

Staying Updated

Indirect tax newsletter

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- While rendering services of erection of tanks and pumps, the value of tanks and pumps supplied by the service receiver cannot be added to the gross amount charged
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VAT

- Electronic filing of returns made mandatory in Jammu and Kashmir
- Electronic issuance of F and H forms made mandatory for all dealers in Daman and Diu
- A works contractor under composition scheme is liable to pay tax @ 4% on the total value of contract including the value of land in Haryana

Sales tax

- CST exemption under section 6(2) of the CST Act available even under hire purchase scenario
- Writ jurisdiction should not be exercised against show cause notice

CENVAT

Case law

Manufacture

- In *Beltek (India) Ltd v CCE* (2014-TIOL-184-CESTAT-DEL), the Delhi Tribunal held that when the goods were already packed and bearing MRP stickers at the stage of import itself, the activity of mere putting warranty stickers and pasting chassis number would not amount to 'manufacture' under section 2(f)(iii).

Valuation

- In *Prisma Electronics v CCE* (2014-TIOL-155-CESTAT-DEL), the Delhi Tribunal held that the goods specified under section 4A would be subject to MRP-based assessment even if such goods were sold through related persons, since section 4A(2) of the Central Excise Act started with a *non obstante* clause.
- In *CCE v Emco Limited* (2014-TIOL-162-CESTAT-MUM), the Mumbai Tribunal held that escort charges, erection and commissioning charges are post clearance expenses and the same would not form part of the assessable value of the goods.
- In *Kores (India) Ltd v CCE* (2014-TIOL-167-CESTAT-MUM), the Mumbai Tribunal held that the value of bought items like slips, spider/ spider bushing,

drill collar & travelling block would not be included in the value of Drilling Rigs since these items did not constitute parts of such machines

- In *Gelnova Laboratories (I) Pvt Ltd v CCE* (2014-TIOL-172-CESTAT-MUM), the Mumbai Tribunal held that physician samples were not intended for sale, and there was no requirement in law to indicate the retail sale price on such sample, and hence the said goods had to be assessed under section 4(1)(a) and not under section 4A.
- In *CCE v Orient Steel Re-Rolling Mill* (2014-TIOL-202-CESTAT-DEL), the Delhi Tribunal held that for application of rule 10 read with rule 9 and rule 8 of the Central Excise Valuation Rules, the mere fact that the assessee and his buyer were interconnected undertakings was not sufficient; it had also to be shown that the buyer was either holding or subsidiary company, or was also so connected with the assessee that they were related persons in terms of clauses (ii), (iii) or (iv) of section 4(3)(b) of Central Excise Act.

CENVAT/MODVAT

- The Delhi Tribunal, in *Rosa Sugar Works v CCE* (2014-TIOL-150-CESTAT-DEL), held that service tax paid on commission agent's service availed for procuring orders for sales of goods was admissible as CENVAT Credit.

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- In *Watson Pharma Pvt Ltd v CCE* (2014-TIOL-108-CESTAT-MUM), the Mumbai Tribunal held that transfer of accumulated CENVAT credit was permissible in case of de-bonding of 100% EOU to DTA unit.
- In *Standard Batteries Ltd v CCE* (2014-TIOL-297-CESTAT-MUM), the Mumbai Tribunal held that for transfer of CENVAT credit under rule 10, condition of transfer of liability was applicable only in case of shifting of the factory resulting from sale, merger, amalgamation or transfer to a joint venture. The said condition was not applicable where the factory had not been shifted, but only the ownership had changed.
- In *CCE v Owens Corning (India) Ltd* (2014-TIOL-284-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit was admissible on inputs used for trial run/testing of machines.
- In *Priyadarshini Polysacks Ltd v CCE* (2014-TIOL-282-CESTAT-MUM), the Mumbai Tribunal held that if there was transfer of goods between different units of the same assessee, CENVAT credit could be taken on the basis of endorsed invoices.
- In *Orchev Pharma P Ltd v CCE* (2014-TIOL-120-CESTAT-AHM), the Ahmedabad Tribunal held that

CENVAT credit of 'tube lights' was not admissible since such goods were classified by seller under chapter 94, which were not covered under the definition of capital goods.

Others

- In *Exide Industries Ltd v CCE* (2014-TIOL-296-CESTAT-MUM), the Mumbai Tribunal held that consequent to favourable decision, refund claim of pre-deposit could be allowed on the basis of attested photocopy of the Challan in lieu of original TR-6 Challan.
- In *NOCIL v CCE* [2014-TIOL-203-CESTAT-MUM], the Mumbai Tribunal held that excess amount of CENVAT credit reversed by assessee was not a duty, and therefore, the provisions of section 11B were not attracted. The assessee was entitled to take *suo motu* credit of such amount.

Service tax

Notifications and circulars

- Service tax not required to be paid on services provided by an authorised person or sub-broker to a member of a recognised association or a registered association in relation to a forward contract, which, due to the prevailing practice, was not levied during the period commencing from the 10 September, 2004 to 30 June, 2012.

(Notification No. 3/2014-Service tax, dated 3 February, 2014)

Case law

- The Mumbai Tribunal, in *Naikavare Chemicals Ltd v CCE (2014-TIOL-104-CESTAT-MUM)*, held that taking over a business on irrevocable leave and licence basis involved performance of actual management function and not advisory *per se*, and hence could not be held liable to tax under 'management consultancy services'.
- In *Endurance Systems India Pvt Ltd v CCES (2014-TIOL-139-CESTAT-MUM)*, the Mumbai Tribunal held that the activity of powder coating of parts of motor vehicle undertaken by the job-worker, to be used in manufacturing of excisable goods, amounted to

manufacturing and could not be held liable to service tax under BAS.

- In *Pagariya Auto Center v CCE (2014-TIOL-141-CESTAT-DEL-LB)*, the Larger Bench of Delhi Tribunal held that provision of table space in the premises of automobile dealers to representatives of financial institutions on basis of lease of space would qualify as renting of space and not as BAS.
- In *CST v Indecor Slides (2014-TIOL-146-CESTAT-MUM)*, the Mumbai Tribunal held that where the drawing and designs had been provided by the service recipient, the mere execution of civil work like plastering, painting, electrical works, flooring, partitioning, false ceiling and furnishing in accordance to such drawings and designs could not be classified as 'Interior decorator services'.
- In *S N Sunderson & Co v CST (2014-TIOL-194-CESTAT-DEL)*, the Delhi Tribunal held that in absence of physical handling of goods, ancillary activities like liaison between collieries and railways, monitoring and witnessing of loading and movement of coal, co-ordinating receipt of documents, organising sampling, etc. could not be classified as 'clearing and forwarding agents services'.

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- In *CCE v Sonali India* (2014-TIOL-204-CESTAT-DEL), the Delhi Tribunal held that while rendering services of erection of tanks and pumps, keeping in line with the decision of the larger bench in *Bhayana Builders Pvt Ltd v CST* (2013-TIOL-1331-CESTAT-DEL-LB), the value of tanks and pumps supplied by the service receiver could not be added to the gross amount charged for the purpose of service tax valuation.
- In *Electromec Engineering Enterprises v CCE* (2014-TIOL-205-CESTAT-DEL), the Delhi Tribunal held that in case of repair and maintenance activity, if there were two separate contracts, one for labour and second for supply of parts, service tax was payable only on the service charges and not on the supply portion.
- In *CCE v Premier Motor Garage* (2014-TIOL-226-CESTAT-DEL), the Delhi Tribunal held that in a cost-sharing arrangement between an authorised service station and the car manufacturer for sales promotion of cars, the amount recovered by the authorised service station from the manufacturer would be taxable under BAS.
- In *CCE v Ebay India Pvt Ltd* (2014-TIOL-243-CESTAT-MUM), the

Mumbai Tribunal held that e-commerce transaction services provided through a website which facilitated sale and purchase of goods over the internet would be taxable under BAS and not under 'online data access and/or retrieval services'.

The Tribunal further held that the listing fee charged towards 'banner advertising' on an e-commerce website could not be classified under BAS and should be classified as 'sale of space or time for advertisement services' taxable only with effect from 1 May, 2006.

VAT

Notifications and circulars

Daman and Diu

- For tax periods starting 1 April, 2014, electronic issuance of F and H forms has been made mandatory for all dealers.

(Circular No. DMN/VAT/VATSoft/2013-14 dated 27 January, 2014)

Haryana

- The Excise and Taxation Commissioner has clarified that a works contractor opting for composition scheme shall be liable to pay tax @ 4% on the total valuable consideration receivable (including the value of land) for the execution of the contract. Further, no input tax credit shall be allowed on intra-State purchases to a dealer under composition scheme.

(Memo No. 259/ST-1 dated 10 February, 2014)

Jammu and Kashmir

- Electronic filing of returns has been made mandatory for dealers having gross annual turnover of INR 10 Mn or more for the quarter ended 31 March, 2014 and subsequent tax periods.

(Notification No. 2 dated 1 February, 2014)

Madhya Pradesh

- Effective 15 February, 2014, requirement of outward waybills has been introduced for select goods such as mobile phones and parts of cellular handsets or parts thereof, packing material, all kinds of hosiery goods, readymade garments, etc..

(Notification No. F-A-3-02-2013/1/V(06) dated 6 February, 2014)

Punjab

- Effective 1 February, 2014, a dealer shall be eligible for reduced rate of input tax credit on the goods which are lying in his stock either as input or as output on the date of reduction in the rate of tax on such goods.

(Notification No. G.S.R.5/P.A.8/2005/S.70/Amd.(53)/2014 dated 25 January, 2014)

Sales tax

Case law

- The Madras High Court, in National Small Industries Corporation Limited v State of Tamilnadu (2014-67-VST-414), allowed CST exemption on in-transit sale of goods where the goods purchased from outside the State were consigned directly to buyers in the State under a hire purchase arrangement.

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The High Court held that the definition of 'sale' under sales tax was wide enough to cover hire purchase transactions and therefore, as long as the conditions of section 6(2) of the CST Act were met, the benefit of CST exemption under section 6(2) was available.

- The Allahabad High Court, in *Noida Medicare Centre Ltd v CTT* (2014-NTN-Vol 54-68), held that medical equipment such as cath machine, gastro machine, imaging machine, etc. fell within the ambit of 'machines' for levy of entry tax under the Uttar Pradesh Tax on Entry of Goods Act, 2000.
- The Allahabad High Court, in *Hindustan Coca-Cola Beverages Private Limited v State of UP* (2014-67-VST-435), held that writ jurisdiction should not be exercised against show cause notice as the person to whom the show-cause notice was issued had the opportunity to address his grievance by submitting his reply before the authority concerned.

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