Tax Quest

An e-newsletter from

K. VAITHEESWARAN & CO.

Advocates & Tax Consultants

Chennai, India.

August 2020

CONTENTS

INCOME TAX

1. Notifications

1.1 CBDT extends due date for belated/ revised filing of returns for AY 2019-20 from 31.07.2020 to 30.09.2020.

1.2 ITNS 285 Challan modified by CBDT to enable payment of the new equalisation levy by e-commerce operators.

2. Case Laws

2.1 Supreme Court

Non-Compete Fee – What is reasonable?

The Supreme Court in the case of ***Shiv Raj Gupta Vs. CIT TS-353-SC-2020*** has set aside the order passed by the Delhi High Court and held that commercial expediency has to adjudged from the point of view of the assessee and that the Income Tax Department cannot enter into the thicket of reasonableness of amounts paid of the assessee. The Revenue has no business to second guess commercial or business expediency of what parties at arms-length decide for each other. In this case, the non-compete fee was paid. This was due to the fact that the Shri Gupta had required considerable knowledge, skill, expertise and specialization in the liquor business. The amount of non-compete fee was arrived at as a result of negotiations between the SWC group and the appellant. Given the personal expertise of the assessee, the perception of the SWC group was that Shri Gupta could either start a rival business or engage himself in a rival business, which would include manufacturing and marketing of IMFL and Beer at which he was an old hand, having experience of 35 years. The Court held that the withholding of INR 3 crores out of INR 6.6 crores for a period of two years by way of a public deposit with the SWC group for the purpose of deduction of any loss on account of any breach of the MoU, was akin to a penalty clause, making it clear thereby that there was no colorable device involved in having two separate agreements for two entirely separate and distinct purposes.

Applicability of 194C

In the case of ***Shree Choudhary Transport Company Vs. Income Tax Officer [TS-370-SC-2020]***, the appellant as per contract was to transport the goods of the consignor company and in order to execute this contract the appellant hired the transport vehicles, namely, the trucks from different operators/ owners. The appellant received freight charges from the consignor company, which deducted tax at source while making such payment to the appellant. Thereafter, the appellant paid the charges to the persons whose vehicles were hired for the purpose of the said work of transportation of goods. The Supreme Court held that the goods in question were transported through the trucks employed by the appellant but, there was no privity of contract between the truck

operators/owners and the said consignor company. Indisputably, it was the responsibility of the appellant to transport the goods (cement) of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the appellant. Hence, hiring the services of truck operators/owners for this purpose could have only been under a contract between the appellant and the said truck operators/owners. Whether such a contract was reduced into writing or not carries hardly any relevance. In the given scenario and set up, the said truck operators/owners answered to the description of "sub-contractor" for carrying out the whole or part of the work undertaken by the contractor (i.e., the appellant) for the purpose of Section 194C (2) of the Act.

2.2 High Court

Assessment Notice to a Dead Person

The Delhi High Court in the case of ***Savita Kapila, Legal Heir of Late Shri Mohinder Paul Kapila Vs. Assistant Commissioner of Income Tax WP(C) 3258/2020*** has held that the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. The Court held that there is no stipulation that there is an obligation upon the legal representative to inform the Income Tax Department about the death of the assessee or to surrender the PAN of the deceased assessee. Therefore, the Court held that the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue. Issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292BB of the Act, 1961 does not apply to the present case. The Court further held that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative.

Section 45(2) - Applicability

The Karnataka High Court in the case of ***CIT Vs. C. Ramaiah Reddy [TS-333-HC-2020]*** examined the issue in relation to whether the Tribunal was correct in law in holding that the provisions of Section 45(2) and 49(1) of the Income Tax Act are not applicable in respect to the property received by the assessee on partial partition of Hindu Undivided Family thereby deleting the long–term capital gain. The Court has held that from a close scrutiny of Section 45(2) of the Income Tax Act, it is axiomatic that it is attracted only when there is a transfer by the owner of a capital asset by conversion into stock in trade. Three conditions which are sine qua non are required to be complied with in order to attract the application of Section 45(2) of the Act.

(i) There has to be transfer by way of conversion.
(ii) The conversion has to be by the owner
(iii) The conversion must be of a capital asset into stock trade.

Section 45(2) of the Act has no application to the facts of the case as the asset received is stock in trade. Alternatively, the Court noticed that there is nothing on record to indicate that any capital asset has been converted to stock in trade and provisions of Section 49(1) are not applicable to stock in trade. The Court also observed that the definition of capital asset in Section 2(14) expressly excludes stock in trade.

2.3 ITAT

Section 35(1)(ii) – Deduction – Subsequent Cancellation of Registration

The Mumbai Tribunal in the case of ***M/s. Span Realtors Vs. Income Tax Officer 2020-TIOL-883-MUM]*** has held that the research institution i.e SHG&PH, as on the date of giving of donation by the assessee was having a valid approval granted under the Act. On a perusal of the 'Explanation' to Sec. 35(1)(ii), it can safely be gathered that a subsequent withdrawal of such approval cannot form a reason to deny deduction claimed by the donor. By way of an analogy, Supreme Court in the case of ***CIT Vs. Chotatingrai Tea - 2002-TIOL-1668-SC-IT***, while dealing with Sec. 35CCA of the Act, had concluded, that a retrospective withdrawal of an approval granted by a prescribed authority would not lead to invalidation of the assesses claim of deduction. On a similar footing, High Court of Bombay in the case of ***National Leather Cloth Mfg. Co. Vs. Indian Council of Agricultural Research***, while dealing with an identical issue of denial of deduction u/s 35(1)(ii) due to a subsequent withdrawal of approval with retrospective effect, had observed, that such retrospective cancellation of registration will have no effect upon the deduction claimed by the donor since such donation was given acting upon the registration when it was valid and operative. On a perusal of the statutory provision i.e Sec. 35(1)(ii), as well as the ratio laid down in the judicial pronouncements, it can safely be concluded that if the assessee acting upon a valid registration/approval granted to an institution had donated the amount for which deduction is claimed, such deduction cannot be disallowed if at a later point of time such registration is cancelled with retrospective effect.

Depreciation of Assets

The Mumbai ITAT in the case of ***Archroma India Pvt. Ltd. Vs. ITO [TS-345-ITAT-2020]*** has held that the 5th proviso to Section 32 is evidently applicable for the computation of depreciation on assets which have been taken over from the transferor company. Hence the computation of depreciation on assets which have been taken over has to be in accordance with the said proviso. The balancing figure between the value of slump sale and the value of WDV of assets taken over shall qualify as goodwill, and eligible for consequent depreciation.

Right under an Agreement - Capital Asset

The Bangalore Tribunal in the case of ***Shri Chandrasekhar Naganagouda Patil Vs. DCIT TS-339-ITAT-2020*** held that the right acquired under the agreement by the

assessee has to regarded as 'Capital Asset'. Giving up of a right to claim specific performance by conveyance in respect to an immovable property, amounts to relinquishment of the capital asset. Therefore, there was a transfer of capital asset within the meaning of the Act. The payment of consideration under the agreement of sale, for transfer of a capital asset, is the cost of acquisition of the capital asset. Therefore, in lieu of giving up the said right, any amount received, constitutes capital gain and it is exigible to tax. However, as is clear from Section 48, before the income chargeable under the head capital gains is computed, the deductions set out in Section 48 has to be given to the assessee. It is only the amount thus arrived at, after such deductions under Section 48, would be the income chargeable under the heading capital gains.

INTERNATIONAL TAX

1. Case Laws

1.1 Supreme Court

Permanent Establishment – Project Office

The Supreme Court in the case ***of Director of Income Tax (International Taxation) Vs. M/s. Samsung Heavy Industries Civil Appeal No. 12183 of 2016*** has held that when it comes to a "fixed place" permanent establishments under double taxation avoidance treaties, the condition precedent for applicability of Article 5(1) of the double taxation treaty and the ascertainment of a "permanent establishment" is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. Further, the profits of the foreign enterprise are taxable only where the said enterprise carries on its core business through a permanent establishment. What is equally clear is that the maintenance of a fixed place of business which is of a preparatory or auxiliary character in the trade or business of the enterprise would not be considered to be a permanent establishment under Article 5. Also, it is only so much of the profits of the enterprise that may be taxed in the other State as is attributable to that permanent establishment. In this case, there were only two persons working in the Mumbai Office, neither of whom was qualified to perform any core activity of the assessee. This being the case, the Court held that no permanent establishment has been set up within the meaning of Article 5(1) of the DTAA, as the Mumbai Project Office cannot be said to be a fixed place of business through which the core business of the Assessee was wholly or partly carried on. The Mumbai Project Office, on the facts of the present case, would fall within Article 5(4)(e) of the DTAA, inasmuch as the office is solely an auxiliary office, meant to act as a liaison office between the Assessee and ONGC.

1.2 ITAT

Management Services - Royalty - DTAA

The Mumbai Bench of Tribunal in the case ***Edenred Pte. Ltd. Vs. DDIT (International Taxation) [TS-361-ITAT-2020]*** held that a perusal of the documents filed before the AO and DRP clearly indicate that (i) appellant has an infrastructure data centre, not information centre at Singapore, (ii) the Indian group companies neither access nor use CPU of the appellant, (iii) no CDN system is provided under the IDC agreement, no such use/access is allowed, (iv) the appellant does not maintain any such central data (v) IDC is not capable of information analytics, data management, (vi) appellant only provides IDC service by using its hardware/security devices/personnel ; all that the Indian group companies received are standard IDC services and not use of any software, (vii) bandwidth and networking infrastructure is used by the appellant to render IDC services ; Indian companies only get the output of usages of such bandwidth and network and not

its use, (viii) consideration is for IDC services and not any specific program and (ix) no embedded/secret software is developed by the appellant. Thus, the Tribunal held that the management services are provided only to support SurfGold in carrying on its business efficiently and running the business in line with the business model, policies and best practices followed by the Edenred group. These services do not make available any technical knowledge, skill, knowhow or processes to SurfGold and thus, is not royalty under DTAA.

Software License Payment – DTAA

The Mumbai Tribunal in the case of ***Reliance Corporate IT Park Ltd. Vs. DCIT ITA No. 7300/2016 AY 2014-15*** has decided on the issue as to whether the consideration paid by the Appellant to Exida Asia Pacific Pte. Ltd. represents royalty as per Income Tax Act, 1961 as well as the India Singapore DTAA. The Tribunal held that when data base access by itself does not result in royalty, such database access being coupled with software license cannot bring the software hence consideration within the scope of royalty. The Tribunal held that the payment for license fee of software is not taxable in nature.

1.3 European Court of Justice – Fixed Establishment

The ECJ in the case of ***Dong Yang Electronics Vs. Dyrektor Izby Administracji Skarbowej we Wrocławiu C-547/18*** has held that Article 44 of Directive 2006/112 and Article 11(1) and Article 22(1) of Implementing Regulation No 282/2011 must be interpreted as meaning that the existence, in the territory of a Member State, of a fixed establishment of a company established in a non-Member State may not be inferred by a supplier of services from the mere fact that that company has a subsidiary there, and that supplier is not required to inquire, for the purposes of such an assessment, into contractual relationships between the two entities.

2. Digital Taxation – Recent Development

2.1 A Draft Article and Commentary has been published by the UN Model Double Taxation Convention which seeks to provide for a withholding mechanism for taxing automated digital services. *A detailed article on the new Article 12B forms part of this Newsletter.*

GST

1. Notifications & Circulars

1.1 FORM GSTR – 4 – Notification No. 59 of 2020 dated 13.07.2020

Due date to for filing FORM GSTR-4 for Financial Year 2019-2020 has been extended from 15.07.2020 to 31.08.2020.

1.2 Furnishing Returns through SMS – Notification No. 58 of 2020 dated 01.07.2020

CBIC issued notification amending Rule 67A of the CGST Rules, 2017 to accommodate provisions for furnishing of returns using SMS. The amendment enables furnishing NIL Return in FORM GSTR-3B or NIL details of outward supplies under Section 37 in FORM GSTR-1 vide SMS through a registered mobile number verified by OTP facility.

1.3 GST Rate – Alcohol Sanitizers – Ministry of Finance – Press Release dated 15.07.2020

Ministry of Finance issued a press release clarifying the issue of GST Rate on alcohol-based hand sanitizers. The Ministry stated that the hand sanitizers attract GST at the rate of 18% as they are disinfectants like soaps, anti-bacterial liquids, Dettol, etc. which all attract duty standard rate of 18% under the GST regime. It was further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

It is nice to note that the economic aspect of a higher GST rate on inputs and a lower rate on output has been appreciated. However, the current provisions of law do not contemplate refund for inverted duty structure for a host of products; do not factor GST on input service which is a huge cost. Further, the real estate sector which is taxed at an effective rate of 5% through Notification No.11/2017 as amended by Notification No.3/2019 does not permit input tax credit.

1.4 E- Invoice – Notification No. 60 & 61/2020 dated 30.07.2020

CBIC issued notification amending the Central Goods and Service Tax Rules, 2017 through the Central Goods and Service Tax (Ninth Amendment) Rules, 2020, in force from the date of publication in the Gazette. Under this amendment the FORM GST INV – 1 is substituted. The notifications also amend the class of registered persons for the

purpose of e-invoice (i.e.) those under 54 (2), (3), (4) and (4A) of the CGST Rules, 2017, whose turnover exceeds Rs. 500 Crores in a financial year shall prepare an e-invoice through the new form.

4. Case Laws

4.1 High Court

Rule 117 of the CGST Rules, 2017 – Constitutional Validity

The Madras High Court in the case of ***M/s. P.R. Mani Electronics Vs. Union of India and Ors. W.P. No. 8890 of 2020*** held that Rule 117 was framed whereby a time limit was fixed for submitting the online Form GST TRAN-1. By Finance Act, 2020, the words "within such time" was introduced in Section 140, with retrospective effect from 01.07.2020, thereby conferring expressly the power to prescribe time limits in Section 140 even without relying entirety on the generic Section 164. In this statutory context, the Court held that Rule 117 of the CGST Rules in intra vires Section 140 of the CGST Act. The object and purpose of Section 140 clearly warrants the necessity to be finite. ITC has been held to be a concession and not a vested right. In effect, it is a time limit relating to the availing of a concession or benefit. If construed as mandatory, the substantive rights of the assessees would be impacted; equally, if construed as directory, it would adversely impact the Government's revenue interest, including the predictability thereof. On weighing all the relevant factors, which may not be conclusive in isolation, in the balance, the Court concluded that the time limit is mandatory and not directory.

With due respect, while the Court referred to the decision of the Supreme court in the context of VAT regime, the decisions of the Supreme Court in the context of the central excise regime dealing with cenvat credit with reference to vested rights have not been considered. It is an interesting legal debate inasmuch that the Apex Court in the context of VAT has considered ITC as a concession while the Apex Court in the context of cenvat credit has given importance to vested rights.

Rule 142(1)(a) of the CGST/GGST Rules – Constitutional Validity

The Gujarat High Court in the case of ***M/s. Mahavir Enterprise Vs. Assistant Commissioner of State Tax SCA/7613/2020*** has upheld the validity of Rule 142(2)(a) of the CGST Rules, 2017 was upheld. The provision was challenged on the grounds of excessive delegation. The Court held that whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject matter, the scheme, the provisions of the Statutes including its preamble and the facts and circumstances in the background of which the Statute is enacted. The Court held that in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the Courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared ultra vires. The Court held that under Section

164 of the Act, the Central Government has the power to make rules generally to carry out all or any purposes of the Act.

Section 13(8)(b) read with Section 2(13) of the IGST Act, 2017 - Constitutional Validity

The Gujarat High Court in the case of ***Material Recycling Association of India Vs. Union of India C/SCA/13238/2018*** has upheld the constitutional validity of Section 13(8)(b) read with Section 2 (13) of the IGST Act, 2017, and held that the basic logic or inception of Section 13(8)(b) of the IGST Act, 2017 considering the place of supply in case of intermediary to be the location of supply of service is in order to levy CGST and SGST and such intermediary service, therefore, would be out of the purview of IGST. There is no distinction between the intermediary services provided by a person in India or outside India. Only because, the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services, more particularly when the legislature has thought it fit to consider the place of supply of services as place of person who provides such service in India.

The contention of the petitioner that it would amount to double taxation is also not tenable in eyes of law because the services provided by the petitioner as intermediary would not be taxable in the hands of the recipient of such service, but on the contrary a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and therefore, it would not be a case of double taxation. If the services provided by intermediary are not taxed in India, which is a location of supply of service, then, providing such service by the intermediary located in India would be without payment of any tax and such services would not be liable to tax anywhere.

With due respect, when services are provided to a recipient located outside India, the general concept would be to consider the same as an export. It is not clear as to why the Government chose to tax these services from 01.10.2014 even though valuable foreign exchange is earned. While place of supply is indeed a proxy fixed by the statute, it should not lead to artificially creating taxability on a transaction which has the characteristics of an export. Prior to 01.10.2014, the place of provision of service was the location of the recipient and even in the pre-negative list regime, the export status was intact. Extra territoriality or taxability of exports or scope of power to levy tax on an export transaction has not been canvassed before the Hon'ble Court.

Inverted Duty Structure – Not providing for refund of input services - Unconstitutional

The Gujarat High Court in the case of ***VKC Footsteps India Pvt. Ltd. Vs. Union of India & 2 Ors. C/SCA/2792/2019*** has held that the Explanation (a) to Rule 89 (5) which denies the refund of "unutilized input tax" paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure is ultra vires to the provisions of Section 54 (3) of the CGST Act, 2017. The Court read down Explanation (a) to the Rule

89 (5) which defines "Net Input Tax Credit" means "input tax credit" only. The said explanation (a) of Rule 89 (5) of the CGST Rules is held to be contrary to the provisions of Section 54(3) of the CGST Act. The Court held that the net ITC should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act.

Interest when tax paid not recorded due to technical glitches

The Gujarat High Court in the case of ***Vishnu Aroma Pouching Pvt. Ltd. Vs. Union of India [TS-543-HC-2020]*** has held that the errors in uploading the return were not on account of any fault on the part of the petitioner but on account of error in the system. In these circumstances, it would be unreasonable and inequitable on the part of the respondents to saddle the petitioner with interest on the amount of tax payable for August 2017, despite the fact that the petitioner had discharged its tax liability for such period well within time. The petitioner had duly discharged the tax liability of August, 2017 within the period prescribed therefor; however, it was only on account of technical glitches in the System that the amount of tax paid by the petitioner for August 2017 had not been credited to the Government account. Hence, the Court held that the interests of justice would best be served if the declaration submitted by the petitioner in October, 2019 along with the return of September, 2019 is treated as discharge of the petitioner's tax liability of August, 2017 within the period stipulated under the GST laws. Consequently, the petitioner would not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October, 2019.

OTHER INDIRECT TAXES

1. Notifications & Circulars

1.1 DGFT Notification No. 20 of 2015-2020 dated 21.07.2020

DGFT amends the export policy of PPE/ Masks to the extent that only surgical drapes, isolation aprons, surgical wraps and X-Ray gowns are removed from prohibition under the medical coveralls of all classes and categories. All other items including the other types of medical coveralls of all classes and categories, exported against the mentioned HS Codes or falling under any other HS code, continue to remain prohibited for export, as part of prohibition on personal protection equipment.

1.2 Circular No. 32/2020 -Customs dated 06.07.2020

CBIC issued a Circular directing all the Customs stations to set up the Turant Suvidha Kendra by 15.07.2020. This programme is aimed at providing a 'Faceless, Contactless and Paperless' Customs administration.

2. Case Laws

2.1 Supreme Court

Purchase Tax – Turnover of empty bottles purchased

The Supreme Court in the case of ***The Commercial Tax Officer Vs. Mohan Brewaries and Distilleries Civil Appeal No. 7164 of 2013*** has considered issue as to whether purchase tax is leviable on the purchase turnover of empty bottles purchased by the assessee in the course of its business of manufacture and sale of Beer and Indian made Foreign Liquor. The Court held that the goods in question (empty bottles) have not been consumed in the manufacture of other goods for sale nor they have been consumed otherwise because of having retained their identity. They have also not been used in the manufacture of other goods for sale because manufacture of Beer/IMFL was complete without their use. However, they have been used for bottling and when bottling remains an integral part of the business activity of the assessee, i.e., of manufacturing the liquor by the process of brewing/distillation and then, selling the manufactured liquor by putting the same in bottles, they have been "used otherwise". That being the position, use of the goods in question for bottling takes the turnover of their purchase within the net of Section 7-A of the Act. The Court held that if clause (a) of sub-section (1) of Section 7-A of the Act was read sliced down to the elements "uses in manufacture or otherwise", it is clear that the goods in question (empty bottles) have been used for bottling, which use, even if not for manufacture, had been a use otherwise which has been closely connected with the business of the assessee and whereby the bottles in question did not remain

available for sale in the form in which they were purchased. Therefore, purchase tax is applicable.

The Court further held that the fact that the bottles in question were subjected to sales tax at the same rate as applicable to their contents is entirely irrelevant and has no bearing on the exigibility of the turnover in question to purchase tax. In this regard, the Court also observed that even though the provision relating to the purchase tax was initially inserted to plug the loss of revenue in relation to the goods that were consumed in manufacture or were consumed otherwise, its scope and amplitude has been widened with insertion of the expression "or uses" and thereby, not only consumption but even use in manufacture or use otherwise of the goods has been made subject to the levy of purchase tax. Merely because the bottles in question were to be subjected to sales tax, when being sold as containers of the liquor, liability of purchase tax cannot be obviated.

2.2 High Court

Revenue bound by earlier precedents

The Madras High Court in the case of ***CCE Vs. Pay Pal India Pvt. Ltd. CMA No. 1069 of 2020*** has held that the Revenue Department is bound by the judgments of this Court unless they are set aside by higher Courts in appropriate proceedings. The Court also held that it is also not the case of the Department that any subsequent amendment in law has changed the legal position to take away the binding effect.

Covid 19 – Order set aside for want of hearing

The Telangana High Court in the case of ***Qualcomm India Pvt. Ltd. Vs. Deputy Commissioner DC(ST) and Ors. TS-528-HC-2020*** has set aside the assessment order passed by the assessing officer by holding that the assessee ought to be provided a personal hearing after the pandemic situation resolves to enable the assessee to submit the documentary evidence in relation to the hearing. The Court held that there has been denial of opportunity to the petitioner by the respondent in view of the COVID-19 pandemic and the consequent lockdown and therefore, the impugned order of Assessment dt.31.03.2020 is vitiated.

2.3 CESTAT

Foreclosure Charges

The Larger Bench of the Tribunal in the case of ***CST Vs. M/s. Repco Home Finance Ltd. STA No. 511 of 2011-LB*** has held that service tax cannot be levied on foreclosure charges levied by the banks and non-banking financial companies on premature termination of loans under "banking and other financial services" as defined under Section 65 (12) of the Finance Act, 1994. The Court held that the foreclosure charges are nothing but damages which the banks are entitled to receive when the contract is broken.

The amendment made in section 65 (12) of the Finance Act in the definition of "banking and other financial services" by addition of "lending" is not relevant at all for the purpose of determining whether service tax can be levied on foreclosure charges. The Tribunal also held that compensation is not the same as consideration.

Taxability of commission paid to agents

The Mumbai Tribunal in the case of ***Bharat Petroleum Corporation Ltd. Vs. CST [TS-580-CESTAT-2020]*** has held that the chartering out of vessels, in the possession of the appellant but lying idle, is a separate business activity. It is in the nature of a service rendered outside India by the appellant and the agency commission, disbursed in India and remitted outside India, is a business expenditure in furtherance of rendering that service. Even of such activity were to conform to a description of the taxable services in section 65 (105) of Finance Act, 1994, its lack of linkage with business and commerce in India would take it out of the purview of the said Rules and, thereby, section 66 A of Finance Act, 1994. The Tribunal held that consequently, the taxability of commission paid to agents for handling of vessels outside India as well as for out charter of vessels fails and, with it, the other detriments fastened on the appellant in relation to these demands.

CORPORATE & OTHER LAWS

1. Consumer Protection Act

1.1 Central Government (Ministry of Consumer Affairs, Food and Public Distribution) vide Notification dated 15.07.2020 appointed 20.07.2020 as the day on which many Sections of the new Consumer Protection Act, 2019 to come into force.

1.2 The notification brings into force the institution of Consumer Protection Councils, Consumer Disputes Redressal Commission, Mediation, Product Liability, Offences and Penalties, etc.

1.3 The Government issued a notification dated 24.07.2020 unveiling norms for the Consumer Protection (Mediation) Regulations, 2020.

1.4 The Government issued a notification dated 24.07.2020 unveiling norms for the Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020.

2. MSME

2.1 The Ministry of Micro, Small and Medium Enterprises vide notification dated 01.07.2020 notified the criteria for classification of MSME w.e.f. 01.07.2020, namely -

Investment in Plant and Machinery (in Rs.)	Turnover (in Rs.)	Classification
< 1 Crore	< 5 Crores	Micro
< 10 Crores	< 50 Crores	Small
< 50 Crores	< 250 Crores	Medium

3. Stamp Act

3.1 The Amendments to the Indian Stamp Act, 1899 brought through Finance Act 2019 and Rules made thereunder relating to levy and collection of stamp duty on securities market instruments comes into effect from 01.07.2020. Stock Exchanges, Depositories, Clearing Corporations, Share Transfer Agents, etc. are designated as Collecting Agents.

4. Case Laws

4.1 Supreme Court

FERA – Liability of a Director

The Supreme Court in the case of ***Shailendra Swarup Vs. The Deputy Director, Enforcement Directorate [LSI-511-SC-2020]*** has held that for proceeding against a Director of company for contravention of provisions of FERA, 1973, the necessary

ingredient for proceeding shall be that at the time offence was committed, the Director was in charge of and was responsible to the company for the conduct of the business of the company. The liability to be proceeded with for offence under Section 68 of FERA, 1973 depends on the role one plays in the affairs of the company and not on mere designation or status.

Service of Notices, Summons by Email, Instant Messaging, etc.

The Supreme Court in a suo motto Writ Petition (C) No.3/2020 in ***Re- Cognizance for extension of limitation*** has observed that services of notices, summons and pleadings, etc. have not been possible during the period of lockdown because this involves visits to post offices, courier company or physical delivery of notices, summons and pleadings. The Supreme Court therefore has directed that such services of all the above may be effected by email, fax, commonly used instant messaging services such as whatsapp, telegram, signal, etc. Further, if a party intends to effect service by means by of the said instant messaging services, in addition the party must also effect service of the same document / documents by email simultaneously on the same date.

4.2 High Court

Time Limit – Arbitral Award

The Delhi High Court in the case of ***ONGC Petro Additions Limited Vs. Ferns Construction Co. Inc. OMP (Misc.) (Comm.) 256/2019, I.A. 4989/2020*** has held that the provisions of Section 29(1) shall be applicable to all pending arbitrations seated in India as on August 30,2019 and commenced after October 23,2015. The Court also held that there is no strict time line of 12 months prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India.

4.3 NCLT

Retrospective Applicability of Section 10A

The NCLT in the case of ***Siemens Gamesa Renewable Power Ltd. vs. Ramesh Kymal (LSI-469-NCLT-2020(CHE))*** held that where the default occurred on 30.04.2020 and the petition for initiation of insolvency was filed on 11.05.2020, Section 10A will have retrospective applicability from 25.03.2020 and consequently rejected the application for initiation of insolvency proceedings.

Limitation – COVID-19

The NCLT in the case of ***R. Raghavendran (RP for Thiru Arooran Sugars Ltd.) [LSI-492-NCLT-2020(CHE)]*** excluded the COVID – 19 lockdown period from the timelines for completion of the Corporate Insolvency Resolution Process.

Relaxation of Timeline – COVID-19

The NCLT in the case of ***Sunil Kumar Agarwal, RP of Digjam Ltd. vs. Suspended Board of Directors of Digjam Ltd. [LSI-436-NCLT-2020(AHM)]*** allows modification proposed by Resolution Applicant in timeline of payment proposed in resolution plan on account of COVID – 19.

WEBINARS

Works Contract and Construction services related issues
https://www.youtube.com/watch?v=io2DsDdguLU

ARTICLES

Impact of COVID-19 on Rental Agreements - Direct and Indirect Tax Issues
https://www.taxsutra.com/experts/column?sid=1416#head

UN's Proposed Article 12B – Light at the End of the Tunnel –
http://vaithilegal.com/images/files/K.Vaitheeswaran%20-%20UNs%20Proposed%20Article%2012B–Light%20at%20the%20End%20of%20the%20Tunnel.pdf

CHENNAI	BENGALURU
Flat No.8/3 & 8/4, 'Venkatagiri', Ground Floor, No.8, (Old No. 9), Sivaprakasam Street, T. Nagar, Chennai – 600 017. Tel.: 044 + 2433 1029 / 2433 4048	402, Front Wing, House of Lords, 15 / 16, St. Marks Road, Bengaluru – 560 001. Tel.: 092421 78157

Email: vaithilegal@gmail.com; vaithilegal@yahoo.co.in

Website: www.vaithilegal.com