

# Staying Updated

## Indirect tax newsletter

August 2014, Volume 17 Issue 05

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- Subsidy received by Fertilizer Company from Government cannot be considered as additional consideration

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- CENVAT credit admissible on portion of furnace oil used for generation of electricity supplied to other unit

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- When two exemption notifications available for a product then the assessee can choose the notification more beneficial to him

#### **Service tax**

#### **Notifications and circulars**

- Radio tax services and selling of space or time slots on internet websites, mobile, etc. will be liable to tax effective from 1 October, 2014

- Rate of exchange to be applied as per generally accepted accounting principles

#### **Case law**

- Rule 5(2) held *ultra vires*, no general or CAG audit to be conducted
- Tax on GTA service under reverse charge can be paid out of CENVAT credit

#### **VAT**

- Rate of composition tax increased in Haryana. Also, new composition tax introduced on developers
- Filing of hard copy of online return dispensed with in Uttar Pradesh

#### **Sales tax**

- Entry tax is leviable on entry of telecommunication equipment in the State of UP under the entry description, 'machinery and parts of machinery'
- No deduction shall be allowed for quantity discounts in the State of Karnataka

## ***CENVAT***

### ***Case law***

#### ***Valuation***

- In *Hercules Hoists Ltd v CCE* (2014-TIOL-1431-CESTAT-MUM), the Mumbai Tribunal held that erection, commissioning and installation charges could not be included in the assessable value of the goods, as manufacture and rendering of services were distinct and different activities, and had been taken under separate contracts.
- In *Coromandel International Ltd v CCE* (2014-TIOL-1553-CESTAT-BANG), the Bangalore Tribunal held that subsidy received by Fertilizer Company from the Government could not be considered as additional consideration in terms of clarification given in CBEC Circular No. 983/7/2014-CX dated 10 July, 2014.
- In *SPL Limited v CCE* (2014-TIOL-1545-CESTAT-DEL), the Delhi Tribunal held that ceramic tiles cleared to bulk buyers such as builders, hotels, schools etc. under contract were to be valued in terms of section 4 and not section 4A.

#### ***CENVAT/MODVAT***

- In *CCE v Nahar Granites Ltd* (2014 (305) ELT 9), the Gujarat High Court held that CENVAT credit on inputs could not be denied on the ground that supplier had wrongly paid duty on

exempted goods, particularly when no action was taken by the Revenue at the supplier's end.

- In *CCE v Jindal Polyester* (2014 (305) ELT 43), the Allahabad High Court held that CENVAT credit was admissible on that portion of furnace oil used for generation of electricity supplied to other unit, particularly when both units were run at one place, and their registered factory premises were adjacent to each other.
- In *CCE v Rituraj Holding Pvt Ltd* (2014 (305) ELT 459), the Gujarat High Court held that CENVAT credit on common inputs was admissible when assessee had reversed proportionate credit under rule 6(3). It further held that the contention of the Revenue that such reversal of credit must happen before utilisation of inputs in the manufacture of exempt goods, would not stand, in view of the retrospective amendment in rule 6 which permitted the assessee to pay CENVAT credit at the time of, or even after, clearance of the goods.
- In *CCE v Indian Oil Corporation Ltd* (2014 (305) ELT 507), the Gujarat High Court held that the balance 50% of the capital goods credit could be availed in the subsequent year if such capital goods were in the assessee's possession, and that actual use should not be insisted upon.

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- In *Glass and Ceramic Decorators v CCE* (2014 (305) ELT 133), the Mumbai Tribunal held that there was no requirement to reverse CENVAT credit taken on capital goods, which were procured and subsequently re-exported under bond.
- In *Ultratech Cement Ltd v CCE* (2014-TIOL-1319-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit on shortage of input to the extent of 2% could not be denied when there was no allegation that goods had been diverted during transit, or that there was pilferage of goods during the course of transportation.
- In *Ultratech Cement v CCE* (2014-TIOL-1506-CESTAT-MUM), the Mumbai Tribunal held that supplies to Developer of SEZ by a DTA unit would not be considered as exempted supply, and hence provisions of rule 6 were not applicable in such cases.
- In *M Kumar Udyog (P) Ltd v CCE* (2014-TIOL-1491-CESTAT-DEL), the Delhi Tribunal held that fire caused in factory on account of electrical short circuit, had to be held as covered by the expression, 'unavoidable accident' and therefore eligible for remission under rule 21.
- In *Savana Ceramics v CCE* (2014-TIOL-1499-CESTAT-AHM), the Ahmedabad Tribunal held that when there were two exemption notifications available for a product, one with a restriction on CENVAT credit and the other with no such condition, then it was up to the assessee to choose the exemption notification more beneficial to him.

#### *Others*

- In *Heidelberg Cement (India) Ltd v CCE* (2014-TIOL-1433-CESTAT-MUM), the Mumbai Tribunal held that sale of cement in 50 kg bags to builders/ developers would qualify as sale to institutional consumers, and hence eligible for benefit of Sr. No. 1C of Notification No. 4/2006-CE dated 1 March, 2006.

## Service tax

### Notifications and circulars

- The Central Government has notified 1 October, 2014 as the date on which the following amendments brought in by the Finance (No. 2) Act, 2014 (clause A, B and C of section 114) come into effect:
  - Services tax payable on services provided by radio taxis
  - Service tax payable on selling of space or time slots in internet websites, mobile advertisements, out-of-home media, bill boards, aerial advertising, etc.
  - Delinking of rate of exchange for service tax from the Customs notified rates

*(Notification No. 18/2014-Service tax, dated 25 August, 2014)*

- A new rule 11 has been inserted in the Service Tax Rules, 1994 which provides that rate of exchange applicable shall be the rate of exchange as per generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011

*(Notification No. 19/2014-Service tax, dated 25 August, 2014)*

### Case law

- The Delhi High Court, in *Travelite (India) v UoI and Ors* (2014-TIOL-1304-HC-DEL-ST) quashed rule 5A(2) of the Service Tax Rules, 1994 that provided for a general audit by officers or by audit party designated by the Commissioner or the Comptroller and Auditor General of India (CAG). The only type of audit contemplated under section 72A of the Finance Act, 1994 was held to be the special audit to be conducted under specified circumstances only. Accordingly, the rule 5A was held *ultra vires* section 72A and section 94(1) of the Finance Act, 1994.
- The Mumbai Tribunal, in *Y M Krishna SSK Ltd v CCE* (2014-TIOL-1299-CESTAT-MUM) held that where the sole selling agent was selling branded products manufactured by the brand owner under the invoice of brand owner itself, even if a minimum guarantee profit per month was provided by the selling agent to the brand owner, it could not be held that the selling agent had received “intellectual property services” by using the brand name, especially, where the goods were owned and manufactured by the brand owner itself.

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- The Mumbai Tribunal, in *Gammon India Ltd v CCECST (2014-TIOL-1344-CESTAT-MUM)*, held that use of considerable amount of goods such as cement, steel, nuts, bolts, etc. while rendering services of erection, commissioning and installation of power transmission towers, resulted in transfer of property in goods while execution of such services, and hence qualified as ‘works contracts’. The argument that the goods were merely consumed while rendering services could not be considered legitimate.
- The Mumbai Tribunal, in *Spring Advertising Pvt Ltd v CCECST (2014-TIOL-1367-CESTAT-MUM)* held that where the service provider was merely working as commission agent forwarding advertisements to newspapers, etc., without performing anything concerning the making, preparation, display or exhibition of the advertisement, the service provider could not be held to be an ‘advertising agency’ liable to tax under ‘advertisement agency services’.
- The Ahmedabad Tribunal, in *Rasna Pvt Ltd v CST (2014-TIOL-1347-CESTAT-AHM)*, held that the service tax liability under reverse charge on ‘goods transport agency’ (GTA) services could be paid out of CENVAT credit balance.
- In *Mantri Developers Pvt Ltd v CCCEST (2014-TIOL-1392-CESTAT-BANG)*, the Bangalore Tribunal held that the contract for construction and sale of residential flats to individual buyers could be classified as ‘works contracts’ instead of ‘construction of residential complex services’. It had to be noted that the builder entered into individual contracts in two stages; the first one was for undivided share of the land, and the second was for construction of the flat.  
  
The Tribunal relied upon the Apex Court’s decision in *Larsen and Toubro Ltd and Anr v State of Karnataka and Anr (2013-TIOL-46-SC-CT-LB)*.
- In *CCE v Amitdeep Motors (2014-TIOL-1542-CESTAT-DEL)*, the Delhi Tribunal held that the activity of sourcing of sales orders on behalf of manufacturer of the goods without taking the physical delivery or storage of goods, could not be held as ‘clearing and forwarding agency’ services.

## VAT

### Notifications and circulars

#### Haryana

- Effective 12 August 2014, the rate of composition tax in the state of Haryana has been increased from 4.00% to 5.00%.
- Effective 1 April 2014, a new rate of composition tax of 1.00% has been introduced for developers engaged in construction of flats  
*(Notification No. S.O.88/H.A.6/2003/S.60/2014, dated 12 August, 2014)*

#### Karnataka

- Educative period (i.e. additional time for filing sales/ purchases listings in relevant annexures) from 21 August, 2014 to 20 September, 2014 for the tax periods May 2014, June 2014 and July 2014, has been extended for dealers having total turnover more than INR 10 Mn, but less than INR 20 Mn  
*(Circular No. 11/2014-15, dated 12 August, 2014)*

#### Rajasthan

- The due date for filing annual return for the FY 2012-13 has been extended to 15 September, 2014  
*(Notification No. F.26(315)ACCT/MEA/2014/582, dated 13 August, 2014)*

#### Uttar Pradesh

- Effective 1 August 2014, the

requirement to submit hard copy of online returns has been dispensed with.

- Dealers are now required to either digitally sign the returns, or to upload a declaration in the prescribed format post filing of the electronic return.  
*(Trade Circular No. 2014-15/643/1415061, dated 30 July, 2014)*

#### West Bengal

- Electronic facility for cancellation of registration certificate has been introduced in the state of West Bengal.  
*(Trade Circular No. 13/2014 dated 13 August, 2014)*

#### Sales tax

#### Case law

- The Allahabad High Court, in *Bharat Sanchar Nigam Ltd v Commissioner of trade tax (2014-72-VST-362-All)*, held that entry tax was leviable on entry of telecommunication equipment (such as multi-wall sets, DIG wireless access system, solar power generating system etc.) into the State of UP under the entry description, 'machinery and spare parts of machinery'. The Court relied upon the dictionary meaning and on national and international jurisprudence, and observed that the term 'machinery' was wide enough to include electronic apparatus or equipment within its ambit.

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- The Karnataka High Court, in *Maya Appliances (P) Ltd v Additional Commissioner of Commercial Taxes (2014-72-VST-505)*, held that under the Karnataka VAT laws, a dealer was not entitled to claim deduction on account of quantity discount shown on the face of the invoice, as the quantity discounts were offered for past performance, and not in respect of goods sold by the said tax invoice.
- The Allahabad High Court, in *Allied Glasses Pvt Ltd v Commissioner of Commercial Tax (2014-NTN-Vol 55-340)*, relying on the Apex Court's decision in the matter of *State of Karnataka v Azad Coach Builders Pvt Ltd (2010-44-NTN-DX 40)*, held that 'same goods theory' was not a pre-requisite to claim the benefit of penultimate sale of goods, so long as there existed an inextricable link between the local sale or purchase, and the export outside India.
- The Gujarat High Court, in *Kadwani Forge Ltd v State of Gujarat (2014-VIL-224-Guj)*, upheld the constitutional validity of the provision that restricts the input tax credit to 2% where the goods were sold on an inter-State basis.

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