Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Contents

Articles

Ex 'cess' compensation or a case of executive lethargy?

The Hon'ble Andhra Pradesh High Court decision in the case of **Maithan Alloys Limited v. Union of India-2024-VIL-04-AP**, was dealing with the question of exemption from payment of GST compensation cess to SEZ units. The High Court, noted the GST Compensation Act is not mentioned in the First Schedule to the SEZ Act, 2005 and therefore, the exemption does not apply to the compensation cess levied under the GST Compensation Act.

While the argument that Section 7 of the SEZ Act, 2005 does not cover the GST Compensation cess is a fact, the reliance placed on Section 26 (1) (a) ibid actually defies logic, as this Section could provide an exemption to taxes, duties, or levies that are not already fully exempt by Section 7 ibid. Therefore, the question whether cesses constitute duty of customs is beating around the bush.

The SEZ Act, 2005 provides for exemption from taxes, duties and levies through two sections. One is Section 7 ibid and other is Section 26 ibid. The question therefore is why Section 7 ibid does not exempt the GST Compensation Cess.

Section 7 of the SEZ Act 2005 and the First Schedule to the Act read as under:

> *7. Exemption from taxes, duties or cess*
>
> Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -
>
> (i) a Unit in a Special Economic Zone; or
>
> (ii) a Developer;
>
> shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

(See sections 7 and 54)

Enactments

1. The Agricultural Produce Cess Act, 1940 (27 of 1940).

2. The Coffee Act, 1942 (7 of 1942).

3. The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946).

4. The Rubber Act, 1947 (24 of 1947).

5. The Tea Act, 1953 (29 of 1953).

6. The Salt Cess Act, 1953 (49 of 1953).

7. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

8. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58of 1957).

9. The Sugar (Regulation of Production) Act, 1961 (55 of 1961).

10. The Textiles Committee Act, 1963 (41 of 1963).

11. The Produce Cess Act, 1966 (15 of 1966).

12. The Marine Products Export Development Authority Act, 1972 (13 of 1972).

13. The Coal Mines (Conservation and Development Act, 1974 (28 of 1974).

14. The Oil Industry (Development) Act, 1974 (47 of 1974).

15. The Tobacco Cess Act, 1975 (26 of 1975).

16. The Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of1978).

17. The Sugar Cess Act, 1982 (3 of 1982).

18. The Jute Manufactures Cess Act, 1983 (28 of 1983).

19. The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of1986).

20. The Spices Cess Act, 1986 (11 of 1986).

21. The Research and Development Cess Act, 1986 (32 of 1986).

The First Schedule is not cast in stone. Government was conscious that there could be changes to the cess regime in India and therefore Section 54 ibid provided for additions and deletions to the First Schedule.

When Government introduced new cesses after the enactment of the SEZ Act, but did not think fit to amend the First Schedule by invoking Section 54, SEZ importers started facing demands, as in the case of GST Compensation Cess which is but one example.

It cannot be intention of Government that the GST Compensation Cess or any other cess for that matter should be carried by the SEZ units as a cost.

What is important to note is that prima-facie, there appears to be no intelligible differentia between the cesses that are already exempt through the First Schedule and the GST Compensation cess or any other cess imposed after the enactment of the SEZ Act. The stand taken by Government before the Andhra Pradesh High Court does not throw any light in this regard.

Government's perceived inaction with regard to the GST Compensation Cess in the First Schedule, is in stark contrast with the manner in which amendments were made to the SEZ Rules on the question of levy of export duty on steel supplied to SEZ units.

If it is the intention of Government to continue to levy cesses not included in the First Schedule to the SEZ Act, 2005, it is incumbent on them to clarify so, without leaving the decision to the courts.

P Sridharan, Senior Advisor, M2K

Disharmony entering the HSN

CLASSIFICATION under the Harmonised System Nomenclature in India has always been a cat and mouse game between the importers and Customs; more so in the case of classification automobile components. Battle lines sharpened with the introduction of GST with Revenue finding a new found use for a practically forgotten SC decision in the GS Auto International *[2003-TIOL-92-SC-CX]* matter.

Then Westinghouse Saxby *[2021-TIOL-121-SC-CX-LB]* happened opening the flood gates and the test to be applied for classification under 8708 is the 'sole and principal use'. Luckily wiser counsels prevailed, and instructions were issued to field formations to respect the Section Notes, HSN ENs and a slew of other Supreme Court decisions and not to be guided only by Westinghouse Saxby alone.

No sooner did the industry start breathing freely, when the Tribunal Delhi intervened in the M/s Continental Automotive Brake Systems India Private Limited[1] matter, where they were deciding the classification of Electronic Control Units (ECUs) for use in the manufacture of Electronic Stability Systems (ESCS) used in motor vehicles. Tribunal came to the conclusion that neither the Anti-lock Braking Systems (ABS) nor the ESCS manufactured, or the ECU imported by the appellant can be classified under CTH 9032, thus approving classification of the ECUs under CTH 8708.

This decision will have wider ramifications for the Auto industry as a whole as Revenue will be getting ready to issue demands in all cases of imports of ECUs, ESCSs or even ABSs placing reliance on the Tribunals observations. It is therefore necessary to place the issue in the right perspective so that the industry is ready to meet the challenge from Revenue, which will be as certain as night follows day.

The crux of the Hon'ble Tribunal decision could be gathered from the following conclusion of the Tribunal.

> *In our considered view, neither the ABS nor the ESCS manufactured, nor the ECU imported by the appellant can fit into Section Note 7 (b) by any stretch of imagination. Since Section Note 7 makes it explicit that CTH 9032 applies only to such goods which fall under (a) or (b), ECU gets clearly excluded from CTH 9032.*

I would like to emphasise that it is not the intention of the author to pick holes in the decision of the Hon'ble Tribunal. But having seen the submissions and findings, one gets the inescapable feeling that all facts were not on the table.

What is an ESC?

The Electronic Stability Control, ESC or ESP, is an on-board car safety system, which enables the stability of a car to be maintained during critical manoeuvring and to correct potential under steering or over steering[2].

ESC is defined as under[3]

The agency adopts the ESC definition based on the Society of Automotive Engineers (SAE) Surface Vehicle Information Report J2564 (revised June 2004). ESC is defined as a system that has all of the following attributes:

(a) *ESC augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to the vehicle.*

(b) *ESC is a computer controlled system, which uses a closed loop algorithm to limit vehicle oversteer and to limit vehicle understeer. [The closed loop algorithm is a cycle of operations followed by a computer that includes automatic adjustments based on the result of previous operations or other changing conditions.]*

(c) ESC has a means to determine the vehicle's yaw rate and to estimate its sideslip slip or side slip derivative with respect to time. [Yaw rate means the rate of change of the vehicle's heading angle about a vertical axis through the vehicle center of gravity.

Sideslip is the arctangent of the ratio of the lateral velocity to the longitudinal velocity of the center of gravity.]

(d) ESC has a means to monitor driver steering input.

(f) ESC has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle.

(g) ESC is operational over the full speed range of the vehicle (except at vehicle speeds less than 15 kph (9.3 mph) or when being driven in reverse). Functional Characteristics of ECU:

B. FUNCTIONAL REQUIREMENTS [4]

The ESC system is required to comply with following functional requirements:

(a) The ESC system must have the means to apply brake torques individually to all four wheels and a control algorithm that utilizes this capability.

(b) The ESC must be operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC, the vehicle speed is below 15 km/h (9.3 mph), or the vehicle is being driven in reverse.

(c) The ESC system must remain capable of activation even if the antilock brake system or traction control system is also activated.

B. How ESC Prevents Loss of Control [5]

The following explanation of ESC systems illustrates the basic principle of yaw stability control, but actual systems include countless refinements and proprietary algorithms that make them practical for the range of circumstances and roadway conditions encountered by drivers. For example, actual ESC systems augment the yaw rate control strategy described below with the consideration of vehicle sideslip (lateral sliding that may not alter yaw rate) to determine the optimal intervention.

When the ESC system detects an imbalance between the measured yaw rate of a vehicle and the path defined by its steering wheel angle, vehicle speed, and vehicle lateral acceleration, it automatically intervenes to turn the vehicle. The automatic turning of the vehicle is accomplished by an automatic application of uneven brake torque rather than by steering wheel movement [6].

Now coming to the components of ESC[7], this same document provides the information as under:

a) Yaw rate or lateral acceleration sensor

b) Steering wheel sensor

c) Integrated control unit (over ABS)

d) Wires/ Tell tale

Now let us look at Note 7 (b) to Chapter 90

(b) *automatic regulators of electrical quantities,* ***and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value.***

The ESC's function is to maintain vehicle's directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to thevehicle.

It receives electrical signals from various sensors on the driving conditions such as yaw rate sensors and wheel sensors. While the directional stability is the non-electrical quantity controlled by the ECSS through ECU, the signals that vary according to the speed, yaw etc., which are the factors to be controlled, are conveyed to the ECSS through ECU by various sensors in the form of electrical signals. The signals are understood and using the closed loop algorithm built into the ECU, the ESCS automatically signals appropriate response through the actuators in order to bring the directional stability and control back to the desired values.

It could thus be seen that the ESC squarely falls within the four walls of Note 7 (b) to Chapter 90. There is no dispute that the ECU is the controller in the ESCS and when it is presented separately, the HSN ENs permit the classification of the controller as an incomplete controlling instrument/ apparatus.

Even assuming that the controller, which is a PCB, is a part of the ESCS, its classification will be under CTH 9032 9000 only in terms of Note 2 (a) to Chapter 90. In this regard we can refer to the WCO ruling in the matter of classification of the main PCB of an Instrument cluster of a motor vehicle. The WCO's HS Committee in their 62nd Session In September 2018, approved its classification under CTH 9029 9000 applying Note 2 (b) to Chapter 90.

As this is a decision on classification, the next course of action is only the Supreme Court and given the stakes involved, the Auto industry should brace themselves for a long battle ahead and the industry could be rest assured that they have nothing to lose and a very good case to argue.

P Sridharan, Senior Advisor, M2K

REFERENCES:

1. *M/s Continental Automotive Brake Systems India Private Limited Vs Commissioner of Customs in Customs appeal No CUSTOMS APPEAL NO. 50546 OF 2021 decided by CESTAT, New Delhi on 19.3.2024 [2024-TIOL-305-CESTAT-DEL]*
2. *THE EFFECTIVENESS OF ESC (ELECTRONIC STABILITY CONTROL) IN REDUCING REAL LIFE CRASHES AND INJURIES Anders Lie Swedish Road Administration Claes Tingvall Swedish Road Administration, Monash University Accident Research Centre Maria Krafft Anders Kullgren Folksam Research Sweden Paper number 05-0135*
3. *U.S. Department Of Transportation National Highway Traffic Safety Administration (NHTSA) - FINAL REGULATORY IMPACT ANALYSIS- FMVSS No. 126 Electronic Stability Control*
4. *Systems Office of Regulatory Analysis and Evaluation National Center for Statistics and Analysis March 2007 -(Page II-2)*
5. *U.S. Department Of Transportation National Highway Traffic Safety Administration (NHTSA) - FINAL REGULATORY IMPACT ANALYSIS- FMVSS No. 126 Electronic Stability Control Systems Office of Regulatory Analysis and Evaluation National Center for Statistics and Analysis March 2007 -(Page II-3)*
6. Page III-2 of the same document
7. *Department Of Transportation National Highway Traffic Safety Administration (NHTSA) - FINAL REGULATORY IMPACT ANALYSIS- FMVSS No. 126 Electronic Stability Control Systems Office of Regulatory Analysis and Evaluation National Center for Statistics and Analysis March 2007 -(Page III- 4)*

Key Rulings and Insights

1. M/s. Sparta Food Factory India. (Mad HC)

Facts of the case

- **The question of law was whether appeal can be filed after the condonation period of filing the same is concluded?**
- In the present case, the petitioner, M/s Sparta Food Factory India Pvt Ltd, challenged an appellate order dated 29.09.2023, which rejected their appeal against the cancellation of their GST registration. The cancellation was effectuated by the Department under an order dated 21.12.2023, with retroactive effect from 08.10.2022. Despite the cancellation, the petitioner filed GST returns on various dates, with the last return filed on 31.08.2023, wherein all tax dues, including interest and late fees, were duly discharged.
- The petitioner contended that the time limit prescribed by Section 30(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), should be calculated from the date of filing relevant returns, as per Rule 23(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), which stipulates that an application for revocation of cancellation cannot be filed until returns are filed.
- Alternatively, the petitioner sought the benefit of the amendment to Section 30 and Rule 23 or the extension of the amnesty scheme to their case.
- On the other hand, the respondents argued against granting any benefit to the petitioner due to the belated filing of returns, relying on Section 39 of the CGST Act.
- The impugned appellate order dismissed the petitioner's appeal solely on the ground of limitation, noting that the appeal was filed 132 days after the period for which delay could be condoned.
- However, it is undisputed that the petitioner filed all returns, with the last one filed on 31.08.2023, and all tax dues were cleared.
- Considering the overall facts and circumstances, the court directed the appellate authority to reconsider the appeal on its merits. Consequently, the appellate order was quashed, and the matter is remanded for re-consideration.

Key insights

- The Hon'ble High Court has given a sigh of relief to assessee whose registration were cancelled and the appeal deadline was missed.
- The Court relied on the deeming provisions of Section 30 and extended the date on which the cancellation ought to take effect. This decision would surely assist various taxpayers who are facing similar challenges.
- **Citation** - 2024 (3) TMI 160

2. M/s. SL Lumax Limited. (Mad HC)

Facts of the case

- **The question of law was whether the show cause notices issued to the petitioner, challenging the classification of goods under Chapter 8512 instead of Chapter 8708, were valid, considering the allegations of pre-determination and pre-judgment by the assessing officer?**
- The petitioner contended that:

1. The show cause notices were issued with a pre-determined bias, assuming that the goods fell within Chapter 8708 instead of Chapter 8512. This prejudgment is evident from the language and content of the notices.
2. The petitioner presented evidence, including notes under Section XVII, HSN Explanatory notes, and relevant instructions, to support their classification of goods under Chapter 8512. The assessing officer failed to consider this material objectively.
3. The assessing officer's approach, as indicated in the notices, was to demand payment based on a predetermined conclusion rather than allowing the petitioner to present their case and justify their classification.

- The court held as under

1. The language and content of the show cause notices indeed suggested a pre-judgment by the assessing officer, as they demanded payment without providing the petitioner with an opportunity to contest the allegations.
2. The petitioner provided substantial material, including statutory notes and explanatory notes, to support their classification of goods under Chapter 8512.
3. The assessing officer was obligated to consider this material objectively before concluding the assessment.
4. Given the procedural irregularities and the failure of the assessing officer to approach the matter with an open mind, the court directed the petitioner to reply to the show cause notices. The assessing officer was instructed to provide a reasonable opportunity for the petitioner to present their case, including a personal hearing, and conclude the assessments while considering the observations made by the court.

- The court disposed of the writ petitions by directing the petitioner to respond to the show cause notices and instructed the assessing officer to conduct assessments in accordance with the observations made.

Key insights

- After the decision of the Hon'ble SC in the matter of M/s Westinghouse Saxby, authorities have been issuing SCN with very large demands to various assessee who are supplying to Auto OEMs.
- The present matter is also a result of such SCN where demands of hundreds of crores of tax are being raised.
- The Hon'ble High Court has directed the Department to assess such matters on the merits of the case on the basis of the appropriate classification in light of the HSN.
- **Citation** - 2024 (3) TMI 220

3. M/s. Indofil Industries Limited. (Mad HC)

Facts of the case

- In this case, the Hon'ble Madras High Court reviewed an order dated 31st December 2023 pertaining to GST transitional credit issues.
- The petitioner, Indofil Industries Limited, had raised objections to the order based on various defects, including a disparity between the Input Tax Credit (ITC) reported in GSTR 9 versus the GSTR 3B returns, non-payment of tax on director's remuneration under reverse charge mechanism (RCM), and blocked credit under Section 17(5) of GST enactments.
- The court noted that the petitioner had provided explanations for these defects in their replies to the show cause notice. For example, the petitioner clarified that the disparity in ITC was due to transitional credit claimed and reflected in the GSTR 9 return but not in the GSTR 3B return.
- Similarly, the petitioner argued that director's remuneration should be taxed under RCM in Maharashtra, where the directors were based, not in Tamil Nadu.
- Additionally, the petitioner stated that no ITC was claimed for the items specified under blocked credit.
- However, the court found that the respondent had confirmed the tax demand without considering the petitioner's explanations adequately. Therefore, the court held the impugned order unsustainable and quashed it.
- The matter was remanded to the respondent for reconsideration. The petitioner was allowed to submit additional documents within fifteen days, and the respondent was directed to provide a reasonable opportunity for a personal hearing before issuing a fresh order within two months.

Key insights

- This case underscores the importance of considering all relevant evidence and explanations provided by taxpayers before confirming tax demands. It also highlights the need for fair and thorough administrative procedures in tax matters.
- This reiterates the right of taxpayers to present their case and have their explanations duly considered before any adverse decisions are rendered, ensuring that outcomes are just and equitable.
- **Citation** - 2024 (3) TMI 1165

4. M/s. Thai Mookambikaa Ladies Hostel. (Mad HC)

Facts of the case

- The question of law revolves around the exemption from Goods and Services Tax (GST) for hostel accommodation provided to girl students and working women. The petitioner, Thai Mookambikaa Ladies Hostel, challenged the imposition of GST on their hostel services.

Key Legal Points:

1. Exemption Criteria: The petitioner argued that hostel services should be considered as "residential dwelling" and thus exempt from GST under Entry No. 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017.

2. Perspective of Imposition: The court emphasized that the imposition of GST should be viewed from the perspective of the recipient of the service, not the service provider. The purpose for which the accommodation is used, i.e., "residential dwelling", determines the exemption eligibility, rather than the nature of the property or the service provider's business.

3. Supreme Court Precedent: The court referred to the Supreme Court's guidance in Collector of Central Excise v. Parle Exports (P) Ltd., emphasizing the importance of interpreting notifications in line with their object and purpose.

Court's Decision and Findings:

1. Residential Dwelling: The court held that hostel accommodation provided to girl students and working women qualifies as "residential dwelling" for use as residence. Therefore, it falls under the exemption criteria specified in the GST notification.

2. Exemption Application: Since the petitioner's hostel services met the conditions of being used exclusively for residential purposes, the court ruled that they are entitled to exemption from GST under Entry Nos. 12 and 14 of the Notification No. 12/2017 - Central Tax (Rate) dated June 28, 2017.

3. Set Aside Orders: The court set aside the impugned orders passed by the respondent, thereby granting relief to the petitioner and allowing them to claim exemption from the levy of GST.

Key insights

- The court's decision reaffirms the interpretation of GST exemptions for hostel accommodation, emphasizing the residential nature of the use as the determining factor. The petitioner successfully argued for exemption based on the purpose of the end use of personal accommodation
- **Citation** - 2024 (3) TMI 1271

5. M/s. Shree Sai Palace (All HC)

Facts of the case

- **The Question of law revolved around the manner of interpreting the provisions of Section 75(4) which provides for granting of personal hearing opportunity in specified transactions.**
- The petitioner, a hotel owner registered under the Goods and Services Tax Act, 2017, was issued a notice under section 74 of the UPGST Act for the period December 2017. However, the petitioner failed to file a reply to the notice, leading to the passing of an order under section 74(9) of the UPGST Act by the respondent No. 2, followed by a Demand and Recovery Certificate (DRC 07) issued on July 13, 2021.
- The petitioner contended that no opportunity of personal hearing was provided, which is a mandatory requirement under Section 75(4) of the UPGST Act, 2017.
- The said section stipulates that an opportunity of hearing shall be granted either upon a request received from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.
- The petitioner emphasized the disjunctive nature of the term "or" in the statute, highlighting that it allows for flexibility and choice by permitting compliance with any one of the alternatives presented.
- Referring to judicial precedents, including decisions of the Supreme Court and various High Courts, the petitioner argued that the law mandates for providing an opportunity for personal hearing before making any adverse decision, particularly in cases involving tax and penalty imposition.
- The petitioner argued that the failure to afford such an opportunity constitutes a violation of principles of natural justice.
- The court, after considering the submissions made by the petitioner and relevant legal precedents, concurred with the petitioner's argument regarding the mandatory nature of providing an opportunity for personal hearing under Section 75(4) of the UPGST Act, 2017.
- It noted that the failure to afford such an opportunity amounted to a violation of principles of natural justice.
- Relying on established legal principles and precedents, including decisions of the Supreme Court and various High Courts, the court quashed the impugned orders and directed the Department to grant the petitioner an opportunity of personal hearing before passing any further order.

Key insights

- In the GST context, there are multiple cases where the department fails to issue the opportunity of personal hearing.
- This decision of the Hon'ble HC throws a proper perspective on interpretation of the provision relating to provision of hearing. The Court has held that hearing has to be made available as a matter of right to the assessee for each matter.
- **Citation:** 2024 (3) TMI 49

6. M/s. Vishal Pipes Limited Limited (All HC)

Facts of the case

- **Question before the Court**: Whether the imposition of penalty under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017, and the subsequent appellate order under Section 107 of the Act, were justified based on the circumstances surrounding the expiration of the e-way bill and the discrepancy in the weight of the goods transported?
- The petitioner contested the imposition of penalty and the appellate order on two main grounds:

  1. The expiration of the e-way bill only nine hours before interception should not warrant penalty imposition, especially considering there was no intention to evade tax.

  2. The discrepancy in the weight of the goods was adequately explained by the petitioner, as the goods were being transported to different destinations for the same purchaser, and the total quantity invoiced matched the goods transported.

- Additionally, the petitioner presented evidence, , to support their explanation regarding the weight of the goods delivered at different destinations, which was not adequately considered by the authorities below.
- The petitioner also referenced a relevant judgment, M/s Globe Panel Industries India Pvt. Ltd. v. State of U.P. and Others, to support their arguments.
- Upon careful consideration of the facts and arguments presented, the court found that:
- 1. The expiration of the e-way bill shortly before interception, without evidence of intent to evade tax, should not warrant penalty imposition, consistent with precedents established by previous court judgments.
- 2. The authorities failed to adequately consider the petitioner's explanation regarding the discrepancy in the weight of the goods, especially considering the consistent total quantity invoiced and transported.
- 3. Given the absence of intent to evade tax and the factual discrepancies in the authorities' findings, the impugned orders imposing penalty and the subsequent appellate order were quashed and set aside.

Key insights

- Levy of penalty for E-way bill matters for minor discrepancies have become very recurring and common. The decision is a welcome step for all such cases where for very minor discrepancies and infractions, the department raises tax demands with very large amounts. All such matters can be litigated on the grounds stated by the Hon'ble Courts.
- **Citation:** 2024 (3) TMI 162

7. M/s. Ratnamani Metals and Tubes Limited (CESTAT Ahmedabad)

Facts of the case

- **The Question of law before the Hon'ble Tribunal was whether tax under RCM was payable on director's remuneration under Sl. No. 5A of Notification 30/2012 – ST dated 20.06.2012 as amended by Notification No. 45/2012 – ST.**
- M/s. Ratnamani Metals and Tubes Limited, engaged in manufacturing tubes and pipes, pays remuneration to its Managing Director and whole-time directors comprising fixed and variable components, including salary and incentives linked to performance and financial results.
- The Appellant argued that the remuneration paid to directors constitutes salary and falls under the employer-employee relationship, as per the provisions of the Companies Act, 1956. The Board resolution and income tax returns were submitted under Form – 16 support this position. The appellant cited CBEC Circular No. 115/9/2009– ST dated 31.07.2009, which clarifies that no service tax is leviable on managing directors/whole-time directors for being compensated for their performance. Additionally, the appellant relied on various judgments, including:
- M/s Supreme Treves Pvt. Final Order 11736-11737/2023 dated 17.08.2023
- Maithan Alloys Ltd. 2020 (33) GSTIL 228 (Tri – Kolkata)
- Allied Blenders and Distillers Pvt. Ltd. 2019 (24) GSTIL 207 (Tri – Mumbai)
- Bengal Beverages Pvt. Ltd. 2020 (11) TMI 633 (Tri – Kolkata)
- Rent Works India Pvt. Ltd. 2016 (43) STR 634
- Vectus Industries Ltd. 2020 (1)TMI 423 (Tri – Allahabad)
- NRB Industrial Bearings Pvt. Ltd. 2019 (8) TMI 600 (Tri – Mumbai)
- After reviewing the submissions and records, the Tribunal found that the remuneration paid to directors were in the nature of salary under the employer-employee relationship. The Tribunal also considered CBEC Circular No. 115/09/2009– ST dated 31.07.2009, which clarified that remunerations paid to managing directors/directors for their performance would not attract service tax. Consequently, the Tribunal held that the impugned order lacked merit and was unsustainable.

Key insights

- The decision of the Hon'ble Tribunal provides relief to the assessee on a much-disputed transaction relating to taxability of Directors' remuneration.
- Though the decision has been rendered in the context of the Finance Act, the rationale of the decision and all relied upon decisions will apply equally to the GST Act also.
- **Citation:** 2024 (3) TMI 10

8. M/s. Denso India Private Limited. (CESTAT – New Delhi)

Facts of the case

- **The question of law before the Hon'ble Tribunal was whether the notional cost of drawings and designs supplied free of cost by Maruti to the vendors should be included in the assessable value of the parts or components manufactured by vendors and cleared to Maruti for the purpose of payment of central excise duty?**

Key Arguments

- The Key submissions made by the assessee were as follows:

a. Maruti provided specifications of parts or components to potential vendors at the "Request for Quotation" stage.

b. Detailed drawings and designs were prepared by the appellant's Research and Development Division.

c. The appellant incurred costs for preparation of detailed drawings and designs, which were included in the assessable value of the final products.

d. The specifications provided by Maruti were merely layout or dimensions, and the appellant was responsible for designing and manufacturing the parts or components.

e. Rule 6 of the 2000 Valuation Rules, which deals with inclusion of certain costs in assessable value, is not attracted as the specification drawings were not used in production nor necessary for production of the components.

- The department relied on previous Tribunal decisions where drawings supplied by motor vehicle manufacturers were used for producing components.

- However, those cases involved drawings supplied after sale agreements were executed, unlike the present case where drawings were supplied at the tender process stage.

- The present appeals do not involve toolings supplied by Maruti, as the tooling cost has already been amortized and excise duty paid.

- The Tribunal held that the drawings supplied by Maruti were mere specifications and not detailed designs necessary for production. The appellant was responsible for designing and manufacturing the components, and the specifications provided by Maruti were not used in the production process. Thus, Rule 6 of the Valuation Rules was not applicable, and the notional cost of drawings and designs supplied by Maruti should not be included in the assessable value.

- Regarding the extended period of limitation, the Tribunal did not find it necessary to examine the contention, implying that the extended period of limitation might not have been validly invoked in the present case.

Key insights

- This issue is one of hotly contested matters where 100s of suppliers to Maruti had received SCN from the department alleging undervaluation.

- The Tribunal ruled in favor of the appellant, stating that the notional cost of drawings and designs supplied by Maruti should not be included in the assessable value of the components. This would give a sigh of relief to all such vendors as the marked distinction between request for proposal and drawing has been subtly captured in the decision.

- **Citation:** 2024 (3) TMI 686

9. M/s. Suzuki Motorcycle India Private Limited (CESTAT Chandigarh)

Facts of the case

- **The question of law before the Hon'ble Tribunal was whether advertisement and publicity expenses incurred by dealers, as per dealership agreements, should be included in the assessable value of vehicles sold by the appellant, and whether the extended period of limitation applies.**
- It was argued by the appellant that the dealership agreement did not mandate the dealers to incur advertisement and publicity expenses on behalf of the appellant. It was also argued that the price of vehicles remains constant regardless of whether dealers opt for advertisement expenses. Dealers incur such expenses for their own benefit, not on behalf of the appellant. Further, any advertisement expenses, if reimbursed, are already factored into the assessable value of goods.
- The Department on the other hand contended that the dealership price isn't the sole consideration, thus additional expenses incurred by dealers should be included in the assessable value. Reliance was placed on Section 4(1)(b) of the Act and Rule 6 of the Central Excise Valuation Rules, 2000.
- The Tribunal on the perusal of dealership agreements, held that the agreement demonstrated that dealers incur advertisement expenses voluntarily, not under obligation from the appellant.
- The price of vehicles remains consistent irrespective of dealer advertisement expenses. The Tribunal relied on judicial precedents to support the exclusion of dealer-incurred advertisement expenses unless there's a legal obligation on dealers.
- On the extended Period of Limitation, the Tribunal noted that the issue involves complex interpretation of the law and has been considered by various Tribunal benches, indicating no intention to evade tax. For invoking the extended period of limitation, the Department must establish fraud, collusion, or wilful misstatement, which is lacking in this case. Thus, The substantial demand up to September 2010 is barred by limitation.

Key insights

- The Appellate Tribunal's has cited the voluntary nature of advertisement and publicity expenses incurred by dealers under dealership agreements, to exclude the same from the assessable value of vehicles sold.
- Additionally, the Tribunal's decision on the extended period of limitation requirement emphasizes the importance of establishing fraud, collusion, or wilful misstatement for invoking such provisions.
- **Citation:** 2024 (3) TMI 1135

Notifications, Circulars and Other Developments

PORTAL UPDATES

1. Integration of E-Waybill system with New IRP Portals

- E-Waybill services have been integrated with four new Invoice Registration Portals (IRPs).
- This integration of E-Waybill with the New IRP Portals allows taxpayers to generate E-Waybills alongside E-Invoicing on the newly integrated IRPs.
- The taxpayers can now efficiently manage both aspects of the invoicing requirements through a single platform, simplifying the operations.

2. Introduction of Tables 14A and 15A in GSTR-1

- The GSTN has introduced new tables, 14A and 15A, in the GSTR-1/IFF forms for amending supplies made through e-commerce operators (ECOs) liable for tax collection/payment.
- These tables allow taxpayers to amend details of previous E-commerce supplies. Effective from February 2024, these tables are live on the GST common portal.
- Amended taxable values will be auto populated in GSTR-3B.
- However, ECOs need to manually add records in Table 15A as there is no auto-population in Table 15A. Additionally, recipients can now view amended document details through a new "ECO-Documents (Amendment)" table in GSTR-2B.

Indirect Tax Compliance Calendar for April 2024

April 2024

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Important Due Dates under Indirect Tax

Due Date	Description
10 April 2024	↳ Filing of GSTR-7 - By Tax Deductor for the month of March 2024 ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of March 2024
11 April 2024	↳ Monthly filing of GSTR-1 for the month of March 2024 (Regular taxpayers)
13 April 2024	↳ GSTR 1 - IFF by Taxpayers under QRMP Scheme for the Quarter Jan - Mar 2024 ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of March 2024 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of March 2024
20 April 2024	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of March 2024 ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of March 2024
22/24 April 2024	↳ Filing of GSTR-3B under QRMP Scheme for the Quarter January – March 2024
25 April 2024	↳ GST PMT-06 - Challan for depositing GST for the month of March by taxpayers who have opted for QRMP Scheme for the quarter Jan – Mar 2024.
28 April 2024	↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.
30 April 2024	↳ GSTR-4 (Annual Return) for FY 2023-24 by Composition Taxpayer ↳ Last date for opt-in / opt-out QRMP Scheme for quarter Apr - June 2024

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