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CLASSIFICATION AND VALUATION OF GOODS & SERVICES WITH RELEVANT ADVANCE RULINGS

INTRODUCTION

India, w.e.f. 1st July, 2017, switched to GST which is the single biggest tax reform undertaken by the country since the last 70 years of independence. GST is a multi-stage destination-based tax which will be collected at every stage of supply of goods or services or both. The credit of taxes paid at the previous stages will be available for set- off at the next stage of supply. GST is applicable on the taxable supply of goods and services or both on the value determined as per the provisions and at such rates as may be notified by the Government on recommendation of the GST Council. The GST Council has fixed four broad tax slabs, i.e., 5%, 12%, 18% and 28%. On the top of the highest slab, there is a cess on luxurious and demerit goods to compensate the States for revenue loss in the first five years of GST implementation. Most of the goods and services have been listed in four slabs but goods like gold and rough diamond have exclusive tax rates. Some goods have also been exempted from taxation. The essential items have been kept in the lowest tax bracket whereas; luxury goods and tobacco products are subject matter of higher tax rates.

OBJECTS AND PURPOSES

Incorrect nomenclature and ambiguities in the product description are the greatest challenges faced globally. Incorrect or misleading classification of commodities and services brings a lot of problems and risks to the businessman, as well as to the exchequer. It also leads to multiplicity in litigation which affects the economy and also affects both the parties to the litigation. The Comptroller and Auditor General of India, in Report No. 12 of 2014 has stated that Director of Revenue Intelligence of India had dictated 298 duty evasion cases involving misdeclaration of goods to the tune of Rs. 23.92 crores in the Financial Year 2013 itself (Sourced from Thomson Reuters' blog). In intricate business domains, classification of commodities are a major challenge to the industries as well as to the authorities. New business ventures need a proper understanding of classification of goods and services, i.e., when a new product is launched or a new service is provided.

Misclassification of goods and services may lead to several adverse consequences. To be specific, few of them are as under:

1. Lesser charging of rate of tax will come under limelight, either at the time of Audit or at the time of assessment; or under the action of enforcing agencies which would consequently lead to erosion of profits on account of higher levy of tax rate, interest and penalty at a later stage. Since GST is an indirect tax and is ultimately collected, it will hit the pockets of the suppliers. Even the customers will not pay for the same.

2. If higher rate of tax is charged than the applicable lower rate, there is a higher risk of getting refund from the exchequer since it is collected from the customers and further, there is loss of business since the other suppliers may be charging a lower rate.

3. Incorrect classification will lead to a great impact in the chain of ITC (Input Tax Credit) claim. It has a serious impact in other tax legislations like Income Tax, i.e. if, on account of misclassification, a higher tax is discharged along with interest and penalty, then you may not get the benefit of deduction under the Income Tax Act, 1961.

4. Earlier, under Central Excise, which was single point tax collection on the manufacture of goods, any misclassification had an impact on the manufacturer collecting the tax and had no direct bearing on the product sold on the distributor or the retailer. But under the GST, which is multiple tax collection at each and every stage and ITC is claimed on the corresponding purchases, any misclassification will disturb the entire chain of transaction.

RELATED PROVISIONS UNDER THE LAW WITH ANALYSIS

1. As per Section 9 of the CGST Act, 2017 and the SGST Act, 2017, tax shall be levied on intra state supply of goods and services or both at such rate as may be recommended by the Council. The GST Council Ministry of Finance, Government of India, Revenue Department vide Notification No. 1/2017 dated 28/06/2017 had notified the rates of the Central Tax at 2.5%, 6%, 9%, 14%, 1.5% and 0.125% classifying all the goods under Schedule I to VI respectively. Similarly, the State Government charges at the same rates as stated above. A separate exemption schedule was notified vide Notification No. 2 of 2017 dated 28/06/2017 exempting certain supply of goods by virtue of exemption granted u/s 11(1) of CGST Act, 2017. Parallel provisions are also provided in the State laws granting such exemption.

2. The rate notifications stated above in terms of supply of goods provide an Explanation for the purpose of the notification. Note (iii) & (iv) to the said *Explanation* reads as under:

(iii)"Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

3. First Schedule to the Customs Tariff Act, 1975 provides certain principles for interpretation of the tariff entries.

General rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975:

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

   (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail

sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

IMPORTANCE OF HSN:

1. In 1983, under the auspices of the World Customs Organization (WCO), most of the major trading countries of the world agreed to a single numbering system, which became the Harmonized System (HS). This system was brought to effect from January 1, 1988.

2. The Customs Tariff is aligned with HSN. Therefore, the Explanation provided in the HSN, viz., the Customs Co-operation Council, (known as World Customs Organization, Brussels) plays a vital role in interpreting the Tariff Entries. Hon'ble Supreme Court, in the matter of '**Reckitt Benckiser (India) Ltd. v. Commissioner, Commercial Taxes and Ors. (2008) 15 VST 10 (SC)'**, recognizes the importance of the Explanation in HSN, wherein it was held that, *"Kerala Value, Added Tax Act, 2003 was aligned with The Customs Tariff Act, 1975 which in turn was aligned with the Harmonized System of Nomenclature (HSN) and consequently each product in question had to be seen in the context of the HSN code and the judgment based thereon."*

3. The Hon'ble Supreme Court in, **'Commissioner of Customs & Central Excise, Goa v. Phil Corporation Ltd. (2005) 12 SCC 333'** held that, *"We have heard the learned counsel for the parties at length and carefully analyzed the judgments cited at the Bar. The Central Excise Tariff Act is broadly based on the system of classification from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human hair, etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not."*
   It was also held that, *"In a number of cases, this court has clearly enunciated that the HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN explanatory notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN explanatory notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question have to be made under Chapter 20."*

4. In **'Collector of Central Excise, Shillong v. Wood Craft Products Ltd.'** it was held that, "*As expressly stated in the Statement of Objects and Reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on Harmonized System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to 'reduce disputes on account of tariff classification.' Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. The ISI Glossary of Terms has a different purpose and therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in the HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in*

case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

5. In the pre- GST regime, wherever there was a dispute regarding classification of any commodity, either under the Sales Tax laws or under the Customs Act or under the Central Excise Act, Indian courts have always taken the explanation provided in the HSN for the correct classification of commodities. Even in the post- GST regime, not only the Act directs to refer to HSN, but also, the Advance Ruling authorities have taken the General Explanations or the internal explanations to each Chapter of the HSN while deciding the issue till date. Therefore, one has to be thorough at least to understand the General Explanations provided in the HSN.

RULES FOR INTERPRETATION OF SERVICE ENTRIES:

1. As far as the supply of services are concerned, the Council has notified a separate schedule vide Notification No. 11 of 2017 dated 28/06/2017 classifying various categories of services and their tax rates thereon; which have equally found place in the State Legislation. Similarly, the Central Government vide Notification No. 12 of 2017 dated 28/06/2017 has prescribed NIL rate of tax for certain classes of services which are equivalently found in the State Legislation.

2. Since the above explanation deals with supply of goods only, a separate Explanation has been provided in the service tariff notifications independently. Therefore, while interpreting service tariff entry, one has to look into the Explanation appended to such service tariff notification.

3. In the services rate notification, the meaning assigned to the terms has a place from Clause 2 onwards. For e.g.,

(i) ***Government entity-*** The meaning is provided in Clause 5 by way of explanation (sub- clause x) which means an authority or a board or any other body including a society, trust, corporation set- up by an Act of Parliament or State Legislature or established by any of the Governments with 90% or more participation by way of equity or control to carry out functions entrusted by the Central Government, State Government, Union Territory or a local authority.

In the service tariff notification, Chapter Heading 99.94 deals with construction services. When a composite supply of works contract is carried out as defined u/s 2(119) of the CGST Act, 2017, then the rate of tax applicable is 18%, whereas, if the services are provided to ***Government entities***, then the rate applicable would be at the rate of 12%.

(ii) ***Agricultural produce-*** Agricultural produce means, *"Any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which doesn't alter its essential characteristics but makes it marketable for primary market."*

Even under the service tariff entry, while classifying any service in any chapter, one has to look into the entries in depth, for e.g. services relating to cold storage. The cold storage facilities provided are mainly in the nature of supporting services. For the purpose of levy such services are classifiable into two parts-

One is supporting services provided in relations to agriculture, forestry, fishing, animal husbandry which is exempt from tax under Tariff Entry 99.86 and whereas, the rest of the supporting services are subject to tax at 18% under Tariff Entry 99.97.99. The said Chapter Heading 99.86 explains various classes of support services, which include loading, unloading, packing, storage, or warehousing of agricultural produces. The explanation appended to Notification No. 11 (Central Tax Rate) of 2017 dated 28th June, 2017 defines, *'agricultural produce'* for the purpose of the present tariff entry in Clause VII to Explanation IV which reads as, *"Agricultural produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done as is usually done by a cultivator or producer which does not alter is essential characteristics but makes it marketable for primary market."* A plain reading of the above definition assigned in the Notification clarifies that, *"Any produce out of cultivation of a plant on which no further processing is done or the processing which is usually done by a cultivator which doesn't alter its essential characteristics but makes it marketable for primary market"* is deemed to be treated as *'agricultural produce.'* Similarly rearing of all life forms of animals (except horses) is also deemed to be treated as *'agricultural produce'*.

(iii) ***Print Media-*** Chapter Heading 99.83 deals with selling of spaces for advertisement in print media which attracts 5% tax whereas, for other professional, technical and business services, other than selling of spaces for advertisement in print media attracts tax at the rate of 18%. Advertisement here is defined as per Clause 2(a) of the Notification; *"Any form of presentation for promotion of or bringing awareness about an event, idea, immovable property, persons, service, goods or actionable claims through newspapers, television, radio or any other means, but does not include any presentation made in person."*

Print media, for the present purpose means, book as defined in sub- section 1 of Section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow- pages and trade catalogs which are primarily meant for commercial purposes. Newspaper is defined as is defined in sub- section 1 of Section 1 of the Press and Registration of Books Act, 1867.

ISSUES, CHALLENGES AND CONTROVERSIES OF THE PAST AND PRESENT

1. When all the Tariff Entries under the GST enactments are aligned towards another legislature i.e., Customs Tariff Act, then interpretation applicable to the Customs Tariff Act alongwith their respective Amendments with respect to such entries will apply in full force to the GST enactments. Hon'ble Supreme Court in the matter of, **'State of Kerala v. ATTESEE (Agro Industrial Trading Corporation) (1989) 72 STC'**, held that, *"There is a distinction between referential legislation which merely contains a 'reference to, or citation of', a provision of another statute and a piece of referential legislation which incorporates within itself a provision of another statute. In the former case, the provision of the second statute, alongwith all its amendments and variations from time to time should be read into the first statute. In the latter case, the position would be as follows: Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act."*

2. Wherever the GST Schedule is aligned directly to the Customs Tariff entries, then there is no other alternate rather than to adopt the meaning assigned in the Customs Tariff Act and interpretation given by various authorities and courts for the said purpose. But, wherever the GST Schedule is not directly aligned to the Customs Tariff Act, but some of the goods have been picked or chosen from the Customs Tariff have been placed in the GST Tariff, then the interpretation given in the Customs Tariff entries may not hold good.

3. While classifying the goods wherever ambiguities have arisen, Indian courts have adopted different tests for arriving to the true meaning and their placement in the Schedule Entries. Generally, the tests adopted are the popular meaning test, common parlance test, trade or commercial parlance test, technical or scientific meaning test, end- user test (a.k.a. dominant user test) and the test of product description. In construing the provisions of a statute, it is essential at the first instance to give effect to the natural meaning to the words therein, if these words are clear enough. It is only in the case of an ambiguity, that the court is in power to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration the other matters and

circumstances, which leads to the enactment of the statute. In such circumstances, the court adopts these tests.

i. Popular meaning test implies the description of any commodity that is understood by the general public or is of common knowledge to the general public. E.g. Fruits, vegetables and other food items. This is also sometimes known as the common parlance test. Hon'ble Supreme Court while applying the common parlance test in the matter of **'Collector of Central Excise v. Parle Export Pvt. Ltd. 75 STC 105'** has laid down that, *"Words used in a provision imposing tax or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them."*

ii. The trade and commercial parlance test adapted to the commodity refers to a commodity that is generally understood in a particular trade or class of business. E.g. Whether green tea leaves are flowers or plants? Hon'ble Kolkata High Court in the matter of **'Ashwini Kumar & Co. v. CTO (114 STC 318)'** held that, *"The expression green tea has a meaning of its own in its trade parlance. Anyone associated with such trade will not ideate green tea leaves just as part of comprehensive botanical concept of plants. It is nothing but raw material for manufacturing of tea."*

iii. The common parlance test though accepted to be a reliable test ordinarily is not the exclusive test. Wherever generic expressions of scientific or technological meanings are used, then the technical meaning would be more relevant. Hon'ble Supreme Court in the matter of, **'B.P.L. Pharmaceuticals Ltd. v. Collector of Central Excise Vadodara 104 STC 164 (SC)'** adapted the scientific and technical meaning in order to classify if Vicco toothpaste, tooth powder and cream items were drugs or cosmetics.

iv. An example of dominant user test can be seen while giving exemptions to the balloons as children's toys as laid down by Hon'ble Karnataka High Court in the matter of **'Kundanmal Ganeshmal & Brothers 96 STC 149'** who held that, *"Balloons are primarily used as toys by children though sometimes they are also used for other purposes like decoration. The decorative use of balloon is only incidental because of the colour given to the balloon. The dominant purpose of the balloon has to be taken into consideration."* As held in the matter of **Commissioner of Central Excise, Cochin vs. Mannampalakkal Rubber Latex Works (2015) (7 SCC 124)**, it was held that, *"Excise-classification of goods-'composition test' and 'end user test'- application of- classification of goods to be made in accordance with 'composition test' unless relevant Entry specifically states that classification shall be made by applying 'end user test'- Note 5 (b) to Ch. 40 of 1985 Act- Applicability- Revenue declaring latex (rubber) based*

adhesive as falling under Heading 35.06 since same is sold to leather footwear manufacturers as adhesive."

v. Wherever two competing entries are available in the Schedule Entry, i.e., special entry and general entry, then the impugned product and its classification is a greater task. The normal rule is that each entry enumerating the goods should be given its natural or normal meaning as understood by those who deal with those and that if there are two entries where one entry is broader and covers an entire class of goods and the other entry covers some of the goods out of the said class, the latter entry should be considered as special entry in respect of those goods. Sometimes if the goods are falling in two entries, which are subject to tax at two different rates, the theory of specific entry will prevail over general entry. For e.g. gold/silver plated idols frames will fall under both, gold entry, which is subject to tax at 3% as well as under frame or metal entry, which is subject to a higher rate. In such circumstances the specific entry will definitely be the entry of articles of gold and silver which is required to be adopted. Similarly, a carpet which is fit into the car as per the specifications and design given by the car manufacturer; would be an accessory of cars and shall fall under the specific entry of accessories of cars rather than being classified under the general entry of carpets. However, in such circumstances, one has to look into the interpretation given in the General or Specific Explanatory notes to the HSN, (WCO).

vi. The test of product description is used when it relates to a product or a class of products and the classification is made on the basis of the products. For e.g., articles primarily made out of plastic, articles primarily made out of rubber, petroleum products, products made out of aluminum, etc.

4. There are various controversies which have come before different courts in relations to classification of goods and services. Some of the precedents are enumerated below:

i. As explained in the above paragraph, some goods are not at all specified in the tariff entries of GST, even though it has placement in the Customs Tariff Act, 1975. Then, in such circumstances an opinion may be deduced that no tax is chargeable to such items. But, Hon'ble Supreme Court in the matter of '**M.P. Agencies v. State of Kerala (2015) (7 SCC 102**)' has held that, *"As per the said Rules of Interpretation, where the commodities have been given HSN numbers, the same meaning would be given for classification under the Customs Tariff Act, 1975 and judgments applicable to corresponding entries in Customs Tariff Act- Where commodities are not assigned with any HSN number, they are to be interpreted as understood in common or commercial parlance- In case of inconsistency between meaning of commodity without HSN number and commodity with HSN number, commodity without HSN number should be interpreted by including commodity in that entry, which has been given HSN number."*

ii. The principle laid down as above, clearly states that if the HSN number is clear, then it is necessary to adopt the meaning for determining the purpose of tax rate, otherwise they are to be interpreted as understood in common or commercial parlance or the other necessary rules of commodity classification.

iii. So far as the Tariff Entry of *'agricultural produce'* is concerned, it depends upon the facts and circumstances of each case, in which the service provider is storing, irrespective of their tax rate applicable in any other entries. For example, *'cashew nuts'* whether or not shelled or peeled falls within the 5% tax rate in Schedule I in Serial No. 27. But is nonetheless an agricultural produce for the purpose of supporting services to agricultural produce under Chapter Heading No. 99.86. Similarly, cinnamon, cinnamon tree flowers, cloves, nutmeg, mac and cardamom, seeds of anise, badian, fennel, coriander, cumin, ginger other than fresh ginger etc. that fall under Serial No. 40 to 44 of Schedule I do not cease to fall in the characteristics of agricultural produce for the purpose of Tariff Entry 99.86. Hon'ble Uttarakhand High Court, Nainital Bench, in the matter of, **'CSTUP v. Yeast Hope Town Company Ltd. 142 STC 319'** held that, *"green leaves without grading and processing has no market value unless it is graded and processed, the green leaves get rotten. In view of the position, the tea graded and roasted by the self-producing tea company remains as agricultural produce."*

iv. Even another test can be adapted as to where a particular commodity is classified specifically in any of the Schedule i.e., dominant nature test by applying end user test. As held in the matter of **Commissioner of Central Excise, Cochin v. Mannampalakkal Rubber Latex Works (2015) (7 SCC 124)**, it was held that, *"Excise-classification of goods- 'composition test' and 'end user test'- application of- classification of goods to be made in accordance with 'composition test' unless relevant Entry specifically states that classification shall be made by applying 'end user test'- Note 5 (b) to Ch. 40 of 1985 Act- Applicability- Revenue declaring latex (rubber) based adhesive as falling under Heading 35.06 since same is sold to leather footwear manufacturers as adhesive- Sustainability- Rubber adhesive being distinct from other adhesives, Ch. 40 applies to instant case since it refers to rubber and articles thereof while Ch. 35 deals with glues and adhesives- Furthermore, Note 5 (b) to Ch. 40 confirms that test of composition is the test to distinguish rubber based adhesives from non- rubber based adhesives or other adhesives- Also after applying composition test, rubber content in the product in question is above 90%- Thus, held, latex based adhesives manufactured by assessee fall under Heading 40.01 and not under Heading 35.06- Central Excise Tariff Act, 1985- Heading 40.01 or Heading 35.06."*

v. In a situation where the common parlance test or user test or any other test is not decisive, sometimes we have to adapt the dictionary meaning in order to find out under which Tariff Entry the product shall be classified. For e.g., 'Yeast' which has various chemical compositions, is not fungi and is also not a plant. Hon'ble Apex Court in the matter of, **Mayuri Yeast India Pvt. Ltd. v. State of UP and Another (2008) (14 VST 259) (SC)**, held that, *"A dictionary meaning, in a case of this nature, is required to be considered with a view to reconcile and harmonize the tariff entry and only because an article is exclusively used for manufacture of a particular item, the same should not be held to be decisive."* It was also held that, *"The meaning of the word 'of' used in an item in a fiscal statute must be considered having regard to the intention of the maker thereof. The court shall, for the said purpose, put itself in the chair of the Legislature. It would presume the 'legislation' to be reasonable."*

vi. Hon'ble Supreme Court in the matter of, **'M/s Gulati & Co. v. The Commissioner of Sales Tax, UP, Lucknow (Civil Appeal No. 1779 of 2004 dated 20.12.2013)'**, has held that, *"The issue that falls for our consideration and decision in these civil appeals is whether food colors and food essences used in the manufacturing of foodstuffs and food products would fall under Entry 56 of the Notification No. ST-2-7218/10/6 (43)/77, dated 30/09/1977."*

In the same matter it was also held that, *"In interpretation of fiscal statutes, the entries must not prima facie be construed in their technical or scientific import but must be understood in its ordinary sense. Therefore, the expression 'foodstuff' must receive its ordinary and natural meaning, i.e. to say a meaning which takes account of and accords with the day to day affairs of life. By 'foodstuffs' is meant food of some kind. (Sat Pal Gupta v. State of Haryana (1982) 1 SCC 610; ESI Corpn. V. TELCO (1975) 2 SCC 835; State of Orissa v. Titaghur Paper Mills Co. Ltd. (1985) Supp SCC 280). Since, the word 'foodstuffs' which occurs in Entry 56 has not been defined under UP Sales Tax Act, the legislature must be taken to have used that word in its ordinary dictionary meaning. While we are mindful that though the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, in doing so the court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court would, therefore, have to select the particular meaning which would be relevant to the context in which it has to interpret that word."*

In the same case it was further held that, *"In our considered view, the words with which we are concerned must be construed in the sense which is imputed to them by the persons who deal in and who consume such articles and therefore, we would now explore the meaning and usage of terms, 'foodstuffs', 'food colors' and 'food essences' in their common parlance."*

vii. Sometimes tariff entries refer to two words, i.e., *'types and forms'*. Such words do not have the same meaning. In this context, Hon'ble Supreme Court in the matter of '**State of Jharkhand & Ors. V. LA Opala R G. Ltd. (2014) (70 VST 342) (SC)'** has held that, *"In common parlance, the two words 'type' and 'form' are not of the same import. 'Types' are based on the broad nature of the item intended to be classified and in terms of 'forms', the distinguishable feature is the particular way in which the item exists. An example would be the item 'wax.' The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of wax would be candles, lubricant wax, sealing wax, etc. Therefore it cannot be said that the expression 'types of glass' will refer to or include 'forms of glass'."*

viii. The concept of manufacturing also plays a vital role in the classification of the Tariff Entries. The raw materials maybe falling in one Tariff Entry and the finished products emerging out of the manufacturing process may fall under a different Tariff Entry. Every process is not a process of manufacturing. The term, *'manufacturing'* is defined u/s 2(72) of the CGST Act, 2017 which is equally applicable to the SGST Act, 2017 on account of parallel definitions in the local Acts. *'Manufacture'* for the purpose of the act means, *"processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term manufacture shall be construed accordingly."* For the purposes of the Act, *'input'* as defined in Section 2 (59) of the CGST Act, 2017 means, *"any goods other than capital goods used or intended to be used by a supplier in the course of or furtherance of business."*

Scope of residuary entry:

a. Serial no. 453 under Schedule III of Notification No. 1/2017 (Central Tax Rate) dated 28.06.2017 has incorporated a residuary entry which is subject matter of levy at 18% and reads as under:

Sr. No	Chapter/Heading/Sub-heading	Description of goods
453.	Any Chapter	Goods which are not specified in schedule I, II, IV, V or VI

b. The scope of residuary entry is very limited and will apply remotely only if the product does not fall under any of the Schedule Entry. Hon'ble Supreme Court in the matter of '**Indian Metals & Ferro Alloys Ltd. v. Collector of Central Excise (1991) 51 ELT 165 (SC)'** has held that, "*One more aspect of the issue should be adverted to before we conclude. The assessee is relying upon a specific entry in the tariff schedule while the department seeks to bring the*

goods to charge under the residuary item no. 68. It is a settled principle that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item. This certainly is not the position in this case, particularly in the light of the department's own understanding and interpretation of item 26AA."

c. In the matter of '**Mayuri Yeast India Pvt. Ltd. v. State of UP and Another (2008) 14 VST 259 (SC)'** it was held that, *"If there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."*
It was also held in the same case that, *"Common parlance or commercial parlance test, we may notice, has been applied recently in **HPL Chemicals Ltd. vs Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208** stating:*
*It was submitted by the learned Senior Counsel appearing for the Revenue that the goods were classifiable under heading 38.23 (now 38.24) as 'residual products of the chemical or allied industries, not elsewhere specified or included' which was the last item covered by heading 38.23. The said heading 38.23 is only a residuary heading covering residual product of chemical or allied industries 'not elsewhere specified or included.' In the present case since the goods were covered by a specific heading, i.e., heading 25.01, the same cannot be classified under the residuary heading at all. This position is clearly laid down in rule 3(a) of the Interpretative Rules set out above. As per the said interpretative rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description. This position is also well settled by a number of judgments of this court. Reference may be made to **Bharat Forge & Press Industries (P) Ltd. v. Collector of Central Excise (1990) 1 SCC 532**. It was observed in paragraph 4, inter alia as under:*

The question before use is whether the department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariffs should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item."

Mixed and composite supply:

1. Wherever mixed supplies of goods or mixed supplies of services are involved, then Section 8 of the CGST Act as well as SGST Act provides substantive provision of mechanism to determine the tax rate and its liability. Section 8 reads as under:

> ***The tax liability on a composite or a mixed supply shall be determined in the following manner namely-***
>
> ***a. A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and***
> ***b. A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.***

i. Section 2 (30) of the CGST Act, 2017 reads as under:

> ***Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.***
> ***Illustration- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.***

ii. Section 2 (74) of the CGST Act, 2017 reads as under:

> ***Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.***
> ***Illustration- A supply of package consisting of canned foods, sweet, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.***

iii. Section 2 (90) of the CGST Act, 2017 reads as under:

> ***Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of the composite supply is ancillary.***

2. Hon'ble Supreme Court in '**State of Punjab v. Nokia India Pvt. Ltd. (2015) 77 VST 427 SC'** held that, *"Battery charger cannot be held to be a composite part of a cell phone but is an independent product which can be sold separately without selling the cell phone. In the judgment Rule 3 (b) of Rules of Interpretations of the First Schedule to the Customs tariff Act, 1975 was taken into account while deciding the issue. Entry 60 (6) (g) of Schedule B to the Punjab Value Added Tax, 2005 relating to cell phone does not mention accessories for the purpose of taxing the product at the rate of 4%. These are to be charged at 12.5% under Schedule F to the Act which covers all residuary items not falling in any of the classifications in other Schedules of the Act. Schedule B does not indicate that the cellular phone includes accessories like the chargers either in the HSN Code or by elaborating in words. A battery charger is not a part of the mobile or cell phone. If the charger were a part of the cell phone, then the cell phone could not be operated without using the battery charger. But in reality, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from other means also such as laptop computer without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. A charger is not an integral part of the mobile phone making it an item of composite goods. Merely, making a composite package of the cell phone charger will not make it composite goods for the purposes of interpretation of the provisions."*

3. The term used in the definition of composite supply as above leans towards the term, *'naturally bundled and supplied in conjunction with each other,'* whereas in the definition of mixed supply, it reads as, *'conjunction with each other.'* Herein, in the mixed supply definition, the term, *'naturally bundled'* is silent. Therefore, in order to be a composite supply, the supply must be supplied in the ordinary course of business in such a manner that not only should it be naturally bundled, but also conjoined with each other. For e.g., supply of books and materials by a professor while rendering services of teaching or if a doctor provides injections and medicines while treatment to the patient then, the service rendered and injections and medicines provided are naturally bundled.

Miscellaneous Issues:

1. Section 7(1) (d) declares by way of Schedule II appended to the CGST Act, 2017 certain composite supply of goods and services like works contract, lease, supply of food and other articles for human consumption, etc. which are deemed to be treated as supply of services.

2. As per Section 8 of GST Compensation to States Act, 2017, a separate compensatory schedule has been prescribed which is either on basis of value or quantity and for determination of value it has been referred to Section 15 of CGST Act.

3. Section 16 of the IGST Act, 2017 deals with *'zero rated supplies'* which consists of *"supplies of goods and services for export or a Special Economic Zone developer (SEZ)*

or a Special Economic Zone unit. (SEZ) Notwithstanding that such supply maybe an exempt supply."

VALUATION OF GOODS AND SERVICES

I. As per the charging provision, i.e., Section 9 of the CGST Act, 2017, *"The tax shall be levied on the value determined u/s 15."* Section 15 of the CGST Act, 2017 reads as under:

(1) "The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—–

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.– For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;
(ii) such persons are legally recognised partners in business;
(iii) such persons are employer and employee;
(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related."

II. The term consideration for the purposes of the Act including Section 15 is defined u/s 2(31) of the CGST Act, 2017. As per the said definition, *"consideration in relation to the supply of goods or services or both includes—*

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether

by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply."

III. For the purposes of Section 15(4), Chapter 4 in the CGST Rules, 2017 is provided which deals with determination of value of supply. The said chapter consists of Rules 27 to 35 which are enumerated below:

*"**27. Value of supply of goods or services where the consideration is not wholly in money.-** Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-*

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration:

(1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.

***28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-**The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where*

the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that 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 goods or services.

29. Value of supply of goods made or received through an agent.*-The value of supply of goods between the principal and his agent shall-*

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

30. Value of supply of goods or services or both based on cost.*-Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.*

31. Residual method for determination of value of supply of goods or services or both.- *Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:*

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

32. Determination of value in respect of certain supplies.- *(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.*

(2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

(a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-

(i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;

(ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and

(iii) five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.

(3) The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five per cent. of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.

Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

(4) The value of supply of services in relation to life insurance business shall be,-

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

(c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

(6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

33. Value of supply of services in case of pure agent.- *Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-*

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

34. Rate of exchange of currency, other than Indian rupees, for determination of value.- *The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.*

35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.-*Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-*

Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

Explanation.- For the purposes of the provisions of this Chapter, the expressions-

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect

of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both."

IV. ***Valuation of IGST:***

A. Section 5 of the IGST Act, 2017 deals with levy and collection of tax, which states that, *"There shall be levied a tax called Integrated Goods and Services Tax on all inter- state supplies of goods or services or both (except liquor) on the value determined under section 15 of the Central Goods and Services Tax Act, 2017 and such rate not exceeding 40% (as per the Rate Notification)."*

B. Proviso appended to Section 5(1) deals with tax on goods imported to India which states that, *"Integrated Tax on goods imported into India shall be levied and collected in accordance with the provision of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when the duties of the Customs are levied on the said goods under section 12 of the Customs Act, 1962."*

C. The scope of Section 3 under the Customs Act has been enlarged by the Union by way of amendment, so as to place IGST within the framework of Section 3. Vide Taxation Laws (Amendment) Act, 2017, the amended sub- section (7) of Section 3 reads as under;
"Any article which is imported into India shall in addition be liable to Integrated Tax at such rate not exceeding 40% as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India on the value of the imported article as determined under sub- section (8)."

D. The charging provision of IGST, 2017, i.e., Section 5 has referred to Section 3 of the Customs Tariff Act, 1972 r.w.s. 12 of the Customs Act, 1962 for the purpose of determining the value of the goods for the purpose of levy of tax. Section 3(8) of the Customs Tariff Act, 1975 deals with the valuation of imported goods for the purpose of calculating Integrated Tax. The same reads as under;

   i. *"For the purpose of calculating the Integrated Tax under sub- section (7) on any imported article, where such tax is leviable at any percentage of its value, the value of*

the imported article shall, notwithstanding anything contained in Section 14 of the Customs Act, 1962 be the aggregate of Clause (a), the value of the imported article determined under sub- section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub- section (2) of that section as the case may be and Clause (b); any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as duty of customs but does not include the tax referred to in sub- section (7) or the cess referred to in sub- section (9)."

ii. Section 3(9) of the Customs Tariff Act, 1975 reads as, *"Any article which is imported into India shall, in addition be liable to the GST Compensation Cess at such rate as is leviable under section 8 of GST Compensation to States Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub- section (10).*

iii. Section 3(10) of the Customs Tariff Act, 1975 reads as, *"For the purposes of calculating the Goods and Services Tax compensation cess under sub- section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of-*

(a) the value of the imported article determined under sub- section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub- section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub- section (7) or the cess referred to in sub- section (9).

E. For the purposes of levy of IGST, the incidence is left over to the Customs Act, 1962 even the valuation is referred to the Customs legislation. In such circumstances, Customs Tariff Act, 1975 and Customs Act, 1962 plays a vital role to the extent of such reference.

The mechanism provided under the said referred Customs Act, interpretation to the relevant provisions and the judgments equally holds good in the parent legislation to the extent of such reference. In this context, judgment in the matter of **'State of Kerala vs. ATTESEE (Agro Industrial Trading Corporation) (1989) 72 STC'**, is relevant.

ADVANCE RULINGS

1. ***Gujarat Authority for Advance Ruling Goods and Services Tax, M/s Power Build Private Limited dated December 13, 2017-*** *The applicant has raised following question for advance ruling in their application:-*
   What is the HSN Code and GST Tax Rate of a product 'Geared Motor'?

   Thus, the Tariff Heading 8483 does not cover Gear Boxes or other variable speed changers combined with a motor. Motor remains classified under Tariff Heading 8501 even when they are equipped with pulleys, with gears or gear boxes, of with a flexible shaft for operating hand tools.

   Therefore, on the basis of the Explanatory Notes of HSN under Tariff Heading 8483 and 8501, it is evident that the product 'Geared Motor', which is an assembly product of the 'Electric Motor' and 'Gear Box', will appropriately fall under Chapter Heading 8501 of the Customs Tariff Act, 1975 and we hold so.

2. ***Authority for Advance Ruling, Gujarat, Guru Cold Storage (P.) Ltd., In re, December 13, 2017-*** *The applicant, M/s. Guru Cold Storage Pvt. Ltd., has referred to, which inter-alia provides rate of tax as NIL for 'support services to agriculture, forestry, fishing, animal husbandry', and submitted that in their opinion, 'Agricultural Produce' includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetables fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco, and intra-state support services to agricultural produce by way of loading, unloading, packing, storage or warehousing of agriculture produce is chargeable at NIL rate. The authority has referred Circular No. 16 of 2017 dated 15th November, 2017 and Notification No. 11 of 2017 dated 28th June, 2017 and has held that, if any further processing is done on the agricultural produce which doesn't alter its essential characteristics but makes it marketable for primary market then it would fall within the definition of agricultural produce.*

3. ***Authority for Advance Rulings, Gujarat, Rishi Shipping., In Re, March, 20, 2018-*** *The applicant M/s. Rishi Shipping has submitted that the company is a Cargo Handling company operating at Kandla Port Trust under stevedoring license issued by Kandla Port and provide Cargo Handling Service which consists of*

loading/unloading; providing space for storage and its further forwarding as per direction of importer/exporter.

The applicant has requested for advance ruling on the applicability of GST for invoices raised to their clients for storage charges for storing their imported agri-product in godowns at Gandhidham after custom clearance from port & shifted at Gandhidham for storage in their godown at distance of 10/12 kms from Port.

The applicant has submitted in the application that as a part of their services, it provides service of warehouse/space on rent to their customers, where they (customers of applicant) store imported agricultural commodities. From the nature of service provided by the applicant, as described in the application, it is clear that the applicant only rent the storage premises. Once the storage premises is rented by the applicant to its customers, what use the customer makes of such premises doesn't have any bearing on the nature of service provided by the applicant.

Held that, taking all these aspects into consideration, we hold that the applicant is required to pay Goods and Services Tax at 18% (CGST 9% + GGST 9% or IGST 18%) for aforesaid activity carried out by them classifiable as 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code – 997212).

4. ***West Bengal Authority for Advance Ruling, Goods and Services Tax, Switching Avo Electro Power Ltd., 21st March, 2018-*** *The Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery.*

   The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price. This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

5. ***Telangana State Authority for Advance Ruling, M/s Nagarjuna Agro Chemicals Pvt. Ltd., Hyderabad dated May 30, 2018-*** *M/s Nagarjuna Agro Chemicals Private Limited, Hyderabad sought advance ruling on Rate of Tax on Agricultural Soil testing Minilab and its Reagent Refills.*

   On examination of the product brochure submitted by the applicant and the functions performed by the minilab in the process of soil testing, reveals that the "Soil testing minilab" is basically an instrument/ apparatus for physical or chemical analysis of the soil and for determining various parameters viz., soil pH, EC, Organic Carbon, available nitrogen, phosphorous, potassium, Sulphur and micronutrients like Zinc, boron and iron.

   The Instruments and Apparatus for physical or chemical analysis are classifiable under GST Tariff heading 9027. As per the explanatory notes to HSN for chapter sub-heading 90.27, "Wet- chemical analyzers" for determination of inorganic or organic components of liquids, e.g., traces of metals, phosphates, nitrates, chlorides or integral parameters such as "chemical organic demand" and "Total organic

carbons" are classifiable under Tariff heading 9027. Similarly pH meters used to measure the factor expressing the acidity or alkalinity of a solution or mixture are classifiable under Tariff heading 9027.

Hence by applying the General rules for interpretation of Customs Tariff as applicable to GST Tariff, as the functions being performed by "Soil testing minilab" are similar to that of an Instrument/ Apparatus for physical or chemical analysis, the "Soil testing minilab" is correctly classifiable under heading 9027 of the GST Tariff.

6. ***EPCOS India Pvt. Ltd. Advance Ruling dated 26th March, 2018, Haryana-*** *Whether the product, 'battery' for mobile handset, when sold to the mobile handset manufacturer will classify under heading 85 as parts of manufacture of telephone for cellular network?*

   Held, the product is to be classified under heading 85.07 when sold to the customer other than mobile manufacturers and will attract 28% GST.

7. ***Paras Motor Industries Advance Ruling dated 26th April, 2018, Haryana-*** *Whether the activity of fabrication, fitting and mounting of bus body on the chassis supplied by the other party is a job work or contract of sale of bus body?*

   Held, the activity carried out by the applicant is composite supply with supply of goods and is classifiable under HSN code 87.07.

8. ***Giriraj Renewables Pvt. Ltd. Advance Ruling dated 21st March, 2018, Karnataka-*** *Whether supply of EPC contract for construction of solar power plant where both goods and services are involved can be construed as composite supply and since the principal supply is solar power generating system, concessional benefit of 5% on such principal supply will hold good for the whole contract?*

   Held that, the major component constituting of 70% of the contract is brought by way of high sea sales. Hence, it cannot be termed as principal supply so as to attract 5% tax.

9. ***Frizo India Pvt. Ltd. Advance Ruling dated 24th September, 2018, Rajasthan-*** *The rate of tax applicable on solar powered generating system.*

   Held that, it amounts to works contract service under Tariff 99.54 and tax rate chargeable is 18%. Even in the matter of ***R.F.E. Solar Pvt, Ltd., Advance Ruling dated 01st July, 2018, Rajasthan*** *took the same view.*

10. ***Ultratech Cement Ltd. Advance Ruling dated 27th June, 2018, Maharashtra-*** *Whether the amount paid to dealers towards rate difference after supply of goods can be considered for the purpose of arriving at the transaction value under section 50 of the CGST Act?*

Held that, no deduction shall be allowable.

11. ***Simple Rajendra Shukla Advance Ruling dated 09th March, 2018, Maharashtra-*** *Whether services related to providing coaching for entrance exams would fall under the ambit of GST?*

    Held that, yes at the rate of 18%.

12. ***Kundan Misthan Bhandar Advance Ruling dated 22nd October, 2018, Uttarakhand-*** *Whether supply of pure food items such as sweetmeats, namkeen, cold drinks and other edible items from a sweet shop which also runs a restaurant is a transaction of supply of goods or services and what is the rate of tax applicable for the same?*

    Held that, the supply shall be treated as a supply of services and the sweet shop shall be treated as an extension of the restaurant.

13. ***Bajaj Finance Ltd., 2018-TIOL-264 AAR, GST-*** *The applicant is a NBFC and provides various types of loans to others and charges a penal interest at the rate of 2 to 4% on late payment for the loans. Whether such penal interest is an interest for the purpose of exemption to Notification No. 12 of 2017 dated 28th June, 2017?*

    Held that, applicant themselves defines penal charges as overdue charges. Hence, GST is chargeable.

14. ***Ernakulam Medical Centers Pvt. Ltd. 2018-TIOL-188, AR, GST-*** *Applicant renders healthcare services which is exempted and also supplies medicines to in- patients and out- patients. What is the liability of the hospital?*

    Held that, medicine supplies to in- patients is exempted but to out- patients it is taxable under the entry medicines and reliance to be placed on Circular dated 1st December, 2018.

15. ***Loyalty Solutions & Research Pvt. Ltd. 2018-TIOL-100, AAR, GST-*** *Applicant manages the customer's loyalty program against a fee. On issuance of reward points called payback points having a value of .25 paisa each with a validity period of 36 months. The customer gets credit on the purchase of goods of such loyalty points. Whether the amount of fee of reward points, retained/ forfeited amounts to consideration of actionable claims and is not subject to tax under Schedule III, Entry 6?*

    Held that, the reward points are actionable claims. After an expiry of 36 months, it loses actionable claim in order to fall under Schedule III. Hence, the amount is treated as consideration for tax.

16. ***M/s Abbot Healthcare Pvt. Ltd. 2018-TIOL-186, AR, GST-*** *Applicant places its own instruments at hospitals and laboratories with pharmaceutical products, re- agents*

and diagnostic kits to be used along with the instruments. Whether it amounts to use without consideration and whether such movement of goods constitutes otherwise than supply under GST?

Held that, individual contract naturally bundled and the transaction is a composite supply. Modus operandi is colorable devices to avoid taxes. Consideration for product is linked with supply of right to use the instrument. The principal supply is the right to use the instrument and is subject to tax as service at 18%.
