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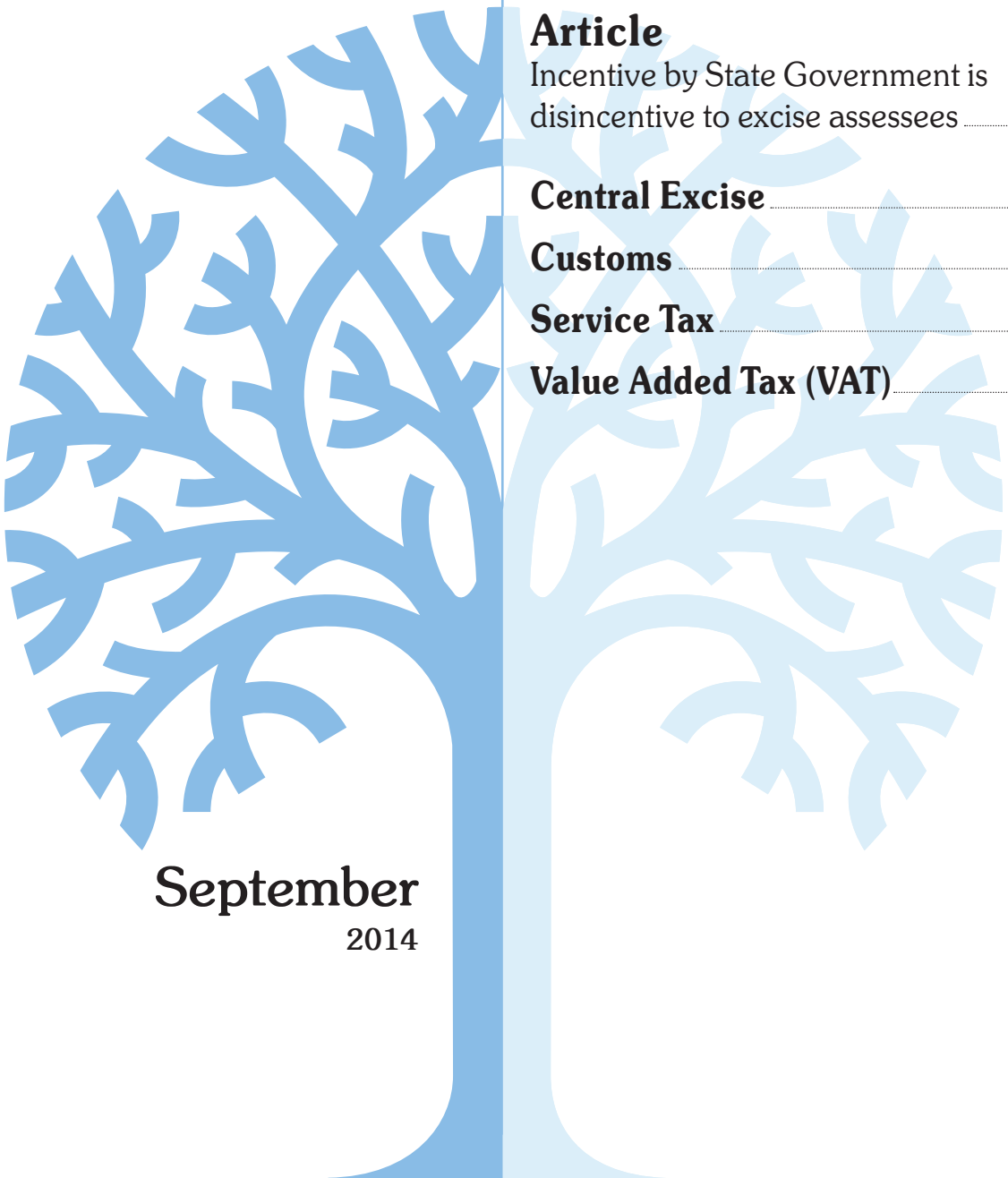

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Article

Incentive by State Government is disincentive to excise assessees

By **Nirav Karia**

The Supreme Court in *Super Synotex*[1] case had considered the Sales Tax Incentive Scheme extended by State of Rajasthan. Under that scheme, it appears that the assessee was entitled to retain with him 75% of the sales tax collected from his buyers and pay only 25% to the State Government. The State of Rajasthan instead of giving certain amount towards industrial incentive, grants incentive in form of retention of 75% of sales tax payable by the assessee.

The Supreme Court in *Super Synotex* case held that for the period prior to 1-7-2000, the amount collected as sales tax and retained under the above mentioned scheme will not be included in the assessable value determined under Section 4 of Central Excise Act as it stood during that period. However, in respect of the period after 1-7-2000 when Section 4 of the Central Excise Act, 1944 was amended, it was held by the Supreme Court that the amount of tax collected and retained under the above mentioned incentive scheme would be part of the price for determining the assessable value for payment of excise duty since sales tax actually paid by the assessee was only 25%. The Apex Court had remanded all the civil appeals involving other assessees to CESTAT with the direction to decide the cases in light of ratio laid down in *Super Synotex* case in respect of period after 1-7-2000.

Consider a case where the assessee has opted for Sales Tax Incentive Scheme wherein the assessee is allowed to collect sales tax from the buyers at the time of sale of goods and pay the same after specified periods. Under such Scheme, assessee is entitled to defer the payment of sales tax by way installments payable after stipulated periods. However, it may be noted that many State VAT Acts provide a deeming provision. As per such deeming provision, if the assessee opts to pre-maturely pay the sales tax collected from the buyers as per Net Present Value, then, such pre-mature payment will be treated as deemed payment of entire amount of sales tax collected by the assessee from the buyers.

Recently, the Supreme Court in the case of *Maruti Suzuki Limited*[2] has decided against the assessee and held that amount of sales tax collected by the assessee on account of incentive scheme from its buyers and retained with them, should be included in the assessable value for payment of excise duty under Section 4 of the Central Excise Act, 1944. In this case, the ratio laid down in *Super Syncotex* was not considered. It means that, as on date, there are two independent decisions on identical issue holding the field against the assessee who have availed the sales tax incentive and retained some amount with them on account of said incentive scheme. However, it may be noted that in *Maruti Suzuki's* case, penalty has been set aside on the ground of *bonafide* and availability of favorable decision of the Tribunal in assessee's own case.

Applying the ratio laid down in *Super Synotex*, the Department may raise demand on those assessees who have availed Deferral Sales Tax Incentive scheme and opted to make premature

1 2014 - TIOL - 19 - SC - CX
2 2014 - TIOL - 74 - SC - CX

payment as per NPV. The department may contend that differential amount arising on account of discharge of deferred sales tax liability as per NPV is not *actually paid* by the assessee to the State Government and hence such differential amount should not be allowed to be deducted from the price for the purpose of calculating the transaction value under Section 4 of the Central Excise Act, 1944. In other words, the department may contend that such differential amount should be included in the assessable value for the purpose of payment of excise duty under Section 4 of the Central Excise Act, 1944.

It is clear that such type of incentive scheme under sales tax was not dealt in *Super Synotex* case. Further it can be argued that sales tax incentive scheme involved in *Super Synotex* and *Maruti Suzuki* case were materially different compared to deferred sales tax incentive scheme. Further it can also be argued that the machinery provision to pay sales tax collected by the assessee under deferral sales tax incentive scheme as per NPV was absent in the statutory provisions contained under the State VAT Act.

The assessee can also argue that in *Super Synotex* and *Maruti Suzuki* the 'deeming provision' provided under the Incentive scheme availed by the assessee and various other schemes offered by various sales tax enactments was not considered. In fact, the court in the said two cases had failed to address a situation where there is a deeming provision under the State VAT Act which provides that on pre-mature payment, sales tax payable after specified periods as per deferment scheme will be treated as deemed to have paid the entire amount to sales tax deferred to the State Government.

The above arguments are only illustrative. Further, submissions may differ from case to case. Similarly, many questions like sustainability of demand raised beyond the normal period of limitation, proof of bona fide, non-receipt of objections from departmental audit on this issue and future course of action may arise in the mind of assessees who have availed sales tax incentive scheme under State VAT Act and some portion of sales tax is retained with them on account of availing such incentive scheme.

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CENTRAL EXCISE

Ratio decidendi

Rebate – Market value of exports: Delhi High Court has held that rebate of duty paid on exports cannot be denied contending that value of exports is higher than their market value. The court in this regard noted that purport of Rule 18 of Central Excise Rules, 2002 was to refund the duty paid by the manufacturer-exporter and as the department had accepted duty paid on higher value, it cannot now challenge the value of exports. It was also held that the market price must necessarily refer to the price in the market where the goods are sold and that price in India was irrelevant particularly when the products were not sold in India. Noting that relevant time for comparison of exports should be "at the time of exportation", the court rejected department's comparison with other goods which

were not available during relevant time. [*Dr. Reddy's Laboratories Ltd.* v. *Union of India* – W.P. No. 818/2014, decided on 14-8-2014]

Rebate not available to EOUs: Allahabad High Court has held that Export Oriented Units are not entitled to rebate of duty on exports under Rule 18 of the Central Excise Rules, 2002. The court held that since the whole of the exports of an EOU was exempted under Notification No. 24/2003-C.E. unconditionally, Section 5A(1A) of the Central Excise Act, 1944, providing for mandatory exemption, would be applicable in such cases. It was hence held that EOU was not required to pay duty on export clearance and subsequently claim rebate of the said duty. CBEC Instruction dated 23-4-2010 was also noted by the court in this regard. [*Vanasthali Textiles Industries Ltd.* v. *Union of India* – W.P. No. 16942/2012, decided on 11-8-2014]

Demand – Applicability of Section 11D when exemption claimed: CESTAT Delhi has held that Section 11D of the Central Excise Act, 1944 is not applicable in cases where the assessee taking benefit of exemption notification was not required under law to disclose excise duty element. Department's contention that there was collection of duty from the buyer after claiming exemption inasmuch as the price of goods remained same though excise duty was shown distinctly in the invoices during period before exemption and not mentioned in invoices when exemption was claimed, was rejected by the Appellate Tribunal. [*Madhya Bharat Papers Ltd.* v. *Commissioner* – 2014 (306) ELT 498 (Tri.-Del.)]

Cenvat credit on fuel used in generation of steam supplied to sister unit when eligible: Cenvat credit of fuel used in generation of steam which is also supplied to the sister unit is available when the steam is not sold to the sister unit. Supreme Court's decision in the case of *Maruti Suzuki*, denying credit when fuel used in electricity which was wheeled out, was distinguished by the Tribunal also observing that credit is otherwise also available when inputs are sent to the job worker and final product is cleared from the latter's premises on payment of duty. The matter was however remanded for verification of duty payment by the sister unit. [*Alkem Laboratories Ltd.* v. *Commissioner* – Order No. A/11563/2014, dated 28-8-2014, CESTAT Ahmedabad]

Interest on delayed refund to be paid automatically: Allahabad High Court has held that in case of delay in grant of refund, interest under Section 11BB has to be paid automatically and that waiver of interest by the party concerned has no relevance in this regard. It was also held that interest under said section becomes payable on expiry of three months from the date of receipt of refund application under Section 11B(1) and that explanation appearing below the proviso in Section 11BB has no bearing with the date from which interest becomes payable. [*Siddhant Chemicals* v. *Union of India* – 2014 (307) ELT 44 (All.)]

Penalty for delay in e-filing returns when not imposable: CESTAT Ahmedabad has set aside penalties under Rule 27 of the Central Excise Rules, 2002 imposed for delay in filing of returns, ER-2 and ER-3, in two different cases. In case of delay in filing ER-2 Return, the Tribunal waived penalty on the ground that the assessee attempted filing of the return but was not able to do so on time due to non-availability of official website. Fact that the delay was only of few days was also taken note of by the Tribunal here. In another case involving

delay in e-filing of ER-3, considering again that the delay was only of few days, the Tribunal waived the penalty holding that penalty was not imposable when the assessee was new to electronic filing of returns. [*Fine Care Biosystems* v. *Commissioner* & *Fine Care Corporation* v. *Commissioner* – Order Nos. A/11497 and 11499/2014, both dated 1-8-2014]

No under-valuation of intermediate goods when duty paid on MRP basis on final product: CESTAT Mumbai has held that there is no question of under-valuation of the intermediate product supplied to manufacturer of finished goods when duty is paid on finished goods on MRP basis. The Tribunal in this regard noted that even if it is presumed that the assessee-appellant supplied the intermediate product at lower price than the price at which the same was supplied to sister unit, the appellant was receiving the finished goods (goods were supplied to its dealers by the finished goods manufacturer) on payment of duty under Section 4A of the Central Excise Act and hence the assessee had a good case on merits. It was also noted that the buyer of intermediate goods was also purchasing same goods at similar price from other independent suppliers as well. [*Hindustan Lever Ltd.* v. *Commissioner* - TS-341-Tribunal-2014-EXC]

Valuation of retail packs supplied to industrial consumers: CESTAT Mumbai has held that valuation of retail packs of tiles which were also supplied to industrial or institutional consumers is to be done under Section 4A of the Central Excise Act, 1944 i.e. under MRP based valuation. Noting absence of marking that the packages were not meant for retail sale or that the packages were meant for some specified industry, the Tribunal, placing reliance on various clarifications issued by State authorities implementing Legal Metrology (Packaged Commodities) Rules, 2011, held that there was no exclusion of such supplies to institutional buyers from the declaration of MRP. Apex Court's judgment in the case of *Jayanti Food Processing* was relied by the Tribunal in the context. [*H&R Johnson (India) Ltd.* v. *Commissioner* – 2014 (306) ELT 645 (Tri.-Mumbai)]

Valuation – Inclusion of amount retained from sales tax collected: Supreme Court has held that 50% Sales tax collected and retained by the assessee in terms of Entitlement Certificate of the High Powered Committee under Haryana General Sales Tax Rules, 1975 would be included in the assessable value for the purpose of payment of Central Excise Duty. It was noted that the amount so collected and retained was neither actually paid nor was payable to the exchequer. The court however waived the penalty taking into consideration the fact that the assessee had succeeded before the Tribunal. [*Commissioner* v. *Maruti Suzuki India Ltd.* – 2014 TIOL 74 SC CX]

Interest on delayed refund – Relevant date in case of re-submission of claim: CESTAT Delhi has held that even though the refund claims in the case were re-submitted later, the dates when the claims were originally submitted would be considered as dates of refund claim for the purpose of computation of interest. It was held that interest liability would hence start from three months of original refund claims pertaining to refund of unutilized Cenvat credit. [*Rishab Velveleen Ltd.* v. *Commissioner* – 2014 TIOL 1688 CESTAT Del.]

CUSTOMS

Notification & Public Notices

Advance Authorization/DFIA - Quantity of input imported to be in proportion to quantity of input actually used/consumed: Para 4.1.15 of the FTP has been amended to include new clause (b) to provide that quantity of inputs allowed to be imported under an Advance authorization/DFIA is to be in proportion to the quantity of such inputs actually used/consumed in the production of export product. According to the amendment as per DGFT Notification No. 90 (RE-2013)/ 2009-2014, dated 21-8-2014, in case a single quantity is mentioned against number of inputs in SION, the quantity of inputs allowed to be imported should be in proportion to the quantity of inputs actually used and be within the overall quantity mentioned against such group of inputs.

Exemptions under specific circumstances (ad hoc exemptions) - Revised guidelines issued: Under Section 25(2) of the Customs Act, the Central Government considers specific requests for grant of exemption from payment of customs duty in cases involving circumstances of an exceptional nature. Existing guidelines for grant of exemption under Section 25(2), contained in Circular No. 49/2003-Cus., dated 10-6-2003 and Circular No.10/2007-Cus., dated 13-2-2007, have been rescinded and revised guidelines have been issued under Circular No. 9/2014-Cus., dated 19-8-2014 for considering past as well as future requests for grant of exemption from customs duty.

Sugar - Effective rate of BCD on raw sugar and refined or white sugar, increased: Sl. Nos. 76, 77 and 78 of Notification No. 12/2012-Cus., dated 17-3-2012, which provides for conditional concession from basic customs duty (BCD) on import of raw sugar and refined or white sugar have been amended. Notification No. 26/2014-Cus., dated 21-8-2014 issued in this regard provides for effective rate of BCD on these products to be 25% instead of earlier rate of 15%.

Ratio decidendi

No interest payable on provisional assessments made prior to 13-7-2006 but finalized later: CESTAT Delhi has held that no interest liability can be fastened on an importer under Section 18(3) of the Customs Act on finalization of provisionally assessed bills of entry filed prior to 13-7-2006, i.e., prior to insertion of said section providing for interest. Noting Gujarat High Court ruling in the case of *Goyal Traders* [2014 (302) ELT 529 (Guj.)], the Tribunal held that Section 18(3) of the Customs Act will have prospective operation and the same cannot be applied retrospectively. [*Gwalior Alcobrew Pvt. Ltd.* v. *Commissioner* - 2014-TIOL-1541-CESTAT-DEL]

Drawback - Brand rate can be claimed after availing All Industry Rate: Bombay High Court has held that an exporter is not barred from seeking brand rate of drawback under Rule 7 of the Drawback Rules merely because, at the time of export, he had applied for, and was granted, drawback at the All Industry Rate (AIR) under Rule 3. The court has also struck down clause (d) of the CBEC Circular dated 30-12-2011, imposing such restriction. It was noted that there is no prohibition

in the Drawback Rules debarring an exporter from seeking brand rate and claim differential amount in such circumstances. The court considered Rule 7(3) providing for provisional drawback during pendency of brand rate claim and it observed that the word "finds" appearing in Rule 7 after the words "manufacturer or exporter", indicates that it is only after the exporter concludes that the AIR of drawback is less than specified amount, that he can make an application for determining the brand rate. [*Alfa Laval (India) Ltd.* v. *Union of India* – W.P. No. 1098/2013, decided on 1-9-2014]

Valuation – CBEC circular existing during date of import relevant and not subsequent one: Madras High Court has held that imports are to be governed by circular(s) prevalent during the relevant period and therefore in respect of the impugned imports, demurrage charges and despatch money were not to be added to the assessable value of imports. According to the court Customs Department is not allowed to take a stand contrary to instructions / circulars issued by the CBEC which are prevalent during the relevant period. During the relevant period, as per CBEC Circular F.No.467/21/89-Cus.V, dated 14-8-1991 such charges were not includible in the assessable value. However, the department had sought to include such amount relying on CBEC Circular No.14/2001-Cus, dated 2-3-2001, which was issued subsequent to the date of import. [*Commissioner* v. *Sterlite Industries India Limited* - 2014-TIOL-1411-HC-MAD-CUS]

Warehousing – Demand cannot be confirmed against EOU when application for extension of warehousing period pending: CESTAT Bangalore has held that duty demand cannot be confirmed against an Export Oriented Unit (EOU) in respect of warehoused goods, which remains unutilized after the expiry of three years or on expiry of warehousing period, without deciding on the application for extension of warehousing period made by the unit. CBEC Circular No. 47/2002-Cus. observing that applications for extension of warehousing period can be made even after the warehousing period is over, was also noted by the Appellate Tribunal in this regard. [*Nutra Specialities Private Limited* v. *Commissioner* - 2014-TIOL-1566-CESTAT-BANG]

Drawback on re-export - Relevant date: CESTAT Mumbai has held that under Section 74 of the Customs Act, 1962 date of Let Export Order cannot be taken as the relevant date for considering entry of goods for re-export. It has been held that the relevant date will be the date on which goods entered the Customs area. Section 74 of the Customs Act provides for duty drawback on re-export of imported goods as such or after use and such drawback is available subject to a condition that goods are entered for re-export within three years from the date of importation. [*Oil & Natural Gas Corporation Limited* v. *Commissioner* - 2014 (307) ELT 146 (Tri-Mumbai)]

Deemed exports – Interpretation by Policy Interpretation Committee, prospective: Bombay High Court has held that interpretation placed on 15th March 2011 by the Policy Interpretation Committee in respect of deemed export benefits would not apply to supplies made prior to such interpretation and such cases would be processed by the authorities in accordance with the policy prevailing and as clarified prior to

15th March 2011. It was held that unless and until the clarification was applied to cases which are already concluded and where refund has already been sanctioned and granted, the petitioner cannot be proceeded against. Considering such denial of benefit as afterthought, the court held that such interpretation issued afterwards could not be relied upon to reopen the concluded cases or review them. The interpretation was further held as not applicable to pending applications. It was also held that such minutes of the meeting cannot override the FTP provisions. [*Patel Engineering Ltd.* v. *Commissioner* – W.P. Nos. 6846 and 8288/2012, decided on 21-7-2014]

Stay/Dispensation of pre-deposit - Inconsistent stand by revenue authorities also amounts to "hardship": Madras High Court has held that hardship under Section 129E of the Customs Act is not merely limited to financial hardship. Hardship is also caused due to the inconsistent stand taken by the same authority in similar matters, due to change in officers. The court hence waived the condition of pre-deposit under Customs Section 129E and directed the Commissioner (Appeals) to entertain appeal without any condition. [*Sahil International* v. *Commissioner* - 2014-TIOL-1429-HC-MAD-CUS]

Old and used propping pipes are capital goods and freely importable: CESTAT Mumbai has held that old and used propping pipes falling under Heading 7308 of the Customs Tariff Act, 1975 will fall within the definition of 'second-hand capital goods' under the Foreign Trade Policy (FTP) as equipment required for rendering construction service. The Tribunal hence set aside confiscation observing that such goods are freely importable under Paragraph 2.17 of the FTP. [*Peri (India) Private Limited* v. *Commissioner* - 2014-TIOL-1630-CESTAT-MUM]

Interest not admissible on delayed refund of sale proceeds: Revisionary Authority, Ministry of Finance has held that no interest under Section 27A of the Customs Act, 1962 is payable by the department to the applicant on delayed refund of sale proceeds of confiscated goods. It was noted that Section 27A only grants interest on delayed refund of customs duty. [*In Re: Ashraf Puliyalla Parambil* - 2014 (307) ELT 192 (GOI)]

SERVICE TAX

Ratio decidendi

Notional interest on security deposit cannot be included in gross value service: At issue was the addition of notional interest on interest free security deposit collected by the assessee from their lessee. The deposit (returnable) was collected in addition to rentals as security against default in payment and/ or damages to property. The department argued that interest free security deposit suppressed the lease rentals and hence notional interest had to be added to value of service. Against this proposition it was argued that any benefit accruing to either party, not in the nature of consideration cannot be added and there is no deeming provision in service tax rules to increase the value of consideration. No evidence had been adduced by the department to prove rental had been suppressed. The Tribunal agreed with the reasoning that security deposit

was collected for a different purpose and was not a consideration for the leasing of property and held that notional interest on security deposit cannot be added to the rent agreed upon. [*Magarpatta Township Development & Cons. Co. ltd* v. *Commissioner,* Order No. A/1366-1374/14 dated 13-7-2014, CESTAT Mumbai]

Utilising data provided by foreign head office – Service tax liability under reverse charge mechanism: The head office of the airline based in Vienna had entered into agreements with Computerised Reservation System (CRS) companies which were located outside India for provision of online database access or retrieval service and did not have any branch or business establishment in India. The entire payments to the CRS companies were made directly by the head office and no part of payment was made by the appellant–branch office. The principal issue (referred to the third member) before the Tribunal was whether the appellant could be treated as the recipient of the service provided by the CRS companies located abroad. The CRS companies were not providing any specific service to the branch office and it was the head office at Vienna which, in order to facilitate the booking of air tickets through IATA agents all over the world, had negotiated with the CRS companies and had entered into contacts with them for storage of updated data on real time basis regarding their flight schedules, fare, seat availability etc., and making the same accessible to their IATA agents. The appellant's job was only appointing the IATA agents in India, collection of sale proceeds of tickets sold by IATA agents and remitting the same to head office and as such they were not involved in taking key business decisions. Hence the Tribunal held that the head office was the recipient of the service of the CRS companies and it could not be said that only the branch office-appellant had benefited from the service provided by the CRS companies. [*Austrian Airways* v. *Commissioner,* 2014-TIOL-1574-CESTAT-DEL]

Cenvat credit not admissible to mobile service provider on towers: The appellant, engaged in providing cellular telephone services, availed Cenvat credit on excise duty paid on towers parts and shelters/ prefabricated buildings purchased by them and to be used for providing output service. Rejecting the availability of Cenvat credit, the High Court observed that towers are immovable property and non-excisable and hence, can neither be regarded capital goods so as to fall within the definition of 'capital goods', nor be categorized as 'input'. It was also noted that in the CKD or SKD condition the tower and parts thereof would fall under the Heading 7308 of the Central Excise Tariff Act which is not specified in relevant provisions of Cenvat Credit Rules so as to be capital goods. The court held that the goods in question would not be capital goods for the purpose of Cenvat credit as they are neither components, spares and accessories of goods falling under any of the chapters or headings of the Central Excise Tariff Schedule as specified in sub-clause (i) of the definition of capital goods. [*Bharti Airtel Ltd* v. *Commissioner,* 2014-TIOL-1452-HC-MUM-ST]

Administrative support services not treatable as management consultancy service: The department argued that services rendered by

the assessee like support for land acquisition and development, employees benefit administration (provident fund, superannuation, gratuity), liaison with banks and financial institutions, etc., prior to 1-7-2003, were in nature of technical services and classifiable under management consultancy services. The department had accepted classification under Business Auxiliary Services for the period from 1-7-2003 onwards. Upholding the nature of service as BAS, the Tribunal stated that the said services were in the nature of administrative support services, and not an advice on how to run an organisation. Also on facts the remuneration was paid by way of commission as a percentage of sales which again is not a feature of management consultancy service. [*Tata Autocomp Systems Ltd* v. *Commissioner*, 2014-TIOL-1608-CESTAT-MUM]

Maintenance of first-aid box along with trained persons in factory – Cenvat credit admissible: Taking a view that use of manpower supply service for maintaining a first aid box, along with a trained person which was mandatory as per the Factories Act, 1948 and Mines Act, 1952 was 'in or in relation to manufacture', the Tribunal set aside impugned orders denying Cenvat credit. The department had argued that maintenance of first aid box along with trained person did not have any nexus with manufacture. [*Jaypee Sidhi Cement Plant* v. *Commissioner,* Final Order No. 53199 dated 4-8-2014, CESTAT Delhi]

Handling and distribution as part of contract of sale– Service tax not payable: Examining the department's contention that activity of handling and distribution of urea as part of a government contract is exigible to service tax, the Tribunal viewed the transaction as a whole and determined that the transaction was essentially one of sale. As per the terms of the contract the assessee imported and distributed (sold) urea to the farmers as per the government tender. It was also argued that no reimbursement was available to the assessee for any loss during handling of urea. It was held that no service was rendered to the government of India. [*Gujarat Narmada Valley Fertilisers & Chemicals Ltd.* v. *Commissioner*, Order No. A/11535/2014 dated 25-8-2014, CESTAT Delhi]

Consulting Engineer's service for construction of railway siding for inward transportation of coal for captive power plant is an input service: The dispute revolved around denial of Cenvat credit on service tax paid on consulting engineer service availed for construction of railway siding for inward transportation of coal for captive power plant. The tribunal held that the said services related to procurement of raw materials, since coal used for generation of electricity was transported by rail. The assessee could therefore take credit of service tax paid on the same. [*RSWM Ltd.* v. *Commissioner,* Final Order 53190/2014 dated 7-8-2014, CESTAT Delhi]

Extended period not invocable by mere non-registration, non filing of return or non-payment of service tax: In the instant case, the department alleged that the assessee was liable to pay service tax under consulting engineer service and also invoked extended period citing failure to obtain registration, non-filing of ST-3 return and non-payment of service tax. The Tribunal held that on facts, the impugned service was not exigible to service tax and invocation of extended period was not sustainable. [*M.P. Laghu Udhyog*

Nigam Ltd. v. *Commissioner*, Final Order No. 53129/2014 dated 11-7-2014, CESTAT Delhi]

Extension of time-limit for pre-deposit under VCES not permissible: The appellant sought relief in two forms as regards the application under Voluntary Compliance Encouragement Scheme (VCES). One was extension of time limit to pay the initial deposit of 50% of declared amount or to take credit of the sum paid as part of return filed earlier in the year. The Delhi High Court held that the VCES was a package in itself and authorities did not have any discretion as regards extension of time. It held that the right of the assessee to claim benefit of the scheme is dependent on pre-deposit of 50% of the declared amount. [*Teknow Overseas P Ltd* v. *Asst CST (VCES)*,2014 (35) S.T.R. 488 (Del.)]

Credit of service tax paid admissible even if discount availed on invoice amount: Drawing analogy from cases pertaining to credit of excise duty paid and relying on the clarification issued by the CBEC, the Tribunal granted relief to the assessee holding that credit of service tax actually paid will be available. The department contended that since the assessee had not paid the invoice amount in full, having availed a discount, Cenvat credit cannot be claimed for entire amount. [*Patel Air Freight* v. *Commissioner*, 2014 (35) S.T.R. 529 (Tri.-Ahmd.)

Place of removal need not be factory gate in case of MRP based valuation: Finding force in the assessee's argument that the place of removal has not been expressly declared to be factory gate in case of goods where rate of duty is specific, the High Court held that if premises of consumer is determined as place of removal then GTA service for transportation to consumer's premises will be deemed to be input service. It held that the presumption by the Tribunal that the place of removal would be factory gate of the manufacturer if excise duty is charged on specific rate was incorrect and there cannot be a presumption of law that in such cases factory gate will be the place of removal. The department argued that place of removal being factory gate, the assessee could not take credit in respect of GTA service [*Ultratech Cement Ltd* v. *Commissioner*, 2014 (35) S.T.R. 641 (Chattisgarh)]

VALUE ADDED TAX (VAT)

Notifications

Concessional rate of CST on sale of motor vehicles from MP: Rate of Central Sales Tax payable, on inter-state sale of motor vehicles with four wheels or more, by dealers having their place of business in Madhya Pradesh has been reduced to 1% of turnover of such sales, subject to fulfilment of the requirements laid down in Section 8(4) of the Central Sales Tax Act, 1956. Notification No. F-A-3-42/2014/1/V (31), dated 6-8-2014, issued under Section 8(5) of the CST Act for this purpose, makes this concessional rate applicable to sales made from 15-8-2014 onwards.

Haryana VAT Rules, 2003 amended: Haryana VAT Rules have been amended by Notification No. S.O.88/H.A.6/2003/S.60/2014, dated 12-8-2014 issued under Section 60(1) of the Haryana VAT Act, 2003. The major changes are as under:

- Rule 49 has been substituted *with effect from 12-8-2014,* to increase the rate of tax from 4% to 5%, under the lumpsum scheme in respect of contractors other than developers. The payment of lumpsum is to be made monthly instead of quarterly.
- Rule 49A has been inserted *with effect from 1-4-2014* to introduce a new composition scheme in respect of developers under which a composition developer may opt to pay by way of composition, a lump sum tax calculated at the rate of 1% of entire aggregate amount specified in the agreement or value specified for the purpose of stamp duty, whichever is higher, in respect of the said agreement.

Haryana VAT Act amended: Section 59A has been inserted in Haryana VAT Act to enable the notification of amnesty scheme for recovery of old arrears of taxes pertaining to a period prior to 1st April, 2014. Haryana Value Added Tax (Amendment) Ordinance, 2014 has been issued in this regard.

Ratio decidendi

Parcel/ courier/ transporting & clearing agencies not liable for registration under Kerala VAT: Kerala High Court has held that the parcel/ courier/ transporting and clearing agencies functioning within the State of Kerala are not liable to get registered under Section 15 of the Kerala Value Added Tax Act, 2003 as the provisions of Kerala VAT Act do not provide for the registration of such agencies. Interpreting clause (viii) of Section 15(2) of the Kerala VAT Act, it was held that transporting agency cannot be deemed to be an agency supplying and distributing goods, as the said phrase used in said clause takes color of the previous words, "business of buying and selling", employing the rule of *ejusdem generis.* It was held that though the state is competent to provide for registration of transporters of goods which are intended for sale within or outside the state and to provide for measures to check evasion of tax by requiring such registered dealers to file returns and make declarations, however as the Act stands, it only mandates the latter and does not provide for registration under Section 15 of the Kerala VAT Act, read with the definition of "Dealer" under Section 2(xv). [*Saurashtra Roadways* v. *Commercial Tax Officer* - 2014-VIL-219-KER]

Lease agreements entered prior to introduction of Karnataka VAT not liable thereunder: The assessee was a dealer under the Karnataka Sales Tax Act, 1957 (KST Act) up to 31-3-2005 and from 1-4-2005 under the provisions of the Karnataka Value Added Tax Act, 2003 (KVAT Act), and engaged in lease of cars. All such cars had suffered local tax in the State of Karnataka under the KST Act. Master lease agreements in standard formats were entered into by the assessee with the concerned customers for a tenure of five years. The charging provision under the KST Act prescribing levy of tax on transfer of right to use goods was Section 5-C however, the proviso provided for non-exigibility in case goods have suffered single point tax at the time of their purchase from local registered dealers. The question before the Court was whether the Tribunal was correct in holding that lease rentals received after 1-4-2005 in respect of transfer of

right to use KST suffered cars leased out prior to 1-4-2005 is not exigible to tax under the KVAT Act.

The court, noting that the assessee had not leased any cars after coming into force of new provisions and that lease was prior to 1-4-2005 for a period of 5 years, held that though the assessee continued to receive rentals every month after 1-4-2005, it was in pursuance of a sale which took place prior to 1-4-2005 and hence the liability to pay tax under Section 3 of the KVAT Act did not arise. It was however held that if after expiry of the lease period, the assessee were to lease the cars again to the customers, the benefit of Section 5-C would not be available to him as sale takes place after coming into force of the KVAT Act. [*State of Karnataka* v. *Lease Plan India Limited* - 2014-VIL-249-Kar]