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Part I – Direct Tax

Judgements

No requirement of tax deduction at source under section 194-H of the Income-tax Act, 1962 (the Act) by telecom companies on discount given to distributors of pre-paid coupons or starter-kits – Supreme Court

In *Bharti Cellular Ltd. v. ACIT*[1], the taxpayer was a cellular mobile telephone service provider as per the license granted to it by the DoT, Government of India.

As per the pre-paid business model of the taxpayer, for a new pre-paid connection, the customers or end-users purchased a kit, called a start-up pack, which contained a Subscriber Identification Mobile (SIM) card and a coupon of the specified value (pre-paid products) as an advance payment to avail the telecom services.

No requirement of tax deduction at source under section 194-H of the Income-tax Act, 1962 (the Act) by telecom companies on discount given to distributors of pre-paid coupons or starter-kits – Supreme Court

For this purpose, the taxpayer had entered into a franchise or distribution agreement with several parties. The taxpayer sold the pre-paid products of the specified value at a discounted price to the franchisee or distributor. The discounts were given on the printed price of the packs, which as per the taxpayer, was not a commission or brokerage under Explanation (i) to section 194-H of the Act.

The Revenue alleged that the relationship between the taxpayer and franchisees or distributors was of a principal and an agent. Therefore, the difference between the price at which the product was given to franchisees or distributors by the taxpayer and sale prices in the hands of the franchisees or distributors should be treated as being of the nature of commission or brokerage. Accordingly, the Revenue argued that the taxpayer was liable to deduct tax under section 194-H of the Act.

Supreme Court's observation and decision

The Supreme Court analysed the principles relating to the principal-agent relationship.

The Court observed that to decide whether a contracting party acts for himself as an independent contractor, one needs to examine whether in the course of work, he intends to make profits for himself, or is entitled to receive a prearranged remuneration. If the party is concerned about acting for himself and making the maximum profits possible, he is usually regarded as a buyer or an independent contractor and not as an agent of the principal.

The court observed that the franchisees or distributors earned their income when they sold the pre-paid products to the retailer, end-user, or customer. Their profit consisted of the difference between the sale price received by them from the retailer, end-user, or customer, and discounted price at which they had acquired the product.

Though the discounted price was fixed or negotiated between the taxpayer and franchisee or distributor, the sale price received by the franchisee or distributor was within its sole discretion.

Further, the taxpayer did not, at any stage, either pay to or credit the account of the franchisee or distributor with the income by way of commission or brokerage on which tax at source under section 194-H of the Act could be deducted.

1 Civil Appeal Nos. 7257 of 2011 and Ors.

Moreover, the Revenue's argument that the taxpayer should periodically ask for the information about income earned by franchisees or distributors was rejected by the court. The Court held that the franchisee or distributor was not the trustee who was to account for this payment to the taxpayer as the principal.

The Court further held that the taxpayer was not privy to the transactions between franchisees or distributors and third parties. Therefore, it was impossible for the taxpayer to deduct tax at source and comply with section 194-H of the Act on the difference between the total or sum of the consideration received by the franchisees or distributors from third parties and amount paid by the franchisees or distributors to the taxpayer.

Considering the above, the court held the taxpayer was not under a legal obligation to deduct tax at source on the income or profit component in the payments received by the franchisees or distributors from the third parties or customers.

On profit attribution in case of global losses, matter referred to a larger bench on expressing reservation on co-ordinate bench's decision – Delhi High Court

In *Hyatt International- Southwest Asia Ltd. v. ADIT*[2], the taxpayer, a tax resident of the United Arab Emirates (UAE), entered into strategic oversight services agreements (SOSAs) with an Indian company operating in the hotel industry.

Under the terms of the SOSA, the taxpayer agreed to provide strategic planning services and know-how to ensure that the Indian company develops and operates its hotel as an efficient and high-quality international full-service hotel.

Simultaneously, the taxpayer also entered into Hotel Operation Service Agreement with its affiliate in India (a group company), whereby its affiliate agreed to provide day-to-day operations, management assistance and technical assistance services to oversee the implementation of the overall strategic planning and know-how provided by the taxpayer.

On profit attribution in case of global losses, matter referred to a larger bench on expressing reservation on co-ordinate bench's decision – Delhi High Court

The taxpayer claimed that the consideration it had received in terms of the SOSA was not taxable in India. The taxpayer's stand was that no specific article exists in the India-UAE Double Taxation Avoidance Agreement (DTAA) to tax such receipt as fees for technical services (FTS), and the taxpayer did not have a PE in India to tax such receipts as 'business income'.

The tax officer (TO) held that it was the taxpayer who operated the hotel in India through continuous presence of its employees and other personnel at the hotel premises. Moreover, the taxpayer provided central reservation system services, which also constituted a fixed place of business in India.

2 IT Appeal No. 216 to 219 of 2020 & Others

The TO also concluded that the taxpayer provided its proprietary written knowledge, skill, experience, operational and management information and associated technologies, etc. for the operation of the hotel.

Thus, the TO held that the taxpayer had a business connection under section 9(1)(i) of the Act and a PE under Article 5 of the India-UAE DTAA. The TO also considered that the receipts under SOSA as royalty or FTS under section 9(1)(vi)/(vii) of the Act as well as royalty under Article 12 of the India-UAE DTAA.

High Court's observations

Taxability of service fee as royalty:

- The taxpayer played an overarching role in the management of the hotel, albeit at the policy level. The taxpayer also had the right to oversee the policies' implementation to ensure that the hotel was operated as per the taxpayer's standard operating procedures.
- The service fee was not a consideration for the use of or the right to use any process or information based on commercial or scientific experience. Rather, such service was incidental to the services set out in the SOSA. Merely because the extensive services covered in the SOSA also included 'access' to written knowledge, processes and commercial information in furtherance of the services, the fee the taxpayer received could not qualify as 'royalty' under Article 12 of the India-UAE DTAA.
- Since such services pertained to the management of hotels, the income must be classified as income from business.

Existence of PE in India:

- The High Court affirmed the decision of the Income-tax Appellate Tribunal (Tribunal) on the existence of a PE in India. The High Court held that although the taxpayer was not required to carry on day-to-day management of the hotel, it could not be denied that the agreements entered into with the Indian company (SOSA and other agreements with the taxpayer's affiliate) did not provide the taxpayer pervasive control over the Indian company.
- The taxpayer's discretion to send its employees at its will without concurrence of the Indian company or its affiliate indicated that the taxpayer exercised control over the hotel premises. Moreover, the premises were sufficiently at the taxpayer's disposal, through which the taxpayer carried on its business.
- The court, thus, concluded that the hotel premises were at the disposal of the taxpayer regarding its business activities; therefore, the taxpayer had a PE in India in the form of a fixed place through which it carried on its business.

PE Profit attribution:

- The High Court observed that a PE in India must be considered as an independent taxable entity for any attribution of profits. Even if the taxpayer had incurred a net loss at an entity level because of losses suffered in other jurisdictions, it was required to pay tax on income attributed to its PE in India. The court expressed reservation towards the coordinate bench's decision in the case of CIT (International Taxation) v. Nokia Solutions and Networks OY

(ITA 503/2022) on the issue of attribution of income to the PE in India if the taxpayer did not make profits at an entity level. Accordingly, the Delhi High Court placed the matter before the Chief Justice of India to refer the question of profit attribution to a larger bench.

No disallowance is warranted under section 40(a)(i) of the Act on payment to non-residents (having PE in India) towards purchase of goods considering non-discrimination clause in India-Japan and India-USA DTAAs – Delhi High Court

In *CIT v. Mitsubishi Corporation India (P.) Ltd.*[3], the taxpayer made remittances to its non-resident AEs for the purchase of goods without deducting tax for the Financial Year (FY) 2005-06. Since one of the Japanese AE had a liaison office in India, which was treated as its permanent establishment (PE), the TO argued that all non-resident entities have PE in India. Consequently, the taxpayer was held liable to deduct tax under section 195 of the Act on all payments made to non-residents, and thus, disallowed the entire amount of remittance under section 40(a)(i) of the Act.

On appeal, the Tribunal concluded that the taxpayer was not liable to deduct tax from the remittances made to the AEs based in Japan and the USA considering the non-discrimination clause in the respective DTAAs.

On an appeal, the Delhi High Court held that the taxpayer was correct in invoking the non-discrimination clause of the respective DTAAs. Although clause (ia) was introduced in section 40(a) of the Act to remove the disparity between the payment made to the residents vis-à-vis non-residents, clause (ia) requires the disallowance of only certain payments on account of the non-deduction of tax. The same does not include payments towards purchases, whereas clause (i) covers all payments made to the non-residents. To this extent, the disparity still prevails, and thus, the taxpayer is right in their approach of seeking the benefit of the non-discrimination clause of the DTAAs.

Thus, the payment made by the taxpayer to the AEs towards the purchase of goods is not subject to disallowance under section 40(a)(i) of the Act on account of the non-discrimination clause in the respective DTAAs.

Mere holding of an office by an individual in a corporate entity is not sufficient for being treated as a principal officer – Delhi High Court

In *Varun Sood v. ACIT*[4], the petitioner was appointed Chief Executive Officer (CEO) of an Indian company on 1 January 2016. Thereafter, he was appointed as its MD on 2 May 2017. He resigned from the position of MD on 1 March 2018. The petitioner received a notice on 11 December 2018 treating him to be the principal officer and asking him to show cause in respect of TDS default by the company for the financial years 2016-17 and 2017-18.

The petitioner furnished a response on 19 December 2018, submitting that although he held the offices of CEO and MD in the respective period, he was not connected with or in charge of the accounting or financing activities pertaining to the company. The Revenue issued orders under section 2(35) of the Act on 20 June 2019 and on 24 July 2019, concluding the petitioner to be the principal officer of the company. According to the Revenue the petitioner, being in the capacity of MD, was certainly associated with the company's management and administration. It further alleged the petitioner to be the person responsible for TDS compliances.

The Delhi High Court observed that as per section 2(35) of the Act, the principal officer with reference to a company means:

(a) the secretary, treasurer, manager or agent of the company; or

3 IT Appeal No 180 of 2014

4 W.P.(C) No. 8577 of 2019

(b) any person connected with the management or administration of the company upon whom the Tax Officer has served a notice of their intention of treating him as the principal officer thereof.

The court opined that merely holding an office in a corporate entity is not sufficient to place a person in part (b). The court noted the judicial precedents[5] relied upon by the petitioner, which held that the connection of any person with the company's management or administration has to be established or supported with substantial material.

Accordingly, the court directed the Revenue to examine the issue afresh after making due inquiry regarding whether the petitioner could be said to be a person connected with the company's management or administration.

Mere holding of an office by an individual in a corporate entity is not sufficient for being treated as a principal officer – Delhi High Court

Notifications and circulars

Lower tax rate for royalties and FTS under the India-Spain DTAA notified – Ministry of Finance

The India-Spain DTAA was signed by the competent authorities of both states on 8 February 1993, and it came into force on 12 January 1995. Paragraph 7 of the Protocol to the India-Spain DTAA provides that if, under any DTAA between India and a third state that is a member of the Organisation for Economic Cooperation and Development (OECD), which enters into force after 1 January 1990, India limits its taxation at source on royalties or FTS to a rate lower or a scope more restricted than the rate or scope provided under the India-Spain DTAA, then that lower rate or restricted scope as provided for in that DTAA on royalty or FTS will also apply to the India-Spain DTAA.

Exercising the powers conferred by section 90 of the Act, the Central Government vide Notification No. 33/2024 dated 19 March 2024, invoked the provisions of the MFN clause enshrined under paragraph 7 of the Protocol to the India-Spain DTAA. The DTAA signed between India-Germany entered into force on 26 October 1996 (i.e. after 1 January 1990), and Germany was an OECD member at the time of entering into this DTAA with India. Since India has limited the taxation at source on royalties and FTS to a rate lower than that provided under the India-Spain DTAA on said items of income, the Central Government notified that such lower rate provided under the India-Germany DTAA will now be imported into the India-Spain DTAA.

Accordingly, paragraph 2 of Article 13 of India-Spain DTAA stands modified as reproduced in the below table. This will be applicable with effect from assessment year 2024–25.

5 K.P.G. Nair v. Jindal Menthol India Limited [2001] 10 SCC 218 (SC); Harish Bhat v. Assist. CIT [W.P.No. 34252 of 2018]

Article 13 in the India-Spain DTAA prior to the notification	*Article 13 in the India-Spain DTAA after the notification*
2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed : *(i) in the case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment, **10 per cent of the gross amount of the royalties;*** *(ii) in the case of **fees for technical services and other royalties, 20 per cent** of the gross amount of fees for technical services or royalties'.*	*2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged **shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services'.***

Ex-post facto extension of due date for filing Form No. 26QE which was required to be filed during the period 1 July 2022 to 28 February 2023 (pertaining to FY 2022-23) – Circular No. 04/2024 dated 7 March 2024

As per sub-rule (4D) of 31A the Income-tax Rules, 1962, a 'specified person' is required to report the deductions made as per section 194S of the Act in a challan-cum-statement electronically in Form No. 26QE within thirty days from the end of the month in which such deduction is made.

During the period from 1 July 2022 to 31 January 2023, specified persons who deducted tax under section 194S could not file Form No. 26QE due to its unavailability. This resulted in consequential levy of fee under section 234E and interest under 201(1A)(ii) of the Act.

Further, the persons who deducted tax under section 194S during the period from 1 February 2023 to 28 February 2023 had insufficient time to file Form No. 26QE and pay corresponding TDS thereon.

The Central Board of Direct Taxes has decided to, ex-post facto, extend the due date of filing Form 26QE for the persons who deducted tax under section 194S but failed to file Form 26QE. The due date is extended to 30 May 2023 in those cases where the tax was deducted by specified persons under section 194S of the Act during the period from 1 July 2022 to 28 February 2023. Fee levied under section 234E and/or interest charged under section 201(1A)(ii) of the Act in such cases for the period up to 30 May 2023, will be waived.

Part II – Indirect Tax

I. Interim Budget (2024-25)

a) ISD provisions revamped

- Definition of ISD (section 2) and substantive provisions (section 20) were amended to make the ISD mechanism mandatory. These amendments have been introduced to give effect to the 52nd GST Council meeting recommendations.
- Amendments to be effective from a date to be notified post enactment of the Finance Bill, 2024. It may be noted that the press release for the 52nd GST Council meeting mentioned that the amendments would be made applicable prospectively.
- The new provisions make it clear that common input services liable to reverse charge would also be subject to ISD mechanism.
- Procedural aspects (manner of calculation and distribution etc.) eliminated from the substantive provision. Rules to be prescribed for the procedures to be followed.

b) Penalty for non-compliance by manufacturers covered under special procedures

- Recommendations were made at the 50th GST Council meeting regarding special procedure to be followed by manufacturers of tobacco, pan masala, etc. for registration of machines, filing special monthly returns and penal provisions for failure to register or comply.
- While special procedure was earlier notified in January 2024, section 122A has now been proposed to be inserted in the Central Goods and Services Tax Act, 2017 (CGST Act) which provides a penalty of INR100,000 for every machine not registered.

c) No other substantive tax or rate related changes announced.

II. Customs and Foreign Trade Policy

i. Under the Finance Act, 2021, the conditional exemption from customs duty extended through notifications was to have a two-year tenure unless extended. Subsequently, a periodic review was undertaken by the government in consultation with the trade and other ministries to rescind certain notifications or to notify the end date for the withdrawal of the exemption.

However, certain notifications and exemptions that were to lapse on 31 March 2024 now stand extended by the government till 30 September 2024[6].

ii. The 13th Ministerial Conference[7] (MC-13) of the World Trade Organization (WTO) held in Abu Dhabi, UAE, between 26 February 2024 and 1 March 2024 served as a pivotal moment for global trade discussions amidst a complex and evolving world. A glimpse of the discussions is encapsulated along with an overview of the agreed outcomes.

a) The deadlocks: EU and US block India's proposal on fish and farm subsidies

Farm subsidies

- As part of the permanent solution to the issue of public stockholding (PSH) of grains for food security programmes, India had sought measures like modifications to the formula to calculate the food subsidy cap.
- Such a solution will help to expand policy space for the Government of India to procure and distribute foodgrains to the needy without

6 Notification No. 6 and 7/2024-Customs dated 29 January 2024
7 PIB Press Releases dated 28 February 2024 and 26 February 2024

getting hit by the WTO's regulations on agricultural subsidies.

- With no movement in this space, however, the existing model continues wherein developing countries like India rely on an interim solution (the Bali Peace Clause of 2013) to provide agricultural support without attracting disputes under the WTO regulation.

Fishing subsidies

- India sought to recognise sovereign fishing rights of members within their exclusive economic zones (EEZs) as per the United Nations Convention on the Law of the Sea (UNCLOS).
- India also sought a 25-year subsidy moratorium on advanced fishing nations for overfishing in the past, while factoring in hidden subsidies such as cheap fuel to fishing vessels on the principle of special and differential treatment so that developing nations can develop their fishing sector.
- In MC-12, the WTO members had agreed to the Geneva Package, which includes an agreement on curbing harmful fishing subsidies. However, the ratification process is still ongoing. The areas of fisheries negotiations that were pending included matters related to overfishing and overcapacity of fish stocks. Post MC-13, nonetheless, the status-quo continues.

b) Convergence areas: e-commerce, services and more!

E-commerce moratorium

- Customs duty exemption on cross-border electronic transactions (e.g. content streaming through Netflix) will continue at least for the next couple of years.

LDC benefit extension

- Smooth transition support measures in favour of countries graduating from the Least Developed Countries (LDC) category, by way of a three-year extension after their graduation, has been extended, for them to adjust with the WTO regulations and provisions regarding the dispute-resolution system.

Comoros and Timor-Leste as WTO members

- The official admission of Comoros and Timor-Leste as WTO members was achieved as one of the positive outcomes of MC-13. This brings the total number of WTO member countries to 166.

c) Three-point action plan by India to revive WTO DSB

- India had proposed a three-point action plan for members[8]:

  i) To transition the discussions on dispute settlement reforms to formal WTO bodies, preferably under the guidance of the Dispute Settlement Body (DSB) chair;

  ii) To ensure that the transition is not just a mere formality but results in an effective multi-lateralisation of the process, which is member-driven, open, transparent and inclusive, taking into account the myriad capacity and technical challenges facing developing country members and LDCs;

8 PIB Press Release dated 28 February 2024

iii) To prioritise the restoration of the Appellate Body.

- The decision recognises the progress made regarding having a fully and well-functioning dispute settlement system accessible to all members by 2024.

d) Non-inclusion of non-trade topics at WTO MC-13

- India highlighted the need for avoiding a fragmentation of the multilateral trading system and importance of remaining focused on agreed trade issues affecting global trade, rather than mixing non-trade issues with the WTO agenda.
- India also expressed serious concerns regarding the increasing use of trade protectionist unilateral measures, which are sought to be justified in the guise of environmental protection.[9]

e) India's proposal on remittances

- India's proposal on reducing the cost of cross-border remittances highlighted the disparity between current global remittance costs (6.18%) and the UN Sustainable Development Goal (SDG) target of less than 3%.
- Cost reduction can create a vantage for India's Unified Payments Interface for a global penetration.
- The proposal, however, could not materialise in the MC-13, primarily owing to the resistance by the developed countries.

f) Plurilateral initiatives, i.e. initiatives not involving complete WTO membership

Domestic regulation of services

- The Joint Initiative on Services Domestic Regulation aims to facilitate services trade by simplifying and streamlining regulatory procedures, thereby lowering trade costs.

9 PIB Press Release dated 26 February 2024

- It also includes a commitment to ensure non-discrimination between men and women when they seek permits to supply services.
- Though India was not party to this plurilateral initiative as it means additional self-commitments by the participant WTO members, by virtue of being implemented on the Most Favoured Nation basis, the benefits, if any, under this regulation, would be extended to Indian services exports as well.

Investment facilitation

- No progress has been noted vis-à-vis Investment Facilitation for Development Agreement (IFD), which is seen as a China-backed initiative with over 120 countries.
- India's stand on this plurilateral initiative has been to keep this outside the WTO's purview, as India argues that IFD falls outside the scope of WTO, it not strictly being a trade issue, and hence, being beyond the Marrakesh Agreement.
- India also argues that IFD does not fulfil the criterion of consensus of a formal agreement, as it has not received a unanimous support from all WTO members.
- India's stand is largely against the inclusion of plurilateral initiatives within the ambit of multilateral negotiations, as these are not endorsed by the entire WTO membership.

iii. India and the European Free Trade Association (EFTA), consisting of four countries – Switzerland, Norway, Iceland and Liechtenstein – have signed a historical Trade and Economic Partnership Agreement (TEPA) that aims to boost bilateral trade and investments, create jobs and enhance cooperation between the countries.

The agreement, signed[10] on 10 March 2024, is a strategic move to strengthen India's global ties and position in global value chains. The highlights of the agreement are as follows:

- EFTA has committed to promote investments with the aim of increasing the stock of foreign direct investments by USD100bn in India. The investments do not cover foreign portfolio investment.
- EFTA has offered 92.2% of its tariff lines, which covers 99.6% of India's exports. The EFTA's market access offer covers 100% of non-agri products and tariff concession on processed agricultural product.
- India has committed to the rationalisation of 82.7% of its tariff lines, which covers 95.3% of EFTA exports (of which more than 80% of import in India is gold).
- India has offered tariff concessions to the EFTA countries on various products such as coal, medicines, dyes, textiles, apparels, iron and steel, fish oil, cocoa, malt, instant tea, machinery, bicycles, clocks, watches, olives, avocado, apricot, coffee, caramel, chocolate, medical equipment, smartphones, sugar and cut and polished diamonds.
- The tariff concessions are phased over different periods ranging from immediate elimination to 10 years, depending on the product and the sensitivity of the domestic industry.

- Switzerland, the largest trading partner of India among the EFTA countries, has granted duty free access to 98% of India's exports of industrial products, which includes gems and jewellery, chemicals, pharmaceuticals and engineering goods.
- However, Switzerland has excluded most agricultural products such as dairy, honey, vegetables and cereals from the tariff concessions, limiting the market access for India's exports of these items.
- In the services sector, the commitments secured by India would encourage the export of services in key sectors – information technology, business, personal, cultural, sporting and recreational, audio-visual and other education services, etc.
- Services offers from EFTA also include better access through digital delivery of services (Mode 1), commercial presence (Mode 3) and improved commitments and certainty for entry and temporary stay of key personnel (Mode 4), in addition to provisions for Mutual Recognition Agreements in Professional Services such as nursing, chartered accountants and architects.

10 PIB Press Release dated 10 March 2024

The agreement signals India's engagement with the developed nations, leading to the diversification of trade partners. It demonstrates the country's commitment to a rules-based multilateral trading system.

III. Judicial Updates

i. The High Court of Allahabad[11] has dismissed a writ petition wherein the taxpayer put forth the challenge that officers of Director General of Goods and Services Tax Intelligence (DGGI) lack jurisdiction to carry out inspection or search proceedings at the premises of the taxpayer under section 67 of the CGST Act. Earlier, the Gujarat High Court decision in the case of Yasho Industries Limited[12] had held that DGGI is 'Proper Officer' under GST to issue summons under section 70 of the CGST Act. The High Court of Allahabad in this case has also ruled that DGGI has a right to issue and conduct such proceedings and that the proper officers, as defined in the GST framework, would include the officers of DGGI and such officers have acted with the authority of the law in doing so.

ii. The Madras High Court[13] modified the Tamil Nadu Appellate Authority for Advance Ruling's[14] (AAAR) order regarding taxation of 'gift vouchers'. The court clarified that a 'gift voucher' is an 'actionable claim', not constituting a supply of goods or services under Schedule III. The court further classified 'gift vouchers or cards' as 'prepaid instruments' (PPI) and acknowledged their status as 'debt instruments'. The taxation obligations were specified, indicating that tax is applicable when vouchers are issued specifically for identified goods at the time of issuance. The court emphasised that tax liability is determined based on the inherent nature of the transaction. Additionally, the court addressed the presence of restrictive clauses in certain vouchers, emphasising a crucial distinction between those issued for specified and unspecified goods. It ultimately held that tax is to be paid at the time of issuance for vouchers that specify identified goods, while the time of supply is deferred to the redemption period for vouchers related to unspecified goods.

iii. The Madras High Court allowed a writ petition[15] challenging the recovery notices issued by the GST authorities demanding interest on the delayed filing of Form GSTR-3B returns on account of technical issues for the period from July 2017 to December 2017. The court noted that the taxpayer deposited the tax amount in the electronic cash ledger (ECL) by making payment via Form GST PMT-06, which is under the control of the government. It was held that interest is not payable, since the tax amount has been credited before the due date of payment of tax and quashed the recovery notices.

iv. The Delhi High Court[16] has upheld the constitutional validity of the anti-profiteering

11 Writ Tax No. 229 of 2023 (Allahabad HC)
12 Yasho Industries Limited v. UOI [R/ Special Civil Application No. 7388 of 2021]
13 W.P. No. 5130 of 2022 and W.M.P. Nos. 5227 & 5228 of 2022
14 AAAR/11/2021 dated 30 March 2021 ROM dated 22 June 2021
15 W.P. Nos. 16866 & 22013 of 2023 and W.M.P. No. 32200 of 2023
16 W.P.(C) 7743/2019 & Ors

provisions, i.e. section 171 of the CGST Act, specified rules in the Central Goods and Service Tax Rules, 2017 (CGST Rules) associated with anti-profiteering. While upholding the validity of the provisions, the High Court has also acknowledged the possibility of the arbitrary exercise of powers under the anti-profiteering provisions by extending the proceedings beyond jurisdiction or not considering genuine factors, such as cost escalations or skewed input tax credit (ITC) situations. However, in such cases, it has been held that the remedy is to set aside these orders on merits rather than striking down the provision itself.

v. The Madras High Court allowed a batch of writ petitions[17] pertaining to the determination of transaction value (for the purpose of GST computation) for supplies made by the petitioner dealer, where a post-supply volume discount has been received from the manufacturer. The Court observed that the discounted price offered to the petitioner and the price at which the goods are further sold to customers are two independent transactions and cannot be intermingled unless such discounted price is due to a subsidy. The court further observed that a discount by itself will not qualify as a subsidy; only a discount disguised as a subsidy would form part of the 'transaction value'.

It was also observed that section 15(2)(e)[18] of the CGST Act, will come into play only when a part of the consideration payable for a supply is subsidised by a third party other than the Central Government or the State Government.

vi. The High Court of Telangana[19] dismissed the writ petition challenging the levy of GST on the transfer of development rights under a Joint Development Agreement (JDA) for residential projects. It held the transfer as a transaction of a service and not as a sale of land. Considering its terms and conditions, executing a JDA does not result in the transfer of ownership or title rights over any portion of the land in favour of the developer.

The court also upheld the validity of the notification[20] dated 30 September 2019 issued by the Indian Government on the GST Council's recommendation that clarified that the transfer of development rights is liable to GST.

vii. The Madras High Court[21] has held that in the absence of a proper notification under section 6 of the respective GST enactments for cross-empowerment, State or Central Tax Officers (TO) cannot usurp the power of investigation or adjudication of a taxpayer who is not assigned to them.

viii. The Supreme Court[22] recently rejected an appeal arising out of the Customs Excise and Service Tax Appellate Tribunal (CESTAT)[23]. The CESTAT had concluded that the provision of incidental services, such as the selection of vendors or making of goods by those vendors ancillary to the main supply or procurement of goods conducted on a principal-to-principal basis, does not qualify as an intermediary service for the purpose of service tax.

On appeal by the Revenue authorities, the Supreme Court held that the taxpayer is not covered within the scope of an intermediary considering the statutory definitions of business auxiliary services, business support services and intermediary services and because it is acting under the scope of the mandate provided by the principal.

17 W.P.Nos.13424, 13427, 13429, 13433 and 13435 of 2023 and W.M.P.Nos.13098, 13099, 13102, 13103, 13104, 13105, 13110, 13111, 13112 and 13114 of 2023

18 Section 15(2)(e) of the CGST Act specifies that subsidies directly linked to the price (excluding government subsidies) will be included in the value of the supply.

19 Writ Petition No. 5493 of 2020

20 Notification No. 23/2019-Central Tax (Rate) (Annexure P1) dated 30 September 2019

21 W.P. No. 34792 of 2019 and Ors.

22 Civil Appeal No. 8343/2024

23 Service-tax Appeal No. 41459 of 2019

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