

Staying Updated

Indirect Tax Newsletter

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- The date for online submission of information in 'Form T2' in Delhi extended to 1 January, 2013

Sales Tax

- Principles of res-judicata do not apply to tax matters relating to different assessment years
- Fruit pulp based drink "slice" is instant energy provider and a thirst quencher and the same cannot be classified as food article for levy of sales tax in Delhi

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Notifications / Circulars

- The Central Board of Excise & Customs ('CBEC') has issued a draft circular wherein it was clarified that CENVAT credit of Basic Excise duty can be utilised for payment of National Contingency Calamity Duty (NCCD).

(CBEC Draft Circular F. No. 354/135/2012-TRU (2012 (283) ELT T20)]

Case Law

Manufacture

- In *Salora International Ltd. v. CCE* (2012 (284) ELT 3), the appellants has manufactured components of television sets, assembled them and then disassembled with individual serial numbers and sent the goods in disassembled form to its sister unit. The Supreme Court held that the manufacturing process is complete when receivers are assembled and subsequent despatch of the goods in disassembled form to the sister unit is wholly irrelevant.
- In *L&T Ltd. v. Principal Secy., Department of Industries & Commerce* (2012 (284) ELT 170), the Karnataka High Court held that Homogenisation of cement done for better quality does not amounts to manufacture.

- In *CCE v. North Sun Enterprises Industrial Estate* (2012 (284) ELT 75), the Tribunal held that fabrication of electric pole result into the existence of distinct product known as steel tubular pole and hence such process amounts to manufacture.

Valuation

- In *Tata Motors Ltd. v. UOI* (2012 (193) ECR 312), the Bombay High Court has held that expenses incurred by dealer towards pre-delivery inspection (PDI) as well as free after sales services without reference to the appellant-manufacturer are not includible in assessable value.
- In *Vardhman Spinning and General Mills v. CCE* (2012-TIOL-1421-CESTAT-DEL), the Tribunal held that deduction of trade discount is admissible if it is known and clearly understood prior to or at the time of removal and it is not necessary that it should be quantified and given to the buyer only at the time of removal.

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- In *CCE v. Inductotherm (I) Pvt. Ltd.* (2012 (283) ELT 359), the Gujarat High Court held that amount collected from purchaser in guise of excise duty for clearance of goods 'as such' without manufacturing was unauthorised. Therefore, such excise duty was

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recoverable under section 11D without any time limit and utilisation of CENVAT credit for payment of such excise duty is not permissible.

- In *Hindalco Industries Ltd v. CCE (2012-TIOL-1444-CESTAT-DEL)*, the Tribunal held that captive power plant located outside factory constituted an integrated part of manufacturing unit. Therefore, cenvat credit of service tax paid on insurance policy for the power plant would be admissible.
- In *Manakpur Chini Mills v. CCE (2012 (284) ELT 79)*, the Tribunal held that press mud/spent wash coming into existence during the manufacture of sugar as waste product is non excisable item even after introduction of Explanation to Section 2(d) effective from 16 May, 2008 and hence demand of 5% of sale price of such waste is not sustainable in law.

Others

- In *CCE v. Hindustan Motors Ltd. (2012 (284) ELT 168)*, the Madras High Court held that penalty is imposable where non-payment of duty is intentional and by reason of deception, even if duty is paid before issuance of SCN.
- In a revision petition filed before the Department of Revenue in *Rohit Poly*

Product Pvt. Ltd. (2012 (284) ELT 137), the Government of India held that though Bill of Export is required to be filed for making clearance to SEZ, yet substantial benefit of rebate claim cannot be denied only on this procedural lapse.

- In *RE: ITC Ltd. (2012 (284) ELT 315)*, the Commissioner (Appeals) has held that rebate of duty paid on exported goods must be refunded in cash and not through credit in CENVAT account.

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Service Tax

News

- In *Delhi Tax Bar Association and Anr. v. Union of India and Ors*, the Delhi High Court has granted an unconditional stay against the operation of the provisions of the Finance Act, 1994 as amended by the Finance Act, 2012 creating a charge of service tax on the 'legal services' rendered by advocates.

Notifications / Circulars

- The CBEC has extended the last date of submission of the return for the period 1 April, 2012 to 30 June, 2012, from 25 October, 2012 to 25 November, 2012.

Earlier, in the wake of changes brought in by the Negative list of services effective from 1 July, 2012, the CBEC vide Notification No. 47/2012-Service tax, dated 28 September, 2012 revised the period of return to be filed on 25 October, 2012 to the quarter ending on 30 June, 2012 instead of half year ending on 30 September, 2012.

(Service Tax order No. 3/2012, dated 15 October, 2012)

Case Laws

- The High Court, in *M/s Imeptus Information System v. Union of India and Ors* (2012-VIL-81-GWA-ST), held that since the petitioner is running an

authorised learning centre of Manipal Universal Learning Pvt. Ltd. under its 'brand name' and also using its 'logo', therefore the petitioner is not eligible to avail the exemption benefit granted under Notification No. 6/2005-ST dated 1 March, 2005.

- In *Ernst & Young Pvt. Ltd. v. CST* (2012(27) S.T.R. 462(Tri-Del)), the Tribunal held that every management responsibility cannot be considered as management function. Accordingly, though compliance with law is part of management responsibility, assistance in this connection cannot be covered under 'in connection with management of any organisation' in section 65(65) of the Finance Act, 1994 and taxed as "management consultancy services".
- The Tribunal, in *Singh Transporters v. CCE* (2012(27) S.T.R. 488(Tri-Del)), held that transportation of end product from one site of activity to another site of activity within the mining area is ancillary to the main activity of crushing, screening and sieving of Dolomite boulders and cannot be taxed under 'Cargo handling service'. However, the transportation of final product to the railway sidings, activity of unloading and then loading of dolomites on the wagons using pay loaders, trippers, etc. for further transportation would qualify as 'Cargo handling services'.

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- In *Jollyboard Ltd. v. CCCE* (2012-TIOL-1264-CESTAT-MUM), the Tribunal held that where there is no dispute about the fact that service tax liability is discharged on the documentation charges billed under the category of Clearing and forwarding services, the officer in-charge of the factory of the recipient of services has no jurisdiction to deny the refund claim on the ground that the documentation charges are not covered under Clearing and Forwarding Agency Service.
- In *M/s Akanksha Overseas and Rachana Art Prints Pvt. Ltd. v. CST* (2012-TIOL-1305-CESTAT-AHM), the Tribunal has held that missing cross-references as to the shipping bills, number and date of export invoices on the invoices raised towards CHA services are curable defects and which were sincecured, refund of input credit towards CHA services should be available under Notification No. 41/2007-ST dated 6 October, 2007.
- In *Datamini Technologies (India) Ltd. And Zenith Computers Ltd. v. CCE* (2012-TIOL-1349-CESTAT-MUM), a two member bench of the Tribunal has referred the matter to the third member, on account of disagreement on a limited question as to where the appellants are the manufacturer of computers and they can use the services of advertisement agency to promote their products. In the advertisements they prominently display the logo and brand of 'Intel' processors and Microsoft Windows software used in their products, for this very reason they get a reimbursement of advertisement expenses from Intel and Microsoft.
 - whether this would qualify as promotion of brands, which has been made liable to tax under 'Brand promotion services' only on and after 1 July 2010; or
 - whether this would qualify as promotion of goods or services liable to tax under 'Business auxiliary services' taxable with effect from 1 July, 2003?
- The Tribunal, in *Bharat Sanchar Nigam Ltd. v. CCCE* (2012-TIOL-1351-CESTAT-DEL), held that the inaction and negligence on account of appellant cannot be held to be a 'sufficient cause' for condoning a delay of as long as 388 days. A liberal approach, if applied in such circumstances, would defeat the purpose of limitation period at first place.
- In *Aryan Coal Benefications Pvt. Ltd. v. CST* (2012-TIOL-1430-CESTAT-DEL), the Tribunal held that transportation of coal to washery for beneficiation/washing of raw coal is integral to the beneficiation process, therefore cannot be segregated and taxed as 'cargo handling services'.

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VAT

Notifications/ Circulars

Bihar

- Electronic payment of tax, interest or penalty has been made mandatory for the following classes of dealers:
 - Annual tax payment exceeds INR fifty thousand during FY 2011-12 (effective from FY 2012-13);
 - Gross turnover during any financial year or part thereof exceeds INR 5 Mn. (effective from 8 October, 2012);
 - Output tax in respect of sales to any one dealer during any one quarter exceeds INR 0.10 Mn (effective from 8 October, 2012).

(Notification No. Bikri Kar/Vividh-57/2007-6528 dated 3 October, 2012 and Notification No. BikriKar/Vividh-43/2011-6597 dated 8 October, 2012)

- Electronic filing of returns has been made mandatory for the following classes of dealers:
 - Annual tax payment exceeds INR fifty thousand during FY 2011-12 (effective from FY 2012-13);
 - Gross turnover during any financial year or part thereof exceeds INR 5 Mn. (effective from 8 October, 2012);
 - Output tax in respect of sales to any

one dealer during any one quarter exceeds INR 0.10 Mn. (effective from 8 October, 2012)

(Notification No. BikriKar/Vividh-43/2011-6529 dated 3 October, 2012 and Notification No. BikriKar/Vividh-43/2011-6598 dated 8 October, 2012)

Delhi

- The effective date for online submission of details of inter-State purchase/ stock transfers received from outside Delhi in 'Form - T2' has been extended to 1 January, 2013.

(Notification No. F.7(433)/Policy-II/VAT/2012/785-795 dated 23 October, 2012)

- The due date for submission of online return for the quarter ended 30 September, 2012 has been extended to 16 November, 2012. Further, the due date for submission of hard copy of the return has also been extended to 19 November, 2012.

(Circular No. 21 dated 25 October, 2012)

- The time limit for filing DVAT 51 along with the statutory forms for first three quarters of FY 2011-12 has been extended to 31 December, 2012.

(Order No. F.3 (33)/P-II/ VAT/ Misc./ 2006/802-812 dated 25 October, 2012)

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Jharkhand

- The rate of tax deduction at source in respect of works contracts has been increased from 2% to 4% effective from 1 April, 2012.

(Notification No. S.O. 24 dated 3 October, 2012)

Tamil Nadu

- The requirement to submit Audit Report in Form WW shall be applicable from FY 2012-13 instead of FY 2011-12.

(Circular No. 9-1/2012 dated 19 October, 2012)

Uttar Pradesh

- The due date of filing annual return for FY 2011-12 has been extended to 31 December, 2012.

(Circular No.3/2012-13/1083/1213061 dated 18 October, 2012)

Uttarakhand

- The time limit for completion of assessment or reassessment for FY 2008-09 has been extended to 30 November, 2012.

(Notification No.856/2012/108 (120)/XXVII (8)/02 dated 27 September, 2012)

Sales Tax

Case Laws

- The Delhi High Court, in *ABB Ltd v. The Commissioner, Delhi VAT ((2012) VIL 83 Del)*, held that that for a transaction to qualify as sale in the course of import under the first limb of section 5(2) of the CST Act, there must be an inextricable link or a back-to-back transaction for the sale or purchase occasioning the import of goods into India. The Court observed that factors like passing of title or whether the end user has a privity of contract with the supplier or where the consideration flows from are not determinative or decisive of the issue.
- The Haryana Tax Tribunal, in *D.S. Pannu & Associates v. State of Haryana ((2012) 43 PHT 159 (HTT))*, held that in computing the taxable turnover under works contract, a contractor is allowed deduction towards the expenses incurred on oil and lubricants consumed in machinery and expenses towards repairs of machinery used in the execution of works contract as a part of cost of labour and services. The same cannot be the part of turnover of the sale of goods.
- The Allahabad High Court, in *Radico Khaitan Ltd. v. State of UP ((2012) NTN (Vol. 50)-34)*, observed that in tax

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matters, each assessment year has to be treated as a separate year and the principles of res-judicata do not apply to tax matters relating to different assessment years.

- The Delhi High Court, in *Varun Beverages Ltd v. Commissioner of VAT* ((2012) VIL 86 Del), has on classification of fruit pulp based drink “slice” as food article applied the common parlance test and held that “slice” at best be an instant energy provider and a thirst quencher and by no stretch of imagination the same can be classified as a food article.

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