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Article

Why tax liquidated damages?

By **Krithika Jaganathan & V. Panchanathan**

Performance is the essence of a contract and hence parties to contract generally incorporate their expectation in terms of damage caused by failure of either party to perform its obligations completely or as per the agreed terms.

The contract may prescribe damages for deficiency in the performance of contract known as 'liquidated damages'. It is to dissuade unsatisfactory performance or non-performance. For instance, contracts state that time is the essence of contract, and any delay invites say, 1% of the value of the contract for every week of delay and the like. Similarly, it is common to forfeit earnest money deposit (EMD) from a bidder in case he wins the bid but fails to act thereafter. This forfeiture clause is a deterrent for non-serious bidders entering the fray. Other examples may be rent for delay in lifting goods; agreeing to shoulder testing charges for samples to meet standards; cost of removing rejected goods etc.

Payment of damages or the forfeiture of deposit does not restitute the person to whom loss or damage is caused. Liquidated damages are in nature of a measure of damages to which parties agree, rather than a remedy. By charging damages or forfeiture, one party does not accept or permit the deviation of the other party. It is an expression of displeasure. Liquidated damages cannot be said to be the desired income or result of the contract.

However, there is a view that liquidated damages and forfeiture are consideration for the non-performance/delayed performance. This view is based on the provisions under the erstwhile Service Tax Law, *"agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"* was a declared service under Section 66E(e) of Finance Act, 1994. Similar provision has been incorporated in Central Goods and Services Tax Act, 2017 also (CGST Act) under Schedule II. Under GST law, the taxable event is supply which has been defined widely and includes all forms of supply for a consideration which is made in course of or in furtherance of business. The act of tolerance or agreeing to refrain from an act is treated as supply of service under the CGST Act. As per these provisions there should be an agreement between the parties to either refrain from doing an act, or to tolerate an act/situation or to do an act.

However, liquidated damages may hardly satisfy the essentials of supply or service. As discussed above the purpose of agreeing to payment of liquidated damages is to ensure performance. It cannot be said to be a consideration for tolerating non-performance. The provisions of law cited above thus cannot be applied to situations where the contract does not want delay in performance rather says that time is the essence of the contract. When the aggrieved party receives damages from the defaulting party it cannot be said that the aggrieved party is tolerating the non-performance or delayed performance.

The view supporting Service Tax liability on liquidated damages and forfeiture was based on the premise that the party had 'tolerated' the non-performance. A contract cannot be read to be

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agreeing to a breach of a contract. A breach of contract is not tolerated and that is why an amount is imposed to deter breach. The contract is for execution and not for the breach.

An argument taken was that payment of liquidated damages and forfeiture of EMD would amount to consideration liable to tax and on that assumption, exemption was / has been granted from Service Tax / GST in case of Government departments, municipalities, panchayats, etc. [Notification 22/2016-ST & Notification 12/2017 Centre Tax (Rate) refer.] It is settled law[1] that an exemption entry cannot presuppose the levy itself.

International jurisprudence also supports the view that liquidated damages cannot be a consideration for supply/tolerance of an act. We may refer to Ruling GSTR 2001/4 (GSTR) & GSTR 2003/11 issued by the Australian Tax Office, where it has been clarified that damage or loss or injury does not constitute a supply under the provision of Australian GST. The European Court of Justice in the case of *Societe Thermale* vs. *Ministere de l'Economie* [2007] S.T.I 1866, Celex No. 605J0277 has held that where the client exercises the cancellation option available to him as compensation for the loss suffered and which has no direct connection with the supply of any service for consideration, it is not subject to tax. The Court of Appeal (UK) in case of *Vehicle Control Services Limited* (2013) EWCA Civ 186, has said that payment in the form of damages/penalty for parking in wrong places/wrong manner is not a consideration for service as the same arises out of breach of contract with the parking manager.

It is time that the Government clarifies the issue with an illustrative list of what constitutes tolerance of an act. This would be of great help to the taxpayers.

[The authors are respectively Senior Associate and Joint Partner, Lakshmikumaran & Sridharan, Chennai]

Goods and Services Tax (GST)

Act, Notifications, Circulars and Press Releases

GST (Compensation to States) Amendment Bill, 2017 receives Presidential assent: GST (Compensation to States) Amendment Bill, 2017 has received the assent of the President of India on 19th of January, 2018. The Act repeals Ordinance - Goods and Services Tax (Compensation to States) Amendment Ordinance, 2017, issued earlier to enhance Compensation Cess on mid-segment cars, large cars and Sports Utility Vehicles (SUVs). It may be noted that Cess was increased after the decision in this regard was taken by the GST Council and Notification No. 5/2017-Compensation Cess (Rate) was issued by the Ministry of Finance on 11-9-2017.

GST rates to be revised on number of goods: GST Council has on 18-1-2018 in its meeting recommended revision of tax rate on number of goods. While the rate is being reduced on number of items including old and used motor vehicles, there is a slight increase in GST rates on cigarette filter rods and rice barn (other than de-oiled). Further, exemption from Compensation

[1] *Kiran Spinning Mills, Thane vs. Collector of Spinning Mills, Bombay II* reported at *1984 (17) E.L.T. 396 (Tribunal)*,
Commissioner of C. Ex. & Cus., Kerala vs. Larsen & Toubro Ltd. reported at *2015 (39) S.T.R. 913 (S.C.)*

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Cess on old and used vehicles and ambulances has also been recommended.

GST rate is also proposed to be reduced on sugar boiled confectionary, drinking water packed in 20 litres bottles, fertilizer grade phosphoric acid, bio-diesel, certain bio-pesticides, drip irrigation system including laterals, sprinklers, mechanical sprayer, tamarind kernel powder, velvet fabric, diamonds and precious stones, and de-oiled rice bran. According to the Press Release, these changes in GST rate will be effective from 25th of January, 2018.

GST Council recommends revision in tax rate for many services: Rate of GST on number of services are proposed to be revised from 25th of January, 2018. Among some major changes proposed by the GST Council in its meeting on 18-1-2018, it has been decided to reduce GST rate on construction of metro and monorail projects. Exemption from GST has been recommended, till 30-9-2018, on service of transportation of goods from India to a place outside India, by air or sea.

The latest recommendations also include exemption from IGST payable on supply of IPR services to the extent of duties and taxes leviable under relevant provisions of Customs Tariff Act read with IGST Act on part of consideration declared under Customs Act towards royalty and license fee includible in transaction value. Rate of tax on Works Contract Services (WCS) provided by a sub-contractor to the main contractor providing WCS to Central/State Government, Union territory, a local authority, a Governmental Authority or a Government entity, is also proposed to be reduced.

Late fees for filing of certain GST returns to be reduced: Late fee payable for failure to furnish FORM GSTR-1 (details of outward supply), FORM GSTR-5 (applicable in case of non-resident taxable person) or FORM GSTR5A (applicable in case of Online Information and Database Access and Retrieval services) is being reduced to Rs. 50 per day. This late fees will however be Rs. 20/day for NIL return filers. According to latest recommendations of the GST Council, after its 25th meeting on 18-1-2018, late fee payable in case of FORM GSTR-6 (applicable for Input Service Distributor) will also be Rs. 50/day.

Cancellation of registration – Relaxations recommended: GST Council has recommended to allow taxable persons who have obtained voluntary registrations to cancel such registration even before expiry of one year from the effective date of registration. According to the Press Release dated 18-1-2018 issued after the 25th meeting of the GST Council, the last date for filing FORM GST REG-29, for cancellation of registration by migrated taxpayers, will also be extended by three months, i.e. till 31st March, 2018.

GST exemption to hostel mess clarified: Ministry of Finance has on 18-1-2018 issued a corrigendum to Circular No. 28/2/2018-GST, dated 8-1-2018 clarifying that catering services, i.e. supply of food or drink, provided by an educational institution in a mess or canteen, is exempt. According to the now corrected circular, when catering services are provided by anyone other than the educational institution then it is a supply of service to the educational institution, attracting GST at the rate of 5%, without the facility of input tax credit (ITC).

GST rate under Composition Levy reduced for manufacturers: GST rate for manufacturers under Composition Levy has been reduced to 1% (0.5% each of CGST and SGST) from 2% (1% each of CGST and SGST) with effect from 1-1-2018. The new rate is equal to the GST rate under the said scheme for traders. Composition Scheme is at present available to manufacturers (excluding those manufacturing ice cream, pan masala and tobacco products), traders and restaurant service providers, if their aggregate turnover in the previous financial year did not

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exceed Rs. 1 crore. Notification No. 1/2018-Central Tax has been issued for this purpose.

GST liability under Legal services clarified: Legal services including representational services provided by an advocate including a senior advocate to a business entity, are liable to GST under Reverse Charge Mechanism (RCM). Clarifying so, the CBEC Circular No. 27/1/2018-GST issued on 4th of January, 2018 also states that in such cases GST is required to be paid by the recipient of the service, i.e. the business entity.

Gambling, horse racing and entry in casino – Value for GST: CBEC has clarified that "entry to casinos" and "gambling" are two different services, and GST is leviable at the rate of 28% on both these services. It is also clarified that GST on gambling services provided by casinos is to be levied on transaction value, i.e., the total bet value, in addition to GST levy on any other services provided by casinos. Circular No. 27/1/2018-GST, dated 4-1-2018 also states that GST is leviable on total of face value of all bets paid into the totalisator or placed with licensed book makers, in respect of horse racing.

Accommodation services clarified: Clarifying the issue as to what would be the GST rate in case an upgrade in respect of accommodation service by a hotel is provided to the customer at the lower rate, CBEC has clarified that if declared tariff of the accommodation provided by way of upgrade is Rs. 10000, but amount charged is Rs 7000, GST would be levied at higher rate [28%] on Rs. 7000. Circular No. 27/1/2018-GST issued in this regard also states that declared tariff at the time of supply would be applicable, GST will be payable on actual amount charged and that room rent in hospitals is exempt.

Rate of GST on goods of Heading 6802: Statutes, statuettes, pedestals; high or low reliefs, crosses, animal figures, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone are to be taxed at 6% SGST. According to circular issued by Rajasthan Commercial Tax Department, SGST at 9% is applicable on **remaining items** like worked monumental or building stone (except slate) and articles thereof; mosaic cubes of natural stone; artificially coloured granules, chippings of natural stone.

E-way Bill under GST for entry in West Bengal – Validity of old way bills: E-way Bill provisions under GST law will come into effect from 1-2-2018. According to circular issued by West Bengal Directorate of Commercial Taxes, generation of waybill keys shall stop from that date and waybill generated till that time will be valid for entry into West Bengal till 15-2-2018. Circular dated 8-1-2018 also states that cancellation of unused keys or generated e-waybills will continue till 15-2-2018. If waybill is cancelled after midnight of 31-1-2018 then the user can only generate new waybill.

Ratio decidendi

No GST on price discounted from MRP: Consumer Forum: District Consumer Disputes Redressal Forum, Chandigarh has held that charging extra GST or any tax on the price discounted from MRP would amount to deficiency in service and indulgence in unfair trade practice. The question was that whether MRP includes all taxes including GST, and whether after discount GST can be charged or not. The complainant had purchased a pair of sandals, having MRP of Rs. 7,495, at the discounted price of Rs. 3,747, but the seller had charged extra Rs. 674.46 as GST on the discount price. [*Shiti Dutt* v. *Woodland* - Decision dated 3-1-2018 in CC/657/2017, District Consumer Disputes Redressal Forum-I, Chandigarh]

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Customs

Notifications and Circulars

Temporary import of broadcasting equipment and sport goods, exempted: The Central Government has exempted certain specified goods - equipment for press, sound and television broadcasting equipment, sports goods and equipment for testing, measuring or calibration, when same are imported under Customs Convention on A.T.A. carnet for Temporary Admission of Goods. Exemption has been provided from whole of Basic Customs duty and from whole of IGST, subject to conditions including that such goods have to be exported within 2 months from the date of importation Notification No. 4/2018-Cus., dated 18-1-2018 has been issued for the purpose.

Customs duty reduced on imports from Malaysia, ASEAN, Korea RP and Japan: Customs duty has been reduced on import of specified goods from Malaysia, Korea RP, Japan, and from countries part of Association of South East Asian Nations (ASEAN). This annual reduction, effective from 1-1-2018 is in line with India's commitments under Comprehensive Economic Partnership Agreements with Korea RP and Japan and under the Comprehensive Economic Cooperation Agreement with Malaysia. India is similarly obliged under India-ASEAN Preferential Trade Agreement to gradually liberalise applied MFN tariff rates on specified imports from 10 ASEAN countries.

Telecommunication Antenna covered under TI 8517 62: CBEC has clarified that antenna used at Base Transceiver Station/NodeB/eNodeB in a wireless telecommunication network, should be classified under TI 8517 62 90 of the Customs Tariff. Instruction No. 1/2018-Cus, dated 15-1-2018 issued for this purpose notes that telecommunication antenna being a complete device with a specified function, i.e. conversion of electrical signals into electromagnetic waves and *vice-versa* in a wireless communication system, is covered by sub-heading 8517 62. General Rules for Interpretation 1 & 6 have been applied in this regard.

Ratio decidendi

Valuation – Payment for distribution rights when not includible: CESTAT Delhi has held that payment for distribution rights paid to another Indian subsidiary, should not be added to the price for import of such goods if there does not exist any such condition of sale (import). Observing that such payment was not an 'indirect' payment, and was for distribution rights of the imported goods and not for their imports, the Tribunal agreed with the Original Authority. It noted that imports would have been made even if no distribution agreement had existed. [*Commissioner* v. *Luxottica India Eyewear Pvt. Ltd.* - Final Order No.50245/2018, dated 18-1-2018, CESTAT Delhi]

Valuation - Advertising and promotion expenses borne by importer: New Delhi Bench of CESTAT has upheld inclusion of cost relating to advertising and promotion borne by the importer, in the value of imported goods. The Tribunal in this regard observed that such expenses were not made on importer's account but as a condition of sale of goods by foreign principal. Considering various clauses of the contract, it was held that such expense was incurred on behalf of the exporter in addition to price of the goods. Expenses were hence held to be includible under Rule 10(1)(e) of Customs Valuation Rules. [*Reebok India Company* v. *Commissioner* - Final Order No. 50117/2018, dated 12-1-2018, CESTAT Delhi]

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SAD refund - Non-mentioning of grades in sales invoice is not fatal: CESTAT Chennai has held that mere non-mentioning of grades of plastic granules in the sales invoices will not make the importer ineligible to refund of SAD. It noted that the same was not required to be mentioned in terms of the Tamil Nadu VAT Act. Allowing refund, it was observed that the department had no case that imported goods were ultimately not sold and VAT was not paid. Bills of Entry in this case described goods as various types of plastic granules such as LLDPE, HDPE, polypropylene, PVC of various grades, while sales invoice stated them as plastic granules only. [*Damodar Trade Links Pvt. Ltd.* v. *Commissioner* - Final Order No. 42565 / 2017, dated 25-10-2017, CESTAT Chennai]

Scrap import - Goods when can be mutilated: CESTAT Chandigarh has allowed mutilation of goods in a case where the revenue department was of the view that though wheel rims were 'used' and 'refurbished', they were 'serviceable'. Observing that purchase order was for heavy melting scrap and that the importer had requested the authorities for mutilation of the wheel rims, it was held that department erred in holding that the case involved deliberate mis-declaration, without pointing out any evidence to establish knowledge on the part of the importer. The Tribunal in this regard also observed that there were contrary reports by two Chartered Engineers and hence benefit has to go to the importer. [*Bansal Alloys and Metals Pvt. Limited* v. *Commissioner* - Final Order No. A/62085-62086/2017, dated 30-11-2017, CESTAT Chandigarh]

SEZ - Scope of words "infrastructure facility": Gujarat High Court has held that for the purpose of laying down pipeline for transportation of natural gas in SEZ, no permission was required from Board of Approval constituted under Section 8 of SEZ Act. It was held that facilities or amenities needed for the units cannot be the 'infrastructure facilities' needed for the SEZ as contemplated in Section 2(p) of the SEZ Act read with Rule 2(1)(s) of the SEZ Rules. Approval granted by Approval Committee constituted under Section 13 was hence held as correct by the Court. [*Gujarat State Petronet Ltd.* v. *GAIL India Ltd.* - 2018-VIL-09-GUJ]

EPCG - Maintenance of logbooks of use of imported cars when not required: In a case involving import of car under the EPCG scheme, CESTAT Mumbai has rejected department's grievance that as logbook was not maintained to show journey particulars, there was no possibility of linking of foreign exchange earnings from the foreign tourists. Taking into consideration other evidence, it was held that mere use of the car by Directors in exigency did not debar importer from the benefit of the EPCG scheme. Reliance in this regard was placed on Delhi High Court decision in the case of *Hotel Excelsior*. [*Hotel Tunga Regency Pvt. Ltd.* v. *Commissioner* - Order dated 14-12-2017 in Appeal No. C/87187/2016, CESTAT Mumbai]

Thermistor & thermistor sub-assembly classifiable under Ch. 85: CESTAT Delhi has held that thermistor and thermistor sub-assembly are classifiable under TI 8533 40 30 of the Customs Tariff. Department's contention that since goods were used in automobiles, they are classifiable under TI 8415 9000 as parts of auto air conditioners was hence rejected. The importer had contended that applying Note 2(a) of Section XVI, classification of specified products identified by name should be in respective heading. Reliance in this regard was placed on an earlier decision of the Tribunal in assessee's case relating to classification of 'resistor blower' (Final Order No. 58389/2017). [*Subros Ltd.* v. *Commissioner* - Final Order No. 50021/2018, dated 3-1-2018, CESTAT Delhi]

No appeal lies against revocation of suspension of CHA licence: In a dispute involving suspension of Customs House Agent's

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licence, CESTAT Mumbai has held that review under Section 129D of Customs Act, and consequent appeal against Order setting aside suspension of the CHA licence, is not legal. Relying on CHA Regulations 1984, it was held that no authority higher than the Commissioner is envisaged for discharge of any function in relation to CHA. The Tribunal was of the view that option to appeal is permitted only to an aggrieved licencee, and that a decision to retain the licence carries with it a finality. [*Commissioner* v. *Mukadam Freight Systems* – Order in Appeal No. C/203/2006, CESTAT Mumbai]

Central Excise and Service Tax

Ratio decidendi

Customer's premises when to be considered as 'place of removal': Supreme Court of India has dismissed Special Leave Petition filed against the Chhattisgarh High Court Order by the Revenue department on the question as to whether 'place of removal' of goods was factory gate or the customer's premises. The Apex Court was of the view that there was no legal and valid ground for interference. The High Court in its impugned Order had affirmed Tribunal's view that customer's premises was the place of removal. The High Court in this regard had noted that as per purchase orders, supply was to be at customer's premises, and freight was arranged and paid by manufacturer while treating same as integral part of the price of goods. [*Commissioner* v. *Ultra Tech Cement Ltd.* - SLP (Civil) No. 38843/2017, decided on 11-1-2018, Supreme Court]

Valuation - Deduction of VAT subsidy given by State of Rajasthan: CESTAT Delhi has rejected department's plea that VAT liability discharged by utilizing subsidy granted in the Form 37B by the Rajasthan Government was not VAT actually paid, for purpose of Section 4 of Central Excise Act, 1944. The assessee was required to remit VAT initially on sales made and then part of such VAT was given back as a subsidy in Challan 37B, for further utilisation in payment of VAT. Allowing assessee's appeal, the Tribunal held that such challans were as good as cash as payment of VAT using such challan was considered legal payment of tax. [*Shree Cement Ltd.* v. *Commissioner* - Final Order No. 50189-50191/2018, dated 18-1-2018, CESTAT Delhi]

Cenvat credit - Excess goods as found by department, not suppression: Cenvat credit is not to be denied merely because excess quantity was noticed during physical verification of the imported goods by the Customs Department at the port. CESTAT Ahmedabad, while holding so, rejected the contentions of the Revenue department that since CVD was paid on excess quantity of goods, only after being pointed out by the Department, it falls within the ambit of Rule 9(1)(b) of Cenvat Credit Rules, 2004. Tribunal in this regard noted that there was no dispute on the facts of receipt and utilization of such inputs. [*Bayer Cropscience Ltd.* v. *Commissioner* - Final Order No. A/13876/2017, dated 29-12-2017, CESTAT Ahmedabad]

Cenvat credit on cleaning, air travel agent and convention services: CESTAT has allowed Cenvat credit on cleaning/house-keeping services availed by a manufacturer for keeping the environment clean in their factory premises and in the marketing office. Reiterating the aim of the drive - Swachh Bharat Abhiyan, Chandigarh Bench of the Tribunal observed that if we do not clean the environment around us, it will defeat

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the very wish of our Prime Minister. Cenvat credit on Air Travel Agent service and Convention service was also allowed observing that said services had direct nexus with the manufacturing activity. [*Hawkins Cookers Ltd.* v. *Commissioner* - Final Order No. 62166-62167/2017, dated 13-12-2017, CESTAT Chandigarh]

Area based exemption to different 'unit' in same factory: Relying on various decisions of the Supreme Court, CESTAT Chandigarh has held that a 'factory' and a 'unit' have two different connotations and a factory can have different industrial units. CBEC Circular Nos. 939/29/2010-CX and 960/03/2012-CX, as relied on by department, were distinguished in this case involving area based exemption. Usage of common facilities like electricity sub-station, control board, generator set, water source, effluent treatment plant, sewerage system and canteen was held not material to deny benefit under Notification No. 50/2003-CE to unit producing different product. [*Wipro Enterprises Limited* v. *Commissioner* - Final Order No. 62164, dated 11-12-2017, CESTAT Chandigarh]

Banking and Other Financial Services - Coverage of 'operating lease': CESTAT New Delhi has rejected department's contention of covering business in 'operating lease' of motor vehicle given to clients, under financial lease. Demand of Service Tax for the said service under Banking and other Financial Services was hence rejected. The Tribunal relied on Accounting Standards (AS) 19 issued by the Institute of Chartered Accountants and the Supreme Court decision in the case of *Association of Leasing and Financial Service Company.* It was noted that income for operating lease was shown as lease rental and that the assets were depreciated in the lesser's account. [*Commissioner* v. *Lease Plan India Limited* - Final Order Nos. 50113-50116/2018, dated 10-1-2018, CESTAT Delhi]

Exemption when service provided to UN entity: CESTAT New Delhi has allowed benefit of Notification No. 16/2002-ST to a sub-contractor providing taxable service to the United Nations or an international organisation. In this case though the services were rendered to UNICEF, the bills were raised in the name of another company (principal contractor). On perusal of those bills, the Tribunal allowed assessee's appeal holding that the nature of services is for UNICEF and hence exemption was available. [*Ballset Entertainment Pvt. Ltd.* v. *Commissioner* - Final Order No. 58436/2017, dated 19-12-2017, CESTAT Delhi]

Cenvat credit on STTG certificate issued by Railways before August, 2014: CESTAT has allowed Cenvat credit on documents (monthly consolidated certificate/RR/money receipt) issued by the Railways during the period prior to Notification No. 26/2014-C.E. (N.T.) which made Service Tax Certificate for Transportation (STTG Certificate) issued by the Railways eligible for taking Cenvat credit. The Tribunal noted that jurisdictional authority had the discretion under Cenvat Rule 9(2) to allow Cenvat credit if documents contained specified details. It was also observed that provisions of Rule 9 were basically to ensure that no assessee availed credit which is not due to them, and that denial of credit because the document produced were officially prescribed only after particular date, was not justified. [*JK Lakshmi Cement Ltd.* v. *Commissioner* - Final Order No. 57354-57355/2017, dated 16-10-2017, CESTAT Delhi]

Food preparations for infants – Scope of classification: Food products for infant use, cleared in unit container to an industrial consumer, whether are classifiable under sub-heading 1901.11 or 1901.19 of erstwhile Central Excise Tariff? CESTAT Chandigarh in this regard could not reach any conclusion, with both Members of CESTAT having different views. While according to one view, goods were ultimately used by infants and legislature did not bar use by other industrial unit for further

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manufacture, according to the other view, goods were intermediate products not capable of being used by infants as such. The appeal of the assessee was however allowed on limitation. [*Kayem Food Industries* v. *Commissioner* - Final Order No. 62165/2017, dated 5-12-2017, CESTAT Chandigarh]

Mounting electrical components on board is not 'manufacture': Mere putting together of items by itself does not constitute assembly of a new item. Perusing samples, CESTAT Delhi has held that assessee did not undertake assembling of electrical components resulting in a new identifiable product. It was noted that though electrical components mounted on board were generally known as BPL kits, there was no BPL kit commercially known and marketed. Rejecting department's appeal it was held that mounted electrical components do not make board an item for electric control. [*TGL Enterprises Pvt. Ltd.* v. *Commissioner* - Final Order No. 58605-58606/2017, dated 28-12-2017, CESTAT Delhi]

Video Tape Production service - Scope: Chennai Bench of the CESTAT has held that services of Computer Graphics, Digital Restoration, and Reverse Telecine, all involving activities on old feature films are post-production film activities rendered for service recipients as per their requirements. Further, observing that the adjudicating authority had stated that the assessee-appellants were not engaged in the recording of any programme, etc., it was held that services of restoration, giving special effects, etc., in respect of old films would not be covered under Video Tape Production service. [*Prasad Corporation Ltd.* v. *Commissioner* - Final Order No. 42464/2017, dated 30-10-2017, CESTAT Chennai]

VAT

Ratio decidendi

Exports - Exemption from Sales Tax when transaction inextricably connected: Madras High Court has held that in a case where transaction between manufacturer and the exporter and the transaction between the latter and the foreign buyer are inextricably connected with each other, the 'same goods' theory would not apply. The Court hence allowed exemption under the provisions of Central Sales Tax Act, 1956. Reliance in this regard was placed on Supreme Court decision in case of *Azad Coach Builders Pvt. Ltd.* The petitioner sold zip-fasteners to manufacturer of readymade garments who after fixing same in garments, exported the garments. [*Zip Industries Ltd.* v. *Commercial Tax Officer* - 2018-VIL-22-MAD]

Karnataka VAT - ITC and scope of Section 10(3) of KVAT: Karnataka High Court has rejected the contention of the department that Input Tax Credit (ITC) is deductible only in that 'Tax Period' during which the invoices of the selling dealer is raised. Interpreting the words "in that period" as employed in Section 10(3) of the KVAT Act, 2003, the Revenue department had contended that the concerned ITC invoices should be of that very month or the 'Tax period'. The Court however held that substantive provision of Section 10(3) of the KVAT Act, 2003, did not lay down any restrictive time frame for allowing the deduction of ITC in a particular tax period to determine the net tax payable for that tax period. Department's view that the amendment in 2015 allowed ITC if the input tax

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pertained to a tax period of five months prior to the tax period, and hence, for the previous periods it should be inferred that there was no such relaxation available, was rejected by the Court. Similarly reliance placed by the department on provisions of Section 35 of the said Act, providing for filing of returns, was also rejected by the Court holding that the machinery provisions of filing of the returns cannot override and defeat the substantive claim of ITC under Section 10(3). [*Kirloskar Electric Co. Ltd.* v. *State of Karnataka* - 2018-VIL-36-KAR]

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