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ARTICLE

GST liability on transfer/disposal of assets in lieu of tax liability

By **Manoj Gupta**

European Union's Court of Justice has recently (on 11th May, 2017) held that transfer of tangible property to the State Treasury in settlement of arrears of taxes constituting State Budget revenues is a transaction that is not subject to VAT. The judgement though deals with transfer of immovable property, and such transactions have been kept out of the GST system in India, proposed to be effective from 1st of July, 2017, nevertheless, the issues raised in this judgement are worth discussion. These issues may be relevant in case of recovery of GST dues by the department by way of attachment of plant and machinery.

The EU Court's Judgement

The question before the Court of Justice was whether it was possible to consider transfer of right to dispose of tangible property (land in the present case), as owner, made in settlement of tax debt, to be a 'supply of goods for consideration' within the meaning of the EU VAT Directive [Articles 2(1)(a) and 14(1) of the EU law].

The Minister in Individual Tax Ruling was of the view that since upon transfer of ownership of immovable property, the municipality acquired all the rights of an owner, such transfer of ownership in settlement of tax arrears constituted supply of goods for consideration. However, the referring court (the court which referred the issue to the Court of Justice) was of the view that since tax is not a pecuniary performance which may be obtained in exchange for another performance, its principal feature being unilaterality, the transaction would not be liable to VAT.

Article 2(1) of the VAT Directive provides,

"the following transactions shall be subject to VAT,

(a) The supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

……."

According to Article 14(1),

" Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner."

The Court of Justice in this regard was of the view that though there existed a legal relationship between the supplier of the immovable property in the case, and the beneficiary of that property – the relationship linking the creditor and its debtor, the obligation of the taxpayer, as a debtor, to make payment to the tax authorities, as creditor, is unilateral in nature. It was held that this is because payment of tax by the taxpayer results only in the statutory discharge of tax debt, even if it is done by means of provision of immovable property.

Accordingly it was held that the transaction of providing a property in lieu of payment, the purpose of which is to discharge a tax debt,

cannot be considered to be a transaction effected for a consideration, as there is no legal relationship entailing reciprocal performance.

The Court also observed that the compulsory charge of tax, whether it relates to sum of money or to tangible property, does not result in any performance on the part of the public authority or any corresponding performance on the part of the taxable person.

Further, the Court rejected the plea of coverage under Article 16 of the VAT Directive, which while talking of application of business assets for private use, also covers 'disposal free of charge' for the purpose of coverage under 'supply for consideration'. The plea was rejected observing that such provision was only to attain the objective of ensuring equal treatment between a taxable person who applies goods for own use and the final consumer who acquires goods of same type, on the other hand. Reliance in this regard was placed by the Court on a 2014 judgement in the case of *BCK Leasing IFN* wherein it was held that impossibility of actually recovering the goods earlier provided under the financial leasing contract, does not fall within any of the situations as in Article 16, for liability under VAT.

Indian perspective

From the EU case law, it is clear that such transfer would not amount to 'supply under consideration' for the purpose of VAT. In the Indian context, transfer of business assets is dealt at two places in the CGST law, other than Section 85 of the said Act (which talks of transfer of business). It finds mention in Schedule I (dealing with activities which are to be treated as 'supply' even if made without consideration), and in Schedule II which specifically deals with transfer of business assets, with or without consideration. It is not clear whether these provisions could be relied by the department in future to claim tax on the plant and machinery attached by them under recovery proceedings (refer Section 79 of the CGST Act), terming such transfer as 'supply' for the purpose of GST liability. It is another matter that it may amount to double blow to the assessee who would be already under pressure to clear earlier dues.

Broadly, it may be argued that above mentioned clauses of Schedule I and II are to take care of disposal of business assets to the third party (another entity), in order to have a level playing field for those procuring and selling those assets from/in the market, and that these provisions would not cover disposal or transfer in favour of the tax department. EU case law discussed above is quite relevant in this context.

Further, it may be noted that Entry 6 in Schedule III, excludes 'actionable claims' from the scope of 'supply of goods'. 'Actionable claim' is defined under the CGST Act as having the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882, and according to the latter provisions, 'actionable claim' means a claim to any debt. Whether, considering the fact that the tax would be the first charge on property of taxable person (Refer Section 82), issue of taxability of transfer

of assets to the Revenue department, in lieu of tax liability – taxpayer being the debtor, would be covered under 'actionable claims'?

It may also be noted that the charging section (Section 9 of the CGST Act) does not talk about 'consideration'. The charge is on provision of 'supply', and it is only in Section 7 (which non-exhaustively defines 'supply'), the term 'consideration' is used. It is another matter that certain supplies even if provided without consideration are part of the Indian as well as the EU law.

Conclusion

It took a long time for the EU law to evolve to the present state, with the Court of Justice only on 11th of May, holding that such supply would not be liable to VAT. In India we are at present just a few days short of implementing the biggest reform in indirect taxes in the history of independent India, and hence it is naturally desirable that we step into the future with more clarity and precision. Clarity is anticipated more because we have knowledge of issues that had cropped-up in other countries and the solutions that tax department or the Courts of those countries have provided to the tax payers.

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GOODS AND SERVICES TAX (GST)

GST rates and 7 Rules approved by GST Council: Schedule containing rates of GST for both goods and services and the revised draft of 7 procedural GST Rules have been placed by the CBEC in public domain. These rules relating to Registration, Valuation, Input Tax Credit (ITC), Invoice, Composition and Refund along with the rates on more than 1200 goods and host of services, have been approved by the GST Council in its meeting on 18th and 19th May, 2017 held in Srinagar. Similarly, GST Compensation Cess Rate Schedule covering Cess rate on specified goods like motor vehicles, aerated waters, tobacco and tobacco products, has also been released.

Rates and Classification for Goods & Services: GST rate slabs for services would be similar to that for goods, i.e., 5%, 12%, 18% and 28%. Further, while transport of goods by GTA (other than used household goods for personal use) would be liable to 5% GST without the benefit of ITC, services by way of admission to entertainment events or amusement facilities including cinemas, would be liable to 28% tax, with full ITC. Composite supply of works contract would be liable to 18% tax and full benefit of ITC would be available. According to a separate list of exemptions released, some 82 exemptions presently available under Service Tax would be grandfathered under the new GST regime proposed to be implemented from 1st of July, 2017. List of 18 services that will be covered under reverse charge mechanism has also been approved by the GST Council. It may be noted that GST Rate Schedule in respect of goods mentions Heading at 4 digit level in contrast to current 8 digit tariff items

in the present Central Excise Tariff. A new Classification Scheme for Services has also been proposed with more than 500 services being classified under 6-digit code.

CENTRAL EXCISE

Ratio decidendi

Valuation - Freight from principal manufacturer to job-worker's premises not to be added in invoice value when same not shown separately: The issue was whether freight for supply of raw materials from principal to the respondent-job worker is to be added over and above the value mentioned in the invoices, for arriving at the assessable value of the job work goods manufactured and returned by them. CESTAT Mumbai in this regard has held that freight charges from principal manufacturer's premises upto the job-worker's premises would not be added when same was not shown separately in invoices. The Tribunal held that freight would be deemed as included in the invoice value as the same was paid by the principal manufacturer. Considering facts of the case it was held that invoice value of principal manufacturer becomes landed cost of raw materials, requiring no further addition in assessable value as per Section 4 of Central Excise Act. [*Commissioner* v. *AVS Industries* - 2017 (349) ELT 344 (Tri. - Mumbai)]

Valuation - Freight charges not necessarily to be reflected in excise invoice: Deciding the question as to whether freight charges collected separately by the assessee through debit notes and which were not shown separately in the Central Excise invoice issued for such clearance, were includible in the assessable value, CESTAT Allahabad has allowed the appeal of the assessee. Observing that assessee had raised separate invoice/debit note of the freight charges, it was held that it is not necessary that the freight be reflected in the excise invoice only. [*Jai Shree Udyog* v. *Commissioner* - Final Order No. 70352/2017, dated 6-4-2017, CESTAT Allahabad]

Valuation - Payment of 10% under Cenvat Rule 6(3)(b) not to be deducted from price of exempted goods: Larger Bench of the CESTAT has held that payment of amount of 8% or 10% under Rule 6(3)(b) of the Cenvat Credit Rules, 2004 is not duty or tax, and hence the same cannot be deducted from the price of exempted goods cleared by consuming inputs on which Cenvat credit was taken. The Tribunal in this regard was of the view that the proposition to equate reversal of 10% of price of exempted goods to 'other taxes' is wrong in as much as reversal of such amount is not tax at all. It was also held that cost of exempted goods needs to be considered as a whole. [*Kriti Industries (I) Ltd.* v. *Commissioner* – 2017 VIL 390 CESTAT LB]

Cenvat credit on returned goods – No requirement for providing reasons for return and evidence of further used for being remade: CESTAT Allahabad has upheld the contention of the assessee that there is no requirement for providing reasons for return of goods under

Rule 16 of the Central Excise Rules, 2002. It was also held that there is no requirement to provide evidence of use of such goods for being remade. Revenue department's contention that returned goods could not be further used for being remade and therefore availment of Cenvat credit under said provisions was not admissible, was hence rejected by the Tribunal. [*India Pesticides Ltd.* v. *Commissioner* – Final Order No. 70350/2017, dated 3-3-2017, CESTAT Allahabad]

Cenvat credit available on rock bolts used in captive mines as capital goods: Cenvat credit on rock bolts used as support for mining wall and grouted/fitted against rock mining is available. CESTAT Delhi in this regard observed that adjudicating authority himself had held the goods to be fixtures, and that 'fixtures' were covered in the definition of 'capital goods'. Reliance was also placed on Apex Court judgment in the case of *Vikram Cement* [2006 (197) ELT 145 (SC)], for allowing credit when the goods were used in captive mines. [*Hindustan Zinc Ltd.* v. *Commissioner* - 2017 (349) ELT 316 (Tri. - Del.)]

Manufacture – Cutting of old tyres to produce two or more pieces of cut-tyres is not manufacture: Larger Bench of the Delhi High Court has answered in negative the question as to whether the process to which used and old tyres are subjected to produce two or more pieces of cut tyres is 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944. Relying on Apex Court decision in the case of *Servo-Med Industries,* the Court was of the view that the essential character of the goods remain the same. It was also held that there was no requirement to reconsider the decision of the Court in the case of *Modi Rubber Ltd.*, since that decision was impliedly approved by the Supreme Court in the case of *Ahmedabad Electricity Co. Ltd.* [*Tinna Rubber & Infrastructure Ltd.* v. *Union of India* – 2017 VIL 249 DEL CE]

Manufacture - Gear teeth cutting of machined blanks amounts to manufacture: Mumbai Bench of the CESTAT has held that the process of gear teeth cutting of machined blanks amounts to manufacture as per Section Note 6 to Section XVI of the Central Excise Tariff Act, 1985. The Tribunal in this regard held that the product attained the essential character of the finished goods even if the same were being thereafter subjected to processes like heat treatment, slotting, etc., by the supplier of blanks. Contention of the appellant that merely gear teething of blanks would not result in a marketable commodity was rejected. [*Moulds & Dies P. Ltd.* v. *Commissioner* - 2017 (349) ELT 186 (Tri. -Mumbai)]

EOU - No requirement to reverse credit on input services received prior to de-bonding: CESTAT Delhi has held that there is no requirement to reverse credit availed on input services in relation to inward transportation of inputs received prior to de-bonding of EOU unit even if the goods manufactured post de-bonding are cleared without payment of duty under Notification No. 30/2004-CE. The submission of the assessee that the services in respect of which credit was availed were

consumed as soon the same were received and since at the time of taking credit, duty was being paid, no liability to reverse credit under Rule 6 would arise, was accepted. [*Nitin Spinners Ltd.* v. *Commissioner* - 2017 (349) ELT 174 (Tri. – Del.)]

Heena powder in retail pack for use on hand is classifiable under Heading 1401: CESTAT Allahabad has dismissed appeal filed by the Department in a case involving classification of henna powder cleared in retail pack for use on hand. Revenue department's view that the goods would be classifiable under Heading 3305 of Central Excise Tariff, in the light of earlier decision in the case of Henna Export Corporation, was rejected by the Tribunal. It distinguished the earlier order holding such goods, with indication of use as hair dye, to be classifiable under Heading 3305. The goods were held to be classifiable under Heading 1401 of the Central Excise Tariff. [*Commissioner* v. *Shubham Goldiee Masala Pvt. Ltd.* - Final Order No. 70366-70368/2017, dated 1-3-2017, CESTAT Allahabad]

SERVICE TAX

Ratio decidendi

Exemption – Benefit of exemption notification to service recipient: CESTAT Delhi has held that benefit of Notification No. 13/2010-S.T. would be available to the assessee-recipient of service, liable to pay service tax under reverse charge mechanism under Section 66A of the Finance Act, 1994. Considering the said provisions, the Tribunal was of the view that the legal fiction under Section 66A cannot be restricted only to collection of tax without applying any concession when conditions of the notifications are fulfilled by the recipient. Department's contention that deeming fiction under Section 66A is only for charging and collection of service tax from recipient and that exemption notification having impact on rate of tax is to be read independently, was rejected by the Tribunal observing that exemption is part and parcel of provisions of service tax. [*United News of India* v. *Commissioner* – 2017 (51) STR 23 (Tri.-Del.)]

Cenvat credit on telephones installed at schools maintained in close vicinity of factory, available: CESTAT Allahabad has allowed Cenvat credit in respect of telephones installed at schools maintained by assesse in close vicinity of factory. Terming the disallowance of credit as bad, the Tribunal in this regard observed that school was run and maintained by assessee with mostly children of workers studying there. [*Dhampur Sugar Mills Ltd.* v. *Commissioner* - Final Order No. 70296-70297/2017, dated 16-3-2017, CESTAT Allahabad]

Penalty - Longer duration of tax liability does not bar closure of case under Section 73(3) of Finance Act, 1994: In a case where the assessee had paid service tax and interest on being pointed out by the department, CESTAT Delhi has allowed the appeal of the assessee observing that the case was fit for closure under Section 73(3) of the Finance Act, 1994. The

department had earlier denied the benefit on the ground that the tax liability was spread over extended period. The Tribunal however was of the view that longer duration of tax liability by itself will not bar closure of case under said provisions, and that the bar will come into effect only in cases where mis-statement, suppression, intention to evade, are present. [*Indian Oil Corporation Ltd.* v. *Commissioner* – Final Order No. 52939/2017, dated 13-4-2017, CESTAT Delhi]

Refund of Cenvat credit available even when premises of service provider not registered: Madras High Court has upheld the view of the CESTAT that refund of Cenvat credit would be available even in cases where the additional building taken on lease by the service provider was not registered with the department. The Court in this regard was of the view that fixation of jurisdiction of the officer to whom the refund application was to be made, in Notification No. 5/2006-ST, cannot be read in a manner to obliterate rights of exporter of services to claim refund. Fact that Rule 5 of the Cenvat Credit Rules, 2004 and sub-rules (2) and (3) of Rule 4 of the Service Tax Rules, 1994 did not stipulate registration of premises for the purpose of claiming such refund, was also considered by the Court while it distinguished an earlier judgement of the Court in the case of *Sutham Nylocots.* [*Commissioner* v. *Scioinspire Consulting Services (India) Pvt. Ltd.* – 2017 TIOL 798 HC MAD ST]

Reimbursable expenses – Evidence for non-inclusion in value of service provided: In a case where the assessee, involved in providing C&F Agent services, arranged for transportation and got the amount reimbursed from their client, CESTAT Delhi has held that such amount would not be included in value of services provided. The Tribunal in this regard took note of the fact that transport documents did not indicate name of assessee-appellant. Assessee's terms of agreement with their clients and the fact that amounts were on actual basis, were also considered by the Tribunal. [*Shri Maheshwari Mills* v. *Commissioner* – 2017 TIOL 1494 CESTAT DEL]

Input credit distribution – Apportionment of inadmissible credit based on turnover of unit, not correct for period prior to introduction of Cenvat Rule 7(d): CESTAT Allahabad has held that apportionment of inadmissible and admissible credit on the basis of turnover of unit manufacturing only exempted or dutiable goods, in a case where the input services were commonly used by the entire group of manufacturing organization, was not correct. It may be noted that period involved in the dispute was from April 2006 to March 2011. The dispute involved credit in respect of services such as advertisement services and sales promotion services received in the corporate office of the assessee. The Tribunal, while holding so, also observed that SCN did not establish that Cenvat credit proposed to be recovered was used in the unit exclusively engaged in exempted goods. Further the fact that the adjudicating authority relied upon clause (d) of Rule 7 of Cenvat Credit Rules, 2004 which was introduced after the period involved in the dispute, was held as

not correct by the Tribunal here. [*Dabur India Ltd. v. Commissioner* – 2017 VIL 422 CESTAT ALH ST]

Rebate on exports - Rent-a-cab service used for transporting employees for conference: CESTAT Allahabad has allowed rebate/refund claim under Notification No. 12/2005-S.T., in respect of Rent-a-cab Operator service used by the company for transport of its employees for holding conference outside the office at club site or resort. The assessee had submitted that holding of a business conference and/ or training program was part of the business activity which improved productivity and profitability, and hence an eligible input service for the purpose of rebate in the case of exports. [*Innodata India Pvt. Ltd. v. Commissioner* – 2017 VIL 393 CESTAT ALH ST]

Export of BAS – Determination of destination of service: CESTAT Delhi has reiterated the view that destination of service has to be decided based on place of consumption and not on the place of performance of service in case of Category III involving Business Auxiliary Services. The recipient of services in the dispute was a foreign entity involved in export of goods to India while the assessee facilitated such importation. Reliance in this regard was placed by the Tribunal on an earlier decision in the case of *Paul Merchants Ltd.*, while it held that persons to whom in India the goods were sold by the foreign entity or from whom various details and information were collected were not to be considered as recipient of service provided by the assessee. [*Sumitomo Corporation India Pvt. Ltd. v. Commissioner* – 2017 (50) STR 299 (Tri.-Del.)]

STGU service – No liability on rental of containers transporting gas, utilized further in manufacture: CESTAT Mumbai has set aside demand of service tax, under reverse charge mechanism, under Supply of Tangible Goods for Use service in a case involving import of gas in containers, where rent on cylinders was paid by the importer-appellant to the foreign supplier. The Tribunal in this regard took note of the fact that the cylinders were in effective control and possession of the assessee till the time empty containers were re-exported, and that Central Excise duty was paid on the gas considering the process of repacking and relabeling as amounting to 'manufacture'. It was also observed that the case involved revenue neutrality service tax, if paid, would be available as Cenvat credit. [*K-Air Speciality Gases Pvt. Ltd. v. Commissioner* – 2017 VIL 396 CESTAT MUM ST]

CUSTOMS

Circular

EO discharge certificate – Customs to keep matter in abeyance till DGFT decision: CBEC has instructed field formations to keep cases in abeyance till the time EODCs are issued to the license/ authorization holder, subject to such license/ authorization holder submitting proof of application for EODC. Field formations have also been directed to issue only a simple

notice for submission of proof of discharge of export obligation. Circular No. 16/2017-Cus., dated 2-5-2017 issued for this purpose also states that alignment of time period as provided in Customs notifications with that given in FTP Handbook of Procedures may not be required.

Ratio decidendi

Valuation – Rejection of value when not sustainable: Finding the reasons such as the importer had used the name of another firm to avoid sales tax, imports were made from trader and not from manufacturer, and the value declared was even less than the value of steel scrap, as not relatable to value of goods, CESTAT Delhi has allowed the appeal of the importer. Similarly, the reason that the word 'telescopic' was not mentioned in the documents, in case of imports of drawer slides, was also held as not relevant for the purpose of value. The Tribunal in this regard also rejected the contention of the department that since the impugned goods were bought on high seas, same could not be considered to be at the same level with the goods imported elsewhere directly. Further department's back calculation allowing 5% selling expenses and profit margin, was also rejected in the absence of any evidence. [*Aman Trading Company* v. *Commissioner* – 2017 VIL 417 CESTAT DEL CU]

Conversion of shipping bill – Limitation prescribed, not correct: In a case involving request for conversion of shipping bills from drawback to DFIA scheme due to delay in grant of drawback, CESTAT Mumbai has held that CBEC Circular No. 36/2010-Cus., seeking to impose restriction on time limit for conversion was not legally sustainable since Section 149 of the Customs Act, 1962 does not prescribe time limit for amendment of the shipping bills. The Tribunal in this regard also noted that in both the schemes the level of examination of export cargo by authorities remained the same. [*Parle Products Pvt. Ltd.* v. *Commissioner* – Order dated 6-2-2017 in Appeal No. C/87134/16, CESTAT Mumbai]

Accounting of goods imported under Customs (IGCRDMEG) Rules – Principles of Rule 7A applicable retrospectively: Relying on principles of Rule 7A of the Customs (Import of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 1996, which was introduced after the concerned period, CESTAT Allahabad has set aside the demand of duty. The case involved re-export of unutilized goods imported earlier under the benefit of said Rules. It was held that though the said provision was not applicable during the relevant period, the principle involved in the said provision should be applicable for all the material periods. The Tribunal declined recovery under Rule 8 observing that if the imported goods are re-exported as such then they should be treated as if they were never imported. [*Samsung India Electronics Pvt. Ltd.* v. *Commissioner* - Final Order No. 70374/2017, dated 11-4-2017, CESTAT Allahabad]

Confiscation – Customs Section 123 does not require explanation of source of source: In a case involving confiscation of gold, CESTAT Allahabad has held that Section 123 of the Customs Act, 1962 requires the person to explain the licit source of acquisition of goods and not source of source. Allowing the appeal, the Tribunal observed that the appellant had produced tax invoice in support of purchase of the gold in question from another dealer who is also duly registered with the trade tax and other authorities, and that the payment for the purchase was made through the banking channel. It was also noted that gold was being transported from the Delhi branch to their Agra Branch under proper challan, as well as road permits/waybill which was pre-authenticated by the Sales Tax Department. [*AIMR Jewels Pvt. Ltd.* v. *Commissioner* - Final Order No. 70267/2017, dated 20-1-2017, CESTAT Allahabad]

EOU – Imported inputs used in production of non-excisable goods cleared in DTA liable to duty: CESTAT Hyderabad has held that dross arising during production of goods and cleared from EOU to DTA being non-excisable, the EOU unit was not entitled to the exemptions claimed on import of such inputs. Penalties were, however, set aside on the ground that dross was otherwise being cleared on payment of excise duty, and there was sufficient confusion in the matter. [*Synergies Castings Ltd.* v. *Commissioner* – 2017 TIOL 1436 CESTAT HYD]

Jurisdiction in respect of rigs operated in Exclusive Economic Zone (EEZ): Mumbai Bench of CESTAT has held that the jurisdiction assigned to the Commissioner of Customs (Preventive), Mumbai under Section 4 of the Customs Act, 1962 extends only to the districts of Mumbai, Thane and Raigad and cannot extend beyond land area of the three notified districts. It was held that once jurisdiction over the EEZ is specifically assigned to the Commissioner of Customs (Mumbai), it is only such officer who can exercise powers under the Customs Act in such areas. It was also held that no demand of duty short levied can be made under Section 12 without adhering to the procedure provided in Section 28. [*Jagson International Ltd.* v. *Commissioner* – 2017 TIOL 1585 CESTAT MUM]

Auction of goods by Customs during pendency of appeal, without notice to importer is not valid: Delhi High Court has allowed the writ petition filed by the importer in a case involving auction of imported goods without notice to the importer while the matter was still pending at appellate stage. The Revenue department was directed to pay the declared value of goods after deducting Customs duty, while the Court rejected the contention that goods were sold by the custodian under Section 48 of the Customs Act, 1962. The High Court in this regard noted that it was only after obtaining permission from proper officer of the Customs that the goods could have beens sold, and that the goods earlier could not be cleared as Customs found them to be mis-declared. [*Dejero Logix Pvt. Ltd.* v. *Commissioner* – 2017 VIL 248 DEL CU]

Due diligence by CHA – Inquiry into genuineness of IE Code, not covered: Pondering over obligations of the CHA under Customs House Agent Licensing Regulations, Delhi High Court has observed that the clauses do not obligate the CHA to look into information which is made available to it by importer or exporter. It was held that CHA is not an inspector to weigh the genuineness of the transaction and that it was too onerous to expect the CHA to inquire into and verify the IE Code given to it by the importer or exporter. Setting aside revocation of the CHA licence, the Court observed that when such code is mentioned there is a presumption that appropriate background check has been done by the authorities. [*Kunal Travels (Cargo)* v. *Commissioner* – 2017 VIL 242 DEL CU]

VALUE ADDED TAX (VAT)

Notification

Amnesty Schemes under Rajasthan VAT and Rajasthan Entry Tax, extended: By Notification No. F.12(16)FD/Tax/2009-08, dated 30-4-2017, Amnesty Scheme-2017, dated 8-3-2017 introduced under the Rajasthan Value Added Tax Act, 2003 has been extended up till 31-5-2017 and will now be available to all dealers/ persons against whom the total outstanding demand for CST/ sales tax/ VAT created on or before 28-2-2017 is less than Rs. 30 crores.

Similarly, by Notification No. F.12(16)FD/Tax/2009-09, dated 30-4-2017, New Voluntary Amnesty Scheme for Entry Tax-2017 dated 8-3-2017 introduced under the Rajasthan Tax on Entry of Goods into Local Area Act, 1994 has been extended till 31-5-2017 and will now be available to all dealers/ persons against whom the total outstanding demand for entry tax created on or before 28-2-2017 is less than Rs. 10 crores.

Ratio decidendi

Sales tax not payable on service tax component even when composition scheme opted: The question before the Tribunal in this case was levy of sales tax on the component of service tax collected separately in the sales bill. The appellant-hotelier ran banquet hall in the hotel premises while providing banquet and catering services to its customers in the said hotel premises. Relying on the decision of *Sujata Painters* v. *State of Maharashtra* [2015-VIL-06-MSTT] and Circular No. 6T of 2015, dated May 14, 2015, the assessee had contended that even if he had opted for the composition scheme under Section 42(2) of the Maharashtra VAT Act, 2002, Sales tax cannot be levied on the service tax component.

The Tribunal took note of Section 42 of MVAT Act and the relevant Notification dated 1-6-2005 issued thereunder, which were applicable to the appellant, and observed that the levy of tax under the said notification is on the 'turnover of sales'. The turnover of sales, as per Section 2(33) of MVAT Act, was the aggregate of the amount of sales price and that the definition of sales price, as per Section

2(25) of MVAT Act, did not specifically include service tax unlike the specific inclusion of custom duty and central excise duty, by way of deeming fiction. It was held that sales tax was not payable on the service tax component in the instant case. [*Royal Court* v. *State of Maharashtra* – 2017 VIL 09 TRB]

ITC on goods used in construction of silos, available: Allahabad High Court has upheld the view of the Tribunal that input tax credit on MS Sheets utilized for construction of silo is available. The Department had contended that 'capital goods', as defined under Section 2(f) of the Uttar Pradesh Value Added Tax Act, 2008, are goods that are movable in nature, and since silo is a storage tank embedded to earth, as such, it cannot be included within the definition of 'capital goods'.

The Court noted that the definition of 'capital goods' covered plant, machine, machinery, equipment apparatus and tools or appliances and electrical installation, which are used for manufacture or processing of any goods for sale by a dealer, and held that mere fact that machine, machinery, etc., are generally understood to be movable property, would not mean that plant also has to necessarily be treated as movable property only. The Court observed that there was no rationale to import the concept of movable or immovable goods while interpreting Section 2(f) of UP VAT, when the provision does not say so.

Decision of the Apex Court in *Jawahar Mills Ltd.* [2001-VIL-02-SC_CE] which was followed in *Rajasthan Spinning and Weaving Mills Ltd.* [2010-VIL-05-SC-CE], and the decision of Karnataka High Court in *SLR Steels Ltd.* [2011-VIL-119-KAR-CE], was also noted by the Court in this regard. The revision petitions of the Department were hence rejected. [*Commissioner* v. *Ambuja Cement Ltd.* – 2017 VIL 233 ALH]

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