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Article

Treatment of vouchers under GST law

By Devanu Roy Choudhury

Introduction

With the increasing trend of electronic commerce, adoption of prepaid vouchers and gift cards has reached new heights. Vouchers are instruments which are redeemable on its face value against supply of goods or services. For example, multi-brand retailers supply gift cards and certificates to customers which can be redeemed against purchase of merchandise of value equal to the face value as printed on such gift card or certificate. Taxability of vouchers under the erstwhile Sales Tax (or Value Added Tax) and Service Tax law was a tricky and contentious issue, with disputes often travelling to the Apex Court for final adjudication. The Legislature has sought to tax vouchers under the Goods and Services Tax (“**GST**”) regime, by including specific provisions in the law. However, there are still unresolved problems which may lead to controversy in the near future.

Regulation by the Reserve Bank of India

Before we delve into the taxability of vouchers under the GST law, it is pertinent to understand the manner in which such payment instruments are regulated in India. A payment system, which enables payment to be effected between a payer and a beneficiary, is governed in India under the Payment and Settlement Systems Act, 2007 (“**PSS Act**”).¹ Pre-paid vouchers are regulated by the Reserve Bank of India (“**RBI**”) in India as Prepaid Payment Instruments (“**PPI**”) under the PSS Act and such instruments cannot be set up and operated by an entity without

the prior approval of RBI.² RBI identifies three types of PPIs – Closed System PPIs, Semi-closed System PPIs and Open System PPIs³, out of which the first two are relevant for the present discussion. ‘Closed System PPIs’ are issued by an entity for facilitating the purchase of goods or services from that entity only and are not classified as a payment system requiring approval by the RBI. On the other hand, ‘Semi-closed System PPIs’ are used for the purchase of goods or services at a group of clearly identified merchant locations / establishments, which have a specific contract with the issuer to accept PPIs as payment instruments and require prior authorisation from RBI. PPIs in the form of gift instruments may also be issued, but such instruments are non-reloadable.

EU-VAT’s Voucher Directive

In June 2016, member States of the European Union (“**EU**”) adopted Council Directive 2016/1065⁴ (“**Voucher Directive**”), which inserts rules relating to treatment and taxability of vouchers into Council Directive 2006/112/EC⁵ (“**EU-VAT**”).⁶ Member States have to necessarily amend their national legislations till 31st December 2018 to give effect to the Voucher Directive. The Voucher Directive defines ‘voucher’ as an instrument where there is an obligation to accept it as consideration or part consideration for supply of

¹ Refer Section 2(1)(i) of the Payment and Settlement Systems Act, 2007.

² Refer RBI Circular No. RBI/DPSS/2017-18/58, dated 11th October, 2017 for master directions relating to issuance and operation of prepaid payment instruments.

³ *Ibid.*

⁴ Council Directive (EU) 2016/1065, dated 27th June, 2016.

⁵ Council Directive (EU) 2006/112/EC, dated 28th November, 2006.

⁶ Council Directive 2006/112/EC (EU-VAT) contains the scheme of European Union’s common system of VAT.

goods or services and where such goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.⁷ The Voucher Directive further recognises two types of vouchers – ‘single-purpose voucher’ (“**SPV**”), where the place of supply of goods or services to which the voucher relates and the applicable VAT are known at the time of issue of voucher, and ‘multi-purpose voucher’ (“**MPV**”), which are defined as vouchers other than a single-purpose voucher.⁸ Each transfer of SPV by a merchant is regarded as a supply of goods or services to which the voucher relates and the actual handing over of goods or provision of services becomes irrelevant.⁹ The underlying principle is to treat the supply of SPV as the supply of goods or services represented by such SPV itself, even though a registered person may be merely supplying a piece of paper or its electronic equivalent. On the other hand, in case of MPV, supply takes place with the actual handing over of goods or provision of services.¹⁰

Indian GST law on vouchers

The GST legislation in India has borrowed the definition of ‘voucher’ from Voucher Directive.¹¹ Though India’s GST law does not identify SPV and MPV by name, the same underlying principle has been borrowed from the Voucher Directive to its provisions relating to time of supply.¹² It provides that in case the supply is identifiable at the time of issuance of voucher, the time of supply shall be the date of issue of such voucher and where such supply is not identifiable at the time of issuance of voucher, the time of supply shall be the date of redemption of

such voucher. The provisions however do not provide clear criteria about the identification of supply at the time of issuance. Placing reliance on the EU’s Voucher Directive, it can be said that the supply may be said to be identifiable at the time of issuance of voucher if place of supply of goods or services to which the voucher relates and the applicable GST are known at the time of issue of voucher. The time of supply in such cases shall be the issuance of the voucher.

In case of SPV, GST is due irrespective of whether such voucher is actually redeemed or not. For example, a voucher which entitles the user to download only e-books from the merchant’s website will be an SPV, whereas a voucher which entitles the user to buy physical books and download e-books may be an MPV, as books and e-books are subject to different rates of GST. Another example of SPV is a voucher issued by a restaurant which can be redeemed against dining in the restaurant and availing the take away service of the restaurant, as both are taxable at the same GST rate. However, if such voucher is also redeemable against availing of outdoor catering service of the restaurant, such voucher may qualify as an MPV. In view of the above distinction between SPV and MPV, disputes regarding the nature of a voucher are bound to crop up in the future. Businesses issuing SPVs may need to re-visit their practices so as to appropriately structure their voucher schemes as MPVs which may entail certain advantages.

The dispute as to whether vouchers qualify as ‘goods’ or ‘services’ was settled by the Supreme Court in *Sodexo* case¹³, which held that pre-printed meal vouchers were not ‘goods’ but the supply of such vouchers constituted a ‘service’. Moreover, this distinction between goods and services is no longer relevant after the enactment of GST in India. However, another issue that arises is whether such prepaid vouchers or gift cards qualify as ‘money’ since these instruments require prior approval from RBI before their issuance. As per GST law, ‘money’

⁷ Refer Article 30a of the Council Directive (EU) 2016/1065.

⁸ Supra footnote 6.

⁹ Refer Article 30b of the Council Directive (EU) 2016/1065.

¹⁰ *Ibid.*

¹¹ Refer Section 2(118) of the CGST Act.

¹² Section 12(4) in case of supply of goods against a voucher and Section 13(4) in case of supply of services against a voucher.

¹³ *Sodexo SVC India Pvt. Ltd. v. State of Maharashtra*, (2015) 16 SCC 479.

includes an instrument recognised by the RBI when used as a consideration to settle an obligation or exchange with Indian legal tender of any denomination.¹⁴ As evident from the definition, had such vouchers or gift cards been capable of being converted into equivalent money, then such instruments could have qualified as 'money'. But, vouchers or gift cards (closed and semi-closed pre-payment instruments) can be redeemed only against goods or services. Moreover, 'money' as a legal tender has acceptability across the length and breadth of the country, whereas a voucher can be redeemed only at the premises of the issuer or the participating merchants. The Court in *Sodexo Pass Services*¹⁵ case has held that vouchers are not substitutes for carrying cash as is the case with debit card/credit card.

Conclusion

Use of alternative modes powered by technology for making payment towards procurement of goods and services is becoming sine qua non in the present era. As new forms of vouchers emerge, coupled with the treatment of the same under the new law of GST, issues are bound to be more pronounced. Importance of a pro-active strategy to re-examine the present system and devising legally sound yet compliant mechanism needs no greater emphasis. As every business house is employing voucher system in some way or another today, attendant issues like valuation and input tax credit may also require attention.

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Goods and Services Tax (GST)

Notifications, Circulars and Press Releases

Last date for filing various Returns and Declarations extended: Last date for submission of Returns GSTR-5 and 5A for the months from July 2017 to December 2017, has been extended to 31st of January, 2018. GSTR-5 is required to be filed by a non-resident taxable person, while GSTR-5A is required to be filed by a person supplying online information and database access or retrieval service from a place outside India to a non-taxable online recipient. Similarly Form GST ITC-01 can now be submitted by registered persons till 31-1-2018. This declaration is required to be submitted by registered persons, who have become eligible, during the months of July - November, 2017, to

avail the input tax credit under Section 18(1) of the CGST Act. Notification Nos. 67 to 69/2017-Central Tax, all dated 21-12-2017 have been issued for extending the due dates as mentioned above.

Last date for submission of Form GST CMP-03, providing for intimation of details of stock held on the date preceding the date from which the option to pay tax under Composition Levy is exercised, has also been extended till 31-1-2018. Order No. 11/2017-GST, dated 21-12-2017 has been issued in this regard in supersession of Order No. 5/2017-GST.

CGST Rules amended to revise various forms and Returns: GSTR-1 and Form GST RFD-01 and 1A have been amended by Notification No. 70/2017-Central Tax, dated 21-12-2017. While Table 6 of the GSTR-1 relating to zero rated

¹⁴ Section 2(75) of the CGST Act.

¹⁵ *Sodexo Pass Services India Pvt. Ltd. v. Commissioner of Service Tax*, 2014 (33) STR 561 (Tri.-Mum.).

supplies and deemed exports, has been amended, statements under CGST Rule 89(2)(h) and (g) have been inserted in Forms RFD-01 and 1A. Further declaration under Rule 89(2)(g) has been inserted in Form RFD-1A, while said declaration has been substituted in Form RFD-01.

Nationwide e-way bill system to come into effect from 1-2-2018: Rules for implementation of nationwide e-way bill system for **inter-State** movement of goods on a compulsory basis will be notified with effect from 1st of February, 2018. According to the Press Release issued by Ministry of Finance on 16-12-2017, after the 24th Meeting of the GST Council through video conferencing, States can choose any date before 1st June, 2018 for implementation of e-way bill for **intra-State** movement of goods. It is stated that nationwide e-way bill system will be rolled out on a trial basis latest by 16-1-2018.

Refund on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger – Manual procedure: CBEC has issued a circular clarifying the procedure in respect of manual filing and processing of refund claims on account of inverted duty/tax structure, deemed exports and excess balance in electronic cash ledger. Circular No. 24/24/2017-GST, dated 21-12-2017 states that the provisions of Circular No. 17/17/2017-GST, dated 15-11-2017 shall also be applicable to such types of refunds. The refund claim has to be filed on monthly/quarterly basis after filing the details in Form GSTR-1 for the relevant tax period and Form GSTR-3B for the last tax period. Refund will be sanctioned provisionally at present since the due date for filing GSTR-1 has been extended while the revised last date is yet to be announced for GSTR-2 and 3.

Advance Rulings – Procedure for manual filing of application and appeal: CBEC has prescribed conditions and procedures for manual filing of application for advance ruling and for

appeal to the Appellate Authority for Advance Ruling. Application for obtaining advance ruling has to be made in FORM GST ARA-01, in quadruplicate clearly stating the question on which advance ruling is sought. Similarly, an appeal against the advance ruling has to be made in quadruplicate, in FORM GST ARA-02 or FORM GST ARA-03. Though application/appeals have to be filed manually till advance ruling module is made available on common portal, the fee is required to be deposited online. The applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”, and then use the temporary ID to pay the prescribed fees. Circular No. 25/25/2017-GST, dated 21-12-2017 has been issued in this regard.

Invoice in case of supply of artwork on approval basis through galleries: CBEC has clarified that an art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place (within the same State or outside it), on a delivery challan along with the e-way bill wherever applicable. Circular No. 22/22/2017-GST, dated 21-12-2017 issued to clarify so, states that the invoice may be issued at the time of actual supply of art work by the gallery. It is also stated that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

Maintenance of books of accounts at principal place of business instead of additional place: Principal and the auctioneer, in case involving stock of goods like tea, coffee, rubber, etc., meant for supply through an auction, have been allowed to maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s). Circular No.

23/23/2017-GST, dated 21-12-2017 issued for this purpose however states that it would be applicable to supply of tea, coffee, rubber, etc., where the auctioneer claims ITC in respect of the supply made to him by the principal before the auction of such goods and the said goods are supplied only through auction.

Ratio decidendi

Absence of TDF only a technical breach: Observing that the detaining authority had not formed any opinion on intention of the assessee to evade tax, in a case involving absence of Transit Declaration Form (TDF), the Allahabad High Court has held that it was difficult to sustain penalty. The seizure order and the penalty order were quashed, directing release of goods and the vehicle. Terming absence of TDF as a technical breach, the Court noted that there was no allegation that the goods were being or had been unloaded inside the State of U.P. Further, since the goods were detained near the exit point in the State of U.P., the Court was of the view that the goods were in fact being transported from Rajasthan to Assam as disclosed in the tax invoice and other documents. As regards mis-description of certain goods, the Court observed that the proper officer should have made an endorsement to that effect and allowed the goods to pass through the State of U.P. [*Ramdev Trading Company v. State of U.P.* - Writ Tax No. 779 of 2017, decided on 30-11-2017, Allahabad High Court]

Anomalies in ITC availability in hotel bookings: Delhi High Court has directed the Central Government to examine the anomalies as asserted by the assessee involved in the business of booking tours and hotel packages. According to the petitioner, since they are not registered in each State, they are unable to avail ITC of SGST charged by hotels located outside Delhi. The petition also points out that different provisions are applicable in case of

online bookings through web travel portals. The Court further directed the Central Government to examine whether the matter should be placed before the GST Council. The matter will be listed on 8-2-2018. [*D Pauls Travel and Tours Ltd. v. Union of India* - 2017-TIOL-37-HC-DEL-GST]

EU VAT - No mandatory requirement to mention address on invoice: The Court of Justice of the European Union has held that for the purpose of deduction of VAT [ITC in India] by the recipient of goods or services, there is no requirement that economic activities of the supplier are to be carried out at the address indicated on the invoice issued by that supplier. The Court in this regard observed that aim of indicating address is to identify issuer and thus to enable tax authorities to carry out checks, and that detailed rules regarding indication of address cannot be a decisive condition in this regard. The referring court had held that the assessee was not entitled to the input tax deduction it had claimed on the basis of another company's invoices since the latter did not carry out any economic activity itself at the address on its invoices. [*Rochus Geissel v. Finanzamt Neuss* – Judgement dated 15-11-2017 in Joined Cases C-374/16 and C-375/16, CJEU]

Valuation – Discount deduction under EU VAT: The Court of Justice of the European Union has held that discount granted by a pharmaceutical company to a private health insurance company, in case of supply of medicinal products through pharmacies which made supplies to persons covered by such private health insurance, would not be includible in the VAT liability of the pharmaceutical company. The private health insurance company had reimbursed the purchase price of the medicinal products to the persons it insured and the pharma company was supposed to reimburse the pharmacies for the discount. The Court took

note of the fact that discount was fixed by law and that the pharmaceutical company was obliged to grant it to private health insurance companies who must be regarded as being the final consumer of supply made by the

pharmaceutical company. [*Finanzamt Bingen-Alzey v. Boehringer Ingelheim Pharma GmbH & Co. KG* – Judgement dated 20-12-2017 in Case C-462/16, CJEU]



Customs

Notifications, Public Notices and Circulars

FTP 2015-20 mid-term review unveiled: Ministry of Commerce has, after a mid-term review, unveiled the revised Foreign Trade Policy and the Procedures, on 5th of December, 2017. While MEIS incentives had already been revised upwards for two sectors – readymade garments and made-ups from 2% to 4%, benefits under said scheme has also been revised for number of other items, broadly increasing the incentive by 2% points. SEIS incentives have also been increased by 2% for certain notified services.

A new trust based self-ratification scheme for duty free import of raw material for export production has also been introduced wherein Authorised Economic Operators (AEOs) would be allowed to self-certify requirement of inputs and take an authorisation, instead of getting ratification of the Norms Committee. The scheme, according to Ministry of Commerce, will expedite export of new products, particularly in pharma, chemicals, textiles and engineering sectors, which have dynamic input requirement.

EPCG Scheme – Revisions: Capital goods installed at one unit have been permitted to be shifted to another unit as appearing in the IEC and RCMC of the EPCG holder, subject to production of fresh installation certificate. Further, clubbing of authorisations have been allowed in cases where EO period has expired, provided these have been issued under the same policy period.

EOU Scheme – Revisions: Value limit of 50% of FOB value of exports, on DTA sale of goods by an EOU has been removed. Consequently, restrictions on DTA sale of motor cars, alcoholic liquors, books and tea, at concessional rate of duty, have been removed. However, DTA sale of pepper & pepper products and marble is not permissible. Notification No. 41/2015-20 and Public Notice Nos. 43 to 46/2015-20, all dated 5-12-2017 have been issued in this regard.

Exemptions - Norms for Bank guarantee, cash security and surety relaxed: CBEC has relaxed the norms for furnishing of bank guarantee, cash security and surety for the purpose of benefit under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. According to Circular No. 48/2017-Cus., dated 8-12-2017, bank guarantee, cash security or surety is not required in case of AEOs, PSUs and Govt. departments. Manufacturers and service providers having a turnover of more than INR 1 crore and filing GST Returns would be required to give bank guarantee / cash security of not more than 5% of import duty foregone.

Basic Customs duties enhanced on many electrical/electronic goods: Ministry of Finance has enhanced Basic Customs Duty on number of electrical or electronic products, including on microwave ovens, telephones for cellular/wireless networks, CCTV or IP cameras, colour TVs, LED

lamps and smart meters for electricity. BCD has also been enhanced on LCD, LED or OLED panels for TVs. Notification Nos. 91 and 92/2017-Cus., both dated 14-12-2017 have been issued amending the First Schedule to the Customs Tariff Act and the jumbo Notification No. 50/2017-Cus., providing for effective rate of Customs duty.

Chickpeas or Masoor (Lentils) – BCD increased: Chickpeas and Masoor are no longer exempted from Basic Customs Duty (BCD). Notification No. 50/2017-Cus., has been amended to remove these two types of pulses from the exemption. These products will now attract BCD as prescribed under the First Schedule to the Customs Tariff Act, 1975. Notification No. 93/2017-Cus., dated 21-12-2017 has been issued in this regard.

Customs (Furnishing of Information) Rules, 2017 notified: Ministry of Finance has, on 14-12-2017, notified the Customs (Furnishing of Information) Rules, 2017. Coming into force from 1-1-2018, the Rules prescribe for furnishing of information required under Section 108A(1) of the Customs Act, 1962, electronically. According to the new Rules, banking company, as per Section 45A(a) of the RBI Act, would be required to furnish details of foreign exchange transactions made or received by any person, to the Directorate of Revenue Intelligence, in a specified format. Notification No. 114/2017-Cus. (N.T.) has been issued for this purpose.

Mandatory e-sealing postponed again: CBEC has again postponed the provisions for mandatory e-sealing of export containers. The procedure is now mandatory from 1st of March 2018 for exporters who have been permitted self-sealing, AEO exporters and those availing supervised sealing at their premises for 15 locations (ports and ICDs). According to Circular No. 51/2017-Cus., dated 21-12-2017 e-sealing procedure will be mandatory for all ports and ICDs, other than 15 specified, from 1st of April,

2018. Exporters who have already switched may however continue with the new procedure.

Exports - Refund of Countervailing duty as drawback: Countervailing duty (CVD) levied under Section 9 of Customs Tariff Act is eligible to be refunded as drawback, in case of exports. CBEC has clarified that drawback of countervailing duties, imposed on inputs which were actually used in exported goods, can be claimed under an application for brand rate. According to Circular No. 49/2017-Cus., dated 12-12-2017 when imported goods subject to such CVD are exported as such, drawback payable under Section 74 will also include incidence to such duty.

Payment allowed in Indian Rupees at duty free shops: Facility of payments in Indian rupees, through INR debit cards or credit cards will now be available at Duty Free Shops (DFSs), without any need for conversion of foreign currency into Indian Rupees. Circular No. 50/2017-Cus., dated 18-12-2017 in this regard also states that DFSs shall, henceforth, mandatorily display the price of all goods on sale in Indian rupees only. However, any passenger desiring to make payment in foreign currency shall be charged in foreign currency by applying the rate of exchange notified under Section 14 of the Customs Act, 1962.

Customs valuation – Utilisation of Transfer Pricing information: World Customs Organisation recently finalised Case Study 14.2, covering a scenario where Customs took into account transfer pricing information in course of verifying Customs value. Customs in this case arrived at the conclusion that import price was not settled in a manner consistent with normal pricing practices, as there was higher gross margin of the importer during relevant period. This document adopted by Technical Committee on Customs Valuation however notes that the case study does not indicate any obligation on Customs to utilize OECD Guidelines.

Ratio decidendi

Valuation based only on Chartered Engineer's certificate, not correct: Chartered Engineer is not expected to do costing of raw material and manufacturing cost and expenses to arrive at final value of the imported goods. Setting aside demand against the importer, CESTAT Delhi observed that how the costing was arrived at was not clear. Further, noting that goods were manufactured outside India, and that costing of such manufacture and other incidental charges are not available in India, the Tribunal held that methodology of simply relying on CE Certificate, was not acceptable. [*Impex Steel & Bearing v. Commissioner* – Final Order No. 57284/2017, dated 18-10-2017, CESTAT Delhi]

Valuation – Not practical to compare one brand with another: CESTAT Delhi has held that it is not practical to have a comparison of one brand with another for the purpose of Customs duty. It rejected the assessee's view that there were comparable goods though of different brands which could have been examined to re-fix the assessable value. The Tribunal in this regard observed that it was apparent that different brand names carry different

values, and hence such determination would be highly subjective. [*Anil Kumar v. Commissioner* – Final Order No. 57650-52/2017, dated 6-11-2017, CESTAT Delhi]

Refund – Challenge to assessment order: In a case where the importer had paid an excess amount of duty in the form of the CVD component paid by it under protest, CESTAT Delhi has held that refund claim shall lie not only in a case, where the Customs Duty has been paid in pursuance of an assessment order, but also where the duty has been borne by the assessee-importer. Observing that assessee had objected to the assessment made by the authorities, in consonance with the audit objections raised for the earlier period, and had also represented the authorities regarding its claim for the exemption benefit, it was held that the case would fall under the second alternative provided in clause (ii) in Section 27 *ibid*, i.e. 'borne by him'. Reliance in this regard was placed on Delhi High Court judgement in the case of *Aman Medical Products* while Supreme Court decision in the case of *Priya Blue Ltd.* was distinguished. [*Delhi International Airport Pvt. Ltd. v. Commissioner* - 2017-VIL-1012-CESTAT-DEL-CU]



Central Excise and Service Tax

Ratio decidendi

Retention fee of hospitals not liable to Service tax under BSS: CESTAT Delhi has held that collection charges/facilitation fee retained by hospital out of the amount collected from patients is not liable to Service Tax under Business Support Services. Demand was set aside observing that agreement on revenue sharing between hospital and doctors did not specify any facility as infrastructural support to doctors and

the amount was necessary to provide healthcare service. Further, observing that doctors were not in 'business or commerce', and that the tax will defeat the exemption provided to health care services, it was held that there was no legal justification to tax the share of clinical establishment on the ground that they had supported the commerce or business of doctors by providing infrastructure. [*Sir Ganga Ram Hospital v. Commissioner* – Order dated 6-12-

2017 in Appeal No. ST/1844/2010, 51751/2014, 51815/2015, 50125/2014, 51764/2014, 50367/2016, CESTAT Delhi]

GTA service - Service in public interest: CESTAT Kolkata has allowed appeals of the Government department (Sikkim Nationalized Transport) providing vehicles to Army for transport of goods and personnel. Revenue department's view that there was provision of GTA and Rent-a-cab service, was rejected by the Tribunal observing that the activity was in pursuance of public interest. It was noted that the activity performed was part of statutory function of the State and that the Government was bound to reach the necessities, including food to people of Sikkim at the time of dislocation of traffic. [*Sikkim Nationalized Transport v. Commissioner* - 2017-TIOL-4365-CESTAT-KOL]

Refund - Unjust enrichment when duty promised to be refunded: CESTAT Delhi has rejected the appeal filed against denial of refund, in a case where the assessee had agreements with their buyers that they would continue to contest the issue with the department and in case the same is settled in their favour, the assessee would return the extra amount to buyers. The Tribunal in this regard noted that answer to the basic question - whether the assessee has passed on the incidence of duty, was in the affirmative, and that such contracts would not satisfy stipulations of Excise Section 11B. [*BSL Ltd. v. Commissioner* – Final Order No. 57653/2017, dated 6-11-2017, CESTAT Delhi]

Convention service – Scope of words ‘general public’: CESTAT Delhi has upheld liability of an assessee involved in holding seminars to discuss various subject matters in different fields and topics, under Convention service. Rejecting the plea that seminars were organised for general public, it held that when a person takes part in an activity with reference to his expertise, skill, etc., he is no more a part of general public. The

Tribunal was of the view that such person becomes a part of a select group or recognized group of public with certain common basis. [*III v. Commissioner* – Final Order No. 57349, dated 25-10-2017, CESTAT Delhi]

Valuation – Depot sale invoice subsequent to factory clearance, not relevant: CESTAT Delhi has held that mandate given by Section 4(1)(b) of Central Excise Act read with Rule 7 of the Valuation Rules, for taking contemporaneous depot prices in case of depot sales, cannot be extended to depot sale invoice which is nearly one month subsequent to the date of clearance from factory. The goods in this case were stock transferred first to warehouse and subsequently to depot from where they were sold to the dealers. [*India Yamaha Motor Pvt. Ltd. v. Commissioner* – Final Order No. 57444/2017, dated 24-10-2017, CESTAT Delhi]

Branded jewellery - Mere use of minute-sized two letters not to be called assessee's ‘brand name’: The gold supplier's initials viz “AT” were being embossed on jewellery items by the goldsmith working on job work basis. Considering the fact that the assessee had a different trade mark/ brand name registered in their name which was not used for the subject goods, viz. articles of jewelry, CESTAT Delhi has held that mere use of minute sized two initial letters “AT” cannot be called brand name of the assessee. [*Commissioner v. Anopchand Trilokchand Jewellers P. Ltd.* - 2017 (356) ELT 271 (Tri. - Del.)]

No liability under BAS for services rendered to Health authorities or State Government: CESTAT Delhi has held that there can be no tax liability, under Business Auxiliary Service, on the services rendered by the assessee to the Health Authorities or State Government. The State Government in the dispute, was undertaking programmes for Public Health and Awareness Campaign for Polio Eradication. The Tribunal

was of the view that there can be no promotion of such service by the assessee to attract tax liability under BAS. It took note of the fact that there was no service provider service recipient relationship in such activity carried out by the Public Health Authorities as part of the Government function, and that there was no payment or arrangement with individual service recipient for any service. [*Smriti Television Media & Films (P) Ltd. v. Commissioner* - Final Order No.57434/2017, dated 27-10-2017, CESTAT Delhi]

Dummy packs distributed as advertising material not dutiable: The assessee had procured inputs for the manufacture of packing materials for packing the goods manufactured by it as well as for making of dummy packs which were not sold but were only distributed as advertising material. Allahabad Bench of CESTAT in the said case has held that the dummy packs do not attract Central Excise duty and thus, the question of their classification does not arise. Further, it was held that the appellant should continue debit of Cenvat credit availed on inputs being used for manufacture of such dummy packs. [*International Tobacco Company Limited v. Commissioner* - 2017 (356) ELT 254 (Tri. – All.)]

Cenvat credit not available on capital goods received directly at job worker's premises: CESTAT Chennai has held that Cenvat credit

was not available to the assessee on capital goods which were received directly at job worker's premises. Rejecting contention that permission under Rule 4(5)(a) of the Cenvat Credit Rules would suffice for the purpose of Cenvat credit as well, the Tribunal observed that such permission or permission under Notification No.214/86-C.E. is only to facilitate movement of capital goods to the job worker, and that Cenvat credit on such capital goods was not covered under such permission. [*Sterlite Industries (I) Ltd. v. Commissioner* - 2017-VIL-1029-CESTAT-CHE-CE]

Air jet filters and super jet filters designed to be used solely or principally with machines of Heading 8437, classifiable under Heading 8437: Bangalore Bench of the CESTAT has held that air jet filters and super jet small filters, which find application in the rice milling industry, are classifiable under Heading 8437 of the Central Excise Tariff as parts suitable for use solely or principally with machines of Heading 8437, in terms of Note 2 to Section XVI. The air jet filters in question were used for removing dust particles from grains & seeds whereas the super jet small filters were used to separate seeds from grains. Revenue department had sought classification under Heading 8421 10 of the Tariff. [*Commissioner v. Bulhar (India) Ltd.* - 2017 (356) ELT 264 (Tri- Bang.)]

VAT

Ratio decidendi

Contract for supply and erection of equipment when not 'works contract' but only sale: In a case where the assessee was to supply equipment and erect it on the site, the

Bombay High Court, while referring to various provisions of the contract, has held the transaction as of sale, and not of works contract. The Court in this regard took note of the fact that out of the total contract value of Rs. 22 crore, Rs. 20.22 crore was the value of goods supplied and

the remaining minuscule part Rs. 1.78 crore included transportation, handling, insurance, erection, testing and pre-commissioning. It was noted that the site was prepared by the purchaser, with assessee only fixing the compressors, and that there was nothing in the contract to indicate that the guarantees also

included the entire erection work. Applying the tests as provided for by the Supreme Court in the case of *Kone Elevator*, it was held that the contract was one for supply and erection of equipment, supply of equipment being the dominant purpose. [*Bharat Heavy Electricals Ltd. v. State of Maharashtra* - 2017-VIL-638-BOM]

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