

refund of Rs.1.95 Cr. should have been adjusted against the tax component and not interest component computed u/s 244A; ITAT held the rectification order as invalid noting that the issue is purely legal and a highly debatable one which falls outside the ambit of mistake apparent from record.

LD/70/78; [ITAT Mumbai: ITA No 931/Mum/2005] Juniper Hotels Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax (Intl. Taxation) 23/09/2021

Article 7 of India-Australia DTAA held to be applicable considering existence of PE of Australia Pacific Project Holding Pte Ltd. in India, and thus assessee held to be liable to deduct tax at source on fee paid for consultancy on project management; Assessee, in the process of setting up the Grand Hyatt hotel in Mumbai engaged the Australian company as project management consultant; Assessee considered the payments to be in the nature of FTS and deducted tax at source at 15% under Article 12 of the India-Australia DTAA whereas Revenue held that since the Australian company constituted a PE in India, rendering the services taxable under Article 7, assessee was liable to tax at 20% under Section 115A; ITAT observes that once it was not in dispute that the Australian company had a PE in India, assessee ceased to derive any benefit under Articles 12(1) & 12(2); ITAT ruled in favour of Revenue.



GST

LD/70/79; [2021-TIOL-251-SC-GST] UNION OF INDIA Vs. BHARTI AIRTEL LTD AND OTHERS 28/10/2021

Hon'ble Court held that the primary source for furnishing the return in self-assessed manner is in the form of agreements, invoices/challans, receipts of the goods and services, and books of accounts which are maintained by the assessee manually/electronically. Auto-populated data available on the electronic portal is more in nature of a facilitator for confirmation but, non-operation of the same does not preclude one from appropriate compliance under the law. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR-3B. There is no express provision permitting swapping of entries effected in the electronic cash ledger vis-a-vis the electronic credit ledger or vice versa. Any indulgence shown

contrary to the statutory mandate would not only be illegality but in reality, would simply lead to a chaotic situation and collapse of the tax administration of Union, States, and Union Territories. Resultantly, the assessee cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, which inevitably would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records. Stipulations in Circular No. 26/26/2017-GST= dated 29.12.2017, including in paragraph 4 thereof, are consistent with the provisions of the 2017 Acts and the Rules framed thereunder.

LD/70/80; [2021-TIOL- 2119-HC-MAD-GST] JENEFA INDIA vs. UOI and ORs 05/10/2021

Circular No. 80/54/2018-GST dated 31.12.2018 which provided that Entry 102 of the Exemption Notification 2/2017-CTR only covers the prepared aquatic/poultry/cattle feed falling under headings 2309 and 2301 and does not apply to raw material/inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301 which are further used to manufacture/formulation of, aquatic feed, animal feed, cattle feed, poultry feed, etc. is held to be ultra-vires. Fish meal falling under heading 2301 / 2309 is held to be exempted under Sr.No.102 of the said exemption notification.

LD/70/81; [2021-TIOL-2161-HC-RAJ-ST-] M/s AKSHAY DAN CHARAN Vs. UNION OF INDIA and ORS 28/10/2021

The aspect of time limit as laid down in the scheme of Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS), is very clearly defined. Thus, an applicant who has made the application under the scheme which has been accepted by the department needs to adhere to the time limits and cut-off dates. Irrespective of any facts and circumstances, the time limit/cut-off dates cannot be extended.

Ld/70/82; [2021-TIOL-720-Cestat-Del] Birla Corporation Ltd Vs Commissioner Of Central Goods And Service Tax, Jabalpur 09/11/2021

Excise duty payable in case of captive consumption under Rule 8 of the Central Excise Valuation Rules is only applicable in the case where the manufactured goods are captively consumed for the manufacture of any other product and not when it's used for constructing factory premises/ immovable property.