

Staying Updated

Indirect tax newsletter

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Sales tax

- Use of stents and valves as an intrinsic and integral element in the performance of a heart surgery on in-patients in a hospital did not involve any element of sale

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Case law

Manufacture

- In *CEV Engineering Pvt Ltd v CCE* (2014-TIOL-796-CESTAT-DEL), the Delhi Tribunal held that assembling of CNG kit for cars out of duty-paid components did not amount to manufacture.
- In *CCE v Tesa Tapes (P) Ltd* (2014-TIOL-842-CESTAT-MUM), the Mumbai Tribunal held that cutting and slitting of jumbo rolls of products falling under Central Excise Tariff Heading (CETH) 4811 and 8546, to smaller sizes did not amount to 'manufacture' since these goods were not covered under the Third Schedule to the Central Excise Tariff Act.

Valuation

- In *Munjal Auto Industries v CCE* (2014-TIOL-778-CESTAT-AHM), the Ahmedabad Tribunal held that, in absence of provisional assessment, refund claim was not admissible on account of reduction of price from a date subsequent to clearance of goods from factory.
- In *PG Electroplast Ltd v CCE* (2014-TIOL-861-CESTAT-DEL), the Delhi Tribunal held that Colour Televisions sold to the Government of Tamil Nadu for free distribution to poorer sections

of people were assessable under section 4A and not under section 4 since the Government of Tamil Nadu could not be called an institutional or an industrial consumer.

- In *H & R Johnson (India) Ltd v CCE* (2014-TIOL-845-CESTAT-MUM), the Mumbai Tribunal held that Ceramic Tiles cleared to real estate developers and builders in retail package were assessable under section 4A since there was no declaration on such package that these goods were "not meant for retail sale".
- In *CCE v Owens Brockway (I) Ltd* (2014-TIOL-809-CESTAT-MUM), the Mumbai Tribunal held that cost of packing of a durable that was returnable in nature was not includible in assessable value.

CENVAT/MODVAT

- In *Union of India v Hindustan Zinc Ltd* (2014 (303) ELT 321), the Apex court held that CENVAT credit was admissible on inputs used in by-product which emerged during the manufacturing process of final product, even if such by-product was exempt from duty. Further, it held that Writ filed at the stage of 'show cause notice' (SCN) was maintainable as the same challenged not only the issuance of the SCN but also challenged the *vires* of rule 57CC of the erstwhile Central

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Excise Rules, 1944.

- In *Essar Oil Ltd v CCE* (2014-(303) ELT 255), the Ahmedabad Tribunal held that differential CVD paid under TR-6 challan, on account of reassessment of Bill of Entry was an eligible document for CENVAT credit.
- In *CCE v VIP Industries Ltd.* (2014-TIOL-720-CESTAT-MUM), the Mumbai Tribunal held that there was no bar of transfer of CENVAT credit lying unutilized on closure of the unit, although there was no stock of inputs and final product.

Service tax

Case law

- The Kerala High Court, in *Kuttukaran Trading Ventures v CCECST* (2014-TIOL-825-HC-KERALA-ST), held that the services of reconditioning/repairing, despite the fact that they were rendered with respect to a dismantled engine of a motor vehicle or a part thereof on standalone basis, would still amount to ‘maintenance and repair of motor vehicles’.
- The Allahabad High Court, in *CCECST v Garg Aviations Ltd* (2014-TIOL-837-HC-ALL-ST), held that ‘flying training institutes’ providing training for obtaining ‘Commercial Pilot Licence’ and ‘aircraft engineering institutes’ for obtaining ‘Basic Aircraft Maintenance Engineer Licence’ would not be liable to service tax under ‘commercial coaching and training services’.
The High Court relied on the decision of the Delhi High Court in *Indian Institute of Aircraft Engineering v UOI and ors* (2013-TIOL-430-HC-DEL-ST).
- The Delhi Tribunal, in *Agarwal Motors v CCE* (2014-TIOL-827-CESTAT-DEL) held that where commission received had been reversed for non-provision or non-completion of services, service tax paid by the commission agent at the time of receipt of commission could be reversed/adjusted against future liability.

- In *B4U Television Network (I) P Ltd v CST* (2014-TIOL-884-CESTAT-MUM), the Mumbai Tribunal held that excess service tax paid during the period 2001 to 2002 could be self-adjusted against service tax liability for period October 2002 to March 2003 under rule 6(3) of Service Tax Rules, 1994, and that there was no need to file a refund claim instead.
- In *Hindustan Steel Works Construction Ltd v CCE* (2014-TIOL-946-CESTAT-DEL), the Delhi Tribunal held that the value of cement and steel 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 *British Airways v CCE (Adjn)* (2014-TIOL-979-CESTAT-DEL), the Delhi Tribunal held that the services received from foreign-based Computer Reservation System/Global Distribution System companies by the foreign head office, could not be held as received on behalf of Indian branch office irrespective of the fact that Indian travel agents could also access the database and use such services for ticket reservation in India.

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The Tribunal held that for the purposes of service tax, the foreign head office and Indian branch were separate entities. Accordingly, the service received outside India by the foreign head office could not be held liable to tax under reverse charge in the hands of the Indian branch.

- In *Jai Mahal Hotels Pvt Ltd v CCE* (2014-TIOL-992-CESTAT-DEL), the Delhi Tribunal held that since leasing/renting of immovable property for a hotel was expressly excluded from the ambit of ‘renting of immovable property services’, the same could not be held liable to tax.
- In *Hyundai Motor India Engineering Pvt Ltd v CCECST* (2014-TIOL-1034-CESTAT-BANG), the Bangalore Tribunal held that for the purpose of calculation of limitation period for filing refund claim towards the export of services, the relevant date was the date of receipt of payment for services exported, and not the date when services were provided.

VAT

Notifications and circulars

Assam

- Effective 1 July, 2014, in addition to the companies and dealers registered under the CST Act, electronic filing of returns (including entry tax returns) has also been made mandatory for dealers having gross turnover in excess of INR 1 Mn in any of the last three financial years. Earlier, electronic filing was mandatory for dealers having gross turnover in excess of INR 4 Mn in any of the last three financial years.

(Circular No. 2/2014 dated 9 June, 2014)

- Effective 1 July, 2014, electronic payment of taxes (including entry tax) has been made mandatory for the following dealers:
 - Dealers registered under the CST Act
 - Other dealers whose tax payable for any tax period is not less than INR 1,000

Earlier, electronic payment of taxes was mandatory for dealers who imported goods in course of inter-state trade and commerce.

(Circular No. 3/2014 dated 9 June, 2014)

Goa

- Effective 26 May, 2014, the rate of VAT on aerated and carbonated non-alcoholic

beverages has been reduced from 20% to 15%.

(Notification No. 4/5/2005-Fin(R&C) (111) dated 26 May, 2014)

Haryana

- Effective 23 May, 2014, the rate of VAT on cell phones having retail price in excess of INR 10,000 has been increased from 5.25% to 8.40%.
- (Notification No. S.O.51/H.A.6/2003 /S.59/2014 dated 23 May, 2014)*

Jharkhand

- Effective 29 May, 2014, the rate of composite tax payable in respect of works contract has been increased from 2% to 4%.
- (Notification NO S.O 5 dated 29 May, 2014)*

Karnataka

- Additional time has been allowed to dealers to file sales/purchases listings in relevant annexures for the month of May 2014 and subsequent tax periods. The additional time will depend on the educative period of the dealers. The educative period for various dealers is as follows:
 - Till 20 September, 2014 for dealers having total turnover more than INR 5 Mn but less than INR 10 Mn
 - Till 20 July, 2014 for other dealers
- (Circular No. 06/2014-15 dated 16 June, 2014)*

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Uttar Pradesh

- Effective 1 July, 2014, electronic filing of applications for making amendments in registration certificates has been made mandatory.

(Circular No. 1415031 dated 18 June, 2014)

- Effective 1 June, 2014, a new facility in the name of “e-Sancharan” has been introduced for generation of waybills. The new facility replaces the erstwhile facility wherein the dealers could download blank waybills and fill the invoice details manually thereafter.

(Circular No. 1415023 dated 3 June, 2014)

Sales tax

Case law

- The Allahabad High Court, in *International Hospital Private Limited v State of Uttar Pradesh and Others* (2014-71-VST-139-All), held that the use of stents and valves as an intrinsic and integral element in the performance of a heart surgery on in-patients in a hospital did not involve any element of sale in spite of the fact that the bill raised on the patients shows charges towards drugs and other consumables separately. The dominant intention of the contract was performance of a medical procedure,

and there was no contract for sale of/intention to sell stents and valves. The present case did not involve application of any of the sub-clauses of article 366(29A) of the Constitution of India, and therefore, there was no element of sale involved.

- The Kerala High Court, in *State of Kerala v Savex Computers Ltd* (2014-VIL-159-Ker), held that there was no restriction on stock transfer of goods outside the state against form F, which were originally purchased in the course of inter-State trade against form C by the assessee. The condition which provided that goods purchased against form C were meant for resale did not mandate resale within the same state.
- The Ahmedabad High Court, in *State of Gujarat v Kay Kay Equipments* (2014-VIL-148-Guj), held that roadside metal crash barriers were an integral part of the road, and installation of such iron and metal barriers with cement-concrete work were in the nature of civil works, and a part of the work of road construction. Such contracts were, therefore, eligible for 2% composition tax applicable to “works contracts for civil works like construction of buildings, bridges or roads, and repairs thereof”.

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