Dimensions – 17th Edition

Judgements:

1. Atin Krishna v. U.O.I. Thru Secy. Ministry of Finance and Ors.[1]	
Issues for Consideration	• Whether the Duty-free shop/s ('DFS') located at an international airport is liable to pay IGST on goods imported into the territory of India. • Is there a requirement to charge applicable CGST and SGST on the sale of goods at the DFS up until January 31, 2019? • Whether refund is rightly granted to the DFS for "export" sales made to international passengers at the departure terminal.
Discussion & Judgement	**Discussion:** • The public interest litigation was filed to ensure that the provisions of the CGST/SGST/IGST Act, 2017 are implemented in the proper manner at DFS. It is a peculiar case due to the Government / Revenue having contended the non-taxability of the transactions in question. • The Petitioner contended that the sale made to international passengers by DFS at the arrival terminal should be considered as intrastate supply of goods and, accordingly, such sale should attract applicable CGST and SGST under Section 9(1) of the CGST Act, 2017 and SGST Act, 2017 up until January 31, 2019. • It was further alleged that the activity undertaken from the departure terminal does not constitute an export of goods under IGST Act, 2017 because the essential conditions for qualifying as export have not been satisfied. • The Allahabad High Court held that the exemption under GST on goods supplied to and from DFS is rightly conferred, and that the claims of any accumulated unutilized input

[1] 2019-VIL-231-ALH

	tax credit are refundable to the Respondent. The ruling was made on the following grounds: - The supply of imported goods to and from the DFS do not cross the customs frontier, hence these supplies will constitute interstate supply in accordance Section 7(2) of the IGST Act. - The warehoused goods are supplied by the DFS to the arriving passengers who cross the customs frontier at the airport along with the goods, thus clearing the goods for home consumption as part of the passenger's *bona fide* baggage. Hence, no customs duty is payable by the DFS, and therefore under proviso of Section 5(1) of the IGST Act, 2017 read with Section 12 of the Customs Act, 1962, no IGST is payable either. - The supply of warehoused goods by the DFS at the departure terminal is for departing international passengers. Thus, the goods supplied are the warehoused goods exported by the DFS, and are not exigible for Customs duty or IGST. **Judgement:** The petition was held to be devoid of merit, and the transactions undertaken by the DFS were held to be not subject to GST. It was further, held that the sales made to international passengers at the departure terminal were tantamount to export.
Dhruva Comments / Observations	• A similar decision was proclaimed by the Bombay High Court in the case of ***A-1 Cuisines Pvt. Ltd. v. Union of India***[2]. • However, it is pertinent to note that in the case of ***Vasu Clothing Pvt. Ltd. v. Union of India***[3], the Madhya Pradesh High Court held that DFS situated at an airport cannot be treated as a territory outside of India. • Furthermore, the Authority for Advance Ruling in the case of ***M/s Rod Retail Pvt. Ltd.***[4] concluded that only when the goods cross the airspace limits or the limits of the territorial waters, will an export have occurred. In the said case, the goods were sold at a location very much within the territory of India, i.e. the DFS, and hence, GST would be applicable on such supplies. • DFS are licensed as private warehouses under Section 58 of the Customs Act, 1962. Under the erstwhile regime, Section 5 of the Central Sales Tax Act, 1956 provided that the supply of goods was classified as having taken place outside India only when the supply of goods was undertaken beyond the customs frontiers. Also, the provisions of State VAT Acts excluded from their purview any transaction which constituted a sale in the course of export or import. • 'Duty Free' is generally understood to be akin to a 'tax free zone'. However, given the complexities involved in the interpretation of the present regime, clarification in this regard appears necessary.

[2] 2019 (22) G.S.T.L. 326 (Bom.)
[3] 2019 (22) G.S.T.L. 163 (M.P.)
[4] Advance Ruling no. 01/DAAR/2018 dated March 27, 2018

2. M/s. Magma Fincorp Ltd. v. State of Telangana and others[5]	
Issue for Consideration	• Whether the Petitioner, who migrated from the State of Andhra Pradesh to the State of Telangana after the split, can carry forward the credit pertaining to this period, to the GST regime.
Discussion & Judgement	**Discussion:** • The Petitioner had migrated from the State of Andhra Pradesh to the State of Telangana after the states split. The transitioned credit was only shown on the Department's web portal due to there being no provisions in place to reflect the credit in the VAT returns. • The credit remaining from the above period was transitioned to the GST regime by filing the TRAN-1. Furthermore, all of the returns up until June 30, 2017 under the Telangana VAT Act, 2005 were filed by the Petitioner. • The Revenue sought to deny such credit on the grounds that Section 140 of the Telangana Goods and Service Tax Act, 2017 ('TGST Act') does not deal with apportionment between the two States, and that a clear mechanism was provided in the VATIS system as to how the dealer should utilize Net Credit Carried Forward accruing to migrated dealers. • The Revenue further alleged that the Petitioner may be entitled to either adjust the available credit against any liabilities under the VAT regime, or to claim a refund. The Petitioner was not, however, entitled to seek transitional relief. • The Telangana High Court observed that the Petitioner was not making a delusive claim, and was in fact entitled to such credit. This fact has not been denied by the Revenue authorities. • The provisions of Section 140(1) of the TGST Act were examined and it was further observed that the Petitioner's case does not fall under any of the contingencies stipulated in the said provision for preventing the carry forward of credit to the GST regime. • Accordingly, the Revenue was directed to provide a purposive interpretation of Section 140 read with Section 16 to 21 of TGST Act. **Judgement:** The matter was remanded to the Revenue for consideration in light of the above observations, and to pass fresh orders.
Dhruva Comments / Observations	• The above decision lays emphasis on one of the most prominent rules of interpretation of statutes – the doctrine of purposive construction. • The decision examines the relevant provisions of the TGST Act in order to understand the intentions and motives of the law makers. Section 140 of the TGST Act permits the carry forward of the credit amount appearing in the VAT return filed for the period ending June 30, 2017. Despite this specific condition, the provisions of said section have been

[5] Writ Petition no.46792 of 2018

	interpreted liberally in order to conclude that as there were no specific restrictions to bar such carry forward, such transition should be allowed. A similar line of interpretation for other material issues pending consideration under Section 140 of the TGST Act, could prove beneficial for the taxpayers. • The above ruling highlights that the interpretation of provisions contained in the GST laws should be given a meaningful interpretation and not be restricted to the limitations configured by the Revenue, by which an outcome intended by the legislature is frustrated.

3. Anil Kumar Anand v. Commissioner of Customs[6]	
Issue for Consideration	• Whether value can be determined in terms of Rule 5 of Customs (Determination of Value of Imported Goods) Rules, 2007 ('Customs Valuation Rules') for levy of Customs Duty on the import of similar goods with different brand names (where the brand value does not make a significant difference to the value of the products).
Discussion and Judgement	**Discussion:** • The Appellant imported branded electronic decorative lightings (from UK, Spain and China) upon the filing of Bills of Entry, and sought clearance for said lightings imported upon payment of applicable Customs Duty. • The Department initiated enquiry proceedings for revaluing the current as well as the past import consignments, and also proposed to confiscate the imported goods and impose penalties under the Customs Act, 1962. • The Adjudication Order was passed, revaluing the imported goods on the grounds that (i) the Appellant knowingly did not declare the brand of the imported goods and undervalued the same with the intent to evade Customs Duty, and (ii) the goods were imported from related parties (goods imported from UK). • The imported goods were revalued by the department, taking recourse to Rule 7 and Rule 9 of the Customs Valuation Rules. • The Appellant assailed the valuation methods adopted by the department on the premise that the scheme of the Customs Valuation Rules had not been correctly understood and implemented by the department: - Rule 3(4) of the Customs Valuation Rules stipulates that the rules outlined from Rule 4 to Rule 9 must operate "sequentially" and therefore the department cannot directly resort to Rule 7 and Rule 9 without first examining the applicability of Rule 4 or Rule 5. - The department arrived at the conclusion that out of the three parties (from UK, Spain and China) from whom goods were imported, the vendor located in the UK is related to the Appellant and therefore the transaction value could not be accepted. The Appellant argued that even if it is assumed that the vendor located in the UK is a related party, the Department should have resorted to determining the

[6]2019 (366) ELT 601 (SC)

	consignment value basis of the import price *via* the other two sources (after allowing requisite adjustment on quantity and freight). - It was alternatively submitted that the import price data regarding identical or similar goods was available with the Department in the National Import Database or the Department of Valuation database, which could have been referred to in order to arrive at the transaction value for customs purposes. - It was also claimed that the brand details, in respect of imports from China, were specifically mentioned on the import documentation. Further, such brands were not well-known brands, and so would not make any difference to the value of the imported goods. **Judgement:** • It was observed that, generally, electrical decorative lightings are not highly branded products. The brand names under which the goods were imported were not trademarks of such a nature that would make them exclusive products. Given that this was the case, the data as was certainly available to the Department, could have been used to determine the value of imported goods. • It was held that the Customs Valuation Rules did not permit the Department to proceed immediately in determining the transactional value by relying on Rule 7 to Rule 9 without having followed the principle of sequential application, especially in view of Rule 3(4) of the Customs Valuation Rules.
Dhruva Comments / Observations	• The decision of the Hon'ble Supreme Court to allow sequential application of the valuation Rules is in accordance with the object and intent of Customs Valuation Rules. The said decision is in line with the settled position of law laid down in ***Eicher Tractors Ltd. v. Comm. of Customs, Mumbai*** [7].

4. International Flavours and Fragrances India Pvt. Ltd. v. Asst. Comm. of Customs[8]	
Issue for consideration	• Whether an applicant is eligible for a refund of excess duty paid by mistake at the time of filing the Bills of Entry (which is not reassessed by the Department), in terms of Section 27 of the Customs Act, 1962.
Discussion and Judgement	**Discussion:** • The Appellant had inadvertently paid excess Customs Duty on an incorrect value declared in the Bill of Entry. • The foreign supplier also confirmed the fact that an error has been committed at the time of declaring the value in the Bill of Entry, which reflects the erroneous unit price. • The Appellant filed an application seeking a refund of excess duty paid by mistake, which was adjudicated by the Department. • The claim for a refund was rejected on the grounds that a refund could only arise if the Bill of Entry was reassessed, and the change in unit price is accepted.

[7] 2000 (122) ELT 321 (SC)
[8] 2019 (5) TMI 882 (Mad HC)

	• The Appellant argued that Section 27 of the Customs Act, 1962 was amended in 2011, and is wide enough to allow refunds in respect of any amount paid or borne by a person. **Judgement:** • It was observed that the Department had completely lost sight of the amended Section 27 of the Customs Act, 1962 while passing the Order rejecting the claim of the Appellant. The sole basis upon which the claim was rejected was that the Bill of Entry submitted by the Appellant had not been reassessed by the relevant Assessing Officer. • The Hon'ble Court noted that the passing of an order for assessment is not within the control of an assessee, and if the Order is taken to its logical conclusion, no refund may be sought by any person unless an order of assessment is made, which itself is only at the discretion of an Assessing Officer. • The impugned Order was rescinded and the Appellant was permitted to re-submit its application for refund. The respondents were directed to consider the matter on merit and in accordance with the law.
Dhruva comments / observations	• The decision of the Madras High Court is in line with both the settled position and the intent of the law which is to allow the refund of excess duty paid (if any) which has been borne by an importer. • The Delhi High Court in ***Comm. of Customs v. Hymatic Agro Equipments Pvt. Ltd.***[9] held that the assessee can move an application for refund under Section 27 of the Customs Act, 1962 without challenging the assessed Bill of Entry by way of an appeal.

5. Srijan Realty (P) Ltd. v Commissioner of Service Tax, Service Tax Commissionerate – II Kolkata[10]	
Issue for Consideration	• Whether the conversion of high-tension electricity supply to low-tension supply amounts to supply of service.
Discussion & Judgement	**Discussion:** • The Petitioner had developed a commercial complex and was operating it under the name and style of Galaxy Mall. • The electricity to the mall was being supplied by Indian Power Corporation Ltd. (Licensee) through an 11KV substation installed at the commercial premise. A single consolidated invoice was raised on the Petitioner for the electricity supplied. • The Petitioner converts the high-tension supply to low tension and redistributes the electricity to the occupants. It collects the money equivalent to the amount of electricity consumed by the occupant based on the reading of the sub-meter installed for the occupant. • The Petitioner was initially collecting the Service tax for redistribution of the electricity but subsequently, on objections being raised by the occupants, the Petitioner consulted the Department which held that Service tax was payable on such activity.

[9] 2018 (361) ELT 887 (Del)
[10] 2019 (3) TMI 821 (Calcutta HC)

	• Subsequently, based on a legal opinion obtained by the Petitioner, it informed the Department that no service tax was payable. The Department did not accept the same and accordingly, the impugned writ application was filed before the Hon'ble High Court. • The Petitioner argued that the impugned transaction should be regarded as a sale rather than service on the following grounds: - The redistribution of electricity amounts to sale/trading activity. Further, as per the Central Excise Tariff Act, 1985, electricity amounts to goods. Reference was also placed upon the West Bengal Value Added Tax, Act 2003 wherein electricity is also regarded as goods capable of being bought and sold. - Trading of goods is exempted from Service tax under Section 66D(e) of the Finance Act, 1994. - Having no license to trade in electricity would not change the character of the sale. • The Department contended that the conversion of the high-tension supply to low tension amounts to supply of service. Further, the trading of electricity could not be done by the Petitioner since it did not possess the requisite licenses for the same. **Judgement:** • The Hon'ble High Court held that the Petitioner could not engage in supply, trading or transmission of electricity, as it did not have the requisite license for doing the same as per the Electricity Act, 2003. • It was held that though electricity is goods but treating the activity as trade would violate the provisions of the Electricity Act, 2003 which should be avoided. • Since the Petitioner cannot sell, trade or distribute electricity, the only thing that remains to describe the activity of the Petitioner is service. • Further, since the Petitioner cannot be regarded as a trader of goods as per the Electricity Act, the Petitioner would not fall within the ambit of negative list of service i.e. Section 66D(e) of the Finance Act, 1994. • Accordingly, it was held that conversion of high-tension electric supply to low tension supply and subsequently providing said supply to the occupants, would amount to supply of service.
Dhruva Comments / Observations	• The Petitioner was only recovering the actual amount from the occupant based on the electricity consumed by them as per the sub-meters installed. There was no additional consideration being charged for the activity being undertaken. The Petitioner was only acting as a pure agent on behalf of the occupants. However, there is no discussion in respect of the same in the judgement. • Further, in the case of ***ICC Reality (India) Pvt. Ltd.* v. *CCEx., Pune III***[11] it was held that electricity is goods as per the Central Excise Tariff Act and under the Maharashtra Value Added Tax Act chargeable to Nil rate of duty, accordingly, the supply of electricity to tenants amounts to sale of goods and not supply of service. Accordingly, it was held that

[11] 2013 TIOL 1751 CESTAT-MUM

	the electricity charges collected from the tenants should not be added to the assessable value of renting of immovable property service. Thus, there exists contrary views.

National Anti-Profiteering Authority ('NAA') Orders:

6. Mr. Varun Goel v. Eldeco Infrastructure & Properties Ltd.[12]	
Facts and Contentions of the Taxpayer	**Facts:** • The Applicant filed a complaint against the Taxpayer alleging that the Taxpayer had illegally charged GST at 90% of the basic sale price and Service tax on balance 10% of the basic sale price for a ready-to-move-in villa booked by him in June 2017 in one of the residential projects launched by the Taxpayer. Furthermore, the Taxpayer did not pass on the benefit of ITC to the Applicant on account of the implementation of GST. **Taxpayer's contentions:** • No methodology is prescribed under GST law to measure the benefit of ITC to be passed on. • Since the project was not complete, the Taxpayer had *suo-moto* decided to pass on the benefit on completion of the project. • No penalty should be levied as the Taxpayer had agreed to pass on the benefit of ITC as calculated by the authorities. • No interest should be imposed as the contracts for the provision of services by them to the customers had not been closed yet and they were supposed to pass on the benefit accrued on account of additional ITC to the customers with adjustments in the final demand due from the customer.
NAA Observations and Order	**NAA observations:** • The Taxpayer did not deny that the ITC benefit had accrued to them, and that they had necessarily passed said benefit onto customers. • However, the actual benefit along with interest was only passed on in February 2019 by way of cheques, i.e. post-initiation of the current proceedings. • The Taxpayer had not only collected an additional amount from customers but had also compelled them to pay more GST on the additional amount realised. **Order:** • The Taxpayer had deliberately and consciously acted in contravention of Section 171 of the CGST Act, 2017 by collecting higher payment(s) from customers and thus was held to have indulged in profiteering. • Accordingly, a notice is to be issued to explain as to why the penalty prescribed under Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed.

[12] Case no. 34/2019 dated May 24, 2019

Dhruva Comments / Observations	• This order adds to the numerous orders already pronounced by the NAA against companies in this sector. Interestingly, in this case, the Taxpayer has accepted the profiteering amount calculated by the authorities and thus the only point to contest is the imposition of the penalty.

7. Mr. Rahul Kumar Agrawal and others v. Shrivision Homes Pvt. Ltd.[13]	
Facts and Taxpayer Contentions	**Facts:** • The applicants filed complaints against the Taxpayer, alleging profiteering in respect of the flats purchased by the applicants located in one of the projects launched by the Taxpayer. Furthermore, it was also alleged that the Taxpayer did not pass on the benefit of ITC availed by way of commensurate reduction in the price of the flat on account of the implementation of GST. **Taxpayer's contentions:** • The Taxpayer did not opt for the composition scheme under the VAT and service tax regime and was eligible to avail ITC of VAT and service tax in relation to the given project. • No additional benefit was accrued to the Taxpayer on account of the implementation of GST.
NAA Observations and Order	**NAA observations:** • Based on the DGAP report, it was observed that the effective tax rate had increased from 8.02% under the pre-GST regime to 12% in the GST regime, hence, there was no reduction in the rate of tax. • The ITC as a ratio of taxable turnover had decreased from 7.56% to 7.09%, hence there was no additional ITC benefit accrued to the Taxpayer in the GST regime when compared to the pre-GST period. **Order:** • There was no merit in the applications filed by the applicants and so they were dismissed. • The Taxpayer had not contravened the provisions of Section 171 of the CGST Act, 2017. As a result, the Taxpayer was not held to have engaged in profiteering.
Dhruva Comments / Observations	The authorities relied upon the DGAP report wherein the various submissions made by the Taxpayer had been taken into consideration. Accordingly, it was held that the Taxpayer had not indulged in profiteering due to the implementation of GST.

[13] Case no. 32/2019 dated May 23, 2019

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