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ARTICLE

Input Tax Credit under GST regime – Make it seamless

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The new Goods and Services Tax (GST) is a comprehensive indirect tax on manufacture, sale and consumption of goods and services across India. GST is a destination-based, value added taxation system. GST will be a dual levy in India and the eligible transactions will be subject to levy of both CGST and SGST in the case of intra-state supplies and IGST in the case of inter-state supplies and imports/ exports.

It is said that in GST, the cascading effect of VAT, CENVAT and Service tax would be removed, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level would be established. This would be achieved through the mechanism of Input Tax Credit (ITC).

Section 2(57) of the Model GST Law (MGL) defines input tax to mean the (IGST and CGST) / (IGST and SGST) charged on any supply of goods and/or services to a registered taxable person which are used or intended to be used in the course or furtherance of his business and includes the tax payable under reverse charge mechanism as per Section 7(3) of the MGL. As per Section 2(58) of the MGL, ITC means credit of input tax as defined in Section 2(57) [inadvertently mentioned as 2(56) in the MGL].

Section 16(1) of the MGL provides that every registered taxable person is entitled to take credit of input tax admissible to him and such amount will be credited to his electronic credit ledger. Further, Section 16(11), *inter alia,* provides that in order to avail the ITC, the registered taxable person should have furnished return under Section 27 of the MGL. As per Section 28, a registered taxable person is entitled to take ITC in his return on self-assessment basis and the same will be credited on a provisional basis to his electronic credit ledger to be maintained at the common portal. Further, Section 2(41) of the MGL defines electronic credit ledger as the input tax credit leger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf.

A combined reading of the above provisions of the MGL points to the position that once the eligible credit is availed on self-assessment basis in his return by the registered taxable person, the same would stand credited to his electronic credit ledger which would be maintained at the common portal registration wise for every registered taxable person.

GST is a destination based consumption tax and the credit thereof is available in the State where the supply has been consumed. To determine the place of consumption, the MGL provides for the rules to find out the place of supply for goods as also services. As far as domestic supplies are concerned, where

the location of the supplier and the place of supply are within the same State, CGST and SGST are to be paid and where the location of the supplier and the place of supply are in two different States, IGST is to be paid. The credit of such input tax(es) is available to the registered taxable person in his electronic credit ledger maintained at the common portal.

In a situation where the place of supply is within the State of the supplier but the recipient of supply is not located in the supplier's State, availment of ITC by the recipient, of the SGST and CGST paid on such intra-State supply would be an issue. This is for the reason that the ITC is to be credited to the electronic credit ledger of the recipient and the recipient is not having any registration in the supplier's State.

For example, the place of supply of goods which involve movement is the location of the goods at the time at which the movement terminates for delivery to the recipient. Suppose, supplier in State A supplies goods to a recipient in State B and the goods were moved and delivered in State A. Here, since the movement of goods terminates in State A, the place of supply is in State A. As suppler and place of supply are in State A, it is an intra-State supply of goods and the supplier will pay CGST and SGST in State A. However, recipient is not registered in State A and has no electronic credit ledger associated with any registration in State A. In such a situation, how will the input taxes be credited to the recipient is not clarified in the MGL.

Similarly, in a situation where the place of supply and supplier's location are in two different States and the recipient is located in a third State which is different from the aforesaid two States, the availment of ITC of the IGST by the recipient would pose an issue. The MGL does not provide as to how the IGST paid by the supplier would be credited to the electronic credit ledger of the recipient maintained registration-wise in the common portal. But we may note that there is no bar on the recipient taking ITC either!

For example, the place of supply of services provided by an architect (i.e. Supplier) in relation to an immovable property is the location/intended location of the immovable property. Suppose, supplier in State X provides architecture services to a recipient in State Y and the immovable property is intended to be located in State Z. Here, since the immovable property is located in State Z, the place of supply is in State Z. As Supplier and place of supply are in different States, it is an inter-state supply of services and the supplier will pay IGST, on the said supply, in State X. However, recipient is not registered in State X and has no electronic credit ledger associated with any registration in State Z. In such a situation, how will the input taxes be credited to the recipient is not clarified in the MGL though there is no bar as such prescribed for the recipient taking credit.

The same ambiguity exists in the situation where the recipient is liable to pay IGST on reverse charge basis on, say, import of goods/ service and the place of supply thereof happens to be in a State other than the State in which

such recipient is located. Can it be said that since CGST and IGST are levies by the Central Government, registration [for CGST/SGST or IGST] in any of the States / Union Territories with legislature in India would suffice to avail the credit of CGST or IGST? If such a position is taken, then it leads to a situation where the ITC is made available in a State other than the one in which the place of supply is located. This would go against the very basic principle of GST that it is a destination based consumption tax.

On the contrary, if the ITC is not made available to the recipient in the above situations, it breaks the credit chain and would be contrary to the purpose of GST itself.

One of the aims of introducing GST is to make the seamless flow of ITC possible in a destination based consumption tax structure. In order to achieve the same, the above issues are to be addressed in the MGL and more clarity is to be brought in at the earliest.

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GOODS & SERVICES TAX (GST)

Migration of existing taxpayers into GST Regime – Procedure specified: In order to enable migration of existing taxpayers into the GST regime, GST-N has prescribed procedure and notified schedule for provisional registration of the assessees in each of the States. The State VAT departments have to issue a provisional ID and password, using which the taxpayers will be able to create username and password for the GST Common Portal and then update their profile information and upload the required documents as described in the FAQs available in the new website relating to GST – www.gst.gov.in. While States of Gujarat and Maharashtra would have to complete the enrolment process between 14-11-2016 and 29-11-2016, schedule for States of Uttar Pradesh, Delhi, Haryana, Punjab and Rajasthan prescribe time from 16-12-2016 till 31-12-2016. Southern States of Kerala, Tamil Nadu, Karnataka, Telangana and Andhra Pradesh have time from 1-1-2017 till 15-1-2017 for completion of enrolment process. Further migration of Service tax assessees would take place from 1-1-2017 till 31-1-2017. It may be noted that Department of Commercial Taxes, Government of Goa has also issued a Circular prescribing procedure to be followed by the taxpayers, so as to enable the department to issue Provisional Registration Certificate. The Circular states that sealed envelope containing provisional ID and password has to be collected from the Ward offices of the department. (GST Updates are available at www.gst.lakshmisri.com).

GST rate slabs finalized: GST Council in the meeting held on 3rd of November has finalized four tier GST rate structure. According to the statement of the Finance Minister, zero-rate will apply to 50% of items in the Consumer Price Index basket, including grains used by the common man, and 5% rate will be applicable on items of mass consumption. Further, while two standard rates of 12% and 18% will cover most of the goods, items presently taxed at 30-

31 per cent [excise plus VAT] will be taxed at 28 per cent. Luxury cars, tobacco and aerated drinks will additionally be liable to a Cess, which will enable the Central Government to compensate States for loss of revenue attributable to implementation of GST.

ENTRY TAX

Constitution Bench of Supreme Court pronounces order on Entry Tax : Constitution Bench of the Supreme Court comprising of 9 Judges has by a majority Order held that a tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State. The Apex Court has held that Article 304(a) of the Constitution of India frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation and hence, incentives, set-offs etc., granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). It was held that States are well within their rights to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. The question as to whether the levies indeed satisfy this test, was however left, by the Court, to be determined by the regular benches hearing the matters. [*Jindal Stainless Ltd. and Ors.* v. *State of Haryana and Ors.* – Order dated 11-11-2016 in Civil Appeal Nos. 3453/2002 and others]

CENTRAL EXCISE

Circular

Combined Annual Return Form for Central Excise and Service tax not required this year: Combined Annual Return to be filed in terms of Rule 12 of Central Excise Rules, 2002 and Rule 7 of the Service Tax Rules, 1994, for the year 2015-16, would not be required to be filed this year as per Circular No. 1050/38/2016-CX, dated 8-11-2016 issued by the CBEC. The Return was due to be filed by 30-11-2016 and CBEC was to notify format for the Return. It may be noted that Excise Rule 12 and Cenvat Rule 9A were amended, as part of this year's Budget changes, to replace the existing Central Excise Forms ER-4 to ER-7 with an Annual Return form. The circular states that after implementation of GST, Annual Return for non-GST goods only may be required and that a final view on the same would be taken later.

Ratio Decidendi

Cenvat credit on inputs destroyed during testing, allowed: Cenvat credit of duty paid on inputs destroyed during testing is admissible according to a recent order of CESTAT Mumbai. It was held that the testing of sample of inputs is an integral part of the process of manufacture of the final product, pre-stressed concrete sleepers, as without testing goods are not allowed to be used in the final product. Further, the Tribunal held that since the inserts were not removed as such in original form, but after getting broken or defective during testing which is part of manufacturing process,

there is no requirement of reversal of credit under Rule 57F(3) of erstwhile Central Excise Rules, 1944. [*ISCO Track Sleepers Pvt. Ltd.* v. *Commissioner* - 2016-TIOL-2823-CESTAT-MUM]

Cenvat credit available on supplementary invoices – Amendment is clarificatory: Mumbai CESTAT has allowed credit of inputs on the basis of supplementary invoices issued between 1-4-2000 to 29-8-2000. The Tribunal for the purpose held that Notification No. 51/2000-C.E. (N.T.), dated 29-8-2000 by which supplementary invoices were declared as the notified documents on the basis of which credit can be taken, is only clarificatory in nature. Further noting that the credit was available before 1-4-2000, it was held that Cenvat Credit Rules is a beneficial legislation and hence benefit which is due to the appellant should not be curtailed due to want/error of the drafting in the legislation. [*Mukand Ltd.* v. *Commissioner* - 2016-TIOL-2478-CESTAT-MUM]

Penalty for ineligible credit when not imposable: CESTAT Ahmedabad has held that penalty under Rule 15(4) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is not imposable even when fact of inadmissibility of credit came to notice of department during audit. The Tribunal in this regard held that fact that inadmissibility of Cenvat credit came to notice of Department during course of audit, cannot be construed as if the credit was availed by way of suppression or mis-declaration of facts. [*Gujarat Boron Derivatives Pvt Ltd.* v. *Commissioner* - Order No. A/11166/2016, dated 30-9-2016, CESTAT Ahmedabad]

Reversal of Cenvat credit on inputs lying in factory, in case of opting for exemption, when not required: CESTAT Allahabad has held that if there is no unutilized balance in the Cenvat credit account, on the date of exercise of option under an exemption notification, no amount is required to be reversed. The Tribunal while holding so observed that Rule 11(2) of Cenvat Credit Rules, 2004 is concerned with only the amount lying in the Cenvat Credit account, which is unutilized balance on the date of availing benefit under an exemption notification and that if there is no unutilized balance on the date of exercise of option under an exemption notification, no amount is required to be reversed. [*A.K. Enterprises* v. *Commissioner* – Final Order No. 70928/2016, dated 19-9-2016, CESTAT Allahabad]

Adjustment of excess payment against short payment, in case of absence of provisional assessment: CESTAT Delhi has allowed adjustment of excess payment against short payment even when request for provisional assessment was rejected by the department earlier. The Tribunal in this dispute was of the view that where initial duty payment is made with a value which is not final and final value is arrived only after closure of the year, it is not sustainable to take a stand that such payments in excess, if any, should be taken back only through the provisions of Section 11B of the Central Excise Act, 1944. Demand for the duty short paid was hence set aside by the Tribunal. [*Jindal Steel & Power Limited* v.

Commissioner - Final Order No. 53849/2016, dated 28-9-2016, CESTAT Delhi]

Sale without MRP to hospitals, co-operative societies and temples, is not retail sale: Rejecting the reasoning of the original authority that schools, educational institutions and hospitals are not service industry in terms of Rule 2A of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, CESTAT Delhi has allowed the benefit of Notification No. 4/2006-C.E., Sl. No. 1C to the cement cleared to such buyers. The Tribunal was of the view that these institutions even if not covered under category of 'other similar service industry', as per Rules, sale to these are not covered as retail sale under Rule 2(q), being done without any intermediary. It was observed that cement, without marking of RSP, was sold directly to these consumers and that such transactions did not qualify as "retail sale". [*Prism Cement Limited* v. *Commissioner* - Final Order No. 53855-53856/2016, dated 28-9-2016, CESTAT Delhi]

Classification – Primary test should be common parlance understanding: Delhi Bench of the CESTAT has held that the products "Roop Amrit" and "Complete Solution" were classifiable as cosmetics under Heading 3304 and not as medicament under Heading 3003 since both the products in question were more in the nature of items used for enhancing one's appearance and beauty. The Tribunal in this regard observed that to classify a product under Central Excise Tariff, the first and foremost test should be the common parlance understanding, unless a specific definition is provided in the entry itself. It was found that the products were marketed to specific target group with a promise of cosmetic improvement in appearance. [*Commissioner* v. *Davo Laboratories* - 2016 (11) TMI 7 - CESTAT]

Couplings exempted as 'pipes' for delivery of water: Observing that couplings are nothing but shorter version of pipes, which are classified in the same sub-heading 6811.83 of Central Excise Tariff and that there was no separate billing or clearance document for the couplings, CESTAT New Delhi has allowed benefit of Notification No. 6/2006-C.E. providing exemption to '*pipes needed for delivery of water from its source to the plant and from there to the storage facility*', to couplings also. The Tribunal in this regard noted that the essentiality certificate was produced from the competent authority and the impugned goods were cleared for the intended purpose. It was observed that construction of the entry in the notification, in order to deny the benefit, would be too literal and against the intended scope therein. [*Commissioner* v. *Kanoria Sugar & General Mfg. Co. Ltd.* - 2016 (11) TMI 10 - CESTAT]

EOU – Exemption to cement used in treatment of hazardous waste, available: Rejecting the contention of the department that since cement was not required in the manufacturing activity of final products and hence exemption under Notification No. 22/2003-C.E. is not available, CESTAT Delhi has allowed the appeal of the assessee. Cement was used by the assessee in stabilization of hazardous waste

i.e. jarosite generated in the manufacture of finished product (zinc), as per directions of the Ministry of Environment & Forests. The Tribunal was of the view that cement can be considered as brought in connection with manufacture of final product. [*Hindustan Zinc Ltd.* v. *Commissioner* - 2016-VIL-770-CESTAT-DEL-CE]

CUSTOMS

Notifications and Circulars

Authorised Economic Operators (AEOs) allowed to pay Customs duties on fortnightly basis: Customs duties payable on import of goods can now be paid on fortnightly basis by specified Authorised Economic Operators-importers. New Rules namely, Deferred Payment of Import Duty Rules, 2016 have been issued for this purpose by the Central Board of Excise and Customs (CBEC) on 2nd of November, 2016 and are effective from 16-11-2016. According to the Rules, importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three), if eligible, would be allowed to pay Customs duties electronically under the said Rules which allows payment of duty in respect of bills of entry returned for payment from 1st to 15th of any month, by 17th of that month and by 2nd of next month in respect of B/E returned from 16th to last day of the month (except March). In respect of duty payable in March, same would be payable by 31st of March in respect of B/E returned from 16th till 29th of March. Duty in respect of B/E returned on 30th and 31st of March would however be payable by 2nd of April, i.e. in the next financial year. Notification Nos. 134 and 135/2016-Cus. (N.T.) have been issued in this regard.

Revised All Industry Rates (AIR) of Drawback notified: Ministry of Finance has revised the All Industry Rates (AIR) of Drawback. These revised rates along with certain changes in tariff item description will come into force from 15-11-2016. According to CBEC Circular No. 50/2016-Cus., dated 31-10-2016, changes have been made in certain tariff item description for packaged rice, rubber parts, certain leather items, leggings, frocks, bicycles, protective sports gear, etc. Similarly, for better product differentiation, separate tariff lines are now provided by carving them out from certain existing tariff items. While residuary rate (customs) provided to items across various chapters has been reduced from 1.9% to 1.5% and from 1.4% to 1.1%, the new notification provides for alternative AIRs on export of garments made against the Special Advance Authorization, specified under recently introduced Para 4.04A of Foreign Trade Policy 2015-20.

Further, Customs, Central Excise and Service Tax Drawback Rules, 1995 have also been amended by Notification No. 132/2016-Cus. (N.T.), dated 31-10-2016 to omit sub-rule (1) of Rule 8, with effect from 15-11-2016. The said provision prohibits AIR or Brand Rate of drawback to exports (other than postal exports

or exports under Advance Authorization) if the amount of drawback is less than 1% of F.O.B. value of export, except where the amount of drawback per shipment exceeded Rs.500.

Ratio Decidendi

Confiscation of restricted goods under Customs Section 111(d), not sustainable: Noting that the word 'restriction' cannot be equated or read as 'prohibition', by any stretch of imagination, CESTAT Bench at Hyderabad has allowed the appeal of the assessee against confiscation of dumpers imported in violation of provisions of Import Licensing Notes of Chapter 87 of ITC (HS) Classifications under Foreign Trade Policy 2004-2009. The Tribunal was of the view that there is no prohibition in force against import of vehicles and that there was only restriction in the licensing notes. Confiscation under Section 111(d) of the Customs Act, 1962 and consequent penalty under Section 112(a) were set aside by the Tribunal. [*International Seaport Dredging Ltd.* v. *Commissioner* - 2016-VIL-772-CESTAT-HYD-CU]

Interestingly, Madras High Court in its recent decision, considering various earlier decisions, held that when there is violation of statutory prohibitions, mentioned in Sections 11 and 11A of the Customs Act, 1962 or any other law, for the time being in force or restrictions imposed, such restrictions would also be covered under the expression 'any prohibition' in the definition of 'prohibited goods' in Section 2(33) of the Customs Act. [*Malabar Diamond Gallery P. Ltd.* v. *Additional Director General, DRI* – 2016 (341) ELT 65 (Mad.)]

Exemption to imports in CKD condition - Interpretative Rules for classification, not applicable: CESTAT Chennai has allowed benefit of exemption under Notification No. 25/99-Cus. in a case involving import of goods in CKD condition as components. This notification allows benefit to parts of remote control if they are imported for manufacture of remote control. The department was of the view that although three components were brought in terms of one bill of entry, those were nothing but the remote control in unassembled form and that going by Interpretative Rules for classification of goods, even unassembled goods should be considered as complete goods. [*Syndicate Electronics* v. *Commissioner* - Final Order No. 41614/2016, dated 23-9-2016, CESTAT Chennai]

Import of parts at different ports not material for classification as complete machine: In a case involving import of parts of second-hand machine through 2 different ports, CESTAT Mumbai has held that even though the machine has been imported and cleared from two different ports, both consignments put together comprise of one second hand machine and that therefore there was no requirement of licence. The Tribunal took into consideration the fact that there was a common purchase order which was complete in two invoices and that there was not much difference in the time of import as well. Rule 2(a) of the General Rules of Interpretation for classification of goods was relied by the Single Member Bench in this case. [*Porritts & Spencer (Asia) Ltd.* v. *Commissioner* - 2016-TIOL-2885-CESTAT-MUM]

Test report when not reliable: Allowing benefit of doubt to the test reports of crude palm oil, CESTAT Mumbai has allowed benefit of Notification No. 26/2003-Cus. to the imports of the goods. As per the test report, the goods were having less carotenoid content, than prescribed by the exemption notification. The Tribunal in this regard noted that it was only after the gap of 21 months after the test report, the proper officer initiated action for denial of benefit of exemption notification, and that if the importer would have been informed in time, challenge to the credibility of the test including re-test would have been possible. Further, observing that there was denial of cross-examination, the Tribunal was of the view that there was maladroit handling of the test procedure by the Customs officials. The benefit of concessional rate was finally allowed observing that there was no case that the goods were refined. [*Britannia Industries Ltd.* v. *Commissioner* – TS 441 CESTAT 2016 CUST]

Quantum of redemption fine in case of import of used goods: CESTAT Chennai has reduced redemption fine in a case of import of used goods, observing that it is not reasonable to go with the percentage method of calculation of redemption fine when the goods imported are already used. The Tribunal however upheld the penalty noting that the case involved import of restricted goods, considering also the nature of goods, life thereof as well as fact of deliberate import of old and used machines in violation of law. Commissioner (Appeals) in the impugned order had imposed redemption fine of 25% of the assessed value. [*Padmalay Enterprises* v. *Commissioner* - Final Order Nos. 41723-41728/2016, dated 30-9-2016, CESTAT Chennai]

Project imports - Exemption available even when goods disposed after some use: CESTAT Mumbai has allowed benefit of project imports to imports even when goods were disposed after using them for sometime. The Tribunal observed that there was no provision under Notification No. 132/85-Cus. or the Project Import Regulations or under Chapter Heading 98.01 that prohibited sale of goods imported under such heading. It was also noted that the equipment was installed and used for more than two years and that it was only when the plant became unviable and was lying idle for more than 18 months that it was disposed of. [*NOCIL* v. *Commissioner* - 2016-VIL-788-CESTAT-MUM-CU]

SERVICE TAX

Notifications and Circular

Online information and database access or retrieval services received from abroad – Amendments with effect from 1-12-2016: Online Information and Database Access or Retrieval [OIDAR] services provided by any person located in non-taxable territory and received by Government, local authority, or an individual in relation to any purpose other than commerce, industry or any other business or profession [cross border B2C (business to

consumer) service] will be liable to Service tax from 1-12-2016, under forward charge mechanism. Such service received by person other than the ones specified above [cross border B2B (business to business) service] will however be taxable under reverse charge mechanism. Further, Online Information and Database Access or Retrieval services have been re-defined in Service Tax Rules, 1994 to include electronic services. Notification Nos. 46 to 49/2016-S.T., all dated 9-11-2016 have been issued in this regard to make suitable changes in Service Tax Rules, 1994, Place of Provision of Services Rules, 2012, Mega exemption Notification No. 25/2012-S.T. and in Notification No. 30/2012-S.T. Circular No. 202/12/2016-S.T., dated 9-11-2016 also issued for the purpose provides for indicative list of non-OIDAR and OIDAR services.

Ratio Decidendi

Cenvat credit on insurance of "Key man", admissible: CESTAT Hyderabad has allowed Cenvat credit of Service tax paid on Insurance Policy of the Managing Director of the assessee-company. The Tribunal in this regard noted that the policy - Keyman Insurance Policy (KIP), though in the nature of life insurance, had an altogether different character inasmuch as there was no nomination and in case of death of "key man", the sum assured was to be paid to company. Further observing that the intention was to meet the crisis which the company may undergo due to the death/loss of key person, it was held that KIP taken by the assessee was a pure financial step, not for personal consumption and hence not covered under the exclusion clause of the definition of 'input service' under the Cenvat Credit Rules, 2004. [*Anjani Portland Cements Ltd.* v. *Commissioner* - Final Order dated 26-9-2016 in Appeal No. E/20373/2015]

Premium for lease of immovable property taxable under Renting of Immovable Property service: Dismissing the contention of the petitioner that what is taxable is rent and not premium, the High Court of Tripura has held that the entire transaction, both premium and rent, are amenable to service tax. The High Court was of the view that what is taxable is the consideration for the transfer and that even if premium is charged, it is like charging one time rent for which rebate would be given for the yearly rent to be paid. It was held that premium is also part of the lease money and was part of the consideration for the lease of immovable property. [*Hobbs Brewers India Pvt. Ltd.* v. *Commissioner* – 2016 (45) STR 60 (Tripura)]

Maintenance of Information Technology Software not taxable before 2008: Arbitrating on the rival contentions as to whether the assessee maintains 'information technology software' or 'computer software', Mumbai Bench of the CESTAT has held that clients of the assessee are users of 'information technology software' and hence any maintenance of that software would be taxable only after 16th May 2008 under the Information Technology Software service and not under Maintenance or Repair service, as contended by the Revenue department. Period involved in the dispute was from 15-3-2005 to 31-12-2007

and the activity - maintenance of software installed at the overseas sites of clients.

Finding Circular No. 81/2/2005-S.T., dated 7-10-2005, as relied upon by the department, to be more of an opportunistic attempt to increase revenue, the Tribunal observed that the Apex Court's decision in the case of *Tata Consultancy* did not permit taxability of any software other than 'canned software'. Further, fact that part of the service was rendered outside India and hence covered as export of services, was also considered by the Tribunal to set aside the demand. [*Persistent Systems Ltd.* v. *Commissioner* - 2016-VIL-780-CESTAT-MUM-ST]

Commission received from RBI by a scheduled bank for collecting taxes, exempted: Commission received from the Reserve Bank of India by a scheduled bank for rendering Banking or Other Financial service, by way of receiving remittances of taxes on RBI's behalf, is entitled to exemption from Service tax under Notification No. 22/2006-S.T. Larger Bench of CESTAT while holding so observed that the banking company (State Bank of Patiala in this case) providing such taxable service is an agent of the Reserve Bank of India. Definition of 'assessee' as provided in Section 65(7) of the Finance Act, 1994, which covers 'agents' as well, and the fact that State Bank was transacting Government business which was in the nature of a sovereign function performed on behalf of the Government, were also noted by the Tribunal in this regard. [*Commissioner* v. *State Bank of Patiala* - 2016-TIOL-2849-CESTAT-DEL-LB]

Refund of Cenvat credit when consideration not received in foreign exchange, admissible: Refund of unutilized Cenvat credit is admissible in the case of export of software, where the consideration was not received in foreign exchange. Allowing appeal by assessee against the order denying such refund, CESTAT Mumbai was of the view that when there is no dispute as to exports of services and availment of Cenvat credit or eligibility thereof, legitimate refund is not deniable for the only reason that the amounts were not received in convertible foreign currency. [*BNY Mellon International Operations (I) Pvt. Ltd.* v. *Commissioner* - 2016-TIOL-2828-CESTAT-MUM]

Seafood testing service covered under Technical Testing and Analysis Services: CESTAT Mumbai has held that service of inspection of seafood at various places on product purchase, testing of seafood, factory audit with respect to compliance of quality and filing of reports, would be covered under Technical Testing and Analysis Services and not under Technical Inspection and Certification Services. The Tribunal observed that activity was not only inspection but included result analysis also. Further, benefit of exemption available in respect of service for human beings or animals, was also held to be available in the present case, by the Tribunal while it observed that seafood was nothing but a kind of animal. [*Shrikant Sopanrao Endait* v. *Commissioner* – 2016 (45) STR 60 (Tri. – Mumbai)]

Deduction/commission given to buyer is trade discount and not liable under BAS: CESTAT Mumbai has set aside demand of

service tax under Business Auxiliary Services, under reverse charge mechanism, in respect of amount paid by the seller to their purchaser situated abroad as deduction/commission on the sale of goods. Considering the fact that there was direct sale to the foreign importer, the Tribunal rejected the reliance placed by the department on the clause of agreement that *"DEL (foreign importer) shall increase the market share of appellant's products"* to conclude that the importer was a commission agent. Further the fact that there were only two and not three parties to the transaction was also considered by the Tribunal while it held that the deduction/commission was nothing but trade discount. [*Duflon Industries Pvt. Ltd.* v. *Commissioner* – 2016-TIOL-2872-CESTAT-MUM]

Demand – Extended period when not to be invoked: In a dispute arising as a result of audit undertaken by the department of assessee's books of accounts, CESTAT Bangalore has rejected the contention of the Revenue department to invoke extended period of limitation. The Tribunal in this regard noted that entire demand was on the details found in the books of accounts maintained by the assessee and that there was no specific ground in the SCN as to how the assessee had indulged in suppression with intent to evade payment of Service tax. Facts that assessee's operations were complex in different parts of the country and hence was not able to readily furnish location-wise split-up, and that they had centralised registrations in more than one place for some services and at the same time having individual registrations in many other places, were also considered by the Tribunal to limit the demand to normal period of limitation. [*GAC Shipping (India) Pvt. Ltd.* v. *Commissioner* - 2016-VIL-797-CESTAT-BLR-ST]

VALUE ADDED TAX (VAT)

Notifications

Assam Entry Tax Act, 2008 – Amendments: By Notification No. FTX.47/2013/Pt/104, dated 15-10-2016, the applicable rates of tax for certain products mentioned in the Schedule appended to the Assam Entry Tax Act, 2008, have been increased as follows:

Entry No.	Specified Goods	Earlier Rate of Tax	New Rate of Tax
2	Refrigerators, air coolers, air-conditioning plant, geysers, washing machines, Xerox and Fax machines and Component and parts thereof	4	10
3	Telecommunication equipment including Telephones, mobile phones, pagers and component and parts thereof.	4	10

Entry No.	Specified Goods	Earlier Rate of Tax	New Rate of Tax
4	Television sets both coloured and black and white, videocassette recorders, video cassette players, VCD player, DVD player, videocassette tapes, wireless reception instrument and apparatus and radios and parts thereof.	4	10
5	Type writers including electronic typewriters, Photocopiers, duplicating machines and component and parts thereof	4	10
6	Motor vehicle: (i) Motor cars, motor omni buses, motor vans, motor trucks, chassis of such motor vehicles excluding ambulance.	4	10
7	Marble, granite and other decorative slabs and articles made therefrom.	6	10
31	Elevator and parts and accessories thereof	4	10
35	PVC pipes, tubes and fittings	2	4
55	(d) (i) Cranes, dumpers, road rollers,	2	4
	(d) (ii) motor cycles, motor cycle combinations, motor scooters, three wheelers and motorettes.	2	10
	(g) Alum	2	10
	(i) Furniture and Fixtures	6	10
64	All varieties of tiles	4	10
64	Sanitary ware and bathroom fittings of all types	6	10

Jharkhand VAT Act, 2005 – Amendments: As per Public Notice dated 5-11-2016, by Notification No. L.G. 26/2016–164/leg and Notification No. L.G. 26/2016–165/leg dated 4-11-2016, the Jharkhand Value Added Tax (Amendment) Ordinance, 2016 has been promulgated whereby the rates of tax under Jharkhand Value Added Tax Act, 2005 have been amended. This revision in tax rates, which is effective from 4-11-2016, is as follows:

S.No.	Description of Goods	Earlier Rate of Tax	New Rate of Tax
1	Goods specified under Schedule II, Part B	5%	5.5%
2	Goods specified under Schedule II, Part D	14%	14.5%

Ratio Decidendi

Surcharge payable on net Sales Tax after deduction of Entry Tax: The respondent-assessee, registered under the Orissa Sales Tax Act, 1947 (OST) as well as under the Central Sales Tax Act, 1956 was engaged in sale and purchase of motor vehicles and paid entry tax on entry of the goods into the State of Orissa under Section 3(3) of the Orissa Entry Tax Act, 1999 (OET). In the instant case, the issue before the Apex Court was whether additional tax was to be calculated on the balance amount of sales tax after deduction of entry tax paid.

The controversy arose on account of an illustration given under Rule 18 of the Entry Tax Rules, 1999 whereby the tax payable under the OET Act was to be determined after deducting therefrom the Entry tax paid by a dealer importing vehicle into the State. The Court observed that it was well settled that an illustration given under the Rules did not exhaust the full content of the Section which it illustrates but equally it could neither curtail nor expand its ambit. It was further observed that on a plain reading of the provisions of the OST Act as well as the OET Act and its Rules it could be seen that Section 5A of the OST Act created a charge and imposed a liability on every dealer to pay surcharge at the rate of 10% on the amount of tax payable by him under the said Act. Section 4(1) of the OET Act, in the same way, prescribed for reduction of the tax amount payable by the dealer to the extent of entry tax already paid for the same article for which sales tax was payable. The Section, did not specifically contemplate anything, which would indicate that the provisions of the OET Act or Rules framed under the same had to be taken into consideration while assessing the sales tax or surcharge.

The Apex Court held that the rules made under the OET Rules laid down the modality of 'set off'. Thus, on a conjoint reading of Section 5

of the OST Act, Section 4 of the OET Act and Rule 18 of the Rules, the amount of surcharge under Section 5A of the OST Act was to be levied before deducting the amount of entry tax paid by a dealer. [*Commissioner* v. *Bajaj Auto Limited* - 2016-VIL-63-SC]

ITC when registration of seller cancelled retrospectively: The respondents ("buying dealer") in this case had effected purchase from a selling dealer whose registration certificate was cancelled with retrospective effect. Consequently, ITC availed by the buying dealer for such purchase was reversed during assessment. The argument on behalf of the department was that it was the duty of persons dealing with registered dealers to find out whether a state of facts existed which would justify the cancellation of registration.

The Court relied upon various decisions including the decision of the Apex Court in *State of Maharashtra* v. *Suresh Trading Co.* [1996-VIL-11-SC] where it was held that a purchasing dealer was entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. It was held that whatever may be the effect of a retrospective cancellation upon the selling dealer, it could have no effect upon any person who had acted upon the strength of a registration certificate when the registration was current. The High Court accordingly dismissed the Writ Appeals filed by the department. [*Assistant Commissioner* v. *Bhairav Trading Company* - 2016-VIL-514-MAD]

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