by the name and style of "BGS Appolo Hospital" at Mysuru, in collaboration with M/s. Appolo Hospital Enterprises Limited (AHEL), Chennai. It was observed that hospital had not done TDS as required under the TDS provisions in respect of 40% of payments made to the doctors under section 194J of the Act. Therefore, an amount of ₹ 65.32 lakhs was disallowed under section 40(a)(ia). Further, for the same reason, amount of ₹ 45.69 lakhs was disallowed on account of operation management service charges. CIT(A) affirmed AO's order. ITAT held that Section 40(a)(ia) cannot be invoked for disallowing the expenses on which tax has not been deducted at source.

Aggrieved Revenue filed an appeal before Karnataka High Court.

Referring to amendment in Finance Act, 2018 High Court held that it clearly indicates that the same would stand applicable only from 01.04.2019. High Court, therefore, held that ITAT was justified in holding the said issue in favour of the Assessee and against the revenue.

Separately, High Court perused amendment in Section 11(6) of the Act regarding restricting depreciation deduction where cost of assets has already been allowed as application of income, and held that the same was also prospective in nature and applicable only from AY 2015-16. High Court upheld ITAT order which relied on Bombay High Court ruling in society of the sisters of St. Anne [146 ITR 28] and held that the depreciation is to be deducted, to arrive at an income available to charitable or religious purposes.

High Court thus ruled in favour of the assessee.

GST

LD/67/133

Optival Health Solutions Pvt. Ltd. and Anr.
Vs.
UOI (CAL, HC)
07/02/2019

Hon'ble High Court permitted the petitioner to revise GST TRAN-2 holding that, TRAN-2 is merely an admission of facts, and even in the absence of specific Rule, any person filing it should be entitled to revise/rectify the same. The verification of grounds for revision can be examined by the Department in the course of assessment.

Facts:

The Petitioner had filed the Tran 1 form within time. It had filed the Tran 2 form within time. However, the petitioners had noticed that, there were certain mistakes in the Tran 2 form. The petitioner wanted to correct the same. However, the present scheme of things does not allow rectification or revision of the Tran 2 form. The petitioners therefore sought for a direction upon the Department to allow them to revise/rectify their Form GST TRAN 2 electronically or manually.

Held:

Hon'ble High Court noted that, although the Rules of 2017 were subsequently amended to provide for revision/rectification of TRAN 1 form by insertion of Rule 120 A, similar provisions have not been incorporated in the Rules of 2017 for rectification/revision of TRAN 2. Since the Rules of 2017 do not contemplate revision of Form GST TRAN 2, the common portal available under the Act and Rules of 2017, does not provide for revision of Form GST TRAN 2 in the electronic manner. The petitioners are therefore unable to file a revised declaration under Form GST TRAN 2 electronically. Relying upon *Alwaye Sugar Agency vs. Asst. Commr. (Assmnt) 2018 (10) GSTL 228 (Ker.)* and *Commercial Taxes Special Circle, Aluva) and Infra Innovations vs. Union of India) 2018 (18) G.S.T.L. 28 (Ker.) GC*, the Hon'ble High Court held that, although Taxing statutes are to be strictly construed, such interpretation should not lead to a reckless or a mindless mechanical application of the statute. Hon'ble Court held that, the Form GST TRAN 2, at best, is an admission of the person filing the same with regard to the contents of the document. Admission is a strong evidence against the person making it. However, law contemplates that, the person making such admission has the opportunity to explain the same. A person making an admission, is entitled to prove that, the admission was made by mistake or was untrue. If a person making the admission is able to substantiate with cogent evidence that

the admission was a mistake or was untrue, then such facts have to be taken into consideration for the purpose of deciding the evidentiary value of the admission and the relevancy thereof. In other words, the law permits a person making an admission, the liberty of explaining the same, if he so chooses. However, neither the Act of 2017 nor the Rules of 2017 can be read to mean that the same excludes the right of a person making an admission, to forfeit the opportunity to explain it. Neither the Act of 2017 nor the Rules of 2017 forfeits the right of a person making an admission to substantiate that, such admission was made by mistake or was untrue. Hon'ble High Court, therefore, held that a person filing Form GST TRAN 2, therefore, should be afforded an opportunity to explain the Form GST TRAN 2, in the event where such person chooses to do so. Moreover, Form GST TRAN 2 will be taken into consideration for the purpose of assessment. In the assessment proceedings, the person filing the Form GST TRAN 2 would be at liberty to establish by cogent evidence that the figures filed therein are incorrect or untrue. The Assessing Officer will be obliged to take into consideration such a stand while pronouncing upon the assessment. Therefore, when such a person is seeking to correct Form GST TRAN 2 on its own, an opportunity should be afforded to such person to correct the same. The authorities may retain the original GST TRAN 2 Form for their assessment purpose and can confront the person seeking to revise the GST TRAN 2 with the Form GST TRAN 2 as originally filed and require explanation from the person filing a revised From GST TRAN 2 as to why such revision was required and whether such revisions are justified or not. Such an enquiry can be held in the assessment proceedings. There is no ground as to why a person filing Form GST TRAN 2 should not be allowed to revise Form GST TRAN 2 after its initial filing.

Accordingly, Hon'ble High Court directed the authorities to allow the petitioner to file a revised Form GST TRAN 2, either electronically or manually, in accordance with law within four weeks from the date of communication of this order.

LD/67/134

Phalanx Labs Pvt. Ltd
Vs.
CCT Vishakhapattanam GST
(CESTAT-HYD)
06/09/2018

Tribunal allowed Cenvat credit of service tax paid on labour charges for fixing and erection of equipments, buffing work, fixation and erection of equipment work, insulation work etc. for the activity undertaken by the service providers in the factory premises

Facts:

Appellant paid labour charges for fixing and erection of equipment, provision of pipe line work, installation and insulation work, fixing and errection of equipments and various other activities which are related to the machines installed in the factory premises of the appellant. While adjudicating show cause notice questioning admissibility of Cenvat credit on such services, the adjudicating authority considered such activity as works contract and confirmed impugned demand. The first appellate authority confirmed the demand on the ground that services received by the appellant are not coextensively used in the manufacture of final products and relied upon the decision of Hon'ble AP. High Court in case of *Rayalaseema Hi-Strength Hype Limited [2012(278)E.L.T 167 (AP)],* wherein it was held that unless the goods are used in the manufacture of capital goods, Cenvat credit cannot be claimed even on the repair and maintenance as for manufacture and the repair and maintenance of the plant cannot be constituents in the process of manufacture of final products. Being aggrieved, appellant filed present appeal.

Held:

Tribunal noted that services received by the appellant were in respect of capital goods and not for laying foundation or making structures for support of capital goods, which are covered under exclusion clause in A(b) of Rule 2(l) of CCR, 2004. As regards findings of first appellate authority that these services were not used

coextensively for manufacture of final products, Tribunal held that such findings are contrary to factual position in as much as the appellant being the manufacturer of bulk drugs, requires installation of various plant and machinery which would contribute towards manufacture of final products. Tribunal noted that the definition of input service clearly mandates for availing Cenvat credit of service tax paid on services which were used by manufactures directly or indirectly, in or in relation to manufacture and clearance of final products. Thus the Tribunal held that it cannot be said that the services rendered by service providers on various activities were in respect of equipments which are not used for manufacturing final products. Further the Tribunal distinguished from decision in Rayalseema Hi-Strength Hype Limited (Supra), as the issue involved in said case pertained to eligibility to avail Cenvat credit on input but not input services and the definition entitles the appellant to avail Cenvat credit. Accordingly, the Tribunal set aside impugned demand and allowed present appeals.

Service Tax

LD/67/135

Union of India & Ors.
Vs.
Coastal Container Transporters Association & Ors.
26/02/2019

Supreme Court held that High Court could not have entertained writ petition of Transporters Association regarding classification of service as 'cargo handing service' (CHS) or 'goods transport agency' (GTA).

This civil appeal has been filed by Revenue against the order of Gujarat High Court, wherein the High Court had quashed the show-cause notices issued in exercise of power under section 73(1) of the Finance Act, 1994. The issue pertained to classification of services as 'cargo handing service' (CHS) or 'goods transport agency' (GTA) service in case of association of transporters.

The assessee is Coastal Container Transporters Association whose members are engaged in the transportation of goods entrusted by the customers. The Revenue had proposed to demand service tax from the assessee under the category of CHS, whereas as per the assessee, the service fell under the category of GTA. To fortify its case, assessee relied on circulars of CBEC.

Revenue contended that assessee, with a view to evade payment of service tax, have split the whole transactions into three parts, i.e., from the place of consignor to Kandla/Mundra Port by road, from Kandla/ Mundra Port to Kochi/ Tuticorin Ports by sea route and from Kochi/ Tuticorin Ports to the place of the consignee by road. As per revenue, if assessee were registered under the category of CHS, no abatement would have been admissible.

High Court overruled the objection of maintainability of the petition and has recorded a finding that the services rendered by the members of the respondent-association are classifiable under GTA but not under CHS. High Court held that the notices impugned in the writ petition, are contrary to the binding circulars issued by the CBEC and relied upon by the assessee, in and so assessee was entitled to invoke the writ jurisdiction of the Court.

Supreme Court observed that High Court ought not to have entertained writ petition against the show cause notices of Revenue more-so when against the final orders appeal lied to this Court. Supreme Court stated that instant case is neither a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice.

Supreme Court stated that the classifiability of service rendered by a particular assessee is to be considered with reference to facts of each case depending upon nature of service rendered and the contract entered into and that there cannot be any general declaration. Supreme Court stated that the judgement of this Court in the case of *Deputy Commissioner Central Excise*

& Anr. vs. Sushil and Company [(2016) 13 SCC 223] cannot be applied to the facts of this case as relied upon by the assessee. Supreme Court approved Revenue's reliance upon its judgement in the case of *Union of India & Anr. vs. Guwahati Carbon Ltd. [(2012) 11 SCC 651]* and *Malladi Drugs & Pharma Ltd. vs. Union of India [2004 (166) ELT 153 (S.C.)]*.

Supreme Court ruled in favour of the Revenue and gave liberty to the Revenue to consider the case on merits and pass appropriate orders, uninfluenced by any of the observations made by the Supreme Court.

LD/67/136

ICICI Bank Ltd
Vs.
Commissioner of Service Tax
(CESTAT-MUM)
12/02/2019

Premium paid by banks to Deposit Insurance and credit Guarantee Corporation (DICGC) for insuring the deposits of the customers does not qualify to be 'input service' in terms of Rule 2(l) of CCR, 2004, after 01.07.2012. Rule 6(3B) of CCR, 2004 cannot be used for extending the benefit of ineligible credit and thus allowing reversal of 50% of eligible and ineligible credit availed by the appellants during the month

Facts:

As per the norms of RBI, the appellant banks got registered with DICGC and were required to insure its deposits through DICGC to protect the interest of small depositors. The short question for consideration in present appeals was whether the appellant banks would be entitled to take credit of service tax paid on deposit insurance premium paid to DICGC, after 01.07.2012. The department's case mainly based on three grounds namely: (i) the insurance service is for the benefit of the depositors and not for the bank. DIGCC has not insured the Bank and thus the bank cannot be treated as an insured person. (ii) Deposit insurance premium is linked only to deposits accepted by banks and has no nexus with any other service provided by banks so it cannot be termed as 'input service' used for rendition of any output service. (iii) The appellant did not charge any consideration for the acceptance of the deposit, so it is a transaction in money only and outside the purview of service tax.

While rebutting allegations made by the Revenue, appellant banks inter alia submitted that deposit insurance is an input service by virtue of it being directly linked to the activity of accepting deposits from which a bank earns various charges and on which service tax liability have been discharged. Rule 2(l) of CCR, 2004 provides that input service means any service used by provider of output service for providing input service. Appellant further submitted that such insurance is statutory obligation as the RBI has power to cancel the license of Banks in case of non-compliance, thus, said service of DICGC is not only commercially expedient but also mandatory in nature. Appellant also submitted that the contractual relationship exists between Bank and DICGC and not between the customer and DICGC and the banks are debarred from recovering the cost of insurance premium from the depositors. Thus, the depositors cannot be regarded as recipient of services.

Held:

While deciding the issue, Tribunal observed that in terms of definition of 'input service' under Rule 2(l) of CCR, 2004, all or any of the services that suffers service tax in the hand of service providers, cannot be said to be 'input service' so as to be eligible for credit i.e. it cannot be said that all the services/activities which are required for promoting or running business cannot be considered as 'input service'. Further, Tribunal took a view that with omission of expression 'activities relating to business' from definition of 'input service' w.e.f. 01.04.2011, all the activities which contribute to the commencement and continuation of banking business may not be relevant for bringing the same within the fold of definition of 'input service'. The Cenvat credit of input services could be allowed only when it falls within the scope of definition of input service.

In present case, Tribunal held that banks are not receiving any consideration for deposits taken by them from the depositors, and in the absence of any consideration from the depositors to the bank for the activity of accepting deposits, the same cannot be considered as a service in terms of Section 65B(44). As the consideration received by appellant banks in extending deposits, loans or advances, being out of service tax net, do not fall within the definition of "service" and if they fall within the definition of service, they are excluded from the scheme of output service by virtue of negative list prescribed in Section 66D. Consequently, the Cenvat credit in respect of services that go exclusively for taking such deposits is not admissible.

It was also held that even though deposit is an activity relating to banking business, it's not a taxable service under the Finance Act, 1994 as consideration for such service is exempted. Therefore, Tribunal upheld the impugned demand of disallowance of Cenvat credit on deposit insurance to appellant banks.

As regards interpretation of Rule 6(3B) of the Cenvat Credit Rules, Hon'ble Tribunal held that, this rule in no way creates an additional entitlement to the credit over and above as available in terms of Rule 3 and hence, the said Rule cannot be used for extending the benefit of ineligible credit and thus allowing reversal of 50% of eligible and ineligible credit availed by the appellants during the month. In other words, Rule 6(3B) does not create an additional mechanism for allowing credit of those service taxes paid which do not qualify to be eligible credit in terms of Rule 2 and 3 of the Cenvat credit Rules, 2004. Since the issue involved question of interpretation of law, penalties were set aside.

LD/67/137

Ericsson India Pvt. Ltd

Vs.

Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II

(CESTAT-MAD)

11/01/2019

When branch office availed Cenvat credit on the basis of valid ISD invoices issued by head office, correctness of availment of such ISD credit in light of Rule 6 of CCR, 2004 cannot be challenged against branch office and since branch office was not engaged in providing any exempted services, ISD credit given by Head office, engaged in providing taxable as well as exempted services, cannot be denied to branch office.

Facts:

The appellant i.e. branch office received Cenvat credit from its head office under input service distribution mechanism. The appellant is engaged in providing taxable services only, whereas the head office having ISD registration is engaged in providing taxable as well as exempted services. In terms of show cause proceedings initiated against appellant, department alleged that the credit availed by the appellant on some input services are not correct as they pertain to trading by their head office and thus, not permissible under Rule 6 of Cenvat credit Rules, 2004. The case pertains to the period April 2005 to March 2008 when there was restriction on utilisation of credit in excess of 20% of the service tax. Hence, department also alleged that the head office of appellant erred in transferring their input service credit as it should not have, at any point of time, exceeded 20% of the output service tax liability of the company.

Held:

Hon'ble Tribunal noted that it was undisputed that appellant was exclusively engaged in providing taxable services only and did not render any exempted service. Further allegations against transfer of Cenvat credit in excess of 20% is against Head Office and, there was nothing on record to show that appellant i.e. branch office utilised Cenvat credit in excess of 20% of their output liability. The Tribunal further held that, even if allegations of wrong availment of Cenvat credit by Head Office are true, demand, interest and penalty is imposable on head office. Tribunal categorically expressed a view that, although appellant and their head office are part of same legal entity, it is inconceivable to hold that the appellant branch office, who received credit from Head Office

through ISD invoices, has full knowledge of how the credit was availed by such head office and how it was transferred to their various branch offices across the country. Accordingly, holding that the appellant had legitimately taken credit on the basis of ISD invoices issued under Rule 9 of Cenvat credit Rules, impugned demand against appellant was set aside.

Excise

LD/67/138

Magadh Plas Pvt. Ltd.
Vs.
C.C.E. & S.T. Jaipur
18/02/2019

Duty exemption benefit no applicable to job worker for goods manufactured for unit availing area-based exemption, as there was no duty on the final goods cleared

The assessee was engaged in manufacture of plastic containers and also manufactured the same on job work basis for Divya Pharmacy Industrial Area, Haridwar, Uttarakhand who was availing area-based exemption under Notification No. 52/2003-CE dated June 10, 2013. The pharmacy had supplied raw materials i.e. plastic granules to the assessee for the said job work under the cover of miscellaneous invoices as different from the regular invoices under Central Excise Rules for clearance of assessee's own manufactured goods qua the said job work expenses. Revenue issued a show cause notice proposing recovery of central excise duty along with the interest and the proportionate penalties which was confirmed by the Commissioner, amounting to ₹ 77.82 lakhs. Aggrieved the assessee preferred appeal before CESTAT.

Assessee contended that they were regularly discharging excise liability for the goods manufactured by them and submitted that no duty was payable for the manufacture of plastic containers on job work basis out of the raw materials received from Divya Pharmacy. Further Cenvat credit was also not taken on the inputs and only job work expenses had been charged from the pharmacy against proper declarations and intimations to Revenue Department. Revenue submitted that exemption benefit was not available to the assessee as the pharmacy for whom job work was done was having the benefit of area-based exemption. Assessee contended that penalty is not imposable as there is no fraud, collusion or any wilful mis-statement or suppression of fact with intent to evade payment of duty.

CESTAT perused Notification No. 214/86 and noted that the said exemption to goods manufactured in the factory as a job work are subject to conditions specified in the Notification No. 214/86 which exempts the job worker from payment of duty subject to fulfilment of given conditions. One such condition states that such goods should be used by the principal manufacturer in the manufacture of goods which are cleared on payment of duty. Divya Pharmacy though was getting the plastic containers on job work basis from the assessee, but they were not clearing their final product with those plastic containers on payment of duty as they were availing the area-based exemption.

CESTAT observed that the assessee had manufactured plastic containers under job work chalans and cleared them under miscellaneous chalans only with an intent to evade the payment of duty as it was very much in the knowledge of the assessee that the unit of Divya Pharmacy was in access free zone and was available an area based exemption. As per CESTAT, no bonafide can be attributed to the assessee of not being aware of the condition of the Notification that the goods are to be cleared after payment of duty to avail the benefit. The only possibility for the non-payment was the intent to evade the duty. CESTAT held that the Revenue had not committed any error while imposing penalty and that the show cause notice could not be barred by time for the said reason.

CESTAT thus ruled in favour of the Revenue.