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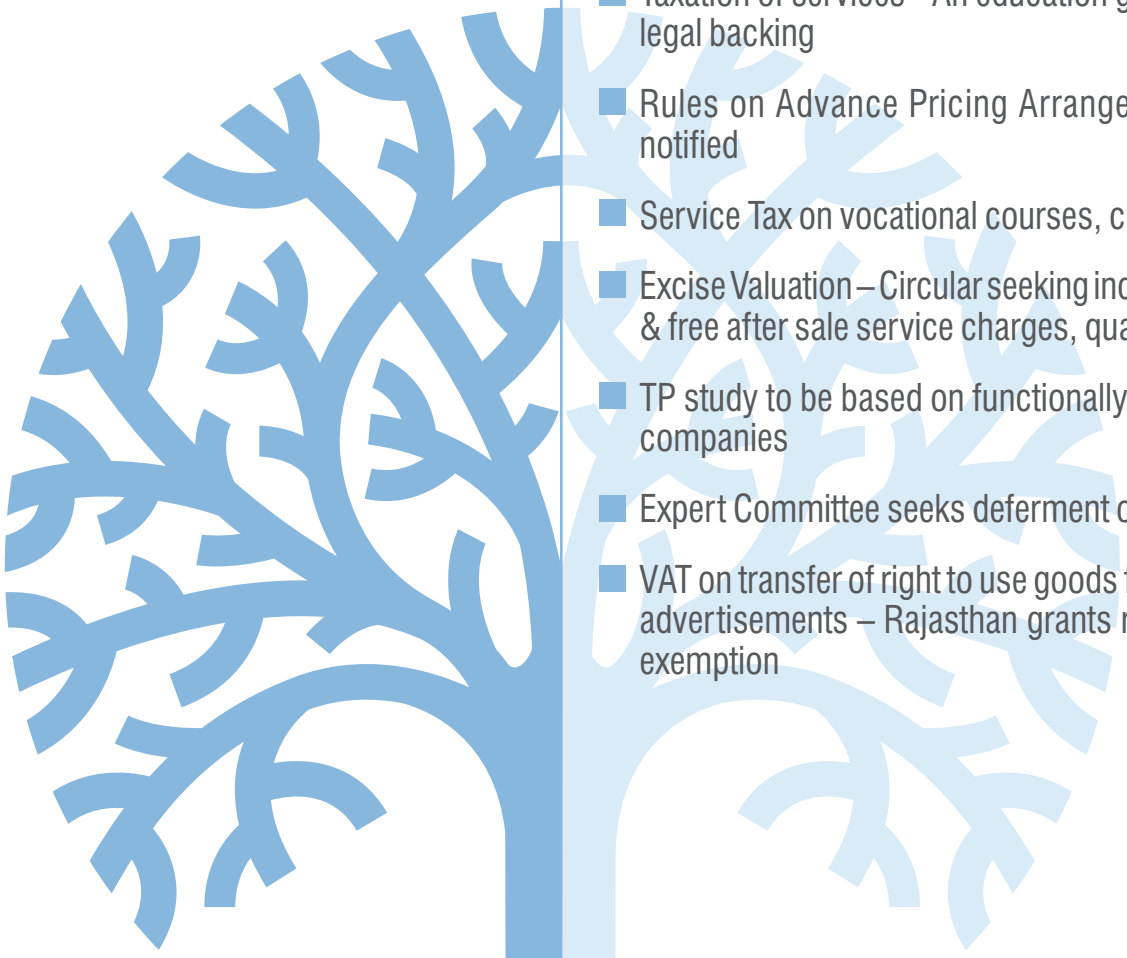

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Article

Taxation of services - An education guide without legal backing

By **Iype Mathew**

Through a press release dated 20th June, 2012 the official spokesperson of the Central Board of Excise & Customs announced the release of guidance paper on service tax titled "Taxation of Services : An Education Guide". The guide in the form of notes was issued in the context of the introduction of a big change in the system of levy of tax on services in India. In fact the earlier system, which was launched in July, 1994, and which evolved from time to time with the addition of newer and newer services and the provisions in law to enable the collection of service tax, as per the intention of the Legislature and the Union Government, was indeed very comprehensive in its coverage but ridden with loopholes and ambiguities, creating confusion and complications all around. A relook at the whole system - act, rules, et al, was indeed overdue. The initiative to take on this challenge and to bring in this change is laudable and the enormous amount of work in the form of research, thinking, conceptualization and drafting that has gone into it, is simply mind boggling. Today the service tax net is cast far and wide, designed on the destination based concept of levy, and incorporating the international practices followed by developed countries in this regard.

Naturally this involved visiting a whole lot of aspects that impacted this system of levy and collection, understanding its implications, formulating and taking policy decisions and creating the necessary changes in law. While typically, in the Indian context, what normally appears at the end of such an exercise, is the mere text of the law (sections, rules, notifications etc.) accompanied by minimum commentary as the situation would warrant, here is a unique departure, in that a compilation is released for all stake holders to read and understand everything about anything that one can imagine or is required to know in respect of the new regime.

But an interesting disclaimer qualifying the legal status of this guidance paper appearing in para 1.2 is a rather strange position to take about this initiative. The disclaimer read as follows:

"It is clarified at the outset that this guide is merely an educational aid based on a broad understanding of a team of officers of the issues. It is neither a Departmental Circular nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide is being released purely as measure of facilitation so that all stakeholders obtain some preliminary understanding of the new issues for smooth transition to the new regime."

Clarifications issued by the Department of Revenue or by the CBEC in the form of circulars, instructions, trade notices etc. which are meant for the information and guidance of officers, assessees and other stakeholders, carry the stamp of authority vested under the relevant laws, and are therefore enforceable during the period of its currency, in respect of decisions taken based on it. This view has been upheld time and again in court rulings [1996 (87) ELT 19 (S.C.); 2002 (139) ELT 3 (S.C.)].

This big change in law governing the levy and collection of tax on services in India introduced with effect from 1st July, 2012 is based on the facts, situations and concepts as researched and understood by the officers of Tax Research Unit (TRU) and CBEC who applied their minds to it and worked for it, and based on which fiscal policy decisions were taken by the Union Government and later made into law by the Legislature. This author is therefore unable to see how the Department of Revenue and CBEC can distance themselves from the guidance paper which

provides different interpretations of the words and phrases appearing in the law and the concepts and theories which lead to its (law) creation.

Obviously the team of officers, who lay claim to the intellectual property in this guidance paper, was part of the larger team (TRU, CBEC and Department of Revenue) which worked on this change that ultimately became law. In other words TRU, CBEC and Department of Revenue also towed the same line all through this law making process. Therefore qualifying the guidance paper as representing merely the understanding of a team of officers, was most unfortunate. CBEC is as much the author and owner of this guidance paper as is the team of officers. In fact a great opportunity to claim and declare responsibility and ownership of such a massive effort to collate all the facts, thoughts and understanding supporting this big change, was let go by the CBEC.

The guidance paper carries the sanctity and status of a clarification issued by the CBEC, and any decision in the matter of payment of service tax taken by an assessees relying on the guidance paper, can neither be faulted nor can CBEC disown any responsibility for it.

[The author is a Director, Lakshmikumaran & Sridharan, New Delhi]

CUSTOMS

Notifications & Circulars

E-payment of customs duty made mandatory from 17-9-2012: Importers registered under Accredited Clients Programme (ACP) or paying customs duty of Rs. 1 lakh or more per bill of entry will be required to pay customs duty only through e-payment mode from 17-9-2012 onwards. In July last year, the C.B.E. & C., had specified these categories of importers for mandatory e-payment but the date of implementation has been specified now through Circular No. 24/2012-Cus., dated 5-9-2012.

Proper officer specified for Section 28AAA: Deputy or Assistant Director in the Directorate General of Revenue Intelligence or the Directorate General of Central Excise Intelligence have been notified as proper officer for the purpose of Section 28AAA(3) of the Customs Act, 1962. Section 28AAA, introduced this year, provides for recovery of duty from the person who had obtained duty credit scrip/authorisation by means of collusion or willful misstatement or suppression of facts, in those cases where the instrument was utilized by some other person. Notification No. 76/2012-Cus. (N.T.), dated 27-8-2012 amends Notification No. 40/2012- Cus. (N.T.), for this purpose.

Fertilisers – CVD on specified goods clarified: The effective rate of countervailing duty or additional customs duty on certain fertilizers and chemicals for use as manure or for production of complex fertilizers is 1% as per Notification No. 12/2012-Cus. As few serial numbers, in this notification, pertaining to the said goods carried a dash in the column meant for additional customs duty, even while a general entry [S. No. 200(ii)] for all goods used as fertilizers provided for a 1% effective rate, there was confusion over applicable rate of CVD in respect of goods covered under other relevant entries. By issuing Notification No. 46/2012-Cus., dated 17-8-2012, the entries that merely had a dash were substituted with 1%. Subsequently, C.B.E.C., by Circular No. 23/2012-Cus., dated 30-8-2012, has effectively clarified that the concessional rate of 1% CVD is available to goods covered under other relevant entries for the period before such

amendment as per the general entry [S. No. 200(ii)] even if the benefit of concessional rate of basic customs duty is claimed under any other serial number.

Oil cakes – BCD exempted: De-oiled soya extract and oil cake/oil cake meal from groundnut, sunflower, canola and mustard have been exempted from basic customs duty. This unconditional exemption would be available from 21-8-2012 to 31-3-2013 as per Notification No. 47/2012-Cus., dated 21-8-2012 which amends Notification No. 12/2012-Cus.

Vehicle import - Import policy for new vehicles amended: In the import policy in respect of new vehicles, scope of the phrase "country of manufacture" in the conditions has been widened to include single market such as European Union. This amendment made by DGFT Notification No. 13(RE-2012)/2009-2014, dated 28-8-2012 will facilitate import of new vehicles from a country different from the country of actual manufacture provided both the countries form part of a single market.

Ratio decidendi

'Related persons' under Customs Valuation Rules: Importer and its supplier are not 'related' as per Customs Valuation Rules when the supplier held 35% share capital in the firm of the Indian importer. CESTAT, Chennai has held that as per Rule 2(2)(iv) of the said Rules, the importer and supplier/exporter would be deemed to be related only if a third person directly or indirectly owns and controls voting stocks or shares of both the supplier and the importer. It was noted that the word 'related' cannot be interpreted either according to its dictionary meaning or according to common parlance, when both the WTO Valuation Agreement and the Indian Customs Valuation Rules precisely define as to who can be considered as 'related'. [*Commissioner* v. *Penshibao Wang P Ltd.* - 2012-TIOL-1018-CESTAT-MAD].

Battery for cellular phone is an accessory: Battery for cellular phone has to be considered as an accessory, if not part/component, of cellular phone because a cellular phone cannot function without a battery. The CESTAT, Bangalore held as above while deciding eligibility to exemption under Sl. No. 320 of Notification No. 21/2005-Cus., dated 1-3-2005 which provided exemption to parts, components and accessories of mobile handsets including cellular phones from basic customs duty and additional customs duty (CVD). [*Commissioner* v. *NI Micro Technologies* - 2012-TIOL-1035-CESTAT-Bang].

Project import benefit when substantial part of goods imported on payment of duty: The CESTAT, Bangalore has held that for the purpose of classification under Heading 9801 (project imports), the bundle of items/goods should be complete so as to be considered as required for setting up the plant and that when the substantial part of the required material had been cleared on payment of duty, the remaining items would not be eligible for the benefit. [*Samalkot Power Limited* v. *Commissioner* - 2012-TIOL-1059-CESTAT-BANG].

Refund once ordered by court, cannot be denied by department: The Kerala High Court has ordered the department to pay interest for delay in granting refund while dismissing a review petition. The Court in the instant case had earlier ordered the refund of fine and penalty to the assessee within ten days of its order, but the department chose to file a review petition. The Court held that it was the bounden duty of the assessing authority, to refund the amounts covered by orders of the appellate authority when appeals were allowed fully or partially. Department was also directed to pay refund with interest of 6% while exemplary cost of 25,000/- was also imposed as the court considered filing of review petition as an abuse of the process of the court. [*Commissioner* v. *Shreesimandar Enterprises* - 2012-TIOL-624-HC-KERALA-CUS].

SERVICE TAX

Circular

Vocational education/training/skill development courses – Taxability clarified: Vocational education courses provided by an institution of the Government or the local authority are not liable to Service Tax. C.B.E.C. Circular No. 164/15/2012-ST, dated 28-8-2012 issued for this purpose also notes that when such courses are offered by an institution (as an independent entity like a society or other similar body) established under law by the Government, service tax liability has to be determined as per relevant clauses in the negative list in Section 66D of the Finance Act, 1994. In this connection, it is clarified that 'qualification' for the purpose of vocational courses implies certificate, diploma, degree or any other similar certificate and the words "recognized by any law" will include those courses which are approved or recognized by any entity established under a central or state law including delegated legislation.

Ratio decidendi

Cenvat credit on input services when service provider is also a dealer: Services of goods transport agency utilized for transport of the vehicle to the dealer's premises being relating to the assessee's activities as a dealer, cannot be treated as input services in respect of activities undertaken by such assessee as authorized service station. CESTAT, Bangalore while allowing Department's appeal noted that the assessee was having dual role, one as dealer of the motor vehicle and the other as the authorized service station. [*Asstt Commissioner* v. *Sree Siva Sankar Automobiles* - 2012-TIOL-1094-CESTAT-BANG].

Erection and Commissioning services when separate invoices raised for different activities: CESTAT, Mumbai has held that agreement for integrated solutions including supply of material, civil work, electrical installation, installation & commissioning etc. would be covered under erection, commissioning or installation service. The Tribunal noted that the material provided by the appellant under the agreement was incidental thereto as also the electrical installation which was part of the agreement. It was held that mere raising of four separate invoices for (i) construction of civil foundation (ii) supply and installation of windmill (iii) erection and installation of windmill (iv) final testing and commissioning of windmills, cannot amount to four separate and distinct contracts with the customers. The appellant was undertaking a composite contract for erection, commissioning or installation of Wind Turbine Generators (WTG). It was noted that the agreement was complete only upon commissioning of WTGs. [*Suzlon Infrastructure* v. *Commissioner* - 2012 (27) STR 242 (Tri-Mum.)].

CENTRAL EXCISE

Ratio decidendi

EOU procurements - Additional duty on HSD not exempt: Additional Excise Duty on High Speed Diesel (HSD) leviable under the Finance Act, 1999 has been held by CESTAT as not exempt under Notification No. 22/2003-C.E. According to the Tribunal, even though this duty was in the nature of excise duty, it will not be exempted because the same is not covered by Notification No. 22/2003-CE. In this case, assessee, an EOU, was procuring its inputs without payment of duty under the said notification. C.B.E. & C. Circular No. 807/4/2005-CX which had clarified that AED leviable on HSD was not required to be paid on goods exported under bond was distinguished by the Tribunal by holding that export

clearances without payment of duty are not synonymous with clearances under exemption. [*Riba Textiles Ltd.* v. *Commissioner* - 2012 (283) ELT 82 (Tri. - Del)].

Valuation – Market penetration is an extra commercial consideration: The Supreme Court has held that when the sale price of cars was much below its cost of production, the same was not a normal price for levying excise duty under the "normal price" regime. In this case, the assessee, in order to penetrate the market and to fight competition, was selling the cars manufactured by him at a loss and was paying excise duty on the sale price realized from unrelated dealers. The Apex Court held that the intention of the assessee to penetrate the market would constitute an extra commercial consideration and therefore, the valuation was required to be made on the basis of the best judgment assessment by taking into account the manufacturing cost and manufacturing profit. For the same reason that the said price was not the sole consideration, under the transaction value regime also, the Court held that such sale price of the goods would be rejected and excise duty would be payable on the manufacturing cost and manufacturing profit. [*Commissioner* v. *Fiat India Pvt. Ltd.* - 2012-TIOL-58-SC-CX].

Rebate – Limitation for filing claim: Limitation prescribed under Section 11B of the Central Excise Act, 1944 is also applicable to rebate claims. Bombay High Court has held that when Section 11B specifically covers rebate under its scope, notification issued allowing rebate on export goods cannot be read independently. In the case before the Court, while exports were made on 12-2-2006, the rebate claim was filed on 17-7-2007 after receiving the assessed shipping bill copy on 25-6-2007. The assessee contended that no time-limit for filing rebate claim was provided in the notification issued allowing rebate on export of goods and that, as the original shipping bill was required to be attached with the rebate application, period of limitation should be computed from the date of receipt of original shipping bill. The Court while dismissing the writ petition also observed that assessee could have submitted self-attested copy of the shipping bill instead of the final assessed copy. [*Everest Flavors Ltd.* v. *UOI* - 2012 (282) ELT 481 (Bom.)].

Valuation – Expenses incurred by sole selling agent not includible: CESTAT, Chennai has held that the advertising expenses incurred by sole selling agent for the purpose of business promotion are not includible in the value of the goods manufactured. The Tribunal noted that there was nothing unusual in such expenditure incurred by the dealer from his profit margin. It noted that the Supreme Court decision in the case of *Bombay Tyres* cannot be interpreted to mean that all expenditure incurred by the sole selling agent will be includible. [*Commissioner* v. *Ravishankar Industries* – 2012 TIOL 1023 CESTAT-Mad.].

Valuation – Circular seeking inclusion of PDI & free after sale service charges, quashed: The Bombay High Court has quashed CBEC Circular dated 1-7-2002 (Clause 7) and Circular dated 12-12-2002 (to the extent of confirming Clause 7 of circular dated 1-7-2002) which stated that expenses for pre-delivery inspection and free after sales services incurred by the dealers were includible in the assessable value of the vehicles sold to the dealers. It was noted that, as per the records, no amount was recovered by the assessee-petitioner from the dealer or the customer, apart from the price paid by the dealer to the assessee and that such services were rendered on account of dealership agreement. The Court further observed that since PDI and said services were not provided by the dealer on behalf of the manufacturer-petitioners, it could not be treated as consideration for sale or a deferred consideration. It was held that clause 7 of the CBEC Circular dated 1-7-2002 holding such charges to be includible in the assessable value of the cars sold to the dealers was not in conformity with Section 4 of the Central Excise Act, 1944. [*Tata Motors* v. *Union of India*– Bombay High Court Judgement dated 7-9-2012 in W.P. No. 2744 of 2012].

VALUE ADDED TAX (VAT)

Notifications

VAT on specified goods increased in Punjab: The applicable rate of tax on goods mentioned in Schedules 'B', 'C-1', 'D', 'E' and 'F' appended to Punjab Value Added Tax Act, 2005 has been enhanced by 0.5% with effect from 3rd September, 2012. Further, public notice issued by Excise and Taxation Commissioner read with the notification also provides that there will be no levy of VAT on sugar including khandsari with effect from 3-9-2012.

VAT on 'Non-levy Sugar' postponed in Uttarakhand: The Government of Uttarakhand had levied VAT on 'Non-levy Sugar' vide Notification No. 519/2012/03(120)/XXVII(8)/07 dated 30th May, 2012. However, the said levy has been postponed till further orders as per Notification No. 736/2012/03(120)/XXVII(8)/07, dated 3rd August, 2012.

Transfer of right to use goods for display of advertisements – Retrospective exemption in Rajasthan: Rajasthan Government has exempted the tax payable on the transfer of right to use goods for display of advertisements with retrospective effect from 1st April, 2006. Notification No. F.12(48) FD/Tax/2012-54, dated 21st August, 2012 has been issued in this regard.

Input tax credit restricted for specified goods under Orissa VAT Act: Section 20 (1-a) has been inserted under Orissa VAT Act with effect from 1st August, 2012 wherein certain taxable goods have been specified in respect of which a dealer will not be entitled for input tax credit. However, the credit with respect to such goods can be taken in certain specific circumstances which are mentioned against each such goods. The Orissa Value Added Tax (Amendment) Act, 2012 read with Notification S.R.O. No. 438/2012 No.27787- FIN-CT1-TAX-0031/2012/F dated 30th July, 2012 have been issued in this regard.

Ratio decidendi

Protective sunglasses are medical devices: The Bombay High Court has held that as per item 5 of the notification dated 23-11-2005, corrective spectacles as also protective spectacles are liable to be considered as medical device. It held that the notification did not require that the protective spectacles such as protective sunglasses would be considered as medical device only if they are sold under a prescription. In this case, the issue before the Court was whether the non-prescription sunglasses are medical devices as per the said notification thereby liable to tax @ 4% under Schedule Entry C-107(8) or the said goods would fall under the residuary entry attracting tax @ 12.5%. The Court held that protective spectacles like protective sunglasses are covered under Schedule Entry C-107(8) upto 27-4-2011 and after amendments, protective spectacles were taken out of the purview of said entry from 1-5-2011. [*Addl. Commissioner of Sales Tax* v. *Chheda Marketing* - 2012-VIL-54 Bom.].

Effective control for the purpose of transfer of right to use: The Madras High Court has held that, on an analysis of the clauses of agreement which stipulated that the drilling unit would be operated by the petitioner and where its maintenance was also with the petitioner, the effective control over

the goods remained with the petitioner. In this case, the issue was whether there was transfer of right to use the drilling unit of the petitioner to ONGC so as to attract the levy of lease tax. The petitioner had an agreement with ONGC for conducting drilling operations in the offshore waters of India. The court placed reliance on the Supreme Court's judgment of *Rashtriya Ispat Nigam Ltd.* [2002 (126) STC 114] and the decision of BSNL v. UOI [(2006) 145 STC 91] and held that the effective control of the rigs remained with the petitioner and hence there was no transfer of right to use goods so as to attract the said levy. [*Aban Loyd Chiles Offshore Ltd.* v. *The State of T.N* - 2012-VIL-60-Mad.].

INCOME TAX

Notification

Rules on Advance Pricing Arrangement (APA) notified: Rules pertaining to the Advance Pricing Arrangement (APA) have been introduced on 30-8-2012. Notification No. 36/2012 issued in this regard, amends Income-tax Rules, 1962 and inserts the rule titled 'Advance Pricing Arrangements, Meaning of expressions used in matters in respect of advance pricing arrangement'. Rule 10 F contains the meaning of various terms used and Rules 10 G to 10 T provide conditions for eligibility, procedures and compliance requirements. Forms 3CEC, 3CED, 3CEE and 3CEF have been provided for various stages like pre-filing consultation, application of APA, withdrawal and so on. Rule 44 GA pertains to procedure to deal with requests for bilateral or multilateral advance pricing agreements.

The rules provide for making an application in writing for pre-filing consultation, application for APA, withdrawal of application for agreement, preliminary processing and removal of defects before the team of competent authority processes the application. As provided in Rule 10M the agreement will include the international transactions covered by the agreement, the agreed transfer pricing methodology, determination of arm's length price, definition of any relevant terms and critical assumptions as applicable and any other conditions. Provisions have also been made with respect to cancellation of agreement.

Ratio decidendi

TP study to be based on functionally comparable companies: The assessee provided *"market support services"* to its parent company which was engaged in providing internet data and telecommunication services. Mumbai ITAT has held that companies which are functionally not comparable cannot be used in a transfer pricing study even if adopted by the assessee in its transfer pricing study and thereafter accepted by the TPO. It was held that this cannot be compared to *"turnkey engineering services"* which was the principal activity of the comparables used for transfer pricing study. [*DCIT* v. *MCI COM India Pvt. Ltd.* [2012-TII-ITAT-DEL-TP].

FTS – More beneficial provisions of India-Canada treaty to apply: Holding that the more beneficial provisions of the India–Canada treaty would apply, the ITAT, Mumbai held that TDS need not be deducted on payments made towards installation charges as covered by Article 12(5) of the treaty. The assessee filed a revised return claiming deduction

amount paid towards installation charges. Revenue contended that (a) initial installation and training were not an 'inextricable part' of purchase of plant and machinery as per provisions of the treaty, since there were two separate contracts – to buy the machinery and install the same and (b) it was also not construction, assembly, mining or like project as provided in Explanation 2 to section 9 (vii) of the Income Tax Act, 1961.

While the Tribunal agreed with the department that the payment would be chargeable as FTS under Section 9 of the Income Tax Act, 1961, it however, held that both contracts had proceeded from the same letter of intent and purchase consideration took into account purchase and installation cost of the system. . The Tribunal accordingly held that merely because the two components of purchase consideration, viz purchase cost and installation cost are executed by different contracts/agreements, the nature of transaction of purchase cannot be changed or denied. [*DCIT* v. *Dodsal P ltd.* I.T.A. No. 2624/Mum/2006. Mumbai ITAT order dated, 29-8-2012]

Section 10A is, in essence, an exemption provision: In the instant case, the taxpayer had profit in EPZ unit and loss in non-EPZ. The taxpayer claimed deduction under section 10A on profits of EPZ unit and carried forward the loss of the other unit. AO on the contrary set off the loss/brought forward loss from a non-EPZ unit and added back certain disallowances to arrive a nil total income. The assessee argued that Section 10A was part of Chapter III –*'Incomes not forming part of total income'* and loss from non-eligible units could not be adjusted against profits of an eligible unit for the purposes of 10A. The High Court of Delhi held that though worded as a deduction provision, Section 10A of Income-tax Act, 1961 (the Act) is essentially and in substance an exemption provision. It stated that loss of non-EPZ unit, cannot be set off against profits of EPZ unit to compute the amount exempt under Section 10A. It was reasoned that the definition of 'total income' as per Section 2(45) of the Act cannot be imported into the interpretation of Section 10A(1). [*CIT* v. *TEI Technologies P ltd,* ITA Nos.347/2011 & 2067/2010, Delhi High Court, decision dated 27-8-2012]

Deductibility of certain expense relating to research and development: Deciding a set of appeals relating to the deductibility of expenses incurred towards research and developments activities, ITAT Mumbai has held that expenses towards 'patent filing' expended for competitor patent study and search, brand orders for R&D decision, process study of existing patent etc, is eligible for weighted deduction under Section 35 (2AB) of Income-tax Act, 1961. It reasoned that explanation to this section provides that expenditure for scientific research shall include filing of application for a patent under the Patents Act, 1970, in relation to drugs and pharmaceuticals. Patent filing charges in respect of international application as per the Patent Act, 1970 was eligible for deduction.

It was also held that expenses relating to filing of ANDA (Abbreviated New Drug Application) in USA was not capital expenditure and was to be allowed as expense. The asssessee argued that it has not acquired any IPR namely trade mark / patent or a ward–off any competition and the expenditure was to comply with regulatory requirements in the US. Revenue had added the same to the income of the assessee and allowed depreciation thereon. The ITAT also held that rent, rates, repairs and taxes relating to the R&D premises cannot form part of cost of building which alone is explicitly excluded under Section 35(2AB) and hence it was also eligible for weighted deduction. [*USV Limited* v. *DCIT,* ITA No. 4517, 5582, ITAT, Mumbai , Order dated 4-7-2012]

News Nuggets

Expert Committee submits draft report on GAAR: The Expert Committee headed by Mr Parthasarathi Shome has called for deferring the implementation of GAAR by three years. It has also sought tax exemption to gains arising from transfer of listed securities. The panel submitted its draft report on the General Anti-Avoidance (GAAR) Rules and comments on the same can be provided by 15-9-2012. Distinguishing between tax mitigation and tax planning, while conceding that tax avoidance is an issue of concern, the committee has made recommendations for certain amendments, guidelines and clarifications.

The definition of an impermissible arrangement has been recommended to be amended to cover only arrangements which have the main purpose (and not one of the main purposes) of obtaining tax benefit. It has suggested that the Approving Panel to which the matter regarding the impermissible tax arrangement is to be referred to by the Commissioner, should consist of a retired Judge of High Court, persons of eminence drawn from the fields of accountancy, economics or business, with knowledge of matters of income-tax and Chief Commissioners of Income Tax. It was originally proposed to have not less than 3 members from income tax authorities only.

The report suggests that an illustrative list of tax mitigation or negative list for purposes of invoking GAAR should be specified and calls for a monetary threshold of Rs 3 crore of tax benefit (including tax only, and not interest etc) to a taxpayer in a year to invoke provisions of GAAR. Non-application of GAAR when specific provisions are available in a tax treaty and in cases where valid Certificate of Residence issued by Mauritius is available and pre-announcement of the date of implementation to remove uncertainty are the other significant recommendations.

Affixation of stickers when does not amount to manufacture: Activities of affixation of different stickers, barcodes, assortment, debundling and bundling of different goods etc., cannot be regarded as "manufacture" within the meaning of Section 2(f) of the Central Excise Act, 1944. In its recent ruling dated 24-8-2012, the Authority of Advance Rulings has held that the intention of the legislature in creating the deeming fiction of "manufacture" under the said provisions was to capture the value addition that occurs in course of making goods marketable, through processes that would not fall within the ordinary definition of manufacture. The Authority observed that if each and every case of putting stickers is regarded as manufacture, every trader shall be a manufacturer.

The activities of the applicant, an online retail sale platform, were stated mainly to be assortment, packing and affixation of stickers (for the purpose of inventory management) in relation to the goods purchased by the customers of the various merchants through the applicant's website. The Authority also held that the outer packing adopted for safety during transit cannot be equated with the processes of packing and repacking contemplated in the said provisions. The contention of department that the activities fell within the expression "adoption of any other treatment to render the product

marketable to consumer" was not accepted by the Authority.

Advance rulings on FTS and royalty: In its ruling dated 27-8-2012, the Authority for Advance Rulings (AAR) held that transmission and wheeling charges paid to the transmission company would be fees for technical services and TDS was required to be deducted on the same. The charges were paid by a govt. company engaged in the business of transmission of electricity to Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN) which also functions as the State Load Dispatch Centre. The AAR held that transmission of electricity does not involve mere provision of instrument or facility but it involved rendering of services which is technical in nature, especially to ensure a proper and uninterrupted supply of electrical energy, at the required quantity and at the required voltage.

In another ruling dated 24-8-2012, the AAR answered a reference on whether consideration for the right to exclusive use/exploitation of capacity allotted under a consortium agreement to plan and lay a submarine cable system constituted royalty. It held that the right to use was covered by right to use process/equipment as per Explanation 2 to Section 9(1)(vi) of the Income-tax Act, 1961. Further in view of the clarificatory amendments introduced by Finance Act, 2012, the consideration for right to use would be royalty. The assessee had argued that since the original allotee would use the same to make payment to the consortium, it was only a reimbursement of cost and he did not earn any income. It however held, on facts that payments towards annual maintenance charges which were paid to ensure right to use without any breakdown were a portion of annual maintenance charges of the entire system and hence not FTS.