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GST – A look at certain grey areas in transition provisions

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The date of implementation of Goods & Services Tax (GST) is now certain and from 1st April, 2017, India will enter the new indirect tax regime bringing great deal of uniformity and robustness which will impact every business and industry. This leaves the industry with just a few months to prepare for the transition. Every transaction and every document need to be analysed from tax point of view to appreciate the impact of the new tax system and transitional strategies are required to be put in place. Does the Model Law enable businesses to plan effectively? This article tries to find an answer to this question.

The Model Law on GST contains transition provisions under Sections 143 to 162E of Model GST law. The aforesaid provisions, once enacted in the final legislation, will play a vital role for transiting from the existing excise/ VAT/service tax regime to the GST regime. The above provisions cover various situations so as to allow carry forward of Cenvat credit and VAT credit available under the existing laws to GST regime and set off of such taxes paid under the earlier laws in GST law. These provisions also provide mechanism to deal with situations relating to refund claims, litigation and recovery of tax dues pending under the earlier laws.

It may be pertinent to note that these provisions cover various business scenarios that any business is likely to face during the transition period. However, there are few scenarios that have not been covered under the transition provisions and hence may need immediate attention to make such transition hassle-free for the businesses. These are being discussed in the paragraphs below.

Carry forward of eligible credit

Transition provisions allow an existing taxpayer to take credit of such amount which represents Cenvat credit / input tax credit carried forward in the returns furnished by them under the earlier law. Resultantly, a taxpayer migrating to GST regime will not be able to take the credit of taxes paid by him on goods and/or services received by it under the earlier laws for which they were not allowed to take the credit under the said earlier law and hence not included in the returns filed under the earlier laws. Likewise a trader will not be able to take the credit of duties paid under the Central laws when he steps into GST regime and a service provider will not be able to take the credit of taxes paid under the State laws, from 1st April, 2017 when GST will be in place.

Tax paid before but supplies received later

In cases where amount including duties/ taxes have been paid to the provider of inputs or input services under the earlier laws but the supplies are to be received on or after the appointed day, the receiver of such inputs or input services will not be able to take the credit of taxes paid under the earlier regime. The

transition provisions do not provide for taking credit of taxes paid on such inputs and input services received under GST regime for which taxes have been paid under earlier laws. These observations are made based on Model Law on GST and businesses need to check if the actual law i.e. CGST Act, IGST Act and SGST Act also contain similar provisions and then prepare themselves accordingly.

Credit taken earlier but GST exempted

The transition provisions allow a manufacturer engaged in manufacturing exempted goods or a service provider engaged in providing exempted services under the earlier laws to take credit of eligible duties/taxes on inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock on the appointed day if he is liable to pay tax under GST. However the Model Law provisions is silent or not clear as to whether assessees engaged in manufacturing dutiable goods or providers of services engaged in providing taxable services under earlier regime but opting for exemption under the GST regime are required to pay any amount in respect of Cenvat credit taken by them under the earlier laws in respect of inputs lying in stock or contained in semi-finished goods or finished goods lying in stock as on appointed day.

Credit not distributed before appointed day

Transition provisions allow an Input Service Distributor to distribute under GST regime, the input tax credit in respect of services received prior to the appointed day (under the GST regime). However there is no clarity on the issue as to whether ISDs will be allowed to carry forward credit which remains undistributed before appointed day or such credit would lapse. The actual legislation may or may not cover such issues but the industry should put in place appropriate compliance mechanism to address them.

Supplies made before but invoices raised under GST regime

In cases where the contracts are entered before the appointed day and in respect of such contracts, goods have been cleared or services have been provided before the appointed day but the invoices for such supplies have been raised on or after the appointed day, taxes would have been paid under the earlier laws because of point of taxation arising under the earlier laws. In such a situation, since the invoices will be raised under GST regime there would be dual tax incidence on the taxpayer. The Model Law is silent on this aspect and no mechanism has been contemplated under the transition provisions for adjusting the taxes paid on such supplies under the earlier laws. The draft law provisions do not allow a taxpayer to take credit in respect of inputs and input services that have been received in the earlier law but for which the invoices are received under GST regime.

No provision is provided for first stage dealers, second stage dealers and registered importer to carry forward the Cenvat credit on goods lying in stock before the appointed day. There are several other grey areas where the actual law may throw light or may provide

scope for disputes in the GST regime. As the law is in the making, one hopes that such issues are addressed in the transition provisions to ensure that the benefits available under the existing laws are effectively available to the taxpayers in the GST regime.

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Goods & Services Tax (GST)

Assam and Gujarat issue instructions for allotment of GSTIN / provisional registration: Assam Government has issued Circular dated 13-10-2016 providing instructions to existing dealers for grant of provisional registration under GST and allotment of GSTIN. According to the circular, five taxes will be subsumed in GST – VAT, CST, Entry Tax, Luxury Tax and Entertainment Tax and taxpayers registered under the respective Acts need to be migrated to GST. All existing registered taxpayers will be allotted PAN based GSTIN on provisional basis. For the Commercial Taxes Department to inform the taxpayers of their GSTIN, they should provide e-mail address and mobile number by 5th November, 2016 in the interface provided in current VAT portal. The circular provides detailed procedures for dealers having user id and password already and those who are not having them. Similar instruction has been issued by Gujarat Government also though detailed procedures are not provided for.

CENTRAL EXCISE

Ratio Decidendi

Cenvat credit of HSD to EOU, permissible: Bangalore Bench of CESTAT has held that the definition of input given in Rule 2(k) of Cenvat Credit Rules, 2004 cannot restrict the entitlement of credit on HSD, when EOU is taking Cenvat credit in terms of Notification No. 22/2003-C.E. The Tribunal in this regard noted that Cenvat credit of the duty paid on HSD used as fuel was taken consequent to the CBEC Circular No. 799/32/2004-CX, dated 23-9-2004 which also made EOU entitled to claim refund under Rule 5 of Cenvat Credit Rules, if credit available with the assessee could not be utilized. The assessee had contended that as 100% EOU they were entitled to procure HSD from the domestic tariff area as fuel for the earth moving equipment and generators, etc., and claim exemption for payment of duty in terms of Notification No. 22/2003-C.E. [*Gem Granites* v. *Commissioner* - Final Order No. 20857-20859/2016, dated 29-9-2016, CESTAT Bangalore]

Valuation – Deduction of quantity discount based on turnover, permissible in case of non-performing dealers also: In a case involving extension of quantity discount based on turnover, CESTAT Mumbai has held that deduction in respect of such discount would also be permissible when such discount has been extended to non-performing dealers. Observing that such discount was in fact passed on, Tribunal agreed with the view that

extension of such discount will encourage the dealers to work more efficiently and get orders for cars which will benefit the dealers as well as the appellant.

Further, the Division Bench of the CESTAT rejected the contention of the department that such discount would not be available since the goods (cars in this case) sold were of the previous year. It was observed that turnover discount was intimated in advance without any qualification as to which cars were to be sold to be eligible for such discount, and that the circular only stated that to be eligible for turnover discount specific number of cars need to be sold in a calendar year. Further, relying on precedents, the Tribunal allowed adjustment of excess payment of duty against short payment of duty on finalisation of provisional assessment. [*Mercedes-Benz India Pvt. Ltd.* v. *Commissioner* – Order dated 17-8-2016 in Appeal Nos. E/1369/05, E/1928 to 1930, 2728/06 & E/180/07, CESTAT Mumbai]

Manufacture - De-coiling, straightening and cutting TMT coil into TMT bars/rods: Jharkhand High Court has dismissed the appeal filed by the department wherein the department had contended that de-coiling, straightening and cutting into sizes of TMT coil would amount to 'manufacture'. Relying on precedents, the High Court was of the view that if the characteristics of the raw material and final product remain as it is, there is no manufacture at all, even though, there is process of unwinding, cutting/slitting and packing. It was observed that in the facts of the case, original identity of the TMT coil remained the same, even after the same were converted into TMT bars and rods. Contention of the Revenue department that there is value addition inasmuch as bars/rods fetch more price in market than coil, and that final product is classifiable under different heading, were also rejected by the Court. [*Commissioner* v. *Castings India Inc.* - 2016-TIOL-2327-HC-JHARKHAND-CX]

Classification of goods does not change with packing: CESTAT Bangalore has held that when there is no change in the bulk item, when it is sold in retail form under the cover of capsule even when it is sold as dietary supplement, classification of the item will remain the same. Revenue department had sought to classify the goods, Natural Beta Kerotene and Pro 9 Natural Mixed Kerotenoids under sub-heading 2108 99 of the Central Excise Tariff Act, 1985 since the items were sold in capsule form as food supplement. The Tribunal observed that there was no change in the item imported in bulk form as well as capsule since the assessee had only filled them in the capsule without adding or using any other vitamin or pro-vitamin or any other material. Classification under Heading 2936 was hence upheld, rejecting the appeal of the department. [*Commissioner* v. *Banner Pharma Caps (India) Ltd.* – Final Order No. 20868/2016, dated 30-9-2016, CESTAT Bangalore]

Penalty - Clandestine removal not proved just on the basis of shortages: CESTAT Delhi has rejected the contention of the Revenue department that detection of shortages

and assessee having deposited the entire duty without questioning the same, leads to inevitable fact that short found goods were removed from the factory without payment of duty and in a clandestine manner. Observing that Commissioner (A) had noted that there was nothing on record to show that shortages had occurred on account of clandestine activities, the Tribunal held that merely because the assessee has deposited the duty will not act as prejudice calling for imposition of equivalent penalty under Section 11AC of the Central Excise Act, 1944. Further, noting absence of any *malafide* in non-recording of goods found in excess, the Tribunal found no justification in confiscation of said goods. [*Commissioner* v. *ABS Metals (P) Ltd.* - Order No. FO/ 53384 /2016-Ex(SM), dated 6-9-2016, CESTAT Delhi]

CESTAT Allahabad has also in a similar dispute held that payment of duty on some shortages detected by the department would not prove that the goods were removed earlier without payment of duty. Observing that payment of duty might be to settle the issue, the Tribunal was of the view that penalty cannot be imposed in such circumstances. Fact that there was no demand of interest, was also considered by CESTAT in this regard. [*Commissioner* v. *Sunita Ispat Ltd.* - Final Order No.70793-70800/2016, dated 22-8-2016, CESTAT Allahabad]

Penalty under Excise Section 35A cannot be imposed in the guise of enhancement: Observing that Section 35A of the Central Excise Act, 1944 does not empower the Commissioner(Appeals) to impose a fresh penalty under the guise of enhancement, CESTAT Hyderabad has set aside the penalty imposed by the Commissioner (Appeals) in a case involving irregular availment of Cenvat credit. Commissioner (Appeals) had proceeded in the dispute as though some penalty (nil penalty) was imposed by the adjudicating authority and that he was enhancing the nil penalty. Tribunal however was of the view that the situation of no penalty cannot be taken as nil penalty and be enhanced under Section 35A(3) of the Central Excise Act. [*Madras Cement Ltd.* v. *Commissioner* – Order dated 19-1-2016 in Appeal No. E/237/2012, CESTAT Hyderabad]

SEZ clearances – Non-execution of LUT is procedural lapse: CESTAT Hyderabad has held that non-execution of LUT in a case involving clearance to SEZ, is only a procedural lapse. Setting aside duty demand, interest and equal penalty, the Tribunal was of the view that the purpose of executing LUT is to assure that in case duty is leviable on the goods on such clearance the appellant undertakes to pay the same, and that since there was no dispute that the goods were cleared to SEZ and no duty was payable, the purpose sought to be served by the LUT ends. Setting aside the penalty under Section 11AC of the Central Excise Act, 1944, the Tribunal ordered the assessee to pay penalty under Rule 27 of the Central Excise Rules, 2002. [*Oil Air Techniques* v. *Commissioner* – Order dated 19-1-2016 in

Appeal No. E/2060 & 2061/2011, CESTAT Hyderabad]

Waste of band-aid generated after quality inspection, not liable to duty: CESTAT Mumbai has held that waste of band-aid generated in the hands of the job worker during quality inspection and before clearance would not be liable to Central Excise duty. Observing that band-aid can be considered finished product only when they are packed and certified as fit for dispatch to the market, on approval of the quality control section, the Tribunal was of the view that shredded band-aid may not become an excisable product as it is not a manufactured item and is a waste that gets generated during the course of manufacturing and packing. Tribunal in this regard also held that since there is no tariff heading for classifying the scrap arising during the course of manufacture of goods of Chapter 30 (Band-Aid), duty demand was not sustainable. [*Johnson & Johnson Ltd.* v. *Commissioner* - 2016-VIL-718-CESTAT-MUM-CE]

Interest for delayed refund – Relevant date is date of original filing and not filing of revised claim: Noting that the revised claim for refund was only a calculation which was submitted on insistence of the department, the Bombay High Court has allowed interest in case of delayed refund of duty, from the date immediately after expiry of three months from the date of receipt of original refund applications, till the date of receipt of the refund amount. The Court in this regard noted that original refund applications were complete in all respects and the refund was rejected purely on its merits. [*Jindal Drugs Pvt. Ltd.* v. *Union of India* - 2016-VIL-561-BOM-CE]

CUSTOMS

Notifications

ATA Carnet - Exemption to specified goods imported for display or use at any specified event - Notification No. 157/90-Cus. amended: Notification No.157/19-Cus., which provides for exemption to goods specified for display or any use mentioned therein, has been amended. The events mentioned in Schedule 3 of said notification have been merged in Schedule 2. Further, Condition No. 1 for the event specified in Schedule II, that it is being held in public interest and is sponsored or approved by authorized persons, has been omitted. Also, the federation (FICCI, liable upto 10% only) and the importer are now jointly and severally liable to pay customs duties with certain provisos. Notification No. 58/2016-Cus., dated 5-10-2016 has been issued for this purpose.

Three Land Customs Stations and two Inland Customs Stations added: Notification No. 63/94-Cus. (N.T.), which provides for Land Customs Stations for the clearance of imported or exported goods, has been amended by inserting three (3) new land customs stations namely, foreign post office at Vijayawada, foreign post office at Leh and foreign post office

at Hyderabad. Notification No. 125/2016-Cus. (N.T.), dated 13-10-2016 has been issued in this regard. Further, two Inland container depots at Kalinganagar and Tumb Villege (Taluka Umbergaon, District Valsad) have been added in the list of ICDs, from where export/import under various Export Promotion Schemes can take place. Notification No. 54/2016-Cus., dated 3-10-2016 has been issued for this purpose.

Export of gold/platinum/ silver jewellery under Notification No. 57/2000-Cus. - Time period for export reduced: The second proviso of Notification No.57/2000-Cus. has been amended to the effect that within 90 days from the date of issue of gold/ silver/ platinum to the exporters, the importer undertakes to export gold/platinum/ silver jewellery or articles, in case of imports under scheme for 'Export Against Supply by Nominated Agencies'. Further, the discretion to extend this period has been removed. Notification No. 56/2016-Cus., dated 3-10-2016 has been issued in this regard.

Re-import of goods exported under drawback, rebate or bond to Bhutan – Time period for re-imports to be 7 years: First proviso to Notification No. 94/96-Cus., has been amended to notify the time period for re-import of machinery and equipment exported under duty drawback, rebate or bond to Bhutan. The time period of seven years, with extension upto three years, however would not be applicable in respect of exports made under DEEC, EPCG and DEPB schemes. Notification No. 57/2016-Cus., dated 3-10-2016 has been issued in this regard.

Ratio Decidendi

Post-export DFIA benefit available even when supporting manufacturer availed Cenvat credit: Calcutta High Court has rejected the contention of the DGFT and Revenue department that although the exporter had not availed of Cenvat facility, yet it is not entitled to exemption from payment of additional customs duty under DFIA because its supporting manufacturer had availed Cenvat credit. The Court in this regard observed that Clause 4.2.6 (c) of the Foreign Trade Policy envisages, conferring benefit of exemption from additional customs duty on a party in whose favour the DFIA licence has been issued, does not make a distinction between a party who was entitled to avail of the Cenvat facility but refrained from doing so, and a party who did not avail of such facility because he was not entitled to do so. Further, observing that the two entities were different, it was held that question of double benefit can arise only if the same entity avails the same benefit twice. [*Sesa International Ltd.* v. *DGFT* - 2016-TIOL-2405-HC-KOL-CUS]

Export incentive schemes have nothing to do with offset of duty element: Gujarat High Court has held that export incentive schemes like VKGUY, FMS or FPS, have nothing to do with offset of duty element of imported raw materials or inputs used in export products. Allowing benefit of drawback when the basic customs duty was paid using MLFPS, the High Court observed that to disqualify such payments for the purpose of duty drawback would indirectly amount to denying the benefit

of the export incentive scheme itself. The High Court further allowed the benefit of drawback when basic customs duty was paid using DEPB scrips noting that neither Section 75 nor the Drawback Rules prohibited such entitlement. [*Ratnamani Metals and Tubes Ltd.* v. *Union of India* – 2016 (339) ELT 509 (Guj.)]

Valuation – Enhancement of value merely based on NIDB data, not correct: Observing that Revenue department had not made enough efforts to compare the subject imports with the really comparable imports having the same identity, quality, quantity, etc., CESTAT Bangalore has held that enhancement of value merely on the basis of NIDB data, when such documents were not even supplied to the importer, was not sustainable. It was noted that the comparison made by the department using NIDB Data, was for different ports and that the importer was importing huge quantities thus could negotiate for lower price with the manufacturer. [*Spaniso Studio* v. *Commissioner* - 2016-VIL-725-CESTAT-BLR-CU]

Interest on delayed payment of duty: CESTAT Bangalore has by a majority Order held that the importer would not be liable to pay interest, for contravention of provisions of Section 47(2) of the Customs Act, 1962, in case the goods were cleared after payment of assessed duty and the letter for differential duty was issued only after such clearance. Duty was initially paid as per provisions of Section 47, however to counter short levy, the department issued letters to the importer for depositing the differential duty. Rejecting department's appeal, the Tribunal further observed that when no show cause notice has been issued in terms of Section 28, confirmation of interest on delayed payment of duty in terms of Section 28AA, which also required payment of duty within three months, was not sustainable. [*Commissioner* v. *Ruchi Soya Industries Ltd.* - 2016-VIL-717-CESTAT-BLR-CU]

Imports under FTA – No discretion or power with Customs authorities to reject certificate of origin: Observing that according to the provisions of SAPTA Rules and Notification No.105/99-Cus. there is no discretion or power with the Customs authorities to reject the certificate of origin given by the concerned contracting state, CESTAT Kolkata has allowed the benefit of said notification in case of imports of cloves from Bangladesh. The adjudicating authority in this case had not accepted the value addition indicated in the certificate of origin and had gone ahead with the investigation to allege that value addition cannot be to the extent as claimed by the assessee and also that activities undertaken by the supplier of cloves does not amount to 'processing' of cloves. Further noting that there was no evidence on record that designated authority of Bangladesh under SAPTA Rules was maliciously involved, the Tribunal held that certificates of origin as produced by the importer cannot be discounted. [*BDB Exports Pvt. Ltd.* v. *Commissioner* - 2016-VIL-699-CESTAT-KOL-CU]

EOU – Inter-unit transfer of goods – No requirement of any valid reason: Mumbai Bench of the CESTAT has held that there is no

requirement of existence of any valid reason for transfer of goods from one EOU to another EOU under Para 6.16 of the EXIM Policy. The Tribunal in this regard was of the view that a valid reason is required only in case of sale of goods to DTA unit. [*Commissioner* v. *Virlon Textile Mills Ltd.* - 2016-VIL-668-CESTAT-MUM-CU]

Recovery of drawback of customs portion when export proceeds not realized: Observing that Section 75 of the Customs Act provides that in case value/price of the goods exported is not received, it is presumed as if no drawback was ever allowed and hence drawback needs to be refunded, the Supreme Court has held that this would be the position even *de hors* Rule 16A of the Drawback Rules, 1995, which was introduced on 16-12-1995. The Court was of the view that Rule 16A is a clarificatory provision clarifying the position of law which already exists in the form of Section 75 of the Customs Act. [*Surinder Singh* v. *Union of India* - 2016 (340) ELT 97 (SC)]

Containers containing goods entitled to be released when goods alone confiscated absolutely: The Madras High Court has held that there can be no detention of containers which are not confiscated. It accordingly directed the DRI/Customs Department to take immediate steps to de-stuff the containers and release the same within 12 weeks. The Court in this regard noted that containers were not confiscated but only goods were confiscated absolutely. [*Trans Asian Shipping Services Pvt. Ltd.* v. *Concor Container Freight Station* - 2016 (340) ELT 123 (Mad.)]

Customs duty not recoverable when option of payment of fine not opted: Kerala High Court has held that customs duty cannot be recovered in terms of Section 125(2) of the Customs Act, 1962 where a show cause notice has been issued under Section 124, and the importer does not exercise its option to redeem the goods on payment of fine. Judgment in the case of *Fortis Hospital Ltd.*, [2015-TIOL-57-SC-CUS] was followed by the Court to hold that liability to pay Customs duty arises only when fine is imposed in lieu of confiscation. [*Sankar Shashtyabdapoorthi Memorial Hospital* v. *Union of India* - 2016-TIOL-2400-HC-KERALA-CUS]

Service of Order by speed post is valid service: Distinguishing views of different High Courts while relying on Orissa High Court decision in the case of *Jay Balaji Jyoti Steels Ltd.*, the Andhra Pradesh High Court has held that service of a copy of the order by speed post, would constitute valid service under Section 153(a) of the Customs Act, 1962. The Single Judge Bench of the High Court was of the view that the expression 'registered post' appearing in Section 153(a) have to be construed as including within its purview the method of registering an article by speed post. It was held that there was no distinction between registered post and speed post other than the difference in the speed of delivery of goods. [*Shyam Ferro Alloys Ltd.* v. *Assistant Commissioner* - 2016-TIOL-2304-HC-AP-CX]

SERVICE TAX

Ratio Decidendi

Business Auxiliary services – Treatment of industrial waste is not processing of goods: CESTAT Mumbai has held that treatment of industrial waste received from a company before releasing treated water in effluent treatment plant of the State Pollution Board cannot be considered as processing of goods for the purpose of Business Auxiliary Services. Reliance placed by the assesse on CBEC Circular No. 137/111/2007-ST, dated 13-7-2007 was held as correct by the Tribunal and it also observed that show cause notice did not invoke specific clause of the definition of Business Auxiliary Services. [*Odyssey Organics Pvt. Ltd.* v. *Commissioner* - 2016-TIOL-2702-CESTAT-MUM]

Financial advisory services covered under Banking and other Financial Services and not Management Consultancy Services: CESTAT Mumbai has held that financial services in respect of energy, banking, development, finance, transport and urban infrastructure, disinvestment and risk management, provided by the assesse would be liable to service tax under Banking and other Financial services from 16-8-2002 and are not covered under Management Consultancy services for period prior to that. The Tribunal in this regard observed that department had not raised any objection in classifying the advisory services under "Banking and Other Financial Services" from 16-8-2002 and therefore it cannot take stand that the same service prior to 16-8-2002 was falling under "Management Consultancy Service". [*Crisil Ltd.* v. *Commissioner* - 2016-TIOL-2643-CESTAT-MUM]

Outdoor catering services – Valuation: Noting that the assessee was not in a position to fix the rates of the food items hence certain concessions were given to it by the service receiver, High Court of Madhya Pradesh has held that addition of 50% in respect of Outdoor Catering service, was not justified. The SCN was issued in the case for addition of said amount as according to the department, the petitioner was provided other considerations from service receivers free of cost in the form of getting gas, electric appliances, water, salary of the staff etc., and that benefit can be added in accordance with the provisions of Service Tax (Determination of Value) Rules 2006. Further, taking note of the fact that the petitioner was eligible to get reimbursement from the service receiver, it was held that there was no question of concealing any fact and hence no scope for invocation of extended period. [*Indian Coffee Workers Co-operative Society Limited* v. *Union of India* - 2016-VIL-545-MP-ST]

Refund under Notification No. 41/2007-ST – Service recipient need not show proof of payment of tax by service provider: Denial of benefit of Notification No. 41/2007-S.T. alleging that proof of payment of service tax by the service provider was not provided by the service recipient is not correct, according to CESTAT Delhi. The Tribunal observed that

it is not the obligation of the service recipient to deposit service tax, and having paid same to the service provider, it is for the service provider to show the proof of payment of service tax. It was observed that said notification for refund of tax also does not specify any such requirement and that CBEC had also clarified that it is sufficient to show that the amount of service tax stood paid to the service provider. [*Bhati and Co.* v. *Commissioner* - 2016-TIOL-2693-CESTAT-DEL]

Refund claim in proper format not required: CESTAT Bangalore has dismissed the appeal of the Revenue department wherein it was contended that the refund claim under Notification No. 41/2007-S.T. was filed beyond limitation period, as it was not filed in proper format before. Commissioner (Appeals)'s Order that the rejection of claim on procedural infirmities was incorrect when all necessary details are forthcoming in records, was hence upheld by the Tribunal. [*Commissioner* v. *Printex Exports India Pvt. Ltd.* - 2016-VIL-670-CESTAT-BLR-ST]

Refund of Cenvat credit on works contract services used for maintenance of office equipment: CESTAT Mumbai has held that Works Contract service used for maintenance of office equipment and building is an input service and eligible to refund under Rule 5 of the Cenvat Credit Rules, 2004. The Tribunal in this regard was of the view that Works Contract service in the mentioned context does not fall under the exclusion category as only such service used in Construction activity is excluded under Rule 2(l) of the Rules. [*Red Hat India Pvt. Ltd.* v. *Commissioner* – 2016 (44) STR 451 (Tri. - Mumbai)]

Sinking of shaft not covered under Site Formation and Clearance service: CESTAT Mumbai has held that actual sinking of a shaft cannot be treated as "Site formation and clearance service" but as related to excavation of mineral from the mine. Noting that Mining Service was made taxable only from 1-6-2007, the Tribunal set aside the demand for the earlier period. The Tribunal in this regard observed that entry for 'Mining Service' was intended to cover all activities relating to mineral exploration and extraction under one head as a consolidation entry.

Further, in respect of construction of railway sidings, the Tribunal was of the view that it would fall within the exclusionary portion of Section 65(25a) of the Finance Act, 1994 and be outside the ambit of taxation. Revenue department's contention that exemption is accorded to railways that are used as public carriage of passengers and goods and would not be applicable in the present case was hence rejected by the Tribunal. [*SMS Infrastructure Limited* v. *Commissioner* - 2016-VIL-665-CESTAT-MUM-ST]

Leasing of machines by manufacturer for certain time, not covered under Banking and other Financial services: CESTAT Delhi has upheld the Order of the Commissioner

(Appeals) holding that leasing of plant and machinery for use for a period of five years, against some monthly charges would not be liable to Service tax under Banking and other Financial services. Tribunal in this regard noted that said activity would not be covered under 'financial lease' as per Accounting Standards 19 inasmuch as ownership of the assets and effective control was with the assesse. Further, relying on an earlier order in the case of *Inox Air Products Ltd.*, the Tribunal was of the view that an industrial concern is not covered by the scope of the definition for the purpose of liability under Banking and other Financial services. [*Commissioner v. Gajra Gears Pvt. Ltd.* - 2016-VIL-683-CESTAT-DEL-ST]

VALUE ADDED TAX (VAT)

Notifications

Maharashtra VAT – Rates revised: Rates of tax on certain commodities specified in Schedules appended to the Maharashtra Value Added Tax, 2002 have been increased. While on goods specified under Schedule C, rate of tax has been increased from 5.5% to 6%, residuary rate of tax on goods not covered under Schedule A, B, C or D (specified in Schedule E) has been increased from 12.5% to 13.5%. Notification No. VAT. 1516/CR 123/ Taxation-1, dated 16-9-2016 , issued for this purpose is effective from 17-9-2016.

Uttarakhand VAT – Rates revised for specified goods: By Notification No. 824/2016/13(120)/ XXVII(8)/2016, dated 4-10-2016, in addition to the tax payable under the provisions of the Uttarakhand Value Added Tax Act, 2005, additional tax at the rate of 1% has been levied on the taxable turnover of sale or purchase or both *in respect of goods other than the goods included in any of the Schedules* appended to the Act (Residuary list). It may be noted that at present as per Section 4(2)(b)(i)(d) of the Act, the rate of tax applicable in respect of such goods is 13.5%. Thus, the effective rate of tax for these items is 14.5% (13.5% + 1%) with effect from 4-10-2016.

Haryana Amnesty Scheme for contractors: Haryana Alternate Tax Compliance Scheme for Contractors, 2016 has been notified under Section 59A of the Haryana Value Added Tax Act, 2003 for recovery of tax, interest, penalty and other dues payable under the provisions of the H-VAT Act for the period upto 31st March 2014. Notification No. 19/ST-1/H.A. 6/2003/S.59A/2016 has been issued in this regard. The contractor opting for the scheme has to calculate year wise liability due under the scheme and pay 25% of the amount at the time of opting for scheme and submit proof along with the application. The balance amount is payable in three quarterly installments of 25% each within 15 days of end of quarter.

Ratio Decidendi

Personal use purchases through e-commerce portals not liable to Entry Tax: Patna High Court has held that no tax can be levied on entry

of goods into local areas, over the transactions made on e-commerce portals, for personal use or consumption of individual consumer. The petitioners in this dispute, registered as transporters under the Bihar VAT Act, 2005, had challenged the levy and collection of Entry Tax under the amended Bihar Tax on Entry of Goods Act, 1993 on goods brought in by them for individual consumers, who order the same through e-commerce portal for personal use.

It was contended that under the second proviso to Section 3(2) of the 1993 Act, entry tax paid can be set-off against VAT payable when goods are imported from outside the State for the purpose of resale. There being no availability of set-off for goods brought in by the petitioners for personal use of the consumer under Section 3(2) of the 1993 Act, such goods will face a higher burden of tax and, accordingly, it will be discriminatory against the goods brought from other States to the State of Bihar, thereby contravening Article 304(a) read with Article 303 of the Constitution.

The High Court was of the view that even if the levy is compensatory in nature, the compensation cannot be demanded more from an outside dealer than a local dealer. Therefore, there can be no discrimination between an outside dealer and a local dealer. Observing that Article 304(a) ensures equal rate of tax, it was held that if incoming goods are taxed at a higher rate or at any rate where indigenous goods enjoy concessional rate of tax, Article 304(a) gets attracted. Holding that the Bihar Finance Act, 2015 amending the 1993 Act and the Rules made thereunder and Notifications dated 20-1-2016 were ultra vires the Constitution, the High Court quashed the said provisions. [*Instakart Services Private Limited* v. *State of Bihar* - 2016-VIL-537-PAT]

Additional tax on amount of lump sum tax paid on works contract, not correct: Punjab & Haryana High Court has held that levy of Additional tax as surcharge on the taxable turnover even in the case of works contractor who has opted for lump sum tax, is not justified. The Court in this regard allowed the appeal against the decision of Haryana Tax Tribunal and set aside the Circular of the Excise and Taxation Commissioner, Haryana dated 14-1-2014, communicating the leviability of additional tax under Section 7A in case of lump sum dealers.

Noting that taxable event for levy of additional tax under Section 7A of the H-VAT Act is on taxable turnover, the court was of the view that unless in the case of a dealer taxable turnover is determined, the provisions under Section 7A will not have application. It was observed that in case of works contractors the amount of lump sum tax is calculated on the total valuable consideration receivable for the execution of the contract on the transfer of property. The High Court thus held that since in case of lump sum dealer including works contractors one of the important components on taxation for the levy of additional tax under Section 7A being missing, namely taxable turnover, the levy of additional tax thereon was not sustainable. [*Mahashiv Promoters Pvt Ltd.* v. *State of Haryana* - 2016-VIL-519-P&H]

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