Rules, represents the total Cenvat credit of "common" inputs/ input services only. The rule cannot be interpreted in a manner to disallow the Cenvat credit of those input services which are used exclusively in the manufacture of dutiable goods or providing taxable output services. The amendment to the said rule by Notification No. 13/2016-C.E. (N.T.) , dated 1-3-2016 is made to set right the anomaly in the said rule and is therefore clarificatory in nature.

Service Tax

LD/68/161, [2020 – TIOL- 469 – CESTAT – Mad.], M/s NSK ABC Bearings Ltd vs. The Commissioner of Central Excise, 03/02/2020

Deputation of employees by the foreign company to its group company in India would not amount to provision of manpower supply service if such employees are on the payroll of Indian company and are being paid salary from the Indian company after deducting salary-TDS. The mere fact that part of the salary of such employees is also paid by the foreign company in their home country will not change the character of services provided by such employees. The amount

reimbursed to the said foreign company towards salary paid to the employee in their home country would not be regarded as consideration for manpower supply services. Tribunal also set aside demand in respect of payment made by Indian company to the foreign company towards its share of reimbursement on account of cost allocation of computer infrastructure related services incurred by the said foreign company by availing services of the foreign vendor as there was no evidence to suggest that foreign company has provided any such services to the Indian company. The tribunal also held that travelling expenses reimbursed to the foreign professional would not be included in the gross amount charged for the purpose of levying service tax under reverse charge mechanism.

LD/68/162, [Madras High Court: CMA 3379 of 2019], M/s Bright Marketing Company Vs. Commissioner of Central Excise and Service Tax, 03/02/2020

Assessee filed the returns and paid the short-levied service tax along with interest before issuance of Show cause notice on the basis of the Audit Objection; CESTAT order imposed a reduced penalty at the rate of 25%. High Court noted that section 73(3) provides for a remedy to the assessee to correct his error of short-levy of service tax either suo-motu or on the basis of tax ascertained by a Central Excise Officer before service of notice under section 73(1) and section 78 applies only when there is a failure on assessee's part to pay service tax for reasons like fraud. High Court held that unless the penalty under section 78 of the Act itself is leviable, there is no question of any reduction of the quantum of penalty to 25%.

Disciplinary Case

Issuance of certificate by Respondent as to registration of "X" as NBFC with RBI, without verifying the records -- Respondent is guilty of Professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants ACT, 1949.

Held:

The Disciplinary Committee noted that the Respondent had issued report on the basis of information provided by the Directors and on the basis of information available on MCA website. In such circumstances, the Respondent ought to have disclosed the fact that he had issued the Certificate on the basis of representation by the Directors and had not physically verified/checked with the Certificate of incorporation, as the same has been misplaced/ lost by the Company. On the contrary, the Respondent mentioned that the Company is entitled to hold the Certificate of registration in terms of asset / income pattern as on 20th May, 1998. The Committee further noted that mere establishment of the fact that the Company was being registered with ROC as NBFC is not valid ground to conclude that the Respondent was not negligent when in fact he was required to verify and establish from the certificate issued by the RBI in this respect that the Company was actually registered with RBI as a NBFC which he has failed to do. In light of the above, the Committee held that the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants (Amendment) Act, 2006.