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An e-newsletter from
Lakshmikumaran & Sridharan, India

August 2017 / Issue – 74

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August
2017

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Understanding composite supply under GST

By **Devanu Roy Choudhury**

India embarked on its tryst with Goods and Services Tax ("GST") on 1st July, 2017. In this regard, the Union Parliament and the State Legislatures have enacted various laws for the levy and collection of GST (hereinafter collectively known as "GST Acts"). The advent of GST has brought about a paradigm shift in the indirect tax regime in India. However, the Legislature have retained the concept of 'bundled services' under the erstwhile Service Tax regime as 'composite supply' and broadened its scope to include supply of goods as well under the GST regime. The purpose of this article is to have a preliminary understanding of this concept of composite supply under the GST Acts.

Composite supply as per GST law

The term 'composite supply' has been defined under Section 2(30) of the Central Goods and Services Tax Act, 2017 ("CGST Act"). As per the definition, the following are the essential characteristics of a composite supply made by a taxable person to a recipient:

- Consists of two or more taxable supplies of goods or services or both, or any combination thereof;
- Such supplies are naturally bundled and supplied in conjunction with each other in the ordinary course of business;
- One of the supplies is a 'principal supply'. Section 2(90) of the CGST Act defines 'principal supply' as the supply which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

In case of a composite supply, GST is payable at the rate of tax applicable on the principal supply. The statute provides the following illustration of a composite 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.*"

The above illustration is a bit disconcerting, as such single supply of goods along with freight and insurance may not always be naturally bundled i.e. supplied in conjunction with each other in the ordinary course of business as the same would depend on the contractual obligations agreed between the supplier and recipient. Further, the phrases "naturally bundled" and "predominant element" have not been defined under the GST Acts.

Unbundling the concept of bundling

The concept of 'composite supply' under GST is similar to that of 'bundled services' under Section 66F of the Finance Act, 1994. As per sub-section (3) of Section 66F, if various elements of a bundled service were naturally bundled in the ordinary course of business, it was to be treated as provision of the single service which gave such bundle its essential character. In this regard, the CBEC Education Guide provided the example of air transport services

provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board.

Therefore, we may infer that apart from being naturally bundled in the ordinary course of business, for two or more supplies to be construed as a 'composite supply', the principal or predominant supply must give the composite supply its essential character. In other words, such bundling of supplies into a single composite supply must not alter the essential character of the principal supply. In the aforesaid illustration provided under Section 2(30) of the CGST Act, though the supply of goods along with freight and insurance may not always be naturally bundled, however, if such supplies are bundled together into a single composite supply, it will not alter the essential character of the principal supply, which is the supply of goods. As a natural necessity in the ordinary course of business, the supply of goods may be bundled with the supply of freight and insurance. The principal supply overshadows the other supplies in a composite supply.

On the other hand, if two or more supplies when bundled together into a single supply, which alters the essential character of the principal supply, thereby making the identification of principal supply an improbable task, such supplies are termed as "mixed supply" under the GST Acts. Section 2(74) of the CGST Act defines 'mixed supply' as two or more individual supplies of goods or services, made in conjunction with each other for a single price where such supply does not constitute a composite supply. In a mixed supply, supply of one good or service does not necessitate the supply of another good or service. For example, a toiletry kit containing a shaving razor, shaving cream, toothbrush, toothpaste and face cream sold for a single price may be considered as a mixed supply. For determining the taxability in case of a mixed supply, it is treated as the supply of that particular supply which attracts the highest rate of tax.

Distinction between composite supply and mixed supply

To understand the distinction between composite supply and mixed supply, let us take the example of an airline operator supplying the service of transportation by air along with the service of catering on board for a single price to its customer. This bundling of supplies constitutes a 'composite supply' as the principal supply is the service of transportation by air. The supply of service of catering on board is ancillary to the said principal supply. However, if the airline operator also provides accommodation in a hotel along with the service of transportation by air to its customer for a single price, such bundling of supplies will be construed as a 'mixed supply'. Each of such supplies can be supplied separately as is not dependent on each other and identification of the principal supply which gives the essential character to such bundle is not possible.

In the absence of Indian jurisprudence on the concept of composite supply, guidance may be derived from the judgments of European Court of Justice ("ECJ") on the same. ECJ has delivered several judgments on the aspects of composite supplies under European Union Value Added Tax laws ("EU-VAT"). Under the EU-VAT law, Title IX of Council Directive 2006/112/EC, dated 28th November, 2006, provides for exemptions for certain activities in public interest, wherein the supply of goods and services incidental thereto are also exempt. In the case of ***Card Protection Plan (CPP)***[i], the ECJ held that a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself,

[i] *Card Protection Plan v. Customs and Excise Commissioners*, [1998] EUECJ C-349/96.

but a means of better enjoying the principal service supplied. In ***Levob***[ii], the ECJ held that where two or more elements or acts supplied by a taxable person to a customer are so closely linked that they form objectively, from an economic point of view, a whole transaction, which it would be artificial to split, all those elements or acts constitute a single supply for the purposes of application of VAT.

Recently, in the case of ***Brockenhurst College***[iii], the issue before the ECJ was whether VAT was applicable on the restaurant and entertainment services provided by the college. The college contended that such services were exempt on the basis that they were 'closely related' to the provision of education, which was exempt under Council Directive 2006/112/EC. The ECJ held that such activities could be regarded as supplies 'closely related' to the principal supply of education, provided that those services were essential to the students' education and that their basic purpose was not to obtain additional income for that establishment by carrying out transactions which were in direct competition with those of commercial enterprises liable for VAT. The Court noted that services offered in the present case, as part of the courses taught to its students, to a limited number of third parties, were substantially different from those habitually offered by a commercial theatre or restaurant and were aimed at a different public and the intention was not to generate additional income. Therefore, the ECJ held that the principal supply was that of education and the restaurant and entertainment services provided by the college were ancillary to this principal supply.

In spite of clarifications arising from such judgments, many uncertainties still remain under the EU-VAT law as to whether the supplies at issue must be treated separately or whether they must be considered to constitute a single supply. It would take some time for the courts in India to adjudicate on similar issues.

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Goods and Services Tax (GST)

Notifications

GST Rate on certain services revised: Notification No. 11/2017-Central Tax (Rate) has been amended to revise the rate of GST on various services, including service provided by Goods Transport Agency (GTA) and specified composite supply of works contract to government and others. Corresponding amendments have also been made in notifications issued under IGST and UTGST laws. Some of the important changes made by Notification No. 20/2017-Central Tax (Rate) are:

1. Transportation of passengers by motorcab and renting of motorcab, where cost of fuel is included in the consideration - Rate of CGST will be 6%, with input tax credit (ITC).
2. GTA service in relation to transportation of goods (including used household goods for personal use) - Rate of CGST will be 6% with ITC. However, GTA opting to pay CGST @ 6% would be liable to pay the same on all services of GTA supplied by it.

[ii] *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën*, [2005] EUECJ C-41/04.
[iii] *Brockenhurst College v Revenue and Customs Commissioners*, [2017] EUECJ C-699/15.

3. Job work services in relation to all textiles and textile products falling under Chapters 50 to 63 will attract CGST at the rate of 2.5% (total GST rate will be 5%).
4. Printing of newspapers, books (including Braille books), journals and periodicals, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer, will attract CGST at the rate of 6%.
5. Specified composite supply of works contract services would be liable to CGST rate of 6%. The services covered for this rate include construction, erection, commissioning, installation, repair etc., services provided to Government in respect of canal, dam, pipeline for water supply/treatment/sewage treatment, etc. Similarly, such services in respect of road, tunnel, bridge, etc., would also be liable to CGST at the rate of 6%.

Reverse charge mechanism for GTA revised: Notification No. 13/2017-Central Tax (Rate) has been amended to revise conditions of reverse charge mechanism (RCM) in case of services provided by Goods Transport Agency. Henceforth, RCM in respect of GTA services would be applicable only when the GTA has not paid CGST at the rate of 6%. Notification No. 22/2017-Central Tax (Rate) has been issued for this purpose. Similar amendments have also been made in IGST and UTGST notifications.

E-commerce Operator liable for house-keeping services provided through them: Notifications issued under Section 9(5) of the CGST Act, Section 5(5) of the IGST Act and Section 7(5) of the UTGST Act, have been amended to cast tax liability on e-commerce operator in respect of house-keeping services such as plumbing, carpentering, etc., provided through them. Notifications issued in this regard state that e-commerce operator would be liable to pay tax except where the service supplier is liable for registration under GST laws.

Exemption to certain services by and to FIFA, and by Fair Price Shops: Services provided by and to FIFA and its subsidiaries related to any of the events under FIFA U-17 (Under-17) World Cup 2017 to be hosted in India, have been exempted from CGST by amending Notification No. 12/2017-Central Tax (Rate). Services provided by Fair Price Shops to Central or State governments, in respect of sale of certain products on commission, have also been similarly exempted. Notification No. 21/2017-Central Tax (Rate) has been issued in this regard on 22-8-2017. Corresponding notifications issued under IGST and UTGST laws have also been amended.

Ratio decidendi

GST (Compensation Cess) Act – Power of Parliament: Delhi High Court has observed that power of the Parliament to enact the Goods and Services Tax (Compensation to States) Act, 2017 cannot prima facie be traced to Section 18 of the Constitution 101st Amendment Act. Granting interim relief to the petitioner-trader of coal from payment of Compensation Cess on coal on which Clean Energy Cess was already paid by him before introduction of GST regime, the Court took note of the history of abolition of the Clean Energy Cess and the introduction of the GST regime. The Court in this regard also noted the fact that no input credit is given for the Clean Energy Cess that was already paid by the assessee under Finance Act, 2010. It was also held that any payment made in terms of the challenged Act in respect of stock of coal on

which Clean Energy Cess was not paid, would be subject to the result of the present petition. The case challenging the constitutional validity of the Goods and Services Tax (Compensation to States) Act, 2017would be listed now on 26-10-2017. [*Mohit Minerals Pvt. Ltd.* v. *Union of India* – Order dated 25-8-2017 in W.P. (C) No. 7459/2017]

Liability in case of chain of successive supplies: In a case involving supply of goods by a taxable person in the first State where, before such supply transaction is entered into, the purchaser, who is a taxable person in the second State, expresses an intention to resell the goods immediately, before transporting them from the first State to a taxable person established in a third State, the Court of Justice of the European Union has held the first transaction to be liable to VAT, as they constituted internal supplies. *[It may be noted that intra-community transactions (supplies between Member countries of EU) are exempt from VAT in EU.]*

Relying on precedents, the Court was of the view that the whole transaction forms a chain of two successive supplies that give rise to only a single intra-Community transport, and hence the intra-Community transport can be ascribed to only one of the two supplies, which will alone be exempted under Article 138(1) of the VAT Directive. It was held that since the second supply, has taken place before the intra-Community transport occurs, the intra-Community transport cannot be ascribed to the first supply to the first person acquiring the goods.

Further, dismissing the argument that the middleman (first purchaser from the second State) was registered in different State and hence the transaction would be liable to VAT twice (with the first purchaser declaring its acquisitions in the second State), the Court observed that the place where a trader is identified for VAT purposes is not a criterion for classification of an intra-Community supply or intra-Community acquisition. It was also held that processing of goods in the first State after the first supply would also not affect the liability to VAT. [*Toridas UAB* v. *Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* – Order dated 26-7-2017 in Case C-386/16, CJEU]

Service by sub-contractor to economic operator in respect of vessel: The Court of Justice of the European Union has held that service of loading and unloading cargo onto and off a vessel, when supplied by a sub-contractor which invoices them to the contracting undertaking rather than to the ship owner directly, would qualify for the exemption from value added tax (VAT).

The Court was of the view that loading and unloading of cargo are services to meet the'direct needs of the cargo of the vessels' referred to in Article 148(a) of the VAT Directive and thereof are exempt from VAT. The view that even services performed at an earlier stage, such as services supplied by the sub-contractor of an economic operator which then re-invoices them to a freight forwarder or a transporter are also exempt, was also affirmed by the Court. It was held that the exemption applies, as regards services for loading and unloading of cargo, not only to services supplied at the end of the commercial chain of those services, but also to those supplied at an earlier stage. [*A Oy* v. *Veronsaajien oikeudenvalvontayksikkö* – Order dated 4-5-2017 in Case C-33/16, CJEU]

Customs

Notifications and Circulars

IGST on High Sea Sales and point of collection thereof: CBEC has clarified that high sea sales of imported goods would not be chargeable to IGST twice i.e., at the time of Customs clearance under Section 3(7) of Customs Tariff Act as well as separately under Section 5 of the IGST Act. Circular No. 33/2017-Cus., dated 1-8-2017 issued in this regard states that IGST shall be levied and collected only at the time of importation i.e. at the time of Customs clearance. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

Rebate of State Levies on garment exports - Continuation of pre-GST rates: Pre-GST rates for Rebate of State Levies on export of garments and textile made-up articles will continue for a transition period of three months, i.e., upto 30-9-2017. According to CBEC Circular No. 34/2017-Cus., dated 9-8-2017, for the exports with Let Export Order date on or after 1-7-2017 for which RoSL is claimed, this additional claim can be made on the basis of revised undertaking (in case of exports made after 5-8-2017) and manual undertaking (in case of exports made between 1-7-2017 and 4-8-2017).

Provisional release of seized imported goods pending adjudication – Guidelines issued: CBEC has issued detailed guidelines for provisional release of imported goods seized under Section 110 of the Customs Act. Specific bar on release has now been placed for prohibited goods, where they do not fulfill statutory compliances/obligations, where goods are notified under Customs Section 123 or where the provisional release is not in public interest. Further, the terms of release have also been prescribed as a guideline. Circular No. 35/2017-Cus., dated 16-8-2017 has been issued for this purpose.

Exemption to temporary import of leased machinery, equipment and tools, revised: Notification No.72/2017-Cus., dated 16-8-2017 has been issued to provide exemption to machinery, equipment, tools taken on lease by importer for use after import, and for re-export thereafter. Notification No. 27/2002-Cus. has been superseded in this regard. Exemption is from a certain percentage of Custom duty levied under Customs Act as per the time within which goods imported are re-exported as well as whole of IGST levied under Section 3(7) of Customs Tariff Act.

Export of Gold jewellery over 22 carats not allowed: The DGFT has issued Notification No. 21/2015-20, dated 14-8-2017 whereby export of gold jewellery, plain or studded, and articles containing gold of 8 carats and above and a maximum of 22 Carats only is permitted from DTA and from EOU/EHTP/STP/BTP Units. Earlier, export of the same goods was permitted for gold of 8 carats and above.

Prohibition on import of Red Sanders (Pterocarpus santalinus): Red Sanders falling under Tariff Item 4403 99 18 is now prohibited for imports. Import Policy for the said goods has been revised from ‘Free’ to ‘Prohibited’ by DGFT Notification No. 17/2015-20 dated 1-8-2017.

Ratio decidendi

Valuation - Examination of technical assistance agreement and pricing agreement necessary before addition of royalty: Observing that before adding the royalty amounts to the value of imported components, it is necessary for the department to examine both the technical assistance agreement as well as the pricing agreement, CESTAT Delhi has remanded the matter directing the adjudicating authority to examine the agreements. Reliance in this regard was placed on the judgment of the Supreme Court in the case of *Ferodo India Pvt. Ltd.,* [2004 (224) ELT 26 (SC)]. According to the license agreement, royalty was to be paid on the sale value of the licensed products after exclusion of taxes but including the cost of the imported components from other group companies. [*Erricsson (I) Pvt Ltd.* v. *Commissioner* - 2017-VIL-706-CESTAT-DEL-CU]

Valuation of ATF available in fuel tank of aircraft returning from foreign trip: CESTAT Delhi has rejected the contention of the Revenue department that valuation of Aviation Turbine Fuel available as remnant fuel in the aircraft returning from foreign trip, has to be done by including 20% as notional freight charges in terms of Rule 10(2) of Customs Valuation Rules. The assessee had paid Customs import duty on such ATF while only adding 1.125% as insurance charges and 1% as handling charges. Observing that the aircraft did not transport the fuel as cargo or goods for the purpose of freight, the Tribunal was of the view that there should not be a freight element attributable to such fuel in the tank. Relying on meaning of 'freight' in various dictionaries, it was held that fuel in the tank of aircraft used for propulsion cannot be considered as cargo/goods with attributable cost of freight. Application of Rule 10(2) was also rejected noting that since there is no freight element involved, there is no question of freight being 'not ascertainable'. [*Interglobe Aviation Limited* v. *Commissioner* - 2017-VIL-731-CESTAT-DEL-CU]

Payment of ground rent/ demurrage for re-exporting, required: Delhi High Court has held that the assessee is not entitled to re-export the prohibited goods, without payment of demurrage/ ground rent. The Court in this regard observed that the *bona fides* of the importer were not proved. The consignment consisted of health products, which at the relevant time were prohibited goods. Contention that the goods were meant for another buyer in Singapore and were mistakenly sent to the present importer, was rejected, noting absence of any contemporaneous records in this regard. [*Muscles Fusion FZE* v. *Principal Commissioner* - 2017-VIL-405-Del-CU]

Restriction with pre-condition, makes goods 'prohibited': Kerala High Court has held that in respect of import of goods requiring prior permission, permission is a necessary corollary to classify the goods as non-prohibited, and that hence classification of goods as 'prohibited' and 'non-prohibited' is to be in accordance with tenor and terms of the law in force. Reliance in this regard was placed by the Court on the definition of 'prohibited goods'. Further, declining provisional release of 'drone' brought by the petitioner along with him from abroad, the Court also noted that when there is a clear restriction on such imports, release of goods overlooking such restriction of pre-condition would defeat the purpose of such restriction. DGFT had by Notification dated 27-7-2016 brought such goods under 'restricted' category and not 'prohibited'. It was also noted that according to Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 any restriction created by order published in official gazette, would make the specified goods 'prohibited'. [*Jagdev Damodaran* v. *Deputy Commissioner* – 2017 (352) ELT 5 (Ker.)]

Refund – Payment of duty on interim order of court is protest payment: Chennai Bench of the CESTAT has held that discharge of Customs duty on imported goods by the assessee pursuant to the High Court Order is to be treated as payment of duty under 'protest'. Limitation of one year for filing refund claim was hence held to be not applicable in this case. The Tribunal was of the view that once the goods were cleared pursuant to an interim order of the Court, the payment would necessarily has to be treated as being under protest, subject to final orders in that petition. [*RFB Rig Corporation LLC* v. *Commissioner* – Final Order 41108/2017, dated 3-7-2017, CESTAT Chennai]

Refund – No unjust enrichment even when amount not shown as outstanding: High Court of Delhi has held that the mere fact that the amount was not shown as outstanding during the relevant year would not mean that the importer is not entitled to claim refund. It was held that the assessee cannot be denied refund if it did not pass on the burden of CVD to its customers. The Court also took note of the fact that CA certificate was submitted by the importer for the relevant period and for the subsequent period, and that the authorities had accepted the said documents in case of subsequent period. Allowing the writ petition, the Court was of the view that there was no reason for the authorities to not accept the very same documents in respect of the earlier imports. [*YU Televentures Pvt. Ltd.* v. *Union of India* - 2017-VIL-391-DEL-CU]

Duty demand jointly and severally is not legally sustainable: CESTAT Delhi has reiterated the view that there cannot be demand of Customs duties from two or more persons jointly or severally. The case was remanded to the adjudicating authority to fix the specific liability on identified persons. Further, it was held that Section 28AAA of the Customs Act, is prospective in nature and demand of Customs duties on exporter cannot be upheld for period prior to 28-5-2012. [*Thar Dry Port* v. *Commissioner* - 2017-VIL-681-CESTAT-DEL-CU]

Sportsman Forest Tractor/ Forest Tractor – Classification of: Taking note of the fact that sportsman forest tractor can accommodate only one person i.e. driver of the vehicle, and that it was constructed essentially for hauling with the provision of hook and also with the capacity to haul upto twice the weight of the vehicle, CESTAT Delhi has held the goods to be classifiable under Tariff Item 8701 20 10. The Tribunal in this regard observed that it was too far-fetched to conclude that the vehicles were intended for transport of persons. Department's view that such vehicles are all train vehicles capable of being used not only on road but also in other places like farms, golf course, etc., and hence classifiable under heading 8703, was rejected. [*Polaris India Pvt. Limited* v. *Commissioner* - 2017-VIL-641-CESTAT-DEL-CU]

Central Excise

Ratio decidendi

Cenvat Rule 3(4) proviso, restricting utilisation of credit, is ultra vires the Credit Scheme: Gujarat High Court has held the proviso to sub-rule (4) of Rule 3 of Cenvat Credit Rules to be *ultra vires* and unconstitutional to the scheme of Cenvat Credit inasmuch as it restricted the utilisation of credit to the extent such credit was available on the last day of the month or quarter, for payment of duty relating to

that month or the quarter, as the case may be. The Court observed that on one hand manufacturer was allowed as per Rule 8(1) of the Central Excise Rules, 2002 to pay the duties on the goods removed from the factory during the month by the 6th day of the following month, while on the other hand, though the manufacturer may have Cenvat credit in his account the same cannot be permitted to be utilized after the end of the month. The proviso to sub-rule 3(4) of Cenvat Credit Rules was hence held to be contrary and /or in conflict with Rule 8(1) of the Central Excise Rules, 2002. The proviso was however not found to be beyond powers conferred under Section 37 of the Central Excise Act, 1944. [*Advance Surfactants India Ltd.* v. *Union of India* - 2017-VIL-408-GUJ-CE]

Export under bond – No condition of receipt of foreign remittance: CESTAT Mumbai has allowed the benefit of Notification No. 42/2001-C.E. (N.T.) to the assessee in a case where the export proceeds were not received fully, some of the goods being rejected by the foreign importer. The Tribunal in this regard observed that Rule 19 of the Central Excise Rules, 2002 and Notification No. 42/2001-C.E. (N.T.), prescribing procedures for export under bond without payment of duty, did not require that the export proceeds should be realised for the exemption to be claimed. [*Gemsons Precisions Engineering Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-2744-CESTAT-MUM]

Cenvat credit admissible even when EOT cranes received in two parts: Mumbai Bench of the CESTAT has allowed Cenvat credit on EOT crane received in two consignments under two different invoices. The Tribunal was of the view that even if the EOT crane was received partly under one invoice and partly under another, it remained a single EOT crane and credit would be admissible on the full value of the crane as the same can be classified as capital goods. [*Aurangabad Electricals Ltd.* v. *Commissioner* - 2017-TIOL-2869-CESTAT-MUM]

Cenvat credit on material consumed in laboratory: Cenvat credit on material used in the laboratory located in the factory premises would be admissible, as per a recent decision of Mumbai Bench of CESTAT. It relied on the decision of *Central Cables Ltd.* [2016 (343) ELT 924 (Tri.-Mumbai)] which stated that no demand of reversal of Cenvat Credit can be made when the goods were not cleared from the factory premises and the value of the samples drawn but not removed were metamorphised in the final goods finally produced and removed from the factory on which duty was paid. It was held in the relied upon case that since there is no revenue loss, there was no requirement to reverse credit. [*Sun Pharmaceuticals Industries Ltd* v. *Commissioner* - 2017-TIOL-2997-CESTAT-MUM]

Valuation – Knowledge of trade discount: Allowing assessee's appeal in a case involving trade discount on damages suffered during transit, CESTAT Chennai has held that merely because the assessee did not produce any written agreement, it cannot be said that the trade discount is not known to the buyer at the time of removal of goods. The Tribunal in this regard observed that discounts were being given by the assessee as a normal trade practice, being followed by them for the past many years, and that such discounts are usually given under mutual understanding between parties. [*Hindustan Lever Ltd.* v. *Commissioner* - 2017-VIL-638-CESTAT-CHE-CE]

Refund of Cenvat credit when benefit under FTP availed: Rule 5 of the Cenvat Credit Rules does not, on the ground of exporters deriving benefits of schemes framed under the Foreign Trade Policy, debar refund of credit. Observing so, CESTAT Mumbai has held that availment of any benefit under a scheme of the Foreign Trade Policy would not impact entitlement for refund

under Cenvat Rule 5. Customs Circular No. 11/2009-Cus., as relied on by the Revenue department, was held to be not applicable by the Tribunal while it observed that enforcement of the circular cannot be allowed to migrate to the administration of other tax statutes without specific authority to do so. The Tribunal further was also of the view that in disposal of such refund claims, veracity of the claim that tax liability on the goods/services which have been utilized in the manufacture of export goods has been borne by the exporter, only needs to be considered, and that there can be no objection to the eligibility of Cenvat credit. [*Milan Laboratories India Pvt. Ltd.* v. *Commissioner* - 2017-VIL-650-CESTAT-MUM-CE]

Interest payable on refund of confiscated currency: In a case involving setting aside of confiscation of currency, Allahabad High Court has allowed the appeal of the assessee in respect of payment of interest for the period the currency was retained by the department. It was held that the government cannot deny the payment of interest merely for the reason that there is no express statutory provision for payment of interest on refund of such amount. Reliance in this regard was placed on Supreme Court decision in the case of *Tata Chemicals Ltd.* wherein it was held that when the collection is illegal, there is corresponding obligation on the department to refund such amount with interest. The Court also took note of the fact that the currency was deposited by the department in a fixed deposit that had earned interest. [*R.H.L. Profiles Ltd.* v. *Commissioner* – 2017 (352) ELT 349 (All.)]

Service Tax

Ratio decidendi

Cenvat credit of tax paid under RCM on sitting fees to independent Directors, available: Hyderabad Bench of the CESTAT has allowed assessee's appeal in respect of Cenvat credit of service tax paid under reverse charge mechanism on sitting fees paid to independent Directors during the course of business activity of manufacturing and clearing the pharmaceutical goods. Considering provisions of Notification No. 30/2012-ST, clause 5(A), the Tribunal was of the view that independent Directors' services were requisitioned by the company under the statute for the business activity. It was also observed that provisions of Rule 2(l) of Cenvat Credit Rules, 2004 mandated that any services in relation to the business like auditing and accounting will be eligible for availment of Cenvat credit. [*Aurobindo Pharma Limited* v. *Commissioner* - 2017-VIL-696-CESTAT-HYD-CE]

Demand – Closure of proceeding under Section 73(3): Observing that bar of Section 73(4) of the Finance Act, 1994 has to be legally justified with clear support, CESTAT Delhi has held that simply because the non-payment of tax extended beyond normal period, the same by itself would not bar the closure of proceedings in terms of Section 73(3). It was hence held that on payment of service tax along with interest, the matter should have been closed in terms of Section 73(3). [*Samara India Pvt. Ltd.* v. *Commissioner* – Final Order No. 53132/2017, dated 28-4-2017, CESTAT Delhi]

Belated submission of required information not fatal for exemption under Notification No. 18/2009-ST: Considering the issue as to whether fulfilment of conditions prescribed in Notification

No. 18/2009-S.T. belatedly, would disentitle the benefit of said notification to the assessee, CESTAT Mumbai has allowed the appeal of the assessee. The Tribunal in this regard observed that the procedures were not mandatory with no consequence of denial of the benefit in case of non-fulfilment. Fact that denial of exemption would make export goods non-competitive in the global trade, which would be contrary to basic principles of WTO, was also noted by the Tribunal in this regard. [*Praj Industries Ltd.* v. *Commissioner* – Order dated 7-4-2017 in ST/85644/13, CESTAT Mumbai]

Construction of residential complexes for military troops, not liable to Service tax: CESTAT New Delhi has held that residential complexes built for married military troops are not liable to service tax as they do not require any approval from any authority. The Tribunal was also of the view that tax liability cannot also be sustained on the ground that these complexes are built for personal use by the Ministry of Defence by allotment to married military personnel. It was hence held that there is no service tax liability for construction activities carried out by the assessee in connection with their contract with Ministry of Defence. [*Purvanchal Construction Works (P) Ltd.* v. *Commissioner* - 2017-VIL-670-CESTAT-DEL-ST]

Finishing services in respect of stadium not covered under Commercial or Industrial Construction service: CESTAT Mumbai has set aside demand of service tax on finishing services (laying of synthetic/wooden flooring) provided in respect of stadium, sports complex, etc., under Commercial or Industrial Construction services. The services were provided to Government of Maharashtra, Delhi Development Authority and Shri Sathya Sai Health & Education Trust. The Tribunal in this regard upheld the views of the assessee that the stadium cannot be considered as commercial construction. Reliance in this regard was placed on CBEC Circular and Tribunal's earlier order in the case of *B.G. Shirke Construction Technology Pvt. Ltd.* [*Freewill Infrastructure Pvt. Ltd.* v. *Commissioner* – Order dated 19-6-2017 in Appeal No. ST/720/12, CESTAT Mumbai]

Cenvat credit on renting of road situated outside factory: Observing that the rented road was used for transportation of goods, which is directly related to manufacture of final products, CESTAT Mumbai has allowed Cenvat credit of tax paid on renting of immovable property (road), situated outside factory. It was held that even though the road was outside factory, but if it was used in relation to manufacture of final product and overall business activity, the credit would be admissible under Rule 2(a) of the Cenvat Credit Rules, 2004. [*Commissioner* v. *Heidelberg Cement India Ltd.* – Order dated 29-6-2017 in E/1661 and 1663/12, CESTAT Mumbai]

VAT

Ratio decidendi

Demo cars are capital goods for dealer of cars: Holding demo cars as capital goods for the dealer engaged in sale of new cars, Delhi High Court has allowed the benefit of Section 6(3) of the Delhi VAT Act. The said provision allows for exemption from VAT in case of sale of capital goods after use, subject to certain conditions. Observing that prospective customers might like to 'test drive' or 'inspect' the demo car before making an informed choice of purchasing the new car, the Court held that it is natural that the assessee purchases some cars in its own name

for use as demo cars.

The Court was also of the view that it makes no difference whether the main business of the assessee is dealing in cars or some other business, in order for goods purchased in the assessee's own name and used for the purposes of the business to be treated as capital goods. Further, the Court did not find any significance in the fact that in the return filed by the assessee the value of capital goods purchased was specified as 'Nil'. It was observed that disclosure of information on capital goods in the returns would not make any difference to the assessee's taxable turnover. [*Triumph Motors* v. *Commissioner* - 2017-VIL-412-DEL]

Construction contracts include repair and reconstruction contract: Answering the question as to whether a contract for repairs or reconstruction of building is a "Construction contract" as contemplated by Section 42(3) of the Maharashtra VAT Act, the Bombay High Court has allowed the appeal filed by the assessee. Referring to various notifications and circulars, the Court in this regard observed that it was the consistent stand of the Department that the "construction contract" included repair, reconstruction and maintenance of building. It was held that there were no distinguishing features and definitions and/or intention reflected in any provisions about the nature of buildings, whether it was new building or old building. The Court was also of the view that as the repairs and reconstruction fell within the ambit of 'Construction Contract', in incidental or ancillary contract awarded before the completion of the contract, it also fell within the ambit of these provisions for all purposes. [*Painterior (India)* v. *State of Maharashtra* - 2017-VIL-389-BOM]

Fabric whitener – Classification under Rajasthan VAT: The question before the Rajasthan High Court was whether 'Ujala Supreme' Fabric/Laundry whitener falls in the category of industrial input liable to tax under Entry 69, Sub-entry 119 of Schedule-IV Part B or in the residual Schedule V of the Rajasthan Value Added Tax Act, 2003, as held by the Assessing Officer. Sub-entry 119 covered "*Synthetic Organic Colouring Matter, whether or not chemically defined, preparations based on synthetic organic colouring matter, excluding catechu or gambiar*". The product is made after dilution of AVP (a 'Synthetic Organic Colouring Matter') and apart from AVP, the only ingredient is water.

The Court, relying on several other judgements on the same issue, held that the product though was a highly diluted form of AVP, retained the essential characteristics of AVP. Further, it reiterated the well settled proposition that the residuary tariff entry can be resorted to only if a product does not squarely fall within any of the specified entries. It was also held that where in a case of classification of entries, two views are possible, question of levy of penalty does not arise. [*Asst. Commissioner* v. *Jyoti Laboratories* - 2017-VIL-387-RAJ]

Interest liability when same not mentioned in assessment order: The issue before the High Court was whether the petitioner was liable to pay interest under the U.P. Tax on Entry of Goods into Local Areas Act, 2007 when the same was not directed in the assessment order. The Court noted that there is no specific provision or power conferred on the Assessing Officer to determine the amount of interest for the reason that liability of payment of interest is automatic under the Act itself. The High Court was of the view that direction towards payment of interest on delay in payment of entry tax was not necessary as the provisions of the Act mandated that interest was payable at the specified rate in case of failure to pay tax within the stipulated period. It was held that as the petitioner had deposited entry tax after a delay of 15 months, the liability

of interest under the Act was attracted, even though the same did not find mention in the assessment order. [***APL Appolo Tubes Ltd.* v. *Deputy Commissioner Commercial Tax*** - 2017-VIL-344-ALH]

Multi-function network printers – Classification of: The Supreme Court has refused to interfere with the decision of the Madras High Court in *Canon India,* 2015-VIL-68-MAD. The Madras High Court, considering the nature of the goods and its predominant use, had held that multi-function network printers sold as 'Image Runner' were classifiable in Entry No. 18(i) of Part B of the Tamil Nadu General Sales Tax Act as 'peripherals' of a computer as the same was an input and output device which worked in conjunction with the computer. The department's appeal was dismissed by the Supreme Court. [*State of Tamil Nadu* v. *Canon India Pvt. Ltd.* - 2017-VIL-26-SC]

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