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Article

# GST - Old order changeth yielding place to new

By **Dr. G. Gokul Kishore**

As I sit down to type this article with the famed saying of Alfred Tennyson, despite the hectic schedule of GST assistance to the industry, both types of feelings gush – on the one side sadness creeps as the Central Excise as we know and we grew up with is going to be part of history . On the other side, India is on the verge of ushering in a tax revolution – an upside down change in the law, process and procedures with GST marking its entry in the Indian economic and political horizon.

## *GST – A great leveler*

Central Excise had given an exalted status to manufacturers given their financial prowess in terms of turnover while dealers down the line despite being in vast majority could not rub shoulders with their manufacturer counterparts. Manufacturers – large, medium, small and dealers – wholesale and retail, everyone in the chain are equal in the eyes of GST law. Everyone in the chain pays the same GST, takes credit of such GST paid, uses such credit to offset his tax liability, files same set of returns and compliances are, to a large extent, common to everybody. Besides playing the role of great leveler, GST ensures that the trade is fully compliant as such compliance stems from mutual dependence for credits and proper reporting of every supply and purchase. To this extent tax administration will find its role getting morphed from one of policing to that of facilitator even while it becomes privy to all business information with every supply and purchase data available in its system. Information being a prized equity today, government will wield extraordinary power with such sensitive commercial information. Investigations will derive great support from such information and the taxpayer will have to watch every step he takes so as to avoid mishaps in the future.

## *Credits – Will it be seamless flow?*

One of the most used phrases with GST is 'seamless credit'. Will the credit be seamless? The credit journey began with Modvat of excise in the eighties and travelling through ITC under VAT, tax jurisprudence is replete with landmark and not so significant disputes on credit. The goods or services on which credit is admissible has always remained an issue dividing the trade and administration. The copy of invoice for credit became a priceless asset with the department compelling the trade to engage in pitched legal battles over such trivial issues. CGST Act does provide for a negative list of goods and services on which credit will not be admissible. Except for the exclusion of plant and machinery from the ambit of immovable property, the list is carried forward from the present regime to the GST regime as such. May be, one can argue that the definition of capital goods is now so vast that from air-conditioner in office to stationery, credit of tax paid can be availed. But the restrictions like telecommunication tower and pipelines defy the basic tenet of GST i.e. credit of tax paid at every stage without artificial fetters. To deny credit on

such items on the ground that they become immovable property evidences the fact that excise concepts are carried over to GST.

## *Valuation Rules – Will they measure up?*

As any legal provision looks, on the face, valuation provisions appear innocent but when they are applied and implemented, the kind of interpretation that the department may adopt on several issues, will pose a great challenge to the industry. Though invoice declared value is deemed as open market value for stock transfers, it remains to be seen how the same is treated when the value is treated as too depressed. One may witness valuation rules down the hierarchy being given a go-by and the best judgment method as provided under the residual method of 'reasonable means consistent with the principles and general provisions of Section 15 and these rules' being used obsessively. The draft valuation rules seek to reckon goods or services of like kind and quality when open market value is not available. Open market value seeks to take value adopted by unrelated parties to obtain such supply at the same time as the supply being valued is made. This leads us to the contemporaneous price issue and read with provisions on similar goods, the ground is set for another grand battle on the litigation front on valuation. This may seem pessimistic but the law, as drafted and enacted, is tilted in favour of the exchequer.

## *Excise classification to GST classification*

Central Excise is dear to our heart. Though we had our difficult times with Excise, we have a soft corner in so far as classification of goods under the Central Excise Tariff is concerned. GST, it appears, is set to continue with more or less the same set of classification. Excise took a giant leap when most of the commodities were brought under uniform rate and classification disputes started drying up. GST commences with multiple rates and the GST Tariff may not be at 8-digit level as the table with the rates approved by GST Council indicates. One may witness re-enactment of atleast a few chapters of the drama on classification when classification becomes contentious once again. But this time, goods will have company as services also have multiple rates.

## *Compliances galore*

GST is system-driven and therefore, it is expected to be less painful in terms of compliances. Uploading invoice details in respect of outward supplies, verifying and amending purchase details, filing ISD return, reconciling statutory returns with books of accounts so as to file annual returns, issuing self-invoice for supplies received from unregistered persons, issuance of receipt vouchers when advance amounts are received – list of new compliances under GST is endless. To help the industry, layers of intermediaries like GSPs and ASPs will be available. It was believed that goods will move across the nation without borders and therefore, check posts and way bills will become part of history but the draft e-way bill provisions indicate that these barriers will continue in electronic form. Given the threshold limit of Rs. 20 lakhs, majority in the lower and middle levels will find fulfilment of such requirements complicated, less friendly and expensive. May be, once the systems and processes get settled in a few years time, these will become non-issues.

## *Welcome GST*

With heavy heart, we bid good bye to Central Excise, Service Tax and VAT at least from

implementation angle as disputes under them may continue for few more years. With full of hope, curiosity and enthusiasm, we welcome GST. May the landmark tax reform create history by conferring more benefits to the industry, lesser price to consumers and more revenue to the exchequer.

**[The author is a Joint Partner, Lakshmikumaran & Sridharan, New Delhi]**

# Goods and Services Tax (GST)

**GST set for launch on 1st of July:** All speculation about postponement of implementation of GST in India has been finally put to rest, with the government fully geared-up to launch GST at midnight of 30th of June-1st July, 2017. Certain provisions of the CGST and IGST Act have already come into force and CGST Rules for Registration and Composition levy have been notified, effective from 22nd of June. Few notifications have also been issued effective from this date, specifying territorial jurisdiction of Principal Chief Commissioners, Principal Commissioners, Chief Commissioners and Commissioners, and granting exemption from registration suppliers where tax is fully payable by the recipient.

In order to make transit to the new regime smooth, last dates for filing of Returns have been relaxed for first two months. Monthly return will be required to be filed based on a simple return (Form GSTR-3B) containing summary of outward and inward supplies, and has to be submitted by 20th of the subsequent month. Similarly, GSTR-1 containing invoice-wise details of outward supplies for July 2017 is to be filed by 5th of September and for August 2017 by 20th of September, 2017. Further, in order to provide more time for persons liable to deduct tax at source or collect tax at source, it has been decided that the provisions of Tax Deduction at Source (Section 51 of the CGST/SGST Act 2017) and Tax Collection at Source (Section 52) will be brought into force only later.

Meanwhile, threshold limit for Composition levy for manufacturers, traders and restaurant service providers has been enhanced to Rs. 50 lakh for suppliers in States of Arunachal Pradesh, Assam, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. Threshold limit (composition levy) for State of Uttarakhand will however be Rs.75 lakh. It may be noted that the scheme is not available for manufacturers of ice cream & other edible ice, pan masala and tobacco & manufactured tobacco substitutes. For more updates, GST Acts of States and other documents related to GST, please visit www.gst.lakshmisri.com.

# Central Excise

## Ratio decidendi

**Availability of exemption notification – Appeal not maintainable before High Court:** In a dispute involving availability of exemption Notification No. 50/2003-C.E., the High Court of

Uttarakhand has dismissed the appeal filed by the Revenue department after holding the same to be non-maintainable before the High Court. Interpreting words 'excisability' and 'taxability' in Section 35L of the Central Excise Act, 1944 relating to appeal to the Supreme Court, and taking note of the intention of the Parliament for using two different words, the High Court was of the view that if a question arises as to the availability of the notification, then it goes to 'taxability'.

It was held that the word "taxability" would cover a situation, where, though the goods are found dutiable otherwise, are found to be non-taxable by virtue of availability of exemption notification. Further, observing that this was not a question of territorial jurisdiction or relating to pecuniary jurisdiction, it was held that a question involved here, relating to the jurisdiction of the Court, cannot be brushed aside on the ground that it was raised late. [*Commissioner* v. *Tirupati LPG Industries Ltd.* – Judgement dated 5-4-2017, Uttarakhand High Court]

**Valuation – Non-inclusion of part of advertisement cost incurred by dealer:** In a case involving non-inclusion of advertisement expenses borne by the dealer, finding absence of evidence to establish that in case there is default on the part of the dealer to incur the 25% expenses on advertisement, the assessee-manufacturer has a legal right to recover the same, Chennai Bench of the CESTAT has allowed the appeal of the assessee. Further, observing that there was neither any obligation cast upon the dealer nor was there a right or remedy given to the assessee, it was held that the agreement to meet 100% advertisement charges and limit reimbursement only to 75%, whereby the dealer is put to shoulder 25% of the charges can be considered as a 'gentlemen's agreement'. It was also noted that such joint advertisement campaigns were examples of synergy with both manufacturer and the dealers stand to benefit. [*Ford India Pvt. Ltd.* v. *Commissioner* - 2017-VIL-497-CESTAT-CHE-CE]

**Refund of excess duty by payment to bank towards discharge of loan, and not in Cenvat account, if assessee a sick company:** Andhra Pradesh and Telangana High Court has held that excess duty paid by the assessee could be refunded by way of payment of money to the bank towards discharge of loan in a case where the assessee company was a sick company under Sick Industrial Companies (Special Provisions) Act, 1985. The Deputy Commissioner had refused to pay the refund directly but instead had ordered the same to be credited to the Cenvat account. The assessee was of the view that there was no point of having Cenvat credit for a sick company. The Court also observed that the case fell within clause (e) under proviso to sub-section (2) of Section 11B of Central Excise Act, 1944 as the incidence of duty was not passed on. [*Victory Transformers and Switchgears Ltd.* v. *Commissioner* - 2017 (349) ELT 422 (A.P.)]

**Area based exemption not deniable when only portion of boundary wall of factory extended to unspecified Khasra:** The assessee was availing benefit of Notification No. 50/2003-C.E. where units present in specific Khasra nos. were exempted from Central Excise duty. The factory was in exempted area however the boundary wall fell in unexempted area. The Tribunal held that benefit of exemption cannot be denied if the portion of land on unspecified Khasra number remained vacant with the boundary wall. The matter was remanded for verification of actual position. [*Diamond Entertainment Technologies*

*Pvt. Ltd.* v. *Commissioner* - 2017 (349) ELT 481 (Tri.-Del.)]

**Remission of duty not available if procedure prescribed under CBEC Manual on Supplementary Instructions not followed:** In a case involving destruction of expired drugs in presence of officers of Food and Drugs Administrative Department, where the assessee had not followed the procedure prescribed under Chapter 18 of the CBEC's Manual of Supplementary Instructions, Gujarat High Court has denied the claim for remission of duty. It observed that since no prior permission of appropriate Central Excise authority was obtained, it amounted to non-compliance of Chapter 18. The Court also held that procedure in Chapter 18 was not a procedural condition but a substantive condition. [*Sun Pharmaceuticals Industries Ltd.* v. *Commissioner* – 2017 (349) ELT 442 (Guj.)]

**Milk treat containing cocoa butter and not cocoa classifiable under TI 1905 32 19:** CESTAT Delhi has held that Milk Treat containing ingredients sugar, liquid glucose, milk solids, golden syrup, partially hydrogenated vegetable fats/cocoa butter, wheat protein, etc., is classifiable under Tariff Heading 1905 32 19 and not under TI 1905 32 11 of the Central Excise Tariff. Taking note of the Explanatory Notes to Heading 1704 and Notes to Chapter 18, it was held that Cocoa butter cannot be said as Cocoa. Assessee's appeal was allowed holding that the product in question hence cannot be said to be coated with chocolate or containing chocolate as required for classification under TI 1905 32 11. [*Cadbury India Limited* v. *Commissioner* - 2017-VIL-518-CESTAT-DEL-CE]

**Exemption to products made up of cotton available to full tent including value of non-cotton parts:** CESTAT Bench at Allahabad has held that cotton tents which are cleared along with other parts necessary for the product to be called a tent, i.e. angle pin, U pin and different types of joints of aluminium, would together be called a cotton tent. It was held that exemption under Notification No. 29/2004-C.E., which was only available to goods falling under Chapter 61, 62 & 63 if made of cotton and not any other textile material, would be available to the full value of cotton tents and not only on the value of the cotton textile material. [*Commissioner* v. *AR Polymers Pvt. Ltd.* - 2017 (349) ELT 645 (Tri-All.)].

**No interest payable in the absence of duty liability even when duty paid on being convinced by Department:** CESTAT Mumbai has held that interest on differential duty, which was paid on being convinced by Department, is not payable when duty liability is absent. The Tribunal was of the view that if an assessee elects to discharge differential duty and subsequently contests the interest liability and penalty sought to be imposed by a show cause notice issued after three years of the discharge of the duty liability, the doctrine of election will not apply. [*Nicholas Piramal (India) Ltd.* v. *Commissioner* – Order dated 16-3-2017 in Appeal No. E/3103/06-Mum, CESTAT Mumbai]

**Payment of duty on net quantity, after deducting value of goods received back during month, correct:** In a case involving clearance of inputs as such to sister concern, CESTAT Mumbai has held that duty is payable only on the net quantity which has been supplied by the assessee. It was observed that the quantity which has come back cannot be considered as removal of input and hence no duty can be demanded on that quantity. [*Commissioner* v. *Ispat Industries Ltd.* – Order dated 3-4-2017 in E/2420/06, CESTAT Mumbai]

**Pre-deposit for preferring second appeal to Tribunal required over and above pre-deposit made for first appeal:** The Larger Bench of CESTAT has held that in second appeal to CESTAT, 10% mandatory pre-deposit has to be made over and above the mandatory pre-deposit of 7.5% of duty liabilities and penalties made for first appeal before Commissioner (Appeals) under Section 35F of Central Excise Act, 1944 and Section 129E of Customs Act, 1962. The Tribunal in this regard noted that first appeal before Commissioner and second appeal before Tribunal have to be treated as independent. [In Re: *Quantum of Mandatory Deposit* - 2017 (349) ELT 477 (Tri.-LB)]

**Recovery of dues on the basis of lease agreement for one of the properties of arrears holder, not sustainable:** CESTAT Delhi has held that simply entering into a lease agreement with reference to one of the properties of the arrears holder will not make the assessee liable for any Central Excise duty arrears standing in the name of the owner of the land-lessor. The Tribunal in this regard also observed that assessee had not succeeded or acquired the business or trade of the arrears holder or purchased any property of the arrears holder. It was also observed that lease deed provisions had no relevance or application to justify the adjustment of sanctioned refund amounts payable to the assessee against the arrears standing against the lessor. [*Flexituff International Limited* v. *Commissioner* - 2017-VIL-488-CESTAT-DEL-CE]

# Service Tax

## Ratio decidendi

**Purchase of foreign exchange on own account for ultimate transfer to customers not covered under foreign exchange broking:** CESTAT Delhi has rejected the appeal of the Revenue department contending classification of services of issuance/encashment of foreign exchange travellers cheques, pre-paid cards, demand drafts and telegraphic transfers for travellers receiving its services, against certain services fees, under foreign exchange broking in Banking and Other Financial services. The fact that foreign exchange was bought on own account by the assessee for the purpose of issuance of said instruments, was noted by the Tribunal while it rejected the view that assessee acted as an intermediary between the customer and the bank, as it charged commission as a consideration for the services, over and above the value of the instrument. The assessee was held not to be liable to service tax for the period upto 15-5-2008. [*Commissioner* v. *Thomas Cook (I) Ltd.* - 2017-VIL-490-CESTAT-DEL-ST]

**Putting up and managing gas storage facility in industrial unit when not covered under infrastructural support service:** In a case involving supply of equipment, plant and machinery under lease agreement where such supply was co-terminus with sale and purchase agreement for supply of gas (final product of assessee), CESTAT Delhi has held that putting up and managing gas storage facility do not fit in the scope of infrastructural support service under Support Services of Business or Commerce. The assessee was discharging VAT considering the transaction as sale. Observing that creation and maintenance of such facility in the client's

premises was in furtherance of facilitating sale of gas, the Tribunal was of the view that consideration of such amount received towards lease rent/ facility fee, etc., as consideration for providing business support to the client, was not correct. [*Air Liquide North India Pvt. Ltd.* v. *Commissioner* – Final Order Nos. 53734-53737/2017, dated 8-6-2017, CESTAT Delhi]

**Leasing of equipment and facilities covered under BSS:** Assessee was involved in leasing of premises along with high quality fire equipments, electrical systems, air conditioning plants, DG sets, elavators, fixtures and fittings, chairs, carpeting, pantry and kitchen equipments, music and PA system, access control and security system, etc., under two separate agreements - one for renting of immovable property another for hiring of equipment and facilities. The Tribunal noted that there was a continuous link of the assessee with the equipment and if during the hiring period there was any breakdown in those systems, it was the responsibility of the assessee to get those fixed as per the recipient's wish and requirement. The service was held to be covered under Infrastructural Support Service under BSS. [*Indo Hong Kong Industries Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-1829-CESTAT-DEL]

**Exemption to health care services by clinical establishments – Scope:** Naturopathy services for various types of ailments are eligible for the benefit of Notification No. 25/2012-S.T. (Sl. No. 2) under health care services by clinical establishments. The petitioner was engaged in provision of various services, such as, steam bath, sauna/infrared bath, foot and arm bath, spinal spray, hydro deluxe bath, jacuzi, mud bath, neem paste bath, plant leaf bath, sand bath, massage, mud packs, vibro massages, physiotherapy, exercises, yoga, meditation, etc., and hence the Revenue department was of the view that such services would be covered under Health and Fitness services liable to tax. The High Court of Andhra Pradesh, after considering scope of expressions "clinical establishments" and "health care services", held that the authorities were wrong in taking the services provided for the wellbeing of an individual, as something out of the purview of the diagnosis or treatment. [*Manthena Satyanarana Raju Charitable Trust* v. *Union of India* - 2017-VIL-288-AP-ST]

**Training by project implementing authority on behalf of government covered under BAS and eligible for exemption:** Observing that the service of training provided by the assessee-project implementing agency was not provided to the trainee, but to the Central or State Government on behalf of whom the trainings were organised, CESTAT Mumbai has dismissed the appeal of the department contending coverage under Commercial Training and Coaching services. Reliance in this regard was placed on letter of Joint Secretary (TRU-III) to Joint Secretary (Rural Department). The assessee was engaged in training relating to repairing of air conditioner, agri-tourism, aquarium making, dairy milk, milk products making, electric motor rewinding, chalk and candle making, etc., on behalf of various Ministries and sought classification under BAS. Further, benefit of Notification No. 14/2004-S.T. was also extended by the Tribunal holding such trainings to be in the field of education. Department's argument that courses conducted for repairing of air conditioner, agri-tourism, aquarium making, etc., are all related to skills development to earn livelihood and cannot be termed as education, was rejected. [*Commissioner* v. *Mitcon Consultancy & Engg. Services Ltd.* - 2017-VIL-536-CESTAT-MUM-ST]

**Construction of independent houses as part of larger number of houses sharing common facilities, not covered under Construction of Residential Complex service:** New Delhi Bench of the CESTAT has held that construction of various residential units built independently but sharing roads, street lights, sewerage line, park in close proximity do not by themselves come under the taxable category of residential complex. The Revenue authorities were of the view that though the construction was of less than 12 individual houses, the same was part of larger number of houses constructed sharing common facilities, and hence there arose liability under Construction of Residential Complex services. [*Hari Narain Khandelwal* v. *Commissioner* - 2017-TIOL-1932-CESTAT-DEL]

**Consideration received for sale of air tickets purchased from another travel agent not covered under BAS:** In a case involving procurement of tickets by the assessee from another travel agent and then selling them to travelling public, CESTAT Delhi has allowed the appeal of the assessee, rejecting department's contention of liability under BAS. The Tribunal in this regard noted that there was no arrangement either by contract or otherwise between another travel agent and the assessee for promoting business of the former. It was observed that the travelling public was getting only ticket with no identity linking same to another travel agent. [*Trade Wings Ltd.* v. *Commissioner* – 2017 (52) ELT 149 (Tri. – Del.)]

**Threshold exemption – Computation of aggregate value – Only net value to be considered:** CESTAT Allahabad has held that for computation of aggregate value under Notification No. 6/2005-S.T. (small scale exemption), only the net value received, i.e. after the abatement under Notification No.1/2006-ST, is to be considered. Notification No. 1/2006-ST, exempted 60% of the gross receipts towards the service of Rent-a-Cab. [*Neelam Singh* v. *Commissioner* - Final Order No. 70390-70391/2017, dated 13-2-2017, CESTAT Allahabad]

# Customs

## Circulars and Trade Notices

**PAN of entity to be used for IEC:** In order to keep the identity of an entity uniform across various departments of the government, Directorate General of Foreign Trade (DGFT) has decided to use PAN of the entity for the purpose of Import-Export Code (IEC) number. DGFT Trade Notice dated 12-6-2017 issued for this purpose states that in respect of new applicants, with effect from a notified date, applicant's PAN would be authorized as IEC. In respect of existing IEC holders, it is stated that necessary changes in the system are being carried out and that IEC holders would be required to quote their PAN in all their future documentations, from a notified date.

**Drawback – Exemption from drawal of samples extended to Tier- I AEO:** Central Board of Excise and Customs has extended exemption from requirement of drawal of samples for the purpose of grant of drawback, to Authorised Economic Operators (AEO) holding Tier-I Certificate. This

benefit however would be available except in case of any specific information or intelligence. Hitherto, only Tier-II and III certificate holders were eligible for the exemption. Circular No. 18/2017-Cus., dated 29-5-2017 has been issued for this purpose.

**Manual filing of Bill of Entry – Procedure streamlined:** Procedure for filing of manual Bill of Entry has been streamlined by the CBEC. According to the new procedure, registered manual Bill of Entry would be linked with a system generated challan for enabling electronic payment of Customs duty at the e-payment portal. Basic details of the BE would be entered by the Noting section in ICES 1.5, and a job number would be generated. Job would be approved by the Assistant Commissioner leading to generation of six digit BE number. According to CBEC Instruction No. 6/2017-Cus., dated 2-6-2017 issued for the purpose, the process would be implemented from 15-6-2017 for all EDI formations.

## Ratio decidendi

**Exemption – Production of Certificate of Origin after filing of B/E, not fatal:** CESTAT Chandigarh has allowed refund claim of excess duty paid by the importer in a case where the importer produced Certificate of Origin in the prescribed format only at a later point of time, i.e. after filing Bill of Entry. Benefit of exemption notification was allowed by the Tribunal observing that the Bill of Entry and invoice also mentioned the goods as originating from that country. The Tribunal also rejected the argument of the department that since the issue involves interpretation of exemption notification, it should be decided by a division bench of the Tribunal. [*Okaya Power Ltd*. v. *Commissioner* – Order dated 12-4-2017 in C/50618/2015, CESTAT Chandigarh]

**Refund – Proof of absence of unjust enrichment in case of exports:** Bengaluru Branch of the CESTAT has allowed the appeal filed by the assessee in a case involving exports where the department had denied refund alleging unjust enrichment. Taking note of sale contract, final invoice, bank realization certificate, etc., it was held that the assessee had not charged any customs duty from the buyer. The Tribunal while holding so, also observed that the export was in accordance with internationally accepted commercial terms, where the invoices the price for the export goods and the export duty was paid on the price or FOB value. The fact that the sale contract also mentioned that duty at country of origin was to be borne by the seller, was also considered by the Tribunal while ruling in favour of the assessee. [*Dream Logistics Company India Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-1918-CESTAT-BANG]

**Valuation – Mere reference to NIDB data not enough for enhancement of value:** Observing that for proving the value to be wrongly declared, independent evidence is required, CESTAT Delhi has held that mere reference to NIDB data is not sufficient. Transaction value was rejected by the Commissioner on the sole ground that NIDB data for the contemporaneous imports reflected higher value of identical goods. The Tribunal held that enhancement of value was not justified. [*Aakash Enterprises* v. *Commissioner* - 2017-TIOL-1930-CESTAT-DEL]

**Opinion of examiner not enough to establish mis-declaration:** Mumbai Bench of the CESTAT has held that only because the examiner had opined that the goods were serviceable, though they were old and used, it cannot be said that there is mis-declaration as the importer had mentioned the goods as 'unserviceable'. The Tribunal in this regard also took note of the fact that the importer had mentioned the description as was found in the documents received from the

supplier. Assessee's appeal was allowed setting aside confiscation of goods. [*Bombay Marine Enterprises* v. *Commissioner* – Order dated 7-4-2017 in Appeal No. C/1003/08, CESTAT Mumbai]

**No penalty under Customs Section 114 on CHA for lapses in verification of exporter:** CESTAT Delhi has set aside penalty under Section 114 of the Customs Act, 1962 imposed on CHA for lapses in complying with the norms regarding verification of the identity and antecedents of the exporters. The department had alleged abetment in fraudulent attempt to export as the CHA had failed to bring information relating to exporter to the notice of the department. The Tribunal however noted that the department did not bring any evidence to prove that the assessee or its representative indulged in any activity to pursue improper exportation. It was held that lapses on verification are liable to be proceeded with by the Customs department in terms of the licensing regulations and that there was no case for imposition of penalty under Section 114. [*Dev Raj Vermani* v. *Commissioner* - 2017 (349) E.L.T. 750 (Tri. – Del.)]

**Scrap - Exemption under Notification No. 20/99-Cus. – Conditions:** CESTAT Bangalore has held that exemption under Notification No. 20/99-Cus., is available to scrap even when same is charged in basic oxygen furnace, in case the liquid metal therefrom is later charged into the electric furnace. Revenue department's allegation that scrap was not used fully in electric arc furnace was rejected by the Tribunal while allowing benefit of the exemption. The department had rejected the application for end-use certificate holding that scrap was not added while processing the liquid metal / steel at the electric arc ladle furnace but was used as a coolant in the basic oxygen furnace. Notification No. 20/99-Cus. provided for concessional duty for melting scrap if used in electric arc furnace. [*Jindal Vijayanagar Steels Ltd*. v. *Commissioner* - Final Order No. 20809-20811/2017, dated 1-6-2017, CESTAT Bangalore]

**Barges not having capacity to navigate not classifiable under Heading 8901:** CESTAT Bangalore has held that dumb barges, not having any means of propulsion such as engine and are required to be pulled in the sea by tug, would not be classifiable under Heading 8901 but under Heading 8905 as floating cranes, considering the fact that they had cranes fitted on them. Importer's argument of classification under 8901 since there is a specific entry for barges in the Tariff was rejected by the Tribunal observing that though the goods were described as 'barges', they did not have the prime requirement for being classifiable under Heading 8901, i.e. the capacity to navigate. [*Adani Enterprises Limited* v. *Commissioner* - 2017-VIL-483-CESTAT-BLR-CU]

**Wires of Nickel Alloy covered under phrase "nickel and articles of nickel":** In a case involving import of wires of nickel alloy, CESTAT Mumbai has allowed benefit of Notification No. 21/2002-Cus. (Sl. No. 483), which granted concessional rate of duty to Nickel and articles of Nickel. The Tribunal was of the view that Nickel alloy is an item arising out of nickel and other metals meaning that presence of Nickel was not disputed. Reliance in this regard was also placed on Section Note 6 of Section XV of the Customs Tariff Act, 1975 and Tribunal's earlier Order in the case of *Mukundbhai D. Rathod*. [*A.J. Corporation* v. *Commissioner* - 2017 (349) E.L.T. 778 (Tri. – Mumbai)]

# VAT

## Act, Ordinance and Notification

**Madhya Pradesh - Ordinance for settlement of old arrears:** Madhya Pradesh Karon Ki Puranee Bakaya Rashi Ke Samadhan Adhyadesh, 2017 dated 29th May, 2017 has been promulgated to provide for the settlement of old arrears under the following Acts –

- Madhya Pradesh General Sales Tax Act, 1958 (repealed);
- Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (repealed);
- Madhya Pradesh Vat Act, 2002;
- Central Sales Tax Act, 1956, and includes the rules made or notifications issued thereunder.

Here, 'old arrears' means tax, interest and penalty under the relevant Acts pertaining to any period ending on or before 31st March, 2012. The scheme is available to any person who is liable to pay old arrears under the relevant Acts as well as any person willing to settle the amount of old arrears of any other person. The settlement amount would be *40 percent of the total amount of the old arrears or 100 percent of the tax amount involved in the old arrears, whichever is higher.* However, in case application is made in respect of a separate penalty order, 100% of the outstanding tax has to be paid. The applicant desiring settlement shall apply within 60 days from the date of the Ordinance coming into force.

**Haryana Alternative Tax Compliance Scheme for Contractors, 2016 – Amendments:** *Vide* Notification No. 17 /ST-1/ H.A. 6/2003/S.59A/2017 dated 2nd June, 2017, the Haryana Alternative Tax Compliance Scheme for Contractors, 2016 has been amended as follows,

- As per the amended sub-clause 4(2), where the interest, tax or penalty already paid by the contractor during the year covered under this Scheme exceeds the lump sum amount payable, *the excess amount shall now be adjusted against the total amount due and payable, and any excess amount after such adjustment will not be refunded or adjusted against any tax liability*.
- By the insertion of a clause 5A, the Scheme has been reopened for applicants to apply online in the prescribed form, **on or before 28th June, 2017**. The new applicants shall pay Rs. 1 Lac with the application form and 25% of the total amount due along with interest at the rate of 2% per month for the period of delay (computed in the manner prescribed).
- As per new sub-clause 6(2A), a contractor paying his due instalment(s) on or before 30th June, 2017 shall be allowed reduction by way of incentive at the rate of 2% per month or part thereof the amount payable of the instalment(s) due, which shall be applicable for original applicants and new applicants on the 3rd and 4th instalments, as two installments are payable already.

**West Bengal Tax on Entry of Goods into Local Areas Act, 2012 – Amendments in West Bengal Sales Tax (Settlement of Dispute Act, 1999) for settlement of disputes:** Settlement scheme has been introduced for settlement of disputes under

the West Bengal Tax on Entry of Goods into Local Areas Act, 2012, for waiver of interest, late fee and penalty under the Entry Tax Act for disputes pertaining to any period ending on or before the 31st March, 2017, as per West Bengal Taxation Laws (Amendment) Act, 2017 with effect from 2nd June, 2017,

- The said scheme is applicable to any dealer or importer, and an application can be made irrespective of whether any appeal, revision or review is pending.
- Settlement shall be made by payment of 100% of the entry tax in dispute or the actual amount paid in respect of the arrear tax in dispute, whichever is higher before making an application under this Scheme.
- The procedure for settlement has been provided in Trade Circular No. 03/2017 dated 5-6-2017. The application is to be submitted in the prescribed form on or before 30th June, 2017, to the specified officers. Further, as per addendum dated 13-6-2017, it is also required that any dealer or importer, other than a dealer who has not filed any return under the Entry Tax Act, and who intends to apply for the scheme, shall file a statement showing the turnover of imports of specified goods in the format of Entry Tax return, as far as practicable, along with a detailed computation of tax, interest and late fee payable as per such statement.

## Ratio decidendi

**Appy Fizz classifiable as fruit juice based drink and not as aerated soft drink:** Supreme Court has held the product 'Appy Fizz' to be classifiable as 'fruit juice based drink' under Entry 71 of the notification issued under Section 6(1)(d) of Kerala VAT Act and not under Section 6(1)(a) as 'aerated branded soft drink'. The High Court in its judgment had held that since the product was charged with air or carbon dioxide, the same was an aerated drink. The Apex Court however held that common parlance test was not the only tests which could be applied for interpreting the entries and that technical and scientific meaning was also to be looked into. It was observed that the process for manufacture in accordance with the Food Safety and Standards Act, 2011 and the Regulations framed therein as well as the nature and characteristic of the product are not irrelevant factors while examining the nature and contents of the product. In view of the facts that Appy Fizz was found to be a thermally processed beverage made from apple juice containing more than 10% of juice content with addition of carbon-di-oxide only as a preservative on the label, said commodity was categorized under Entry 71, Clause 5 as 'fruit juice based drink' at the rate 12.5% [now 14.5%].

On application of the principle of *noscitur a sociis,* the Court took the view that the inclusion of fruit juice based drinks in Entry 71 clearly proved that the same were never treated to be included in 'aerated branded soft drink' and that the amendment did not change or affect the character and content of the products which were included in Entry 71. [*Parle Agro (P) Ltd.* v. *Commissioner* - 2017-VIL-20-SC]

**NEW DELHI**
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811
---
B-6/10, Safdarjung Enclave
New Delhi -110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

**MUMBAI**
2nd floor, B&C Wing,
Cnergy IT Park, Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

**CHENNAI**
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

**BENGALURU**
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax:+91(80) 49331899
E-mail : lsblr@lakshmisri.com

**HYDERABAD**
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail :lshyd@lakshmisri.com

**AHMEDABAD**
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

**PUNE**
607-609, Nucleus, 1 Church Road,
Camp, Pune-411 001.
Phone : +91-20-6680 1900
E-mail :lspune@lakshmisri.com

**KOLKATA**
2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

**CHANDIGARH**
1st Floor, SCO No. 59,
Sector 26,
Chandigarh -160026
Phone : +91-172-4921700
E-mail :lschd@lakshmisri.com

**GURGAON**
OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon-122001
phone: +91-0124 - 477 1300
Email: lsgurgaon@lakshmisri.com

**ALLAHABAD**
3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.R)
phone . +91-0532 - 2421037, 2420359
Email:lsallahabad@lakshmisri.com