

Staying Updated

Indirect Tax Newsletter

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Case Law

- Retrospective applicability of service tax on renting services constitutionally valid.
- 'Business' for Sec. 65 (105) covers all services undertaken as occupation regardless of profit.
- Reversal of CENVAT Credit before utilization is non availment.
- Rule 6 of the CENVAT Credit Rules not applicable on services provided to SEZ units/developers

VAT

- E-filing of returns has been made mandatory in Daman & Diu and Orissa

Sales Tax

- Sales of goods by duty free shops at international airport to inbound and outbound passengers not liable to sales tax.
- Reimbursement of cost of parts to dealers in lieu of warranty arrangement between manufacturer and the customer liable to sales tax
- Goods of general household use such as lunch boxes, casseroles are covered under the meaning of Utensils for levy of VAT in Madhya Pradesh.
- Duty drawback received under customs and excise laws is not includible in sales price for levy of sales tax.

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Notifications/Circulars

- Central Board of Excise and Customs “CBEC” has clarified that area based exemptions in Himachal Pradesh and Uttarakhand would continue even after transfer of ownership of factory to new owner.

(Circular No. 960/03/2012-CX dated 17 February 2012)

Case Law

Manufacture

- In *Printo India Graphics (P) Ltd Vs. CCE (2012 (275) ELT 592)*, the Tribunal has held that conversion of aluminium foil in jumbo rolls into blister rolls for packing medicine and items by process of cutting, slitting and printing does not amount to ‘manufacture’ and was not excisable.
- In *Reckon Diagnostics Vs. CCE (2012 (275) ELT 242)*, the Tribunal has held repacking of de-mineralised water from bulk/tanker into five litres jars does not amount of ‘manufacture’.
- In *Ceat Ltd Vs. CCE (A) (2012 (275) ELT 561)*, the Tribunal has held that ferrous waste generated out of worn out capital goods arises during the manufacturing process and is subject to excise duty.

Valuation

- In *Hindustan Coca-Cola Beverages P. Ltd. Vs. CCE (2012 (275) ELT 103)*, the Tribunal has held that in case of sale at

distributor’s premises, distributor’s commission and freight expenses upto distributor’s premises are includible in assessable value of excisable goods.

- In *K.J.V. Alloys Conductors P. Ltd. Vs. CCE (2012 (275) ELT 90)*, the Tribunal has held that refund arising out of downward revision of prices after clearance is admissible irrespective as to whether or not the assessment is provisional.

CENVAT/MODVAT

- In *UOI Vs. HEG Ltd. (2012 (275) ELT 316)*, the Chhattisgarh High Court has held that CENVAT credit on capital goods used in captive power plant is admissible, even if major portion of electricity is sold by the assessee and only a part of electricity is used in the manufacture of dutiable final product.
- In *CCEVs. Ispat Industries Ltd. (2012 (275) ELT 235)* the Tribunal has held that CENVAT credit on inputs cannot be denied on account of variation of 0.02% - 0.04% weights in the material receipt register and corresponding invoice as such variation is within the prescribed tolerance limit.

Others

- In *Hindustan Lever Ltd. Vs. CCE (2012 (275) ELT 477)*, the Tribunal has held that non-disclosure of information for assessment of goods under Section 4 does not amount to suppression when department itself has directed the assessee to pay duty under Section 4A (MRP).

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- In *Gammon India Ltd. Vs. CCE(A) (2012 (275) ELT 442)*, the Tribunal has held that supplementary invoice raised on account of price variation clause would attract interest liability from the original date of clearance of goods.
- In a revision petition filed before the Department of Revenue in *Parshva Overseas (2012 (275) ELT 261)*, the Government of India has held that the rebate of duty paid on inputs used in export goods is admissible when the assessee had reversed the CENVAT credit as it tantamount to non-availment of CENVAT credit.

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Service Tax

News

- The Chennai High Court has restrained theatre owners' and film distributors' associations in Tamil Nadu from deducting service tax from film distributors' share of income in line with the recent clarification of the CBEC.

(www.indianexpress.com dated 20.01.2012)

- The negative list of services is proposed to be introduced from 01/04/2012.

(The Business Standard dated 10.01.2012)

Notifications/Circulars

- The CBEC has clarified that toll collected from road users is not chargeable to service tax except when collected through an agent whose services would be taxable as *Business Auxiliary Services*.

(Circular No. 152/3/2012-S.T. dated 22.02.2012)

- The CBEC has clarified that the value of free of cost supplies are not includible in the 'gross amount' for valuation of a works contract where the contract was executed or payment (except through book adjustments) was made prior to 07/07/2009.

(Circular no. 150/1/2012-S.T. dated 08.02.2012)

Case Laws

- In *Glyph International Ltd. Vs. UOI* [2012 (25) S.T.R. 209], the Allahabad High Court has held that the levy of service tax under Section 66A of the Act on services received from outside India is *intra vires* the Constitution.
- The Madhya Pradesh High Court, in *Entertainment World Developers Ltd. Vs. UOI* [2012 (25) S.T.R. 231], has held that retrospective applicability of service tax on renting services is within the legislative competence of the Parliament.
- The Punjab & Haryana High Court, in *Punjab Ex-Servicemen Corporation Vs. UOI* [2012 (25) S.T.R. 122], has held that for taxing statutes the term 'business' need not necessarily imply a profit element and would cover all services undertaken as a matter of occupation.
- The Gujrat High Court, in *CCE Vs. Dynaflex Pvt. Ltd.* [2012 (25) S.T.R. 277], has held that reversal of CENVAT Credit wrongly availed prior to its utilization amounts to non availment and no interest is payable on such reversal.
- The Punjab & Haryana High Court, in *CCE Vs. Nahar Industrial Enterprises Ltd.* [2012 (25) S.T.R. 129 (P&H)], held that in view of the legal fiction created by Sec. 68 (2) of the Finance Act, 1994 (Act), service tax on *Goods Transport Agency Services* is permitted to be discharged by utilization of available CENVAT Credit.

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- In CCE Vs. Bosch Chassis Systems India Ltd. [2012 (25) S.T.R. 175], the Tribunal has held that no credit is available towards outdoor catering services where the cost of the services is recovered from employees.
- In M. Power (Arena Multimedia) Vs. CCE [2012 (25) S.T.R. 239], the Tribunal has held that franchisee fee paid by a franchisee to a principal is includible in the gross amount for the payment of service tax by the former.
- In Sobha Developers Ltd. Vs. CCE [2012 (25) S.T.R. 136], the Tribunal has held as per below –
 - services provided to SEZ units/developers are not export services but only services exempted by way of notification and are, as such, subject to the application of Rule 6 of the CENVAT Credit Rules, 2004; and
 - the provisions of Rule 6 of the CENVAT Credit Rules, 2004 restricting credit availed are applicable only where the exemption for output services is absolute and output services exempted under conditional notifications are not bound by Rule 6
- The Tribunal, in Saumya Mining Pvt. Ltd. Vs. CCE [2012 (25) S.T.R. 150], has held that penalty is not imposable where tax is paid in full along with interest before issuance of show cause notice.
- The Tribunal in CCE Vs. Novo Petrochemicals Ltd. [2012-TIOL-116-CESTAT-AHM], has held that a recipient of Goods Transport Agency Services, being a deemed output service provider, is permitted to utilize available CENVAT Credit for payment of service tax on reverse charge basis.
- In CCE Vs. Shakumbari Automobiles Pvt. Ltd. [2012-TIOL-127-CESTAT], the Tribunal has held that free after sales services offered to customers by an agent, the value of which has already been included in the contract for sale of the motor vehicle, are not exigible to service tax as *Authorized Service Station Services*.
- The Tribunal, in CST Vs. Suzuki Motor Corp. [2012 (25) S.T.R 266], has held that transfer of technical know how against payment of royalty is not liable to service tax under the category of *Consulting Engineer's Services*.
- The Tribunal, in Convergys India Services Pvt. Ltd. Vs. CST [2012 (25) S.T.R. 251], has held that a claim for rebate of input services, if otherwise eligible, cannot be denied on account of technical inaccuracies in the supporting documentation.
- The Tribunal, in Showa India (P) Ltd. Vs. CCE [2012 (25) S.T.R. 152], has held that CENVAT credit cannot be denied merely on the ground that the underlying invoices are addressed to the recipient under an erstwhile name.

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- The Tribunal, in *GMK Concrete Mixing Pvt. Ltd. Vs. CCE* [2012 (25) S.T.R. 357], has held that no service tax is chargeable on ancillary services provided in pursuance of a contract for supply of goods.
- In *Ambika Overseas Vs. CCE* [2012 (25) S.T.R. 348 (P&H)], the Tribunal has held that sales support services received from an foreign commission agents are input services under Rule 2(l) of CENVAT Credit Rules, 2004 and admissible as credit.
- The Tribunal, in *CST Vs. Gowri Computers (P) Ltd.* [2012 (25) S.T.R. 380], has held that a demand for penalty under Section 78 of the Act is not legally sustainable in the absence of any allegation of supersession or malafide in the show cause notice.
- In *Rahul Trade Links Vs. CCE* [2012 (25) S.T.R. 178], the Tribunal has held that penalty under Ss. 76 and 78 of the Act arise from different ingredients of offences and may be imposed simultaneously.

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VAT

Notifications/ Circulars

Daman and Diu

- Online filing of returns has been made mandatory for all class of dealers, along with payment of tax, interest, penalty etc wef January 31, 2012.

[Notification No No.DMN/VATSoft/2010-11/1847 dated February 10, 2012]

Delhi

- The gross turnover limit for the accounts to be audited has been linked to the limits fixed under Section 44AB of the Income Tax Act, 1961, which is currently Rs 60 lakhs. Earlier, the prescribed limit was Rs 40 lakhs.
- Reduction of input tax credit on declared goods on account of stock transfer has been reduced from 50% to 40% of the tax paid on purchase of such goods.

[Notification No. F.3 (23)/Fin(Rev-I)/2011-12/DSIII/68 Dated January 27, 2012]

- Online filing of Annexure 2A & 2B by dealers filing quarterly returns has been made mandatory for the quarter ended December 2011 and onwards.

[Circular No. F.7(420)/Policy/VAT/2011/1189-1196 dated January 30, 2012]

Nagaland

- Composition Scheme has been introduced for the retail VAT dealers whose gross turnover is above Rs 3 lakhs but does not exceed Rs 40 lacs, with an option to pay VAT @ 0.50% of the annual gross turnover.

[Notification No. FIN/REV-3/VAT/2001 dated January 09, 2012]

Orissa

- Online filing of returns has been made mandatory for all dealers wef April 1, 2012.

[Circular No. III(I)38/09-1398/CT Dated dated January 31, 2012]

Sales Tax

Case Laws

- The Supreme Court, in M/s Hotel Ashoka Vs. Assistant Commissioner of Commercial Taxes & ANR [(2012) VIL 03 (SC)], has held that sales by duty free shops situated at international airports both to inbound and outbound passengers were made before/after the goods have crossed the customs frontiers of India. Consequently, such sales are not liable to sales tax as the same qualify as sale in the course of imports/exports covered by section 5 of the CST Act, 1956.

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- The Bombay High Court in *Navnit Motors Pvt. Ltd. Vs. State of Maharashtra* [(2012) 47 VST 511 (Bom)], relying on the Supreme Court decision in *Mohd. Ekram Khan & Sons Vs. Commissioner of Trade Tax* [(2004) 136 STC 515 (SC)], has held that the transactions involving FOC replacement of spare parts under the warranty arrangement where the cost of such spare parts are subsequently reimbursed by the manufacturer by issue of credit note, are covered under the definition of sales and hence liable to sales tax.
- The Madhya Pradesh High Court in *P. K. Plastics Vs. Commissioner of Commercial Tax* [(2012) VIL 20 (IND)], while deciding the classification of general household products (like lunch boxes, pet bottles, plastic containers, casseroles etc) under the entry description of “All Utensils” has applied the common parlance test and held that utensils means the items of daily household use generally used for preparing, serving or keeping food or beverages and the scope of utensils cannot be restricted to items which are only used in Kitchen.
- The Madras High Court in *Garware Wall Ropes Vs. The State of Tamil Nadu* [(2012) NTN (Vol. 48) 161], has held that duty drawback received by the dealer under the Customs and Excise laws cannot be included in the sale price for levy of sales tax as the receipt of such drawback has nothing to do with the sale transaction

between the parties and the same has no relevance to sales transaction at the time of or before delivery of goods.

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