

subsequent retrospective amendment cannot be enforced against the payer.

Pune ITAT deletes disallowance under section 40 (a)(ia) for TDS non-deduction under section 194J on leased line charges paid by assessee-company during AY 2012-13 acknowledges that the leased line charges paid by the assessee was in the nature of ₹ Royalty' under the terms of Explanation 6 to Section 9(1)(vi), inserted by the Finance Act, 2012 w.r.e.f. 01-06-1976. However noting that the Finance Act, 2012 was enacted somewhere after the close of the F.Y. 2011-12 (i.e. AY 2012-13), explains that the liability to deduct tax at source can be fastened only under the law prevailing at the time of payment and if no liability exists at the time of payment, any subsequent retrospective amendment cannot be enforced against the payer.

*LD/69/116, [ITAT Bangalore: ITA. No. 282/Bang/2017], M/s. Karnataka Power Corporation Limited, Bengaluru Vs. The Asst. Commissioner of Income-tax, 11/01/2021*

Revenue had done a suo-moto rectification of issues which were not raised in appellate proceedings. ITAT dismissed the same holding as time-barred under section 154(7). Revenue calculated the period of limitation from the date of order passed after ITAT's remand order instead of the date of assessment order initially passed by applying the doctrine of merger. Doctrine of merger applies only in respect of such items which were the subject matter of appeal. If the matter of dispute is same in two rectification orders passed then the period of limitation would be calculated from the date of first rectification



## GST

*LD/69/117, [2021-TIOL-147-HC-AHM-GST] Nipun a Bhagat Proprietor of Steel Kraft Industries Vs. State Of Gujarat, 04/01/2021*

The Blocking of Electronic crocredit Ledger under rule 86A of the CGST Rules is permissible only in circumstances mentioned in the said rule and not for recovery of tax dues of the entity where the

assessee was a director for some period of time. In the above case, the Hon'ble High Court held that Rule 86A can be invoked only if the conditions stipulated therein are fulfilled. In other words, it is only if the Commissioner or an officer authorized by him has reasons to believe that the crocredit of input tax available in the electronic crocredit ledger has been fraudulently availed or is ineligible for the reasons stated in Rule 86A(1)(a) to (d) that the authority would get the jurisdiction to exercise the power under Rule 86A of the Rules. It therefore cannot be invoked for the recovery of dues of any other company.

## SERVICE TAX

*LD/69/118, [2021-TIOL-84-CESTAT-DEL], M/s Beekay Engineering Corporation Ltd. Vs Principal Commissioner Of Central Tax And Central Excise, 27/01/2021*

Indivisible Turnkey contracts are not liable to service tax prior to 01-06-2007. In the above case, the Hon'ble Tribunal did not accept the argument of the Revenue that the contracts are divisible. It noted that an identical matter was decided by the court in respect of the same assessee in the case of Beekay Engineering 2017-TIOL-1116-CESTAT-DEL. It further held that the Hon'ble Supreme Court in the case of CCE, Kerala vs. Larsen and Toubro Ltd. - 2015-TIOL-187-SC-ST has categorically held that the Works Contracts involving the supply of goods as well as the provision of services cannot be subjected to service tax for the period up to 31.05.2007. Since the entire demand in the present case is prior to 01.06.2007, the demand is not sustainable, as has been held in the impugned order. The Tribunal also held that when the applicability of judgment of the Supreme Court in the case of Larsen and Toubro Ltd (supra) to the appellant's case was decided by the Tribunal, Commissioner was required to follow the judicial discipline. The impugned order was therefore set aside and the appeal was allowed#

## EXCISE

*LD/69/119, [2021-TIOL-257-HC-MAD-CX], In the High Court of Madras Commissioner of Central Excise Vs. M/s Aswin Textiles Pvt Ltd., [20-01-2021]*

When an employee of the assessee committed bona-fide mistake of availing CENVAT credit based on the CVD amounts mentioned on the bill of entries by custom authorities, although no CVD was paid and reversed the same along with interest when pointed out by the department during the audit and the department issued Show Cause Notice for imposing penalty under section 11AC of the Central Excise Act after 2.5 years, the

provisions of section 11AC cannot be said to be attracted on the ground of intention to evade tax.

*LD/69/120, [2021-TIOL-216-HC-AHM-CX], Cebon Apparels Pvt. Ltd. Vs The Commissioner Central Excise, 18/01/2021*

When the tribunal was convinced as regards the actual export of the goods and that a report of the superintendent verifying the actual physical export of goods based on shipping bills and BRC etc was available on record, the tribunal was not right in remanding the matter back to the adjudicating authority.

## Disciplinary Case



***Signing of Balance sheet, Profit & Loss Account and Audit Report without holding certificate of practice (COP) -- Held, Respondent is guilty of professional misconduct within the Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act 1949***

### **Held:**

In the instant case, the allegation against the

Respondent is that he signed the Balance sheet, Profit & Loss Account and Audit Report for the financial year 2009-10 without holding certificate of practice. The Respondent in his defence submitted that he signed the financial report of the firm for the Financial Year 2009-10 unintentionally as he was not aware that his certificate of Practice has been cancelled due to non-payment of fees and further accepted/admitted his mistake. The Committee noted the provision of Section 6 (1) of the Chartered Accountants Act, 1949 states that "no member of the Institute shall be entitled to practice (whether in India or elsewhere) unless he has obtained from the Council a certificate of practice." Thus the Respondent has clearly violated the provisions of Act and is prima facie guilty as admitted by him. In view of above noted facts, the Committee was of the opinion that the Respondent is guilty of professional misconduct falling within the meaning Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 (as amended).