India tax konnect

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Direct Tax

Decisions - International Tax

High Court quashes reassessment proceedings for denial of treaty benefit on sale of shares, upholds sufficiency of the tax residency certificate for treaty eligibility: Delhi High Court[1]

The Singaporean company sold equity shares of an Indian company and claimed that the gains on the sale of such shares were not taxable in India under Article 13(4) of the India-Singapore tax treaty based on the Tax Residency Certificate (TRC). The return of income was processed under Section 143(1) with no demand. The Assessing Officer (AO) initiated reassessment proceedings and denied the tax treaty benefit despite the availability of the TRC. The AO recorded the reason for reopening the case as the transaction's genuineness and taxability remained unverified as no assessment was carried out. The Delhi High Court held that the AO could not go behind the TRC issued by the other tax jurisdiction as the same is sufficient evidence to claim treaty eligibility, residence status and legal ownership. Accordingly, the High Court quashed the reassessment proceedings initiated by the AO.

Payment for payroll services to the Philippines group company is not taxable as FTS under the India-Philippines tax treaty: Karnataka High Court[2]

An Indian company outsourced payroll-related services to its Philippines group company. The AO held that the payments made to the Philippines company were in the nature of Fees for Technical Services (FTS) under the India- Philippines tax treaty. The Karnataka High Court observed that the Philippines company worked like a sub-contractor under the Indian company and earned profit by rendering services. The Philippines company did not provide any technical service to the Indian entity. The amount received by the Philippines company was in the nature of business income. Further, the Philippines company did not have a Permanent Establishment (PE) in India. Accordingly, the Indian company was not liable to deduct tax under Section 195 and thus could not be deemed as 'assessee-in-default'.

Decisions - Domestic Tax

The assessment order passed in the name of the amalgamating company after amalgamation is illegal and invalid: Mumbai ITAT[3]

During the year, the amalgamation of GlaxoSmithKline Consumer Healthcare Limited (GSK) (the taxpayer) and Hindustan Unilever Limited (HUL) was approved by the NCLT.

[1] Blackstone FP Capital Partners Mauritius V Ltd v. DCIT (ITA Nos. 981 and 1725/Mum/2021) (Mum)
[2] DIT v. IBM India Private Limited (ITA No. 218 of 2014) (Kar)
[3] Hindustan Unilever Ltd v. DCIT (ITA No.1860/Mum/2022) (Mum)

Subsequently, the AO passed the assessment order assessing the income in the name of GSK instead of HUL. At every stage, GSK had intimated to the respective authorities that it was not in existence from 1 April 2020 and HUL was the legal successor after amalgamation. The NCLT had approved the scheme of amalgamation with effect from 1 April 2020 which was intimated to the concerned tax authorities and they were also requested to address all future communication with regard to GSK to HUL. Accordingly, the Mumbai ITAT quashed the assessment order passed in the name of GSK by holding it illegal and invalid since the order was passed on a non-existent entity.

Reassessment proceeding initiated against the UK entity is without jurisdiction: Orissa High Court[4]

The AO based in Bhubaneshwar issued a reassessment notice under Section 148 to the UK entity. The UK entity filed a writ petition on the ground that the AO based in Bhubaneshwar lacks the jurisdiction to issue such reassessment notice. On the 'Know Your Jurisdictional AO' page of the tax department's portal, the jurisdiction of the UK entity was Delhi. The Orrisa High Court held that the reassessment notice issued by the AO based in Bhubaneshwar were without jurisdiction since the UK entity's jurisdiction falls within Delhi and no order under Section 127 was passed to transfer jurisdiction from Delhi to Bhubaneshwar. Accordingly, the High Court quashed the notice.

Foreign Exchange Management Act, 1999

FAQ's issued by RBI on Legal Entity Identifier ('LEI') for cross border transactions

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. The Reserve Bank of India ('RBI') introduced LEI in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

The RBI expanded the scope of application of LEI for the resident entities (non-individuals) undertaking capital or current account transactions of INR 50 crore and above (per transaction) under FEMA, 1999 with effect from 1 October 2022 vide A.P. (DIR Series) Circular No. 20 dated 10 December 2021.

In furtherance to the aforementioned circular, the RBI has come up with the FAQ's on Legal Entity Identifier for Cross-border Transactions on their website in order to put in place the common queries that users might have on the said subject.

[4] Vedanta Resources Ltd v. The ACIT (W.P.(C) Nos. 6372, 6375, 6377, 6378 and 6395 of 2022) (Orrisa)

Indirect Tax

Notifications/ Clarifications

RoDTEP schedule aligned with the First Schedule of Customs Tariff Act, 1975[5]

The Central Government has notified alignment of the RoDTEP Schedule under Appendix 4R with the First Schedule of the Customs Tariff Act, 1975 for chapter 28 (inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of; isotopes), chapter 29 (organic chemicals), chapter 30 (pharmaceutical products) and chapter 73 (articles of iron or steel). This revised Appendix 4R is effective from 15 February 2023.

High Court Decision

GST law cannot curtail the right to carry on trade or profession[6]

Petitioner a proprietary firm engaged in the business of fabrication was registered under GST. Petitioner could not file GST returns from August 2021 onwards since he had undergone angioplasty and the firm had suffered financial set back due to the pandemic. State Tax Officer invoked section 29(2) of the GST Act and cancelled the registration of the Petitioner with effect from 21 August 2021.

Petitioner appealed against the order of cancellation of registration and prayed for revocation of registration. The Appellate Authority rejected the appeal on the grounds of limitation that the appeal had been submitted beyond the prescribed period.

The Bombay High Court allowed the writ petition in favour of the Petitioner. It held that the right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Article 19(1)(g) and Article 21 of the Constitution of India. If a person like Petitioner is not allowed to revive the registration, the state will suffer a loss of revenue, and the ultimate goal under the GST regime will stand defeated. The Petitioner deserves a chance to come back into the GST fold and carry on his business in a legitimate manner.

Tribunal decision

Incentives are not liable to tax[7]

Appellant is an authorised dealer of an automobile manufacturer for the sale, service and spare parts of medium and heavy commercial vehicles in five districts of Rajasthan. It was registered with the Service Tax Department under various categories of services. On meeting specific sales targets, various incentives were given by the automobile manufacturer to the Appellant. It filed a declaration under Voluntary Compliance Encouragement Scheme 2013 (VCES) to settle tax disputes and seek immunities from interest, penalty and other proceedings under the Finance Act, 1994.

A show cause notice was issued to the Appellant proposing to reject the declaration under section 111 of the Finance Act, 2013 on the ground that the declaration was substantially false. The show cause notice was confirmed by an order demanding service tax on various incentives received by the Appellant from the automobile manufacturer. Aggrieved by order of the Commissioner, the Appellant filed an appeal.

CESTAT, Principal Bench at New Delhi, allowed the appeal in favour of the Appellant and held that it did not find any misdeclaration in the VCES declaration made by the Appellant on the inference that incentives are a form of trade discount, and they are not a payment for any service rendered to the manufacturer.

[5] Notification No. 55/2015-2020 dated 7 February 2023, Ministry of Commerce & Industry

[6] Rohit Enterprises Vs Commissioner & Ors. [2023-VIL-117-BOM]

[7] Veer Prabhu Marketing Ltd Vs Commissioner of Central Excise, Jodhpur [2023-VIL-108-CESTAT-DEL-ST]

Advance Ruling

SEZ unit is not required to pay GST under RCM[8]

Appellant is a SEZ unit engaged in the export of manufactured goods outside India. It applied for an advance ruling on whether the supply of renting of immovable property services provided by the SEZ Authority (Local Authority) is a zero-rated supply; and whether the supply of any other services by the suppliers located in DTA to the SEZ unit is zero-rated supply in terms of section 16(1) of the IGST Act, 2017. The Advance Ruling Authority held that the Appellant is liable to pay GST under RCM. Aggrieved by the ruling, the Appellant filed an appeal.

Maharashtra Appellate Authority for Advance Ruling set aside the order of the lower authority and held that:

- Appellant is not required to pay GST under RCM on the services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services;

- Appellant is not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.

The ruling is on the reasoning that as per section 16(1) of the IGST Act, any supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorised operation in SEZ will be considered as zero-rated supply. Further, this provision of zero-rated supply will cover even the services specified in RCM notifications.

[8] Portescap India Private Limited [2023-VIL-09-AAAR]

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