L&S UPDATE

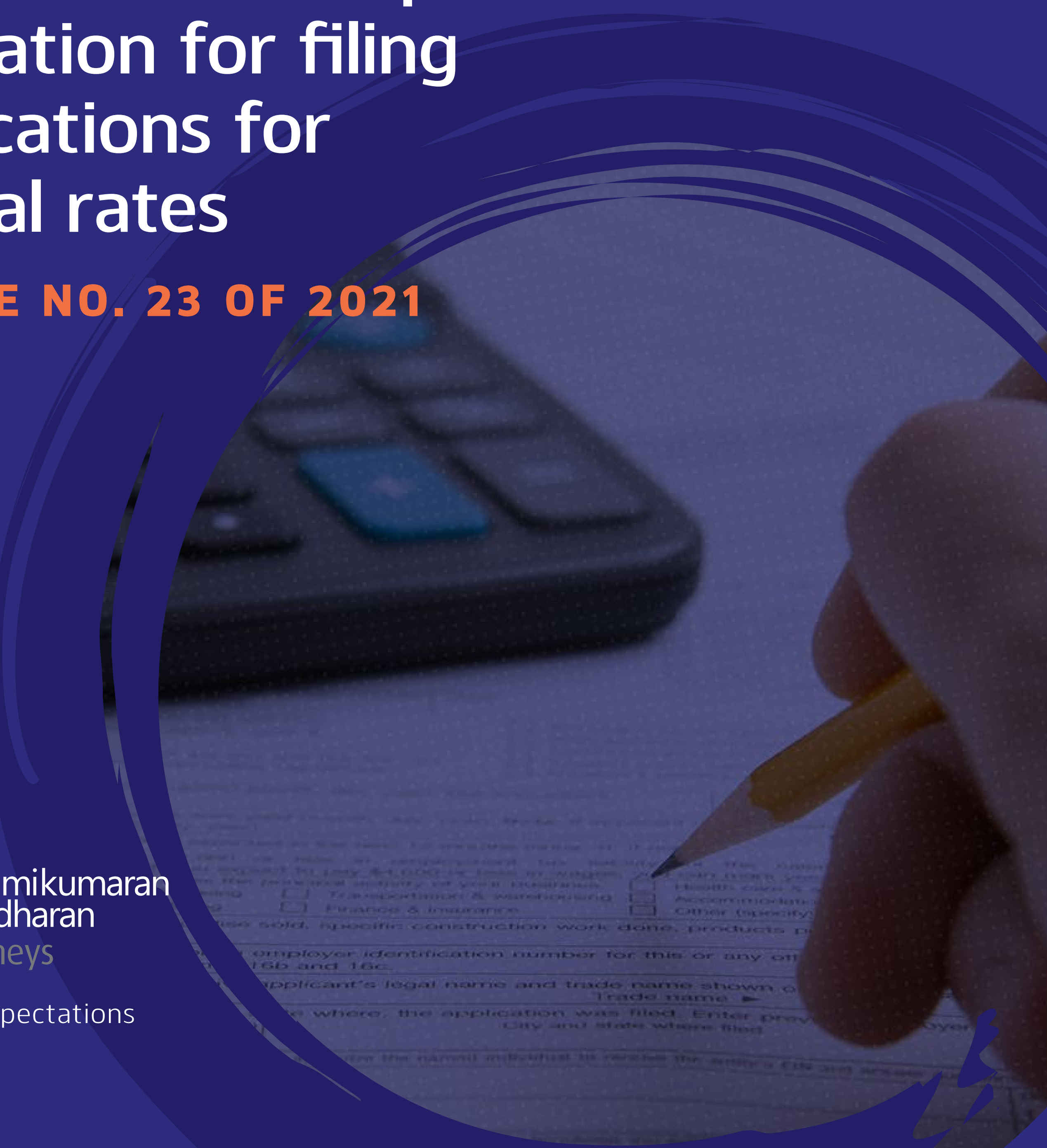
An e-update to clients from Lakshmikumaran & Sridharan

16 AUGUST 2021

INDIRECT TAX

Area-based exemption – Limitation for filing applications for special rates

UPDATE NO. 23 OF 2021



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The Gauhati High Court has held that application for fixation of special rate of value addition under Notification No. 17/2008-C.E. as amended by Notification 31/2008-C.E. ought not to have been dismissed by the Department on grounds of limitation when such applications were filed immediately after the decision of the Supreme Court dated 22 April 2020 in the case of *VVF Ltd.*

BRIEF FACTS

- Petitioner was availing benefit of refund of Central Excise duty paid in cash vide Notification No. 32/1999-C.E., dated 8 July 1999. The benefit was thereafter curtailed vide the Amending Notifications to the extent of duty paid on value addition.

- Pursuant to the decision of Supreme Court's decision in *VVF Ltd.* on 22 April 2020, the Petitioner filed seven applications for fixation of special rate of value addition.

- Before the adjudication of the said applications, recovery proceedings were initiated.

- Petitioner challenged the recovery proceedings before the Gauhati High Court in an earlier writ petition. The Gauhati High Court *vide* Order dated 24 March 2021 directed the Principal Commissioner to consider the applications filed by the Petitioner.

- Thereafter, the Principal Commissioner rejected the seven applications on the ground of being time barred, without going into the merits.

ISSUE

Whether applications filed by Petitioner for fixation of special rate of value addition could have been dismissed by the Principal Commissioner on the ground that they were time barred?

DECISION OF THE GAUHATI HIGH COURT

- Once the Amending Notifications were set aside by Gauhati High Court, the requirement to file applications for fixation of special rates only arose after the decision of the Supreme Court in *VVF Ltd.* on 22 April 2020.

- There was no prior occasion at the Petitioner's end, to apply for fixation of special rates as the requirements in the Amending Notifications were ineffective and unimplementable.

- Upholding of the Amending Notifications by the Supreme Court brings in a legal right to apply for special rates.

- The ground of limitation for rejection of the applications by Principal Commissioner was not available to the Department. Specific direction was given to Principal Commissioner to consider the applications on merits.

BACKGROUND

The relevant notifications and litigation history

Notification No. 32/1999-CE dated 08.07.1999 (**'Original Notification'**) granted exemption to goods cleared from units located in specified areas in the North Eastern States. The exemption was available by way of refund of the Central Excise Duty paid in cash.

Notification No. 17/2008-CE dated 27.03.2008 [as amended by Notification No. 31/2008-CE dated 10.06.2008] (**'Amending Notifications')** curtailed the benefit under the Original Notification to extent of duty payable on value addition. The Amending Notifications (i) fixed a percentage of refund based on value addition; and (ii) gave the option to the asseesee to fix a special rate of refund. The application for fixation of special rate of value addition was to be filed by 30th September of the respective financial year.

Challenge to Amending Notifications

The Amending Notifications were challenged before the Gauhati High Court on the ground that the State was estopped from withdrawing or curtailing a promised benefit. The Amending Notifications were set aside by the Single Judge Bench and Division Judge Bench of Gauhati High Court. However, the Supreme Court reversed the decision of the High Court and held that the amendment in the Notification did not amount to violation of a promise made by the State.

Herbo Foundation v. UOI **(24.06.2009)**

Single Judge Bench of Gauhati High Court held that Amending Notifications are not sustainable in law.

UOI* v. *Kamakhya Cosmetics **(20.11.2014)**

Division Bench of Gauhati High Court dismissed the writ appeal filed by Department and held that Union in estopped from curtailing the benefits.

UOI* v. *Kamakhya Cosmetics **(Interim order 07.12.2015)**

The Supreme Court stayed the operation of the Division bench judgment of Gauhati High Court.

Union of India* v. *VVF Limited **(22.4.2020)**

The Supreme Court of India held that the Union is not estopped to withdraw or amend a promised benefit. Further, the Court held that the pending refund applications must be decided as per the amended notifications.

L&S Comments:

- Subsequent to the decision of the Supreme Court in *VVF Ltd.*, many assessees had filed applications for fixation of special rate of value addition. This decision provides a much-needed relief to assessees who have filed their applications immediately after the decision of the Supreme Court in *VVF Ltd.*

- Factors such as the time of filing the application, previous communications etc. will be relevant.

- While applicability of the decision has to be seen in the facts of each case, for matters where the applications are rejected on the ground of limitation, the decision of Gauhati High Court should bring relief.

[*Jyothi Labs Ltd. v. Union of India & Ors.* – W.P (C) No. 3569/2021, Order dated 12 August 2021, Gauhati High Court]

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