SHREYAS THOUGHTS

MONTHLY NEWSLETTER FROM SHREYAS GLOBAL

July 2024

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2.	**Arya Cotton Industries Vs Union of India [2024] 164 taxmann.com 2 (Gujarat)[14-06-2024]**	In case of payment of tax, interest can be levied only from due date of payment of tax till deposit of such tax in electronic cash ledger and the petitioner cannot be made liable to pay the interest from the date of deposit in the account of the electronic cash ledger till the date of filing of the return
3.	**Amex Services Versus Deputy Commissioner, State Tax (2024) 20 Centax 161 (Cal.) [22-05-2024]**	Assessee filed a writ petition challenging the order issued under section 73(9) contending that since Form GST ASMT-10 had not been served upon assessee after conducting scrutiny under Sec. 61. The Hon'ble High Court held that the adjudication order passed stood vitiated on such ground and accordingly directed that the impugned order was to be kept in abeyance and Adjudicating Authority was directed to make available Form GST ASMT-10 and to provide appropriate opportunity to assessee to file additional response to show cause notice.
4.	**Tvl. Moon Labels Versus the Government of India, (High Court of Madras dated 11.06.2024)**	Credits validly availed under the TNVAT Act are considered indefeasible unless explicitly provided to lapse under the law. Procedural mistakes in transitioning ITC should not lead to the denial of credit if the substantive entitlement is proven.
5.	**Royal Sundaram General Insurance Company Limited Vs Commissioner of Central Excise and Service Tax (High Court of Madras dated 24.05.2024)**	The court emphasized that the settled issue should not be re-adjudicated. The court underscored that the orders of the coordinate bench should be respected and followed to maintain judicial discipline and credibility.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax:

This section summarizes the analysis of circulars issued pursuant to the recommendations made in 53rd GST Council Meeting held on 22 June 2024.

❖ **Monetary Limits for Departmental Appeals to reduce litigation [Circular No. 207/1/2024 – GST]:**

- CBIC prescribed monetary limits for filing departmental appeals as below:

Appellate Forum	Monetary Limit
Appeal before Appellate Tribunal ('GSTAT')	20 Lakhs
Appeal before High Court	1 Crore
Appeal before Supreme Court	2 Crores

- The Circular also specifies the manner of determining the monetary limits as follows:

Dispute Pertains to	Amount to be considered
Tax demand	Aggregate amount of disputed tax
Interest or penalty or late fee	Amount of interest, penalty or late fee, as the case maybe
Interest, penalty and late fee	Aggregate amount of interest, penalty and late fees
Composite order disposing multiple appeals / demand notice	Total amount of tax / interest / penalty / late fee but not on amount involved in individual appeal or demand order
Note: *monetary limit shall be applied on* ***disputed amount*** *of tax, interest, penalty and late fee*	

- The above monetary limits may not apply in the below cases:
  a. Provision ultra vires to the Constitution of India
  b. Rules/regulations held ultra vires to Parent Act
  c. Order, notification, instruction, or circular held ultra vires to GST Acts
  d. Matters of recurring in nature and / or involves interpretation of GST law such as Valuation, Classification, Refunds, Place of Supply, Any Other issue.
  e. Where strictures or adverse comments passed against Government / Department or their officers
  f. Any other case necessary as per CBIC in interest of justice or revenue

Shreyas Comments:

Prescription of monetary limits for department appeals would be helpful to reduce the number of litigations before the higher forums of Tribunal, High Court and Supreme Court. But the exceptions to monetary limits cover almost all types of issues which could be a concern.

❖ **Clarification on Special Procedures to be followed by the Tobacco Manufactures [Circular No. 208/2/2024 – GST]:**

Issue	Clarification
Where make, model number and machine number is not available	➢ Make and model numbers are optional fields and year of purchase may be declared as make number. ➢ Machine number field is mandatory, and manufacturer can assign numeric number to machine

Issue	Clarification
	➢ Where multiple machines are used for packing, details of machines used for final packing is to be furnished.
Where MRP is not available	➢ Sale price of the goods so manufactured may be entered where there is no MRP of package.
Where Electricity Consumption Rating is not available	➢ Certification of Chartered Engineer may be furnished. ➢ Practicing Chartered Engineer from the Institute of Engineers India
Applicability of Special Procedure	➢ Not applicable to SEZ manufacturing units. ➢ Not applicable on manual seamer / sealer used for packing operations. ➢ Not applicable on manual packing operations such as those in cases of post-harvest packing of tobacco leaves. ➢ Special procedure is applicable to all persons involved in manufacturing process, job worker and contract manufacturer. ➢ Where job worker / contract manufacturer are not registered, then principal manufacturer is liable to comply with special procedure.

Shreyas Comments:

This circular has clarified the various doubts in relation to the special procedure to be followed in terms of maintaining the records and filing the returns related to the no. of packing machines & their production capacity etc., by the manufacturer of specified products of tobacco & pan masala etc.

❖ **Clarification regarding place of supply on sale to unregistered persons through E-Commerce platform [Circular No.209/3/2024 – GST]:**

- In the case of supply to unregistered persons the place of supply is the location of recipient when the address/state of the recipient is recorded in the invoice otherwise POS is the location of supplier.
- Further, it is also clarified that the in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

Shreyas Comments:

Now with this clarification, the e-commerce industry may need to revisit the position taken for determining place of supply of goods where billing and delivery address were different and need to align the IT system with the clarification issued

❖ **Valuation of Services imported from foreign affiliate / related person [Circular No. 210/4/2024 – GST]:**

- As per the 2nd proviso to Rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the distinct or related persons where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.
- The same provision shall be applicable on services received from foreign related person / affiliate.
- Accordingly, in the case of import of services from foreign related persons/affiliates, the amount charged on the invoice shall be deemed to be the open market value provided the recipient is eligible for Full ITC. If no invoice is issued, then open market value is deemed to be nil.

Shreyas Comments:

The above clarification provides relief to the taxpayers where the tax officials have sought the tax liability on services imported by the Indian companies from related/affiliated companies abroad by interpretation of the deeming fiction in S. No. 4 of Schedule I of CGST Act, though no consideration is involved.

❖ **Time-Limit to avail ITC under Section 16(4) of RCM paid on Unregistered Supplies [Circular No. 211/5/2024 – GST]:**

- In the case of supplies from un-registered person attracting RCM liability under Section 9(3) or 9(4) of GST Act, the recipient is required to issue invoice u/s. 31(3)(f).
- Rule 36(1)(b) prescribes that ITC shall be availed based on the invoice issued u/s 31(3)(f).
- The relevant financial year to determine the time limit under Section 16(4) shall be the Financial Year in which the said invoice is issued by the recipient and not the time of supply.
- In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

Shreyas Comments:

The circular clarified the long pending issue which was interpreted differently among the taxpayers and the tax authorities. Further, it helps to dispose the various pending cases before the appellate forums.

❖ **New Certification requirement for post-sales discounts to be allowed u/s. 15(3)(b)(ii) [Circular No. 212/6/2024 – GST]:**

- In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value u/s 15(3)(b)(ii) only if the following condition are satisfied.
  a. Discount is established as per agreement on or before time of supply
  b. It is linked to relevant invoices
  c. ITC attributable to discount is reversed by recipient.
- There is no functionality to report the above reversal in the portal. Therefore, a new mechanism is introduced for supplier to obtain certification from recipient as evidence of reversal by recipient.

Monetary Limit	Document
Where tax amounts is up to Rs. 5,00,000	Recipient's undertaking/ certificate confirming ITC reversal
Where tax amount exceeds Rs. 5,00,000	CA/CMA Certification certifying the ITC reversal

Shreyas Comments:

Since there is no functionality in the GSTN portal to prove to the tax authorities during the adjudication that the tax on credit notes issued has been reversed by the recipient, it was very difficult on part of the taxpayers to convince the tax authorities during the adjudication process. With this circular the unnecessary litigations can be avoided by the taxpayers.

❖ **Taxability of Securities issued by Foreign Entity under ESOP's [Circular No. 213/7/2024 – GST]:**

- The following conditions must be met to keep the transaction out of the purview of GST levy.
  a. ESOPs are transferred at the request of Indian Subsidiary company by foreign holding company.
  b. Reimbursement of such securities/ shares is done by Indian subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission.
- Hence, it is clarified that no supply of service appears to be taking place where the foreign holding company issues ESOP/ESPP/RSU to the employees of Indian subsidiary company, and the subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis.

- However, in cases where an additional amount over and above the cost of securities/shares is charged, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable on reverse charge basis as import of services.

Shreyas Comments:
This clarification provides clarity and relief to the cases where the tax authorities have already issued notices by treating those transaction as facilitation services to the issuance of securities.

❖ **Valuation of life insurance services and the impact on ITC - Circular No. 214/8/2024 - GST:**

- It is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount.

Shreyas Comments:
It is a beneficial and welcome clarification.

❖ **Treatment of salvage value in motor insurance claims [Circular No. 215/9/2024 – GST]:**

- In cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.

Shreyas Comments:
Another taxpayer's friendly circular clarifying that the GST need not be paid by insurance companies when the owenership of the salvage and wreckage vest with the insured only.

❖ **GST liability and reversal of Input Tax Credit on replacement of parts or goods as such as such under Warranty Replacements [Circular No. 216/10/2024].**

- *Circular No. 195 of 2023* clarified previously that if a manufacturer or distributor on behalf of manufacturer replaces parts free of cost during the warranty period, the manufacturer / distributor is not liable to charge GST and no ITC reversal is required.
- This clarification is now extended to cover the replacement of entire goods as such during the warranty period. ***Accordingly, wherever, 'any part,' 'parts' and 'part(s)' has been mentioned in Circular No. 195/07/2023-GST dated 17.07.2023, the same may be read as 'goods or its parts, as the case may be'***
- If the supplier of the goods offers an extended warranty against payment, after the date of original supply, or if the supplier of the goods and the provider of the extended warranty are different entities, the extended warranty is treated as a distinct supply of service not as a composite supply of original supply of Goods.

Shreyas Comments:
This circular is kind of an amendment to earlier circular to rectify few gaps in understanding the same. It was only the word "parts" has been mentioned in earlier circular that are eligible for ITC in case of warranty replacements, then, the questions have been raised whether the said circular

can be applied if the whole part or entire good itself is replaced under warranty. Now, it is clarified that it also included goods as such.

- **Circular No. 217/11/2024 (26.06.2024) – Eligibility of ITC by Insurance Companies for Repairs to Motor Vehicles**
  - ***Context:*** Section 17(5) of the CGST Act blocks ITC for services related to repairs and maintenance of motor vehicles, except for insurance companies and motor vehicle manufacturers.
  - ***Cashless Claims***: In a cashless insurance model, the garage issues the invoice to the insurance company, which pays the bill directly, in such case ITC is available to insurance companies.
  - ***Reimbursement Model:*** Insurance companies can avail ITC even when the vehicle owner initially pays the repair bill and is later reimbursed by the insurance company. garages issue the invoice in the name of the insurance company and the ITC is available.
  - ***Full Reimbursement:*** If the insurance company reimburses the entire bill amount to the vehicle owner, it can avail ITC on the entire tax paid.
  - ***Partial Reimbursement***: If the insurance company only partially reimburses the bill, it can avail ITC proportionately to the amount reimbursed.
  - ***Vehicle Owner's ITC:*** The vehicle owner cannot avail ITC on the portion of the expenses they bear, as this credit is blocked for them.
  - ITC will not be available to the insurance company where the invoice for the repair of the vehicle is not in name of the insurance company.

Shreyas Comments:
This circular clarifies the proportional entitlement of ITC to insurance companies when they make the payment partially.

- **Circular No. 218/12/2024 : Loans between related entities**
  - Where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons by deeming the same as supply of services.
  - However, in cases of loans among related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

Shreyas Comments:
It is very regular that the companies may provide the financial assistance in the form of extending loans among the group, which cannot be held as supply of financial services to the borrowing company. This circular provides the required clarity in a taxpayer friendly manner.

- **Circular No. 219/13/2024 : ITC on ducts and manholes used in laying Optical Fiber Cables**

ITC is allowed for ducts and manholes used in laying Optical Fiber Cables as these are considered as "Plant and Machinery." in terms of Explanation to Section 17(5)(d) and hence input tax credit is not restricted under section 17.

Shreyas Comments:
Another taxpayer friendly circular which is welcome. The reasonings given for

considering the OFC as "Plant and Machinery" would be helpful for favourable interpretation in similar issues.

- **Circular No. 220/14/2024 : Place of supply for custodial services provided by banks**

  Specifies the place of supply for custodial services provided by banks to foreign portfolio investors. It is clarified that these services are not in relation to "account holders". Hence, the provisions of Section 13 (8) (a) of the IGST Act is not applicable (Where PoS = Location of supplier's location), and only Section 13 (2) is applicable (Where PoS = the Recipient's location).

- **Circular No. 221/14/2024: Time of Supply in case of BOT Model Contracts**

  Contracts for Laying of Road are often awarded under Design, Build, Operate and Transfer (BoT) model where, apart from laying the road, the contractor has to operate and maintain it for a fixed period. Notices have been issued by Tax Authorities demanding GST on whole contract value, where construction is completed, though the annuity payments are not yet due. It has been clarified that the activity is a continuous supply of service and GST is payable would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

  It is also clarified that as the installments / annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

  Shreyas Comments:
  The above circular provides the clarifications on determining the time of supply for taxability which was much needed by the industry due to the reason that there is a huge time gap between the provision of service and the payment terms.

- **Circular No. 222/16/2024 - Time of supply for spectrum usage.**

  It has been clarified that where the telecom operator choses to make payments in instalments, during the contract period, the liability to pay GST under reverse charge mechanism would arise only as and when the instalments are due or paid, whichever is earlier.

  It is also clarified that the similar treatment regarding the time of supply, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act.

  Shreyas Comments:
  The applicability of the above clarification in the other continuous supply of services is to be analysed.

Part B- Case Laws

Goods and Service Tax and Customs & FTP:

❖ **Greenstar Fertilizers Ltd. vs. Joint Commissioner (Appeals) [2024] 163 taxmann.com 509 (Madras) [11-06-2024]**

a) **Subject Matter:** The subject matter of this case revolves around the levy of penalty under section 74 on wrongly availment or utilization of Input Tax Credit (ITC) under the GST regime. The central issue is the imposition of penalties under section 74 for allegedly availing ITC that was reversed after issuance of show cause notice.

b) **Background and Facts of the Case:** The petitioner had availed input-tax credit transitioned from the Value Added Tax Act and Entry Tax Act. This credit available in the electronic credit ledger but was not utilised. The dispute arose regarding whether the respondents can impose a penalty under section 74, arguing that the petitioner had availed ITC that was not eligible, without any wilful misstatement suppression of facts with an intend to evade tax.

c) **Discussions and Findings of the Case:**

- The Court relied on the judgment of this court in case of "In Aathi Hotel, Rep. by its Proprietor S. Vaithiyanathan Vs. Assistant Commissioner (ST) (FAC) [2021 SCC OnLineMad 16170]", although proceedings under Sections 73(1) and 74(1) of the CGST Act can be initiated for mere wrong availing of Input Tax Credit (ITC) followed by the imposition of interest and penalty under the respective provisions, they stand attracted only where such credit was not only availed but also used for discharging tax liability.
- In view of the above, the imposition of a penalty under the peculiar facts & circumstances of the case is unjustified. However, considering the fact that the Taxpayer had availed ineligible ITC that could have resulted in the wrong utilisation of the ITC, a token penalty of INR 10,000 was imposed on the Taxpayer.

Shreyas Comments:

The key outcome of the above judgement is that penalty cannot be levied u/s 74 for mere availment of ITC which was not intentional to evade any tax. The GST department recent days, has started issuing the show cause notices under section 74 for the period for which time limit to issue show cause notice under section 73 is expired, though the government had recently clarified vide Instruction No. 05/2023-GST dated 13.12.2023 that in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice (Paragraph 3.3). The above said instruction was issued CBIC vide Instruction bearing no. 05/2023-GST dated 13.12.2023 wherein the hon'ble HC held that show cause notice u/s 74 cannot be issued mechanically.

❖ **Arya Cotton Industries Vs Union of India [2024] 164 taxmann.com 2 (Gujarat)[14-06-2024]**

a) **Subject Matter:** The case revolves around the question of whether interest is payable on cash deposited in the electronic cash ledger towards payment of taxes in GSTR-3B but the return was filed belatedly after the due date.

b) **Background and Facts of the Case:**

- Show Cause Notice was issued contending that interest was payable up to the date of filing of return even if the tax had been paid earlier. The petitioner objected imposition of such interest contending that interest could not be demanded for a period after deposit of tax by the petitioner up to the date of

filing of the return. The petitioner argued that credit amount in the electronic cash ledger is nothing but payment of tax and clause (a) of Explanation to Section 49 of the GST Acts provides that the date of credit to the account of Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger. Further, when return is filed in Form GSTR-3B, the liability as per return is simply offset against such balance. Hence there cannot be any imposition of interest for the period beyond deposit of tax amount in the electronic cash ledger.

- The respondent has relied on the decision of the Patna High Court in case of Sincon Infrastructure Private Limited v. Union of India reported in 2024 SCC Online 896 wherein, it is held that the mere deposit in the Electronic Cash Ledger to be a mere deposit which does not amount to payment of the tax liability. Only when the Electronic Cash Ledger is debited towards payment of tax, the money gets transferred to the State for utilization. The tax liability gets discharged only upon filing of the GSTR-3B return. A return could be filed even prior to the last date and such tax liability can be discharged on its filing but a mere deposit in the cash ledger on any date prior to filing of GSTR-3B return does not amount to payment of tax due, into the State exchequer.

c) **Discussions and Findings:**

- The amount in the electronic cash ledger is nothing but in nature of advance tax lying in the account of the assessee which cannot be withdrawn or utilised in any manner by the assessee except for payment of tax liability as per the return filed. Interest which is compensatory in nature. If the mechanical and literal interpretation is done by the respondent is accepted, the same would convert the interest into the nature of penalty.

- The Court relied on the judgement of Hon'ble Madras High Court in case of Eicher Motors Limited versus The Superintendent of GST & Central Excise (HC) Madras and held that the tax amount which has already been credited to the Government by depositing an electronic cash credit ledger by the petitioner is required to be considered as a payment of tax which gets adjusted at the time of filing of the return by debit in the electronic cash ledger as per the scheme of the CGST Act and therefore, the question of payment of interest would not arise for the period from the date of deposit of the amount in the electronic cash ledger by the petitioner till the date of filing of the return.

Shreyas Comments:

In line with the above judgment, Previously, Gujarat & Madras high courts have also granted the similar relaxations in the following cases:

a) The Hon'ble Gujarat High Court in case of "Messrs Vishnu Aroma Pouching Pvt. Ltd. Vs Union of India [2020 (38) G.S.T.L. 289 (Guj.)]"
b) Hon'ble Madras High Court in case of "Eicher Motors Limited Vs Superintendent of GST and Central Excise [[2024] 158 taxmann.com 593 (Madras)]"

Further, in line with the above judgements, the above provision was included in the 53rd GST council recommendation and the same was made effective from 10.07.2024 by amending rule 88B of CGST Rules vide Notification No. 12/2024 – Central Tax dated 10.07.2024.

❖ **Amex Services Versus Deputy Commissioner, State Tax (2024) 20 Centax 161 (Cal.) [22-05-2024]**

a) Subject Matter: Whether Form GST ASMT-10 shall be required to issue before issuance of show cause notice notifying discrepancies in the returns after the return scrutiny under section 61 of GST Act.

b) Background and Facts of the Case: An intimation of liability was given to the petitioners via a notice dated 26th September 2023.A show cause notice was

issued on 29th September 2023.Subsequently, an adjudication order under Section 73(9) was issued on 29th December 2023.

c) **Petitioners' Contention:** The petitioners argue that they were not made aware of the discrepancies through the required form in GST ASMT-10 before issuance of show cause notice issued after return scrutiny under section 61, which hindered their ability to appropriately respond to the show cause notice.

d) **Discussions and Findings:**
   - The court noted that according to Section 61 read with Rule 99, the proper officer must notify the taxpayer of any discrepancies using Form GST ASMT-10 before issuance of show cause notice. The petitioner emphasized this requirement, stating that the absence of Form GST ASMT-10 notification invalidated the subsequent proceedings.
   - The court further noted that the proper officer's failure to issue Form GST ASMT-10 resulted in a violation of the principles of natural justice. The petitioners were deprived of the opportunity to understand and respond to the discrepancies noted by the proper officer. Consequently, the adjudication order dated 29th December 2023 was vitiated due to this procedural lapse.
   - The court directed the proper officer to issue Form GST ASMT-10 to the petitioners within two weeks and reconsider the matter and pass a fresh order based on the petitioners' response and after a proper hearing.

Shreyas Comments:

Issuance of ASMT-10 before a show cause notice under Section 73, is not explicitly mandated by Section 73 itself. However, by reading the provisions of Section 61 with Rule 99, it necessitates its issuance when scrutiny under section 61 was undertaken by the department and discrepancies werr found during such scrutiny. Therefore, if the show cause notice was issued upon return scrutiny under section 61, taxpayer may check if ASMT-10 was issued before issuance of SCN.

❖ **Tvl. Moon Labels Versus The Government Of India,(High Court of Madras dated 11.06.2024)**

a) **Subject Matter:** Whether procedural lapses in failed to file TRAN-1 return invalidates the Input tax credit (ITC) that has been transitioned from the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) of unutilized ITC lying in its VAT returns as on June 30, 2017.

b) **Background and Facts of the Case**
The petitioner claimed unutilized input tax credit (ITC) under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 as of 30.06.2017, which they were entitled to transition under Section 140 of the GST enactments. Instead of filing Form TRANS-01, the petitioner reflected the ITC in the monthly GSTR-3B returns and utilized this credit to discharge tax liability under the GST Act. The respondents argued that the petitioner bypassed the prescribed procedure under Section 140 of the TNGST Act, 2017 and Rule 117 of the TNGST Rules, 2017 by directly reflecting the ITC in the GSTR-3B returns.

c) **Discussions and Findings**
   - **Indefeasibility of Credits:** The credits availed under the TNVAT Act, 2006, are deemed indefeasible. The court relied on the Supreme Court's decision in Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd. (1999), which held that validly availed credits are indefeasible unless provided to lapse under the law. Such credits are intended to reduce the cascading effect of taxes and benefit consumers.
   - **Procedural Compliance:** The court acknowledged that the petitioner did not comply with the procedural requirements of filing Form TRANS-01. Despite procedural infractions, if the credit was validly availed, it should not be denied for mere procedural non-compliance.
   - **Refund and Transition of Credits:** Section 54 of the TNGST Act, 2017, does not provide for a refund of unutilized ITC that was not transitioned under Section 140. The

petitioner cannot be made to suffer if the credit was validly availed.

- **Verification and Remand:** The impugned order was set aside for verification to determine if the petitioner validly availed ITC under the TNVAT Act, 2006.The fourth respondent is directed to verify the original invoices and determine if the petitioner was entitled to transition ITC under Section 140 of the TNGST Act, 2017.If the petitioner was indeed entitled, the credit should be allowed to set off against the tax liability.
- **Legal Precedent:** The court referred to Commissioner of Sales Tax, Uttar Pradesh vs. Auraiya Chamber of Commerce, Allahabad (1986), emphasizing that procedural rules are meant to serve justice and should not become an impediment.

Shreyas comments:

It was well settled in various judicial precedents that the substantial benefit of input tax credit cannot be taken away by mere lapse of procedural steps in availing the ITC. However, in the present cases, taxpayers may not get the relief at the adjudication and first appellate level and they may have to approach the court for relief.

❖ **Royal Sundaram General Insurance Company Limited Vs Commissioner of Central Excise and Service Tax (High Court of Madras dated 24.05.2024)**

a) **Subject Matter**: The subject matter of the case revolves around the eligibility of the petitioner, Royal Sundaram, to avail of Central Value Added Tax (CENVAT) credit on service tax charged by automobile dealers for infrastructure services provided in respect of motor insurance policies.

b) **Background and Facts of the Case:**

Petitioner's Business: The petitioner, Royal Sundaram, is engaged in providing general insurance services, including motor insurance, health insurance, property insurance, engineering insurance, liability insurance, and other miscellaneous insurance. The petitioner has been registered with the Service Tax Department since 2001 and also with the Insurance Regulatory Development Authority of India (IRDAI).

Agreements with Automobile Dealers: The petitioner has facilitating agreements with various automobile manufacturers and dealers. These dealers assist buyers of automobiles in obtaining motor insurance at the time of sale. The dealers are the first point of contact for buyers regarding motor insurance. The petitioner offers insurance services through these dealers based on agreements made with them. Additionally, the petitioner has service provider agreements with the dealers and, in some cases, tripartite agreements with automobile manufacturers and infrastructure service providers. The dealers declared these infrastructure support services as taxable and remitted the service tax.

Investigation and Dispute: An investigation by the Chennai Zonal Unit raised questions about the petitioner's eligibility to avail CENVAT credit on the service tax charged by the dealers. The investigation concluded that the dealers of motor vehicles were not permitted to act as Agents/Brokers/Intermediaries of insurance companies and thus questioned the validity of the CENVAT credit claimed by the petitioner.

Tribunal's Decision: The Tribunal consisting of a Member (Judicial) and a Member (Technical) gave a split verdict. The Member (Judicial) allowed the appeals, deeming the denial of CENVAT credit unjust, while the Member (Technical) dismissed the appeals. Consequently, the matter was referred to a third member for resolution.

Writ Petition: Challenging the order dated 25.07.2023, the petitioner filed writ petitions, claiming that the Tribunal's order was arbitrary, perverse, and violated principles of judicial discipline by ignoring settled law

c) **Discussions and Findings:**

Judicial Discipline: The court emphasized the importance of judicial discipline and adherence to precedents. It criticized the practice of different Benches not following the judgments of coordinate and larger Benches, citing minor differences in facts as reasons for deviation. The

court stressed that predictability and certainty are crucial in judicial jurisprudence.

Adherence to Precedents: The court referred to previous judgments to underline that a smaller Bench cannot override a larger Bench's decision. It reiterated that the principle of reasonableness and non-arbitrariness in executive action is a part of Article 14 of the Constitution, as established in the Maneka Gandhi case, which a five-Judge Bench decision like Umadevi (3) cannot override.

Binding Nature of Coordinate Benches: The court held that the Tribunal should have followed the clear and categorical findings of the CESTAT - Mumbai and other coordinate benches regarding the eligibility to avail CENVAT Credit, instead of re-examining the same issue. It pointed out that judicial discipline requires following the orders of coordinate benches without independently reassessing the merits of the case.

Judgement: The prejudicial portion of the order dated 25.07.2023 passed by the Member (Technical) of the CESTAT, is quashed. The writ petitions are allowed. No costs.

Shreyas Comments:

This is another authoritative pronouncement on the importance of judicial discipline and the responsibility of the Tribunals/Courts in strict adherence to the same.