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E-Way Bill – Taking GST on digital highway

By **Krithika Jaganathan**

The concept of way bill and the requirement for every consignment of goods being moved to be accompanied by a way bill (besides other documents) has been retained under the GST regime, *albeit* electronically. Amidst news reports raising concern over how it would perpetuate the existing issues plaguing the system even in the GST regime, other common questions revolve around operationalizing the scheme and ensuring due compliance with the Draft Electronic Way Bill Rules (*'draft rules'*) released on 13 April, 2017. This article seeks to shed light on the provisions as contained in the draft rules.

E-Way Bill and E-Way Bill Number

The draft rules require every registered person causing movement of goods to furnish information about every consignment whose value exceeds INR 50,000 before movement commences. The information should be furnished in cases where the movement of goods is caused in relation to a supply, or for reasons other than supply (such as sales returns, stock transfer, movement for job work, etc.) and also if it is because of inward supplies from an unregistered person. If transportation is by the parties to the supply in their respective capacities as consignor or consignee, such party who has transported the goods (whether in their own conveyance or in hired conveyance) should furnish transportation details in the prescribed form. On the other hand, if the transportation of the consignment is handed over to a transporter such as a Goods Transport Agency ('GTA'), the GTA is also required to furnish details of transportation in the relevant form.

An e-way bill will be generated on the common portal after the relevant form has been filed. Once the e-way bill is generated, a unique e-way bill number termed 'EBN' will be available on the common portal to the supplier, the recipient and the transporter. If the consignor has not generated the information in Form GST INS-01 despite the value of consignment being more than INR 50,000, the transporter is required to generate the same by using the invoice or bill of supply or delivery challan.

Supplies by unregistered persons, transfers and multiple consignments

Assessees are permitted to voluntarily generate an e-way bill even in cases where the consignment value is lower than INR 50, 000 and where the movement of goods is caused by an unregistered person. In cases where an unregistered person supplies to a registered person who is identifiable at the time the goods begin movement, it will be deemed that the registered person receiving the consignment has caused the goods to be moved, and will be required to generate an e-way bill.

A new e-way bill will be required to be generated where the goods are transferred

from one conveyance to another in the course of transit and such new e-way bill will be required before such transfer. A new e-way bill is to be generated by the transporter before each such transfer and movement occurs, detailing the change in mode of transport. Where one conveyance comprises of multiple consignments, the transporter is required to indicate the serial number of e-way bills generated for each consignment, and then generate a consolidated e-way bill on the common portal. Again, the consolidated e-way bill should be generated before the goods commence movement.

The draft rules require an e-way bill to be cancelled if, after generation, the consignment is not being transported at all, or is not being transported as per the details furnished in the e-way bill. However, the cancellation must be effected before it is verified in transit.

Validity period of e-way bills

The Draft Rules prescribe distance-based validity periods for the e-way bills in the following manner:

Distance (Km)	Valid for (from date of generation of e-way bill)
Less than 100	1 day
100-300	3 days
300-500	5 days
500-1000	10 days
1000 or more	15 days

Thus, for even the most expansive of transit times, an e-way bill shall be valid only for 15 days. Significantly, the draft rules do not provide for renewal of an e-way bill, where the transit time runs beyond 15 days. They do not even discuss the eventuality of transportation taking longer than 15 days. How then, is one expected to comply where the destination of the goods-in-transit is in a remote location, or where the delay is on account of unforeseen exigencies? Considering the physical infrastructure of the nation, a provision for renewal of e-way bill seems to be in order, to cover the above situations.

Acceptance of e-way bill and validity in particular State

The recipient is required to communicate acceptance or rejection of the details of the e-way bill after the same are made available to him. If there is any lack of communication within 3 days, the details shall be deemed to have been accepted. One significant modality brought about by the draft rules is that the e-way bill generated under the CGST Rules or SGST Rules of a particular State shall be valid only in that State.

Digitizing the economy

The person in charge of a conveyance is mandated to carry a set of documents during transit. An invoice, bill of supply or delivery challan have been identified alongwith an e-way bill or EBN. The draft rules mention Invoice Reference Number (IRN) instead of tax invoice for the purpose of verification. The e-way bill or EBN can be carried either in physical form, or in a copy mapped to the RFID that will be embedded on to the conveyance. While further information is awaited on how the ambitious plan of attaching RFID tags to every

conveyance is going to be operationalized by the Government, the draft rules empower the Commissioner to notify a class of transporters to obtain a unique RFID and have the same embedded on their conveyance, so that the e-way bill may be mapped to the RFID prior to the movement of goods itself. It is anticipated that goods of special importance, and modes of transport that are likely to be misused will be covered under the unique RFID in order to better monitor plying of such conveyances.

Interception of vehicles and verification of e-way bills

The draft rules empower the Commissioner to authorize interception and verification of e-way bills and EBNs. However, in the event of any specific intelligence received of tax evasion, the conveyance shall be physically verified by the departmental officer. A welcome provision is that the physical verification of goods within one State cannot occur after the goods have already been physically verified during transit at one place within the State, unless specific information of tax evasion is received. Where a vehicle has been detained for more than 30 minutes, the transporter is enabled to upload the information of detention on the common portal in Form GST INS-04.

The draft rules seem to extend some welcome relief in certain respects, by limiting to one instance the physical verification of goods within a State, and by enabling e-way bills to be generated and cancelled over SMSs. Such trade friendly measures would go a long way in ensuring ease of business. While the installation of RFID tags would assist in reducing the paper trail and can be portrayed as an eco-friendly measure, the stupendous task of implementing RFID tags requires robust IT infrastructure and infallible digital systems.

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Applicability of GST on GTA

By **Ekansh Agrawal**

The Final GST Act is here, still many issues lack clarity and could result in disputes with the tax authority, owing to different interpretations and views between businesses and the department. This article seeks to highlight some of the significant issues pertaining to registration by a GTA, as set out in the CGST Act and Draft Rules (issued to date) which may be of interest to most businesses.

Background of GTA Service

The levy of Service Tax on Road Transportation Service has always remained a subject matter of uncertainty. Initially, Finance Act 1997 proposed to tax the services of road transportation which was subsequently withdrawn after nation-wide strike. Thereafter in the Budget 2004, it was proposed to levy service tax on services provided by a goods transport agency in relation to transport of goods by road vide Finance Act, 2004 with effect from 10-9-2004. However, the levy was deferred till further notice again in view of protest by transporters. The Government thereafter constituted a committee to study the matter.

Taking into account the recommendations of the Committee, Notification Nos. 32 to 35/2004–ST all dated 3-12-2004 were issued, so as to effectively impose tax on the service of transport of goods by road with effect from 1-1-2005 under reverse charge basis.

How it will pan out under GST?

Based on a bare reading of the provisions of registration carved out in the CGST Act and Revised Registration Rules (Draft), it is possible to come to a conclusion that a person providing the service of goods transport agency and having an aggregate turnover of more than INR 20 lakhs is mandatorily required to get registered under GST and comply all the provisions that a taxable person has to comply viz. raise invoices, furnish returns, etc. No specific exclusion has been provided to GTAs neither in the Act nor in draft Rules. Bringing GTAs under GST net might not be the intention of the law makers considering the resistance by the industry in the past, however such language used in law is likely to give rise to disputes. This will also adversely affect the transport industry where majority of the transporters are not exposed to any compliances under existing law and are also not equipped to carry out such tasks.

What will happen to the inter-unit services of GTA?

Under GST, even support services between different units located in different States (distinct persons under GST) without any consideration are also liable to GST. Suppose a GTA engaged solely in supplying goods transportation service (i.e. presumably a reverse charge supply) is operating in two States because of business requirements, and one unit is set up solely for providing administration, HR, accounts, etc., related services to the other unit, then as per Entry 2 of Schedule I provision of such support services even without any consideration between distinct persons will be liable to GST and taxable value shall be determined as per Valuation Rules.

Valuation Rules

Attention is invited to sub-rule (7) of Rule 6 of GST Valuation Rules (Draft), which provides that 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 Entry 2 of Schedule I between distinct persons as referred to in Section 25, other than those where input tax credit is not available under sub-section (5) of Section 17, shall be deemed to be NIL. This provision exempts the services between the units of notified service providers, which are otherwise taxable as per Entry 2 of Schedule I (supply of services between distinct persons even if made without consideration).

Summary

It is pertinent to note that the intention behind taxing the inter-unit services is to seamlessly pass the credit to the other unit from where the ultimate taxable supply is being undertaken. In a case where the receiver of such credit is effecting supplies on which tax is

to be discharged by the recipient under reverse charge, question of passing any credit does not arise as the same will not get utilized. If the same is taxed, it will only result in blockage of credits at the end of receiver which is not logical and may not be the intention of the government.

Action to be taken

Industry should remain vigilant as these are potential areas where representations should be made to the appropriate authority (on the following grounds), listing the consequences of above said provisions and request the government to come up with suitable amendments enabling them to maintain status quo:

- GTA (inter-alia) should be notified by the government under the reverse charge category under Section 9(3) of CGST Act.
- Once notified under reverse charge category, GTA should also request to get notified under Rule 6(7) of the Valuation Rules.

Above issues are equally applicable to other services which are presently kept under reverse charge category under service tax law.

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GOODS AND SERVICES TAX (GST)

Telangana, Bihar and Rajasthan pass SGST Bill: Telangana, Bihar and Rajasthan have become the first three States to pass SGST Bill. As per reports, the Bills have been passed on the same lines of CGST Act, 2017 with appropriate changes as a State law would require. Rule-making has gained momentum and CBEC has released several draft rules like draft accounts & records rules, draft assessment & audit rules, draft appeals & revision rules, draft advance rulings rules and draft e-way bill rules. Draft accounts & records rules seek to prescribe various obligations for manufacturers, service providers, agents, works contract service providers, carriers and C&F agents. Draft e-way bill rules mandate generation of e-way bill and e-way bill number before transportation / movement of goods of value more than Rs. 50,000 commences. For GST Updates on various draft rules please visit www.gst.lakshmisri.com. The end-date mentioned in GST portal for migration / enrolment is 30 April, 2017 and the same has been reiterated by Delhi Service Tax Zone in public notice.

CENTRAL EXCISE

Ratio decidendi

Cenvat credit on capital goods installed away from factory, when eligible: The appellant, involved in the manufacture of Horlicks, Boost, etc., procured milk from nearby villages, and to facilitate collection and storage of same at a specific temperature installed 'Bulk Milk Coolers' and 'DG Sets' on the leased premises. Cenvat credit was denied on the aforesaid

capital goods since these were used outside the factory. CESTAT Chandigarh however held that capital goods such as 'Bulk Milk Coolers' and 'DG Sets' installed away from factory in milk collection centers leased out by the assessee to facilitate milk collection form an integral part of the factory and its manufacturing process. Cenvat credit was accordingly allowed relying on Supreme Court decision in the case of *Vikram Cement* [2006 (197) ELT 145 (S.C.).] [*Glaxo Smithkline Consumer Health Ltd.* v. *Commissioner* - 2017 (348) ELT 328 (Tri. – Chandigarh.)]

Cenvat credit on items used in transmission line erected as dedicated line for assessee: CESTAT Delhi has allowed Cenvat credit on items (cement, cables, etc.), used in the transmission line which was erected as dedicated transmission line for use by the assessee. Revenue department's contention that transmission lines were immovable property and that they did not had any relation to the process of manufacture of the final products, was rejected by the Tribunal while it noted that electricity was an essential requirement in manufacturing of cement and the items used for laying down dedicated lines were duty paid with documents being in the name of the assessee. [*Prime Cement Ltd.* v. *Commissioner* - 2017-VIL-327-CESTAT-DEL-CE]

Manufacture – Refining of waste and used oil and sale thereof to industrial customers in bulk packs is not 'manufacture': Waste and used oil was subjected to refining process and cleaner oil which emerged was sold to industrial customers in bulk packs. CESTAT Bench at Allahabad has, in this regard, observed that according to the relevant chapter note, to examine whether manufacture has taken place, it is essential to establish that (a) relabelling has taken place (b) re-packing from bulk packs to retail packs has taken place and (c) such treatment had rendered the product marketable. It was held that the process undertaken did not amount to manufacture as none of the above conditions was fulfilled in the present case and the department had not proved that goods which emerged after removal of impurities were marketed to consumers. [*IEP Petro Products Pvt. Ltd.* v. *Commissioner* - 2017 (348) ELT 172 (Tri. – All.)]

Interest on delayed refund when Court stipulated period for authority to decide application: Relying on Supreme Court's decision in the case of *Ranbaxy Laboratories Ltd.*, Gujarat High Court has rejected the contention of the Revenue department that orders sanctioning rebate having been passed and the amount having been paid within the time limit stipulated by the High Court, no interest is payable. The Court was of the view that when the statute provided that interest shall be payable on expiry of three months from the date of receipt of the application, merely because the Court stipulated the period within which the concerned authority should decide the application, the same would not operate in favour of the department and against the assessee and curtail the statutory period prescribed under said section. [*Kamakshi*

Tradexim (India) Pvt. Ltd. v. *Union of India* - 2017-VIL-209-GUJ-CE]

Area based exemption - Change in ownership, alteration of machinery and addition of new products do not affect eligibility to exemption: CESTAT Chandigarh has held that the assessee would be eligible to avail the area based exemption under Notification No. 50/2003-C.E. read with CBEC Circular No. 939/29/2010-CX even after change in ownership, alteration of machinery and addition of new products, within a period of 10 years as per the said notification. The Tribunal in this regard took note of evidence establishing that the eligible unit availing benefit under Notification No. 50/2003-C.E. was acquired and the manufacture of the earlier specified product had continued in the newly acquired unit along with the manufacture of new products. [*Khurana Oleo Chemicals* v. *Commissioner* - 2017 (348) ELT 332 (Tri-Chan.)]

Area based exemption under Notification No. 32/99-C.E., when old machinery sold and fresh investment made: CESTAT Kolkata has held that the spirit of the Notification No. 32/99-C.E. is to boost growth of industries in the North East Region by way of expansion of the old units as well as to set up the new units and that the new unit should not be set up at the expense of old units. In the instant case wherein the total investment in the subsequent plant was of Rs. 34 lakhs and the earlier parts and machineries were sold for Rs. 20 Lakhs, it was held that the appellant never started a new unit or expanded its unit. Therefore, the exemption was disallowed. [*ATC Agro Industries Ltd.* v. *Commissioner* - 2017 (4) TMI 89-CESTAT Kolkata]

EOU - Epoxy resins used for polishing of granite slabs are not raw materials: The issue involved was whether exemption under Notification No. 22/2003-C.E. was available to an EOU when epoxy resins were imported for polishing of granite slabs. Observing that epoxy resins only add to the glossiness and smoothness of the slabs and that granite slabs are complete for their intended use even without use of such resins since they only improve the visual appearance of the slabs, CESTAT Bench at Hyderabad has held that epoxy resins cannot be considered as raw materials used in manufacture of granite slabs. Exemption was, therefore, allowed to granite slabs cleared in DTA, since goods were produced wholly from material produced in India. [*Commissioner* v. *Alliance Minerals Pvt. Ltd.* - 2017 (348) ELT 155 (Tri. - Hyd.)]

Milk powder with addition of Maltodextrine and artificial flavouring substance – Classification of: CESTAT Delhi has rejected the contention of the Revenue department that with the addition of Maltodextrine and artificial flavouring substance, item manufactured (milk powder) would go out of the purview of Heading 0404 of Central Excise Tariff and would be classifiable under Heading 1901 - food preparation of goods of Heading 0401 to 0404. The dispute involved classification of "NIDO Nutritious milk for growing kids". The Tribunal in this regard was of the view that addition of small

quantity of artificial flavouring substance does not change the essential nature of the product from what is covered under Heading 0404. [*Nestle India Limited* v. *Commissioner* - 2017-VIL-324-CESTAT-DEL-CE]

Aerated drink with fruit pulp or juice – Use of fruit concentrate: The appellant claimed the benefit of Notification No. 3/2001-C.E. and 6/2002-C.E. for its products, Maaza Orange drink and Maaza Pineapple drink made with imported 'Authentic Aseptic Orange Juice Concentrate' and 'Authentic Aseptic Pineapple Concentrate', as drinks which were manufactured out of fruit juice and fruit pulp. CESTAT Chennai however, considering that there was no fruit pulp or fruit juice used in the manufacture of drinks, there being absence of any purchase record produced before any authority to prove purchase of fruit pulp or fruit juice, held the product to be classifiable under sub-heading 2202.99 of Central Excise Tariff. Benefit of the exemption notification for goods falling under said sub-heading was held to be inapplicable. [*Hindustan Coca Cola Beverages P. Ltd.* v. *Commissioner* - 2017 (3) TMI 1410 - CESTAT CHENNAI]

SERVICE TAX

Notifications and Circulars

Due date for filing ST-3 Returns extended to 30 April: CBEC has extended the last date for filing service tax return (ST-3) for the half-year 1st October, 2016 to 31st March, 2017 to 30-4-2017. The Order No. 1/2017-ST, dated 25-4-2017 issued by CBEC states that this extension has been made as difficulties were faced in accessing ACES website on 25-4-2017.

Transportation of goods by vessel for import into India where both provider and receiver are located in non-taxable territory – Liability revised: With effect from 23-4-2017, importer of goods has been made liable for paying service tax in respect of service of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. Further by Notification No. 14/2017-S.T., point of taxation in respect of such services has been specified as the date of bill of lading of goods in the vessel at the port of export. It may be noted that CBEC Circular No. 206/4/2017-S.T., dated 13-4-2017 also states that no service tax is leviable if the bill of lading is of date prior to 22nd January, 2017. Further, Cenvat Credit Rules, 2004 have been amended to allow the importer to avail Cenvat credit on the basis of the challan of payment of service tax by such importer. The circular also states that benefit of conditional Notification No. 26/2012-S.T. (Sl. No. 10) would not be available in this case.

Ratio decidendi

Cargo Handling service or Packaging service – Scope: Distinguishing between Cargo Handling service and Packaging service, the Supreme Court of India has held that though the word 'packing' is included in the definition of 'Cargo handling service', the same is

referable to the word 'cargo' whereas packing activity is defined to mean 'packaging of goods' in the definition under Section 65(76b) of the Finance Act, 1994. The Court was of the view that 'cargo' denotes goods which are ready for transportation whereas packaging of goods is a stage prior, i.e. before they become cargo, and since assessee had nothing to do with transportation of goods which they pack at the premises of the principal manufacturer, he would not be liable to service tax under Cargo Handling service. Allowing the appeal, the Court also observed that it was nobody's case that the assessee was a Cargo Handling agency. [*Signode India Ltd.* v. *Commissioner* – 2017 (50) STR 3 (SC)]

Reverse charge mechanism – Liability when foreign entity has establishment in India, and in case of repayment of term loan: CESTAT Delhi has set aside the demand of service tax under reverse charge mechanism in a case where assessee had taken loan from a foreign bank and the foreign bank had representative office in India by way of another branch entity of the bank. The dispute involved an agreement between three parties namely, (a) the appellant as borrower of loan; (b) ABN Amro Bank, NV, Singapore as lender and (c) ABN Amro Bank, NV, New Delhi as Security Trustee. The demand under RCM, in respect of another amount paid to another foreign bank in respect of latter taking insurance of buyer's credit, was also set aside by the Tribunal. The agreement for term loan involved buyer's credit in favour of assessee's supplier and the buyer's credit insurance premium paid by the lender to a different bank. Noting that the appellant was paying the full amount, including the insurance amount as a term loan to the bank, it was held that in such arrangement no consideration was paid by the assessee to be considered as taxable value under reverse charge basis. [*India Glycols Ltd.* v. *Commissioner* - 2017-VIL-274-CESTAT-ST]

BAS – Activity of physical printing of telephone bills not covered under 'billing': CESTAT Delhi has held that printing of telephone bills and certain post printing operations like stuffing the bills in the envelops and bunching them together as per area code for further dispatch by the telecom company, would not be covered under 'billing' in Section 65(19)(vii) of the Finance Act, 1994 providing for definition of Business Auxiliary Service. The Tribunal in this regard was of the view that billing is more of a financial activity involving quantification of charge, methodology of providing information in the bill and reaching it to the customer and following it up for collection. Tribunal also took note of the fact that the assessee was not connected with promotion of service or provision of service on behalf of the telecom companies. [*Commissioner* v. *Ricoh India Ltd.* - 2017-VIL-284-CESTAT-DEL-ST]

Support service of business or commerce – Scope: CESTAT Mumbai has held that unless an activity is optional for the continued existence of the organization and permits the flexibility of self-performance vis-a-vis outsourcing, it is not covered under the scope

of 'Support service of business or commerce'. The assessee was involved in auditing of accounts, checking of clients' accounting data, consultancy, VAT and IT return checking, preparation of documents in compliance with various statutes besides representing clients before tax authorities and statutory bodies. The contention of the department that such services would be covered under BSS and not legal consultancy service, was rejected by the Tribunal while it observed that submission of returns or appearance for resolution of disputes are activities that are thrust upon an organization for its very survival and are not easily performed by the human resources available within the organization. The Tribunal was of the view that since professional outside assistance has necessarily to be solicited, it loses the character of having to be outsourced for economic viability. [*Commissioner* v. *RD Kute & Co.* - 2017-VIL-360-CESTAT-MUM-ST]

Technology transfer not covered under Consulting Engineer service: In a case involving agreement for supply of technical knowhow, process technology, proprietary technical information and various connected services to the assessee in connection with setting up of their plant in India, CESTAT Delhi has set aside the demand of service tax under Consulting Engineer service. The Tribunal in this regard took note of the fact that the agreements talked about the foreign companies as "licensor", and observed that in a typical agreement for consultancy service, there will be no licensor or licensee with transfer of licensed process technology or proprietary technical information. [*Bharat Oman Refineries Ltd.* v. *Commissioner* - 2017-VIL-308-CESTAT-DEL-ST]

Cenvat credit when Broadcasting service also rendered in J&K: In a case involving provision of 'broadcasting service' and failure to maintain separate records for taxable and exempted services when the services provided in Jammu and Kashmir were not subject to service tax, CESTAT Mumbai has set aside the demand for excess utilisation of Cenvat credit for payment of tax. According to the Revenue department, the assessee was required to restrict the utilisation of Cenvat credit to 20% for payment of tax. The Tribunal however held that there is no logic to hold that the inputs/ input services used for rendering 'broadcasting service' should be restricted to such quantum as used for rendering service in the rest of India. It was stated that the entire quantum of input services would be required to provide the taxable service. [*Reliance Media World Limited* v. *Commissioner* - 2017-TIOL-1251-CESTAT-MUM]

BAS – Promotion of trademark, not covered: CESTAT Mumbai has rejected the contention of the Revenue department that since the agreement between the assessee and his supplier required the main assessee to promote the trademark, which is 'goods', they would be liable to service tax under Business Auxiliary Service. The agreement in the dispute involved sale of concentrate to the main appellant and

conditions for bottling the beverage using the trademark. The Tribunal in this regard took note of the fact that assessee was not required to promote or market sale of goods produced or provided or belonging to the supplier (concentrate for beverages). It was also observed that there was no mention of trademark in the definition of BAS. [*SMV Beverages Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-1150-CESTAT-MUM]

CUSTOMS

Notifications and Circulars

Reward scheme scrips (MEIS and SEIS) allowed to be utilised for EO default duty payment under previous FTPs: Duty Credit scrips issued under Chapter 3 of the Foreign Trade Policy can be utilised for payment of Customs duties in case of default of export obligation for authorisations issued under Chapters 4 and 5 of the earlier Foreign Trade Policies as well. Provisions of Para 3.18(a) of the FTP, before amendment by DGFT Notification No. 4/2015-20, dated 21-4-2017, stated that scrips can be utilised in respect of authorisations issued under *this* Policy.

EOU – No requirement of refund of deemed export benefit when goods procured indigenously returned back: CBEC has clarified that once applicable Customs duty is paid at the time of transfer/sale back into DTA in respect of goods procured indigenously, there is no requirement of refund of the deemed export benefits or for the production of a certificate from the Development Commissioner regarding refund or non-availment of deemed export benefits. Circular No. 13/2017-Cus., dated 10-4-2017 issued for this purpose further states that this would also be applicable when EOU seeks exit from the scheme.

Exemption when contract registered under Project Import Regulations: CBEC has rescinded Circular F. No. 528/2131/87-Customs (TU) dated 8-8-1987 which stipulated that once a contract has been registered for a project, the imports made thereunder lose their identity, become classifiable under Heading 9801, and are to be assessed only at the project import rate. Circular No. 15/2017-Cus., dated 19-4-2017 issued in this regard notes that the Supreme Court has allowed benefit of individual notifications even for imports assessed under Heading 9801.

Exemption to specified medicines for supply under Patient Assistance Programmes: Complete exemption from BCD has been extended to specified drugs and medicines for supply under Patient Assistance Programmes run by the specified pharmaceutical companies, subject to conditions mentioned therein. Notification No. 16/2017-Cus. ,dated 20-4-2017 lists some 27 medicines which would be eligible for the benefit, if supplied free of cost to the patients under the specified Patient Assistance Programmes.

Exemption to goods imported by Navy, Air Force or CRPF: Complete exemption from BCD and CVD has been extended to all goods

imported into India by or along with a unit of the Army, the Navy, the Air Force or the Central Paramilitary Forces on the occasion of its return to India after a tour of service abroad. Notification No. 17/2017-Cus. dated 21-4-2017 issued in this regard states that such exemption would be available provided that such goods are proved to have been exported by or along with such unit on the occasion of its departure from India.

Ratio decidendi

Valuation of goods imported from sister concern, when correct: In a case involving import of goods from sister concern, CESTAT Mumbai has upheld the transaction value. Observing that there was absence of sale transaction as material supplied was purchased from third party, the Tribunal was of the view that value as declared being value of third party, was correct. It was noted that the importer had paid the actual amount of procurement price of the sister concern. The Tribunal also took note of the fact that import documents revealed that goods were procured from third party and the value declared was the value of the third party. [*GKN Sinter Metals Ltd.* v. *Commissioner* – Order dated 1-2-2017 in Appeal No. C/46/07-Mum, CESTAT Mumbai]

Refund of SAD - Absence of sale invoice for imported goods when not fatal: In a case involving import of sanitary fittings, CESTAT Hyderabad has allowed refund of SAD under Notification No. 102/2007-Cus., rejecting department's contention that there was no evidence for sale of the imported goods as the imported goods were fixed in the bathroom of apartments sold by the assessee. The Tribunal in this regard noted that sale agreement in respect of apartments showed that the value of apartment is arrived at after including the value of imported sanitary items fixed in the bathrooms, and that the assessee was discharging their VAT liability under composite scheme by paying 5% of the agreement value. It was observed that non-issuance of invoices was not a choice but a compulsion while opting for payment of composite scheme. [*Lodha Healthy Construction and Developers Pvt. Ltd.* v. *Commissioner* - 2017-VIL-323-CESTAT-HYD-CU]

Second hand furniture imported by service provider covered under 'capital goods': CESTAT Mumbai has held that import of second hand furniture (not more than 10 years old) by service provider would be covered under the term 'plant' in the definition of 'capital goods' in the EXIM Policy. It was held that the 'plant' would include apparatus used by businessman for carrying out his business, and hence would be freely importable. The importer in this case was in the business of providing services in financial market. [*Warburg Pincus India Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-1359-CESTAT-MUM]

Certified copy of Country of Origin certificate can be produced post import: CESTAT Hyderabad has allowed refund of BCD on production of certified copy of the Country

of Origin certificate at a later stage. The Tribunal in this regard relied upon Rule 3(f) of the Implementation Procedures provided in Appendix-A to Annexure-2 of Notification No. 55/2011-Cus. (N.T.). Denial of BCD exemption by the department alleging absence of intimation was also rejected by the Tribunal observing that the assessee had filed photocopy of the certificate at the time of filing bill of entry. It was also held that there is no condition in the procedures prescribed that the importer is required to produce specimen signatures of the authority issuing such certificate. [*Pelicon Rubber* v. *Commissioner* - 2017-TIOL-1358-CESTAT-HYD]

Conversion of Shipping Bill from Duty drawback to DFIA Scheme – Limitation: Observing that provisions of Section 149 of the Customs Act, 1962 do not prescribe time limit for amendment of the shipping bills, CESTAT Mumbai has held that CBEC Circular No. 36/2010-Cus., dated 23-9-2010, seeking restriction on time limit for conversion of shipping bill goes beyond mandate of the law. Allowing the appeal of the assessee, and directing the authority to convert the shipping bills, the Tribunal also took note of the fact that the goods which are sought to be exported were examined in accordance with law for sanctioning of duty drawback, as any other export promotion scheme. [*Parle Products Pvt. Ltd.* v. *Commissioner* – Order dated 6-2-2017 in Appeal No. C/87134/16, CESTAT Mumbai]

Appeal to Supreme Court - Conditions for admission of appeal from Appellate Tribunal: The Supreme Court of India has laid down conditions which are to be satisfied before an appeal is filed before it against an order passed by the Appellate Tribunal (CESTAT) in terms of Section 130E of the Customs Act, 1962. It has been held that the question must have a direct and/or proximate nexus to the question of determination of the applicable rate of duty or value of goods. The Apex Court was also of the view that if the Tribunal, has arrived at a conclusion which is a possible conclusion, the same must be allowed to rest even if the Court is inclined to take another view of the matter. [*Steel Authority of India Ltd.* v. *Designated Authority* - 2017-TIOL-173-SC-CUS]

Thermacool Thermage Radio Frequency Therapeutic device and accessories classifiable as device for medical treatment of skin: CESTAT Delhi has held that Thermacool Thermage Radio Frequency Therapeutic device and its accessories would be correctly classifiable under Tariff Item 9018 90 99 of Customs Tariff as medical device and not under Tariff Item 8543 70 93 as beauty care instrument. The Tribunal in this regard examined the technical literature and observed that the goods were used only by qualified doctors for dermatological and general surgical procedures. Rejecting department's appeal, the Tribunal also relied upon CBEC Circular No. B-11/1/2002-TRU, dated 1-8-2002. [*Commissioner* v. *Bausch and Lomb Eyecare India Pvt. Ltd.* - 2017-VIL-297-CESTAT-DEL-CU]

VALUE ADDED TAX (VAT)

Notifications

Rajasthan VAT and Entry Tax - Amnesty Schemes introduced: By Notification No. S.O. 159 No. F 12(14)FD/Tax/2017-92 dated 8th March, 2017, Amnesty Scheme 2017 has been introduced under the Rajasthan Value Added Tax Act, 2003 whereby there shall be waiver of interest, penalty and late fee for all dealers/ persons against whom the total outstanding demand created upto 31-12-2016 is less than Rs. 30 crores under the Rajasthan Sales Tax Act, 1954, the Rajasthan Sales Tax Act, 1994, the Rajasthan Value Added Tax Act, 2003, and the Central Sales Tax Act, 1956. The extent of the above waiver and the conditions for the same for different categories of demands are specified in the Table under Clause 4 of the above notification. The scheme is effective from 8th March, 2017 to 30th April, 2017.

Further, by Notification No. S.O. 163 No. F.12(14)FD/Tax/2017-96 dated 8th March, 2017, New Voluntary Amnesty Scheme for Entry Tax-2017 has been introduced under the Rajasthan Tax on Entry of Goods into Local Area Act, 1994 and RVAT Act whereby there shall be waiver of interest, penalty and late fee for all dealers/ persons against whom the total outstanding demand for entry tax created on or before 31-12-2016 is less than Rs. 10 crores. The extent of the above waiver and the conditions for the same for different categories of demands are specified in the Table under Clause 4 of the above notification. This scheme is also effective from 8th March, 2017 to 30th April, 2017.

Karnataka - Amnesty Scheme introduced: By Order No. FD 24 CSL 2017, Bengaluru dated 31st March, 2017, Karasamadhana Scheme, 2017 has been introduced by Government of Karnataka, whereby there shall be waiver of 90% arrears of interest and penalty for all dealers/ persons/ proprietors under the following statutes relating to the following assessment years:

Statute	Assessment Years
The Karnataka Sales Tax Act, 1957 and the Central Sales Tax Act, 1956 ("CST Act")	Up to 31-3-2005
Karnataka Value Added Tax Act, 2003 and the CST Act	From 1-4-2005 to 31-3-2016
• Karnataka Tax on Entry of Goods Act, 1979 • Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 • Karnataka Tax on Luxuries Act, 1979 • Karnataka Agricultural Income Tax Act, 1957 • Karnataka Entertainments Tax Act, 1958	Up to 31-3-2016

The grant of waiver of arrears of penalty and interest are subject to conditions mentioned therein. The application (separate for each of the above categories) for the above scheme is to be submitted on or before 31-5-2017. Further, arrears of tax (remaining unpaid up to 15-3-2017) and 10% arrears of interest and penalty (including cases where there are no arrears of tax and only arrears of interest and penalty) have to be paid on or before 31-5-2017.

Ratio decidendi

Entry Tax on machine brought from outside, used and then sent back, valid: A machine was brought into the local area from outside India for the purpose of carrying its obligation under the contract. The machine was used and thereafter was sent back. The issue in the instant case was whether such import of machinery into the local state would amount to 'Entry'. The authorities held that since the machine was brought within the local area from outside and had been used, as such, the liability to entry tax arises. The Tribunal however was of view that the entry tax would be payable only if machine is embedded to earth and since it was re-transported after its use, no tax would be payable.

On appeal by the department before the Allahabad High Court, while examining Section 2 (c) of the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 that defines "entry of goods", the Court held that the machine was brought from beyond the territory of India and used for due performance under the contract, as such, Section 2 (c) was attracted. The Court rejected the view taken by the Tribunal that only if machine is embedded to earth, liability of entry tax would arise. Observing that the expression for consumption, use or sale is an expression of wide amplitude, applicability, it was held that it is not necessary that the machine brought in within the local area has to be permanently stationed in the local area itself. The assesse was held to be liable to pay entry tax. [*Commissioner v. Charington Drilling Services Ltd.* - 2017-VIL-198-ALH]

ITC on goods received back from job worker – Period of 90 days prescribed in Punjab VAT Rule 20 is directory: The petitioner engaged in the business of manufacture and sale of jewellery was entitled to Input Tax Credit (ITC) of the tax paid on purchase of gold used in the manufacture of jewellery. ITC was claimed on purchase of bullion which was not received back from the job workers after it was processed and reconditioned, within the time prescribed in Rule 20 of the Punjab VAT Rules, 2005. Deliberating over the question of validity of Rule 20 which prescribes time limit of 90 days for claiming back the ITC reversed for the goods which have been sent on job work, Punjab & Haryana High Court has held that the period of 90 days prescribed in Rule 20 is only directory and not mandatory. It was held that prescribing a time limit only makes it easier for the Department to ascertain whether the goods returned by the job workers after processing are the same as the goods that were

sent by the taxable persons to the job workers for processing/ further processing, and hence Rule 20 therefore was not *ultra-vires* Section 13(3) or otherwise invalid. The Court was of the view that once it is held that the period of 90 days is only directory, the authorities must not consider themselves bound by any rigid time-frame or any specific period, and that there was no warrant for holding that the goods sent must be returned by the job workers during the same assessment year. The challenge to Rule 20 was rejected and the petition was disposed of by quashing the impugned order and remanding the matter to the Tribunal for determination of the appeal afresh. [*Reliance Retail Ltd.* v. *State of Punjab* - 2017-VIL-194-P&H]

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