

Staying Updated

Indirect tax newsletter

July 2014, Volume 17 Issue 04

pwc

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

In the issue

CENVAT

Case law

Valuation

- Physician sample cleared to buyers at contractual prices would be assessed at transaction value

CENVAT

- CENVAT credit not required to be reversed on inputs issued for production that are destroyed in fire

Others

- Payment of pre-deposit by way of debit to the CENVAT credit balance has been allowed

Service tax

Case law

- No immunity in STVCE scheme for default in payment of first installment of 'tax dues' beyond

31 December, 2013

- Profit margin earned on sale of CNG at fixed RSP cannot be held as commission towards rendition of BAS

VAT

- WCT TDS rate increased in Haryana
- Threshold limit for submission of audit report increased in Maharashtra
- VAT rate on declared goods increased from 4% to 5% in Meghalaya

Sales tax

- Supply of food and beverages to employees through canteen run as per the requirements of factories act held liable to VAT
- A dealer was held eligible to obtain form F even for the period during which he was not registered with VAT department

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

CENVAT

Case law

Valuation

- In *Jabil Circuit India Pvt Ltd v CCE* (2014-TIOL-991-CESTAT-MUM), the Mumbai Tribunal held that the value of remote control, smart card and software supplied free of cost to buyers was includible in the value of Set Top Box (STB) as these items formed an essential part of the STB.
- In *CCE v Ravishanker Industries Pvt Ltd* (2014 (299) ELT 249), the Chennai Tribunal held that trader loss could not result in reduction of assessable value at the hands of job worker just as trader profit could not form part of the assessable value.
- In *Hard Castle Petrofer Pvt Ltd v CCE* (2014 (304) ELT 576), the Delhi Tribunal held that in case of FOR destination sale, place of removal was customer's premises, and hence freight and transit insurance expenses were includible in the assessable value.
- In *Kohinoor Tissue Converting Co v CCE* (2014-TIOL-1177-CESTAT-MUM), the Mumbai Tribunal held that the description of goods under Sr. No. 55 of Notification No. 49/2008 matched exactly with the tariff description of goods falling under central excise tariff heading (CETH) 48182000 and hence,

toilet paper falling under CETH 48181000 was not covered under section 4A.

- In *Phaarmasia Ltd v CCE* (2014-TIOL-973-CESTAT-BANG), the Bangalore Tribunal held that the physician sample cleared to buyers at contractual prices, and thereafter further distributed free of cost to physicians, would be assessed at transaction value.

CENVAT/MODVAT

- In *CCE v Ilgin Automotive (P) Limited* (2014 (299) ELT 129), the Madras High Court held that capital goods received by a job worker under a leave and licence agreement with the principal were eligible for credit even if the job worker was not the owner of said capital goods.
- In *Porritts & Spencer (Asia) Ltd v CCE* (2014 (300) ELT 87), the Delhi Tribunal held that 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 actual installation might not be insisted upon.
- In *Monarch Catalyst P Ltd v CCE* (2014 (300) ELT 89), the Mumbai Tribunal held that CENVAT credit was eligible on sulphuric acid used for treatment of effluents arising during the manufacture of final product.

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

- In *CCE v Sundaram Brake Linings Ltd* (2014 (299) ELT 342), the Chennai Tribunal held that input could not be removed from DTA unit to SEZ without payment of duty, considering it as deemed export.
- The Mumbai Tribunal in *Sharad S S K Ltd v CCE* (2014 (304) ELT 595), relying on the decision in the matter of *Gularia Chini Mills v Union of India* [2014 (34) STR 175 (All)], held that electricity was neither excisable goods nor exempted goods, and hence there was no question of payment of 5% of value of electricity supplied to State Electricity Board under rule 6(3) of CENVAT Credit Rules, 2004 (CCR).
- In *Capital Packaging Pvt Ltd v CCE* (2014-TIOL-1150-CESTAT-AHM), the Ahmedabad Tribunal held that clearances to 100% EOU were to be treated at par with exports for the purpose of granting refund of unutilised credit under rule 5 of CCR.
- In *Century Rayon v CCE* (2014-TIOL-1165-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit was not admissible on extra copy/xerox/photocopy of invoice as these are not prescribed documents under rule 9 of CCR.
- In *Virender Processors Pvt Ltd v CCE* (2014-TIOL-1019-CESTAT-MUM), the

Mumbai Tribunal held that CENVAT credit was not required to be reversed on inputs issued for production which were destroyed in fire.

Others

- In *Akshay Steel Works Pvt Ltd v Union of India* (2014 (304) ELT 518), the Jharkhand High Court held that in absence of any specific bar in law, CENVAT credit could be utilised for payment of pre-deposit of an amount under section 35F.

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

Service tax

Case law

- The Calcutta High Court, in *Parijat Vyappar Pvt Ltd and Anr v UoI (2014-TIOL-1094-HC-KOL-ST)* held that there was no provision in the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (STVCES) to permit extension of time for the payment of first installment of 50% of 'tax dues' beyond the specified last date of 31 December, 2013. The proviso to section 107(4) permitting extension of payment date was a specific provision applicable only to the second installment or the 'tax dues' remaining after the first installment, and hence the benefit of the proviso could not be applied to the first installment.
- The Mumbai Tribunal, in *Bharat Petroleum Corporation Ltd, Hindustan Petroleum Corporation Ltd v CST (2014-TIOL-1114-CESTAT-MUM)*, held that where the appellant had purchased compressed natural gas (CNG) from the supplier of CNG to be sold to customers at retail outlets owned and managed by the appellant, merely because the appellant had provided some infrastructure to the supplier to compress the gas at the retail outlet before it was sold to the customers, the transaction could not be held to be a service liable to tax under 'business auxiliary services' (BAS) category.
- The Tribunal also held that simply because the retail sale price (RSP) was fixed by the supplier of CNG, the profit margin earned by the appellant on sale of CNG to retail customers could not be held as commission towards rendition of BAS.
- The Delhi Tribunal, in *Taj View Hotel v CCE (2014-TIOL-1128-CESTAT-DEL)*, held that the services of renting out conference hall to corporate clients for meetings/conferences/assemblies other than formal meetings or assemblies that were not open to general public were correctly classified as 'Mandap keeper's services' instead of 'Convention services'.
- In *Ahluwalia Contracts (I) Ltd v CST (2014-TIOL-1135-CESTAT-DEL)*, the Principal Bench of the Delhi Tribunal held that the value of goods supplied free of cost by the contractee to the contractor for providing 'commercial or industrial construction' services could not be added while determining the value of the contract liable to service tax. The Tribunal relied upon the decision of the larger bench in *Bhayana Builders (P) Ltd v CST (2013-TIOL-1331-CESTAT-DEL-LB)*.

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

- In *Deepak and Co v CCE* (2014-TIOL-1233-CESTAT-DEL), the Delhi Tribunal held that the Commissioner (Appeals) could not go beyond the allegation made in the show cause notice (SCN) and confirm the demand under a category of service that was different from the category of service originally alleged in the SCN.

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

VAT

Notifications and circulars

Haryana

- Effective 24 June, 2014, the rate of WCT TDS has been increased from 4% to 5%.

(Notification No. S.O.67/H.A.6/2003/S.24/2014 dated 20 June, 2014)

Jammu and Kashmir

- Electronic filing of CST returns has been made mandatory for all dealers from the quarter ended 30 June, 2014 and onwards.

(Notification No. 04 dated 16 July, 2014)

Karnataka

- Additional time granted for filing sales/purchases listings in the relevant annexures for the tax periods May, 2014 and June, 2014 has been extended from 21 July, 2014 to 20 August, 2014 for dealers having total turnover more than INR 10 Mn, but less than INR 50 Mn.

(Circular No. 09/2014-15 dated 19 July, 2014)

Madhya Pradesh

- Electronic filing of returns has been made mandatory for tax period starting on or after 1 April, 2014.

(Notification No.F-A-3-34/2014/1/V

(23, 24, 25 and 26) dated 28 June, 2014)

Maharashtra

- The following amendments have been brought under the Maharashtra VAT Act, 2002:
 - The limit of turnover for the purpose of determination of incidence of tax, and thus liability to register for all dealers (other than importers), has been increased from INR 0.5 Mn to INR 1 Mn
 - The threshold limit for submission of audit report has been increased from INR 6 Mn to INR 10 Mn

The above amendments are effective from 26 June, 2014.

(The Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2014)

Meghalaya

- Effective 30 June, 2014, the VAT rate on declared goods has been increased from 4% to 5%.

(Notification No. ERTS(T)12/2010/251 dated 30 June, 2014)

Punjab

- The due date for filing returns for the quarter ended 30 June, 2014 has been extended to 20 August, 2014.

(Public Notice, dated 24 July, 2014)

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

Rajasthan

- The due date for filing annual return in form VAT-10A for the FY 2012-13 for select dealers has been extended to 15 August, 2014.

(Notification No. F.26(315)ACCT/ME/2014/314 dated 2 July, 2014)

Entry Tax

Notifications and circulars

Rajasthan

- Effective 18 July, 2014, hydraulic excavators (i.e. earth moving and mining machinery), mobile cranes and hydraulic dumpers have been exempted from the levy of entry tax.

(Notification No. F.12(59)FD/Tax/2014-75 dated 18 July, 2014)

Sales tax

Case law

- The Supreme Court, in *State of Jharkhand v LA Opala R G Ltd* (2014-NTN-Vol 55-252), relying on the decision in *Union of India v Wood Papers Ltd* (1990-4-SCC-256), held that it was a settled rule of construction of a notification that a strict approach ought to be adopted in administering whether a dealer/manufacturer was covered by it at all; and if the dealer/ manufacturer was covered by the notification, then the provisions of the notification should be

liberally construed so as to grant benefit of the notification to such dealer/ manufacturer.

- The Karnataka High Court held in *TVS Motors Company Ltd v State of Karnataka* (2014-VIL-185-Kar) that supply of food and non alcoholic beverages to employees and guests at subsidized rates through canteen run by the company as per the requirements of the Factories Act fell under the definition of 'business' under the Karnataka VAT laws. Accordingly, the company was held liable to pay VAT on the consideration received from employees for supply of food and non-alcoholic beverages irrespective of profit or loss on such supplies.
- The Maharashtra Sales Tax Tribunal held in *Kotak Mahindra Bank Ltd v The State of Maharashtra* (2014-VIL-04-MSTT), relying on the decision in *State of Tamil Nadu v Cocoa Products and Beverages Ltd* (1998-109-STC-634-Mad), that the information required in the body of form 'F' read with the first proviso to rule 12(5) of the CST Rules as to 'the date from which registration is valid' had to be construed in a liberal sense so as to foster or develop inter-State trade or commerce. Consequently, a dealer was permitted to obtain declaration in form 'F' even in respect of the consignments received during the period the dealer was not registered.

In the issue

CENVAT

Service tax

VAT/Entry tax/Sales tax

Contacts

Contacts

Delhi

Vivek Mishra/R Muralidharan
Ph: +91 (124) 3306000

Mumbai

Dharmesh Panchal/S Satish
Ph: +91 (22) 6689 1000

Kolkata

Gopal Agarwal
Ph: +91 (33) 2357 9100/4404 6000

Bangalore

Pramod Banthia
Ph: +91 (80) 4079 6000

Hyderabad

Ananthanarayanan S
Ph: +91 (40) 4424 6363

Chennai

Harisudhan M
Ph: +91 (44) 4228 5000

Pune

Nitin Vijaivergia
Ph: +91 (20) 4100 4444

Ahmedabad

Dharmesh Panchal/Niren Shethia
Ph: +91 (22) 6689 1000

About PwC

PwC* helps organisations and individuals create the value they're looking for. We are a network of firms in 157 countries with more than 184,000 people who are committed to delivering quality in assurance, tax and advisory services.

PwC India refers to the network of PwC firms in India, having offices in: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, please visit www.pwc.in.

*PwC refers to PwC India and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

Tell us what matters to you and find out more by visiting us at www.pwc.in.



For private circulation only

This publication does not constitute professional advice. The information in this publication has been obtained or derived from sources believed by PricewaterhouseCoopers Private Limited (PwCPL) to be reliable but PwCPL does not represent that this information is accurate or complete. Any opinions or estimates contained in this publication represent the judgment of PwCPL at this time and are subject to change without notice. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. PwCPL neither accepts or assumes any responsibility or liability to any reader of this publication in respect of the information contained within it or for any decisions readers may take or decide not to or fail to take.

© 2014 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.