and the draft assessment order was accompanied by the notice under section 274 r.w.s. 271(1) (c). ITAT distinguished the rulings relied upon by the assessee and held that character of the assessment order was that of the draft assessment order and there was no violation of Section 144C. In case of royalty payment to AE, TP addition was deleted by ITAT relying on the coordinate ruling for past year in assessee's case only. Regarding international transaction of receipt of indenting commission for selling goods on AE's behalf, matter was remitted to the TPO for lack of due calculations.

GST

LD/68/59, [2019-TIOL-260-AAR-GST] Siemens Ltd., 19/08/2019

Where the applicant had received mobilisation advance from recipient of service in pre-GST period and such advance was adjusted against the invoices raised in period after 01.07.2017, AAR held that in respect of portion of unadjusted advance as on 01.07.2017 (to the extent unadjusted against invoices raised in pre-GST period), the applicant becomes liable to discharge GST liability from 01.07.2017 and subsequently, when such advance will be adjusted against GST invoices to be raised in future, GST shall be paid on net amount (i.e.; invoice value less advance adjusted).

Facts:

The applicant received mobilisation advance from customer in 2011 i.e. pre-GST period. Said advance was liable to be adjusted towards tax invoices to be raised by the applicant on attaining contract progress milestones. The applicant sought present ruling as to what will be the GST implication on the amount so received before the implementation of GST and its recovery against the Applicant's sales invoices issued post introduction of the GST and whether GST shall be charged on the gross amount of the invoice or the net amount after adjusting the lump-sum amount outstanding as on 30.06.2017.

Ruling:

AAR held that in terms of Section 15(1) and Section 13(2) of CGST Act, 2017, the applicant shall be deemed to have supplied service to recipient on 01/07/2017 to the extent covered by the lump-sum that stood credited to its account on that date as mobilisation advance. Accordingly, AAR held that as the supply to the extent of the above amount is deemed to have been made on 01/07/2017 and tax is leviable thereon accordingly, the value of the supply of works contract service in the subsequent invoices as and when raised should, therefore, be reduced to the extent of the advance adjusted in such invoices. To avoid double taxation, the GST should, therefore, be charged on the net amount that remains after such adjustment.

LD/68/60, [2019-TIOL-265-AAR-GST] M/S Chennai Port Trust, 26.07.2019

AAR held that interest/late fees/penalty etc. charged for delayed payment of pre-GST invoices is separate supply of service in terms of Section 7(1)(a) of CGST Act, 2017 and hence chargeable to GST.

Facts:

The applicant discharged service tax liability in respect of invoices raised during pre-GST regime for service provided before July 2017. When the payment of such invoices was received by the applicant after July 2017, in terms of contractual terms, applicant charged interest, late fee, penalty etc. Applicant sought present ruling as to whether the amount received on or after 01.07.2017 towards interest, late fee penalty relating to the services other than continuous supply of services (CSS) rendered by the applicant before 01.07.2017 are liable to GST.

Ruling:

AAR noted that the applicant has collected an amount as interest/late fee/ penalty for the delayed payment of consideration for the original service, which was received after 1st July 2017 for which separate invoice was raised. AAR held that there is a payment of a separate consideration for this tolerance of delayed payment of lease /rent. Such payment is a part of the contract for supply of services of the applicant to the port user in the course of their business. It can be said that as the applicant has tolerated the delayed payment of consideration charged by them which the recipients should have paid much before. Therefore, this tolerance on the part of the applicant for the delayed payment of lease/rent by collecting an interest/late fee/penalty is a separate supply of

service as covered under section 7(1)(a) of CGST Act, 2017 and thus chargeable to GST.

LD/68/61, [2019-TIOL-255-AAR-GST], M/S Spacelance Office Solutions Pvt Ltd.,15.07.2019

AAR held that separate GST registration can be allowed to multiple companies functioning in a 'co-working space' as there is no prohibition under GST law for obtaining GST registration to a shared office space or virtual office.

Facts:

The applicant is engaged in business of subleasing of offices as 'co-working space' to their clients. The lease agreement between the applicant and landlord permit subleasing and accordingly they obtain NOC from landlord for registering GST for customers. The applicant provides dedicated distinct and identifiable space, table and chairs to each client working there. Each client company is working as separate and identifiable office within main office and these companies are maintaining their financial records in electronic form and accessible from co-working space. These companies have same address and same electricity bill except the suit number or desk number. The GST authorities denied registration to some co-working companies for the reason that already another company is registered in same address. Applicant sought present ruling as to whether GST registration can be allowed for multiple companies from same address, provided they follow all GST rules related to 'principal place of business'.

Ruling:

AAR noted that co-working is a business services provision model that involves individuals working independently or collaboratively in shared office space. A virtual office is an access to the basic services that are generally provided in a traditional office such as permanent office address, meeting rooms or video conferencing rooms, a mail forwarding facility with minimum charge etc. without a room for real-life people and these offices are of greater benefits to the travelling freelancers, small businesses, start-ups and even to businesses that are operated from remote areas. AAR held that there is no prohibition under GST law for obtaining GST registration to a shared office space or virtual office. Thus, if the landlord permits such subleasing as per agreement and each co-working space is demarcated with different suite number or desk number, identification of a taxpayer is not a difficult thing as GST registration is based on PAN. Therefore, AAR held that separate GST registration can be allowed to multiple companies functioning in a "co-working space" and which provide services alone. Further, it was held that such companies shall upload rental agreement with the landlord and lessee and if there is any sub-lease, then rental agreement between lessee and sub-lessee should also be uploaded as proof of address of principal place of business of respective suite or desk number assigned to them.

Service Tax

LD/68/62, 2019-TIOL-2365-CESTAT-DEL Gurubani Security Pvt. Ltd. vs. Principal Additional Director General, 1/08/2019

In case of services of manpower supply or security services, while computing 'gross amount charged' under section 67 of Finance Act, 1994 for providing services, various statutory payments made towards wages, salaries and employer's contribution towards PF, EPF, ESI etc. shall not to be included in computation.

Facts:

The appellant provided security services, manpower supply services. The issue in present appeal was, whether the salaries, wages and other statutory contributions made by the appellant towards PF, EPF, ESIC etc. were includible in computation of 'gross amount charged' under section 67 of the Finance Act, 1994 for the purpose of payment of service tax by the appellant.

Held:

Tribunal relied upon ratio laid down in *Security Guards Board for Greater Bombay and Thane District Vs. Commissioner of Central Excise, Thane – 2017 (51) STR 51 (Tri-Mumbai)*, wherein it was held that wages and allowance including salary paid by the appellant to its employees, is excludible from the gross value of taxable services in terms of Section 67 of the Finance Act, 1994. Tribunal also noted that in *Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. Union of India - 2012-TIOL-966-HC-DEL-ST,* it was held that

for arriving at the gross amount to be charged under section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is reimbursable in nature, is not required to be included for the purpose of computation of assessable value under section 67 of the Act. Therefore, in present case, it was held that the various statutory deductions the payment made towards salary and wages are required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service. Thus, the charges attributable to the service element can only to be considered in the gross amount charged.

LD/68/63, [2019-TIOL-2306-CESTAT]-All Commissioner of Central Excise vs. M/s Lion Security Guards Services, 10.01.2019

Where the respondent-assesse was engaged for execution of cleaning work and employed individuals on his own account, tribunal held that the respondent-assessee cannot be said to have provided manpower recruitment or supply agency services.

Facts:

The respondent assessee entered into contract with service recipient for execution of cleaning work. He employed labours to execute the contract and was responsible to get all the work executed through supervision. Respondent assessee raised bills for entire contract and was also liable to bear any penalty for non-execution by way of deduction of amounts from the bills submitted by them. Revenue alleged that respondent provided services of 'manpower recruitment and supply agency services'. The fist appellate authority held the issue in favour of respondent. Being aggrieved, the Revenue filed the present appeal.

Held:

Tribunal observed that respondent was awarded contract for cleaning work and not for supply of manpower. The workers were engaged by respondents from outside and daily wages were paid to such workers. Respondent did not engage permanent workers to execute said contract. Tribunal relied upon decision in *Divya Enterprises vs. CCE 2019 (19) S.T.R. 370 (Tri.-Bang.) and Ritesh Enterprises vs. CCE Bangalore 2010 (18) S.T.R. (Tri.-Bang.)*, wherein it was held that in the absence of any agreement to utilise the services of an individual, assessee cannot be said to have provided Manpower Recruitment or Supply Agency Services. Accordingly, Revenue's appeal was dismissed.

Customs Act

LD/68/64, Bombay High Court, [Writ Petition No.14417 of 2018], Union of India Vs. The Commissioner of Customs (Import -I) 09 /08/2019

Writ petition filed by the assessee was dismissed by the Bombay High Court and levy of interest under section 28AA of the Customs Act was upheld. Assessee had not paid interest on customs duty within 3 months from order assessing the duty payable. Assessee contended that Section 28AA was not applicable since it was effective from 26/05/1995 whereas the assessee's goods were imported before that period. High Court held the order in original, determining such duty, was passed after the introduction of Section 28AA. Coordinate bench ruling in another case distinguished where it was held that interest provision in Section 11AB of Central Excise Act would apply only to those cases where clearances were effected after the date of insertion of Section 11AB. High Court noted that Section 28AA of the Customs Act was similar to Section 11AA of the Central Excise Act and not similar to Section 11AB of the said Act.

Sales Tax Act

LD/68/60, [W.P.No.15233 of 2019], Madras High Court, Shri Varalakshmi Company Vs. The State of Tamil Nadu and Ors, 04/06/2019

Post GST implementation, the department's site was blocked and denied access from downloading 'C' forms, due to which the assessee was unable to obtain the same for purchase of High Speed Diesel oil from other States at concessional tax rate of 2%. Coordinate bench ruling in *Ramco Cements [W.P.Nos.19458/2018 to 19460/2018]* was relied upon where the coordinate bench had directed the Revenue to permit the petitioners to download 'C' forms. High Court noted that it was incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the principle laid down in Ramco Cements with regard to pending assessments till such time the order of Ramco Cements is either stayed or reversed.