

Legal Update

(e) and explains that the word 'loan' means anything lent specifically on interest whereas deposit means a sum paid to secure an article, clarifies that deposit is not covered within the ambit of Sec. 2(22)(e). Company was benefitted as the building was let out to it at much lower than market rate and therefore was a commercial transaction, which was outside the purview of Sec.2(22)(e). Ruled in assessee's favour.

LD/69/143, [Gujarat High Court: R/Spcl. Civil App. No. 20161/2019], Cemach Machineries Ltd. Vs. Income Tax Officer, 05/02/2021,

Revenue initiated reassessment proceedings after expiry of 4 years, on assessee based on information obtained during scrutiny proceedings of one Smt. Harshaben Gosai indicating receipt of Rs. 14.82 Cr. by the assessee through bogus billings by three entities. Assessee challenged the re-assessment and contended that the sanction accorded by authority under section 151 was illegal because it was given mechanically in a consolidated manner for 53 entities. AO had verified the bank statement of the assessee and Smt. Harshaben and also that all the three entities had no business activities and had only shown transactions of sale and purchase by issuing bogus invoices. High Court held that reassessment was initiated not only based on information from the concerned department, but independent verification by AO. Reassessment proceedings were thus upheld.

GST



LD/69/144, M/s Fosroc Chemicals India Pvt. Ltd. Vs. Commissioner of Central Tax GST Bangalore, [2021-TIOL-900-HC-KAR-CX], 01/04/2021

When Tribunal confirmed the order of first appellate authority without citing the reason or case laws cited by the Appellant having bearing on the issue before Tribunal, High Court remitted the matter to the Tribunal for consideration afresh.

On perusal of the order of the Tribunal, Hon'ble High Court held that the said order is cryptic and suffers from the vice of non-application of mind.

The Tribunal has not assigned any reasons in respect of its finding and has merely recorded the conclusions. It further held that the decision of CCE vs. ECOF Industries Pvt. Ltd., 2011 (271) ELT 58 (Kar) = 2011-TIOL-770-HC-KAR-ST which has a bearing on the controversy involved in the appeal has also not been considered by the Tribunal. The Appeal was therefore allowed and the matter was remitted to the Tribunal for decision afresh and in accordance with law.

LD/69/145, M/s DY Beathel Enterprises Vs. State Tax Officer (Data Cell) - 2021-TIOL-890-HC-MAD-GST, 24/02/2021

When the assessee is denied ITC on the ground that the assessee has not received the goods and that the sellers have not paid tax to the government, the demand of ITC cannot be confirmed against the ITC automatically and the defaulting sellers need to be examined as a witness and be subjected to recovery proceedings if the circumstances so require, without which demand confirmed against such assessee is flawed and liable to be set aside.

SERVICE TAX

LD/69/146, Tektronix India Pvt. Ltd. Vs. Commissioner of Central Tax [2021-TIOL-207-CESTAT-BANG], 06/04/2021

When CENVAT Credit is reversed during the inquiry and duly communicated to the department and the assessee had sufficient credit balance to arrive at the conclusion that the said credit is not utilised, the penalty under section 78 cannot be imposed unless there is material to prove the suppression or other ingredients of Section 78.

LD/69/147, The Regional Testing Laboratory Vs. Customs, Excise and Service Tax Appellate Tribunal and Ors, [2021-TIOL-902-HC-MAD-ST], 29/03/2021

Where there was a genuine doubt as regards the applicability of tax and consequently the tax was neither collected nor paid to the Government, no demand can be raised by invoking an extended period of limitation if the fact of such non-payment

was well within the knowledge of the Department.

LD/69/148, Guniting Corporation Vs. Commissioner of Central Tax, [2021-TIOL-100-CESTAT-DEL], 10/02/2021

A demand made in SCN under a particular category of service cannot be confirmed under a different category of service.

EXCISE

LD/69/149, M/s C N S Comnet Solution Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax – [2021-TIOL-94-CESTAT-CHD], 03/02/2021

Refund claim cannot be denied on the grounds of non-admissibility of Cenvat Credit, where availment of Cenvat Credit was not challenged.

Disciplinary Case



Signing of Compilation Report by a Chartered Accountant without adhering to Standard on Related Services (SRS) 4410 -- Held, Respondent is guilty of professional misconduct falling under the Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949 (as amended).

Held:

In the instant case, the allegation against the Respondent is that he had signed the Balance Sheet of Samithi (entity) for the period from 15th July 2007 to 31st July 2013, though the accounts were not being properly maintained, and did not comply with certain provisions of law. The Respondent in his defence submitted that the Report dated 9.11.2013 prepared by him containing financial statements of the said Samithi were not subject to Audit rather it was only a compilation report along with a Receipt and payment account for the period from 15th July 2007 to 31st July 2013 along with addendum to the Compilation Report dated 9.11.2013 disclosing the important findings in the accounting records and other documents produced before him simply for the internal consumption of members of the Samithi. The

Committee noted that the Respondent has not complied with requirement of Standard on Related Services (SRS) 4410 titled Engagements to Compile financial Information issued by ICAI which deals with the practitioner's responsibilities when engaged to assist management with the preparation and presentation of historical financial information without obtaining any assurance on that information. The Committee noted that in the extant case Respondent was dealing with historical financial information from 2007 to 2013 the compilation report was required to be prepared in accordance with SRS 4410 but the Respondent has not followed the same and failed to bring into the attention of management the limitations and prepared compilation report from incomplete information available with him. The committee further noted that the defence of the Respondent that only Compilation report was given by him not an Audit Report, but at the same time the Respondent has failed to give any disclaimer in his compilation Report. In view of above noted facts, the Committee was of the opinion that as far as SRS 4410 issued by ICAI has not been followed by the Respondent and there are serious lapse in the overall compilation and non-review of the various legal provisions to be compiled by the Samithi which reflects the casual approach towards handling his professional duties. Therefore, the Committee, was of the opinion that Respondent is guilty of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.