Legal Update

Transfer Pricing

LD/68/121, [Madras High Court: W.P. 1729/2011], Vedaneta Limited Vs. The Assistant Commissioner of Income Tax, 22/10/2019

Section 144C held to be applicable prospectively w.e.f. AY 2010-11. Clarificatory Circular of CBDT issued in 2013 stating that earlier CBDT circular was inadvertently incorrect and stating that Section 144C was retrospectively applicable for orders which proposes to make variation in income or loss returned by an eligible assessee, on or after 1.10.2009 irrespective of the assessment year to which it pertains, held to be non-jurisdictional. High Court held that such change sought by CBDT cannot be considered as a mere 'shift in procedure' and was a substantive amendment and has to be made applicable prospectively. High Court held that right has been enured to the parties in 2009 and it cannot be modified by a Clarification issued by the Board, three years thereafter in 2013.

GST

LD/68/122, [Ker HC], Abbott Healthcare Pvt. Ltd. Vs. Commissioner of SGST and Ors, 07/01/2020

The concept of a composite supply would not be attracted in cases where there was more than one supplier. The concept of the enhancement of utility of one supply through others may be relevant only for the purposes of valuation of the supply of instruments and cannot be imported into the concept of composite supply under the GST Act. The business model followed by the petitioner for a considerable period of time would be indicative of whether or not the supplies are bundled in the 'ordinary course of business'.

LD/68/123, [Delhi High Court], TMA International Pvt Ltd. & Ors Vs. UOI & Ors, 26/11/2019

The refund of IGST not to be denied merely because the applicant inadvertently claimed higher duty drawback during transitional period due to lack of clarity on the procedural matters. The department is however, free to verify the claim.

LD/68/124, [Mad HC], M/s Precot Meridian Ltd. Vs. Commissioner of Customs and Ors, 19/11/2019

Claiming Higher duty draw back which is repaid subsequently along with interest, would not disentitle the Applicant of IGST refund under the IGST Act. The *Circular No.37/2018 – Customs* issued for the purposes of explaining the provisions of the drawback schemes has nothing to do with IGST refund claimed under section 16 of the IGST Act, read with Section 54 of the CSGT Act and Rule 96 of the CGST Rules.

Service Tax

LD/68/125, [MUM-CESTAT], Mankeshwar Enterprises Vs. CCEx., 07/10/2019

Hon'ble Tribunal relied upon the agreement between the parties to decide the nature of services and held that the services provided under the agreement are not manpower supply services but cleaning services.

LD/68/126, [Kar HC], Abdul Samad S/O Late P Mohammed Age 50 Years Chartered Accountant Vs. Commissioner of Central Excise and Service Tax, 5/3/2019

High Court held that, once there was no compulsion or duty cast to pay the service tax, the amount paid by petitioner under mistaken notion, would not be a duty or 'service tax' payable in law. Once it is not payable in law there is no authority for the department to retain such amount which would otherwise be outside the purview of Section 11B of the Act. Time limitations mentioned in Section 11B is therefore, not applicable in such cases.

Customs

LD/68/127, [Madras High Court: W.P. 29526 of 2012], J. Sheikh Parith Vs. The Commissioner of Customs, 13/12/2019

High Court held that it cannot entertain the writ petition of assessee seeking to quash hearing notice issued to the assessee. Assessee submitted that it was not supplied with relevant material for preparing their reply to the show cause notice by the Revenue. The Directorate of Revenue Intelligence had seized certain documents of the assessee which were not returned to the assessee after completing its investigation. High Court directed the Revenue to return the seized documents and also directed the assessee to file reply to the hearing notice [show cause notice] in time bound manner, noting that adjudication of the show cause proceeding had been considerably delayed by about seven years due to pendency of the present writ petition.

LD/68/128, [Kerala High Court: W.P. 25339 of 2019], Anu Cashews Vs. The Commissioner of Customs, 13/11/2019

High Court ruled that Revenue should not have denied export benefit to the assessee for an inadvertent mistake by the assessee where he failed to check the box on form filled on web portal which was consequently recorded as 'No' at filing the form online. High Court held that lapse held to be a mere technical lapse and the Revenue could not have denied the benefit in a mechanical manner especially when there was sufficient indication from the other details entered in the form that pointed to the assessee's intention to claim the benefit.

Excise

LD/68/129, [Patna High Court: W.P. 22415 of 2019], Bihar State Beverages Corporation Limited Vs. The Union of India, 03/12/2019

Writ Petition of assessee against levy of service tax charged under Reverse Charge Mechanism on License fees and privilege fee charged by State Government for granting exclusive wholesale business in liquor disposed by the High Court. Appeal before Tribunal held to be an equally efficacious alternative remedy available to the assessee. The High Court thus held the writ petition to be not maintainable and disposed the writ.

Sales Tax Act

LD/68/130, [Madras High Court: W.P. 14193 of 2001], Advance Paints Private Limited Vs. The Commercial Tax Officer, 09/12/2019

Sale of goods by agent immediately after receiving of goods from the Principal is not a ground to treat the branch transfer as an inter-state sale. The assessing authority did not find any pre-concluded contract with the buyer and the assessee had demonstrated movement of goods from Tamil Nadu to Kerala with supporting documents like Form F. Revenue was incorrect to levy CST merely based on assumptions.

Disciplinary Case

Respondent* actively *engaged in business and managing the affairs of the Partnership Firm without obtaining prior permission from the Council - Held, Guilty under Clause 11 of the Part I of First Schedule to The Chartered Accountants Act, 1949.

In the instant case, Respondent was the working partner and was having substantial interest in the partnership firm. It is an admitted fact that the Respondent before becoming partner had not taken permission of the Council. The Board noted that as per Clause 11 of the partnership deed dated 01st May, 2006, the Respondent was the working partner and was having substantial interest in the partnership firm. Respondent was actively involved in business as partner without the permission of the Council. As per the partnership deed, the Respondent was entitled to salary of ₹ 5,000/- per month and bonus @12% of the salary. Further as per the clause 8 of the same partnership deed, the Respondent along with one more partner was jointly operating the bank account of the firm. Moreover, the onus lied on the Respondent to show that he was not actively engaged in the business of the firm which he could not substantiate before the Board.

On overall consideration of the same, the Board was of the view that there is clear cut ignorance of law by the Respondent and it cannot be taken as a excuse. Hence, in the opinion of the Board, the Respondent has violated the requirements of Clause (11) of Part I of First Schedule to the Chartered Accountants (Amendment) Act, 2006.