

Staying Updated

Indirect tax newsletter

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- Sales by duty-free shops at international airport to inbound passengers qualify as sale in the course of imports into India
- Optical finger print scanners are computer peripherals for purposes of levy of VAT in the State of UP

CENVAT

Case law

Manufacture

- In *The Paper Products Ltd v CCE* (2014-TIOL-373-CESTAT-MUM), the Mumbai Tribunal held that process of printing & lamination on plastic/polyester films etc amounted to manufacture as it changed the character of films in terms of end users.
- In *M J Biopharm P Ltd v CCE* (2014-TIOL-323-CESTAT-MUM), the Mumbai Tribunal held that excise duty was not payable on excess quantity filled in Injection as per provisions of the Drugs and Cosmetics Rules, 1945.

Valuation

- In *Blackstone Polymers v CCE* (2014-TIOL-358-CESTAT-DEL), the Delhi Tribunal held that the mere fact that the buyer had provided interest-free advance to the assessee would not constitute an additional consideration unless the Revenue proves that such arrangement was intended to influence the sale price.

CENVAT/MODVAT

- In *CCE v Jayaswal Neco Ltd* (2014-TIOL-380-CESTAT-MUM), the Mumbai Tribunal held that there was

no requirement to reverse CENVAT credit on inputs used in job worked goods when the principal manufacturer had paid duty on the final product.

- In *JSW Ispat Steel Ltd v CCE* (2014-TIOL-325-CESTAT-MUM), the Mumbai Tribunal held that HR Plates, MS Plates, SS plates, Weld, etc. used in repairs and maintenance of capital goods were eligible for CENVAT credit.
- In *Mararjee Brembana Ltd v CCE* (2014-TIOL-404-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit was admissible on input contained in exempted waste in view of clarification given by Central Board of Excise and Customs vide Circular No. B-4/7/2000-TRU dated 3 April, 2000.
- In *Advanced Enzyme Technologies Ltd v CCE* (2014-TIOL-438-CESTAT-MUM), the Mumbai Tribunal held that endorsed bill of entry was a valid document for availment of CENVAT credit.
- In *Umedica Laboratories Pvt Ltd v CCE* (2014-TIOL-378-CESTAT-AHM), the Ahmedabad Tribunal held that CENVAT credit was admissible on Xerox copy of the triplicate Bill of Entry (duly certified by bank) when there was no dispute relating to receipt of inputs and its use in the manufacturing activity.

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- In *Jolly Board v CCE (2014-TIOL-316-CESTAT-MUM)*, the Mumbai Tribunal held that refund of CENVAT credit on inputs under rule 5 was admissible on export of exempted goods.
- In *Themis Medicare Ltd v CCE (2014-TIOL-336-CESTAT-AHM)*, the Ahmedabad Tribunal held that there was a requirement to reverse CENVAT credit on input used in final products which were destroyed in fire and such provision was not applicable to inputs used in semi-finished goods or work-in-progress even if assessee received compensation from insurance company for the value of such goods including excise duty.
- In *Vardhman Stampings Pvt Ltd v CCE (2014-TIOL-396-CESTAT-AHM)*, the Ahmedabad Tribunal held that once the duty on final products had been accepted by the department, CENVAT credit availed need not be reversed even if the activity did not amount to manufacture.

Others

- In *Unique Industrial Handlers Pvt Ltd v CCE (2014-TIOL-408-CESTAT-MUM)*, the Mumbai Tribunal held that sub-contractor whose name was mentioned in the project authority certificate could claim excise duty exemption on goods supplied to

Thermal Power Project.

- In *A N Impex v CCE (2014-TIOL-365-CESTAT-MUM)*, the Mumbai Tribunal has held that when the excisable goods were cleared without payment of duty under warehousing procedure and the consignor failed to produce re-warehousing certificate, the duty liability would shift from consignor to consignee once it was established that such goods had been received by the consignee.

Service tax

Case law

- The Delhi High Court, in *CST and Ors v Ernst and Young Pvt Ltd and Ors* (2014-TIOL-263-HC-DEL-ST) held that an appeal against the order of CESTAT where the question involved was whether or not an activity could be held to be a service, related to 'rate of tax'. Accordingly, the order was appealable before the Supreme Court and not with the High Court.
- The Bombay High Court, in *Kandrameshbabu Naidu v Superintendent (AE) ST* (2014-TIOL-307-HC-MUM-ST) held that where the service provider had collected tax and not deposited with the Government, considering that it was a continuing offence, the tax dues pertaining to the period prior to 10 May, 2013 would also be considered while calculating the limit of INR 5 Mn to make it a cognizable and non-bailable offence.
In a tax evasion case, where the amount of tax exceeded INR 5 Mn, the offence had been made cognizable with effect from 10 May, 2013.
- The Calcutta High Court, in *Sudip Das v UoI* (2014-TIOL-314-HC-KOL-ST) granted bail to the accused where tax evasion exceeding INR 5 Mn was involved. The Court held that since the

duty liability pertained to the period prior to 10 May, 2013, the offence was non-cognizable and bailable when it originated.

- In *Taco Faurecia Design Center P Ltd, Faurecia Technology Centre India P Ltd v CCE* (2014-TIOL-318-CESTAT-MUM), the Mumbai Tribunal held that since the entire services rendered by the service provider was exported out of India and no tax was payable, the rebate claim filed towards export of services could not be denied on the ground that the service provider was not registered prior to export of services.
- In *National Construction Company v CCE* (2014-TIOL-387-CESTAT-DEL), the Delhi Tribunal held that where the contract was for mining of lignite, activities of clearing of mining site, excavation of top soil, removal of overburden, loading of lignite into trucks, etc. were activities incidental to the main services, and could not be held liable to tax under 'site formation and clearance, excavation and earth moving services' or 'cargo handling services'.
- The Mumbai Tribunal in, *Choudhary Yatra Co Pvt Ltd v CCE* (2014-TIOL-401-CESTAT-MUM) held that the reservation of an entire bus for scheduled tour would be taxable under 'tour operator services' and not under 'rent-a-cab services'.

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- In *Krishna Homes v CCE and CCE v Raj Homes* (2014-TIOL-402-CESTAT-DEL), the Delhi Tribunal held that the refund claim, towards service tax paid by the builder of residential complex before 1 July, 2010, which was not charged to buyers of residential units, was not hit by unjust enrichment clause.

The Tribunal also held that the explanation to section 65(105)(zzzh)- Construction of complex services (CCS), which provided that the construction of residential units where the consideration was received in installments linked to construction before completion of units was liable to tax as CCS, and was not merely a clarification. It resulted in expansion of scope of the provision, and therefore, could only be applied prospectively from the date of insertion i.e. with effect from 1 July, 2010.
- In *Computer Sciences Corporations Pvt Ltd v CST* (2014-TIOL-434-CESTAT-DEL), the Delhi Tribunal held that in relation to hiring of overseas employees for operations in India, who were either recruited directly or were transferred from overseas group companies on permanent employment basis, the mere fact that some applicable social security and other benefits for such employees had been paid at their home location through the concerned group companies cannot make them liable to service tax under 'manpower supply services' on reimbursement of such cost to the concerned foreign companies by the appellant.

The Tribunal relied upon the decision of the Mumbai Tribunal in *Volkswagen India Pvt Ltd v CCE* (2013-TIOL-1640-CESTAT-MUM).
- In *Infosys Ltd v CST* (2014-TIOL-409-CESTAT-BANG), the Bangalore Tribunal held that 'information technology software services' provided by overseas service providers and received by overseas branches, though funded by the Indian head office, could not be held to be received/ provided in India. Accordingly, the liability under section 66A - Reverse charge did not arise in the hands of head office in India.

VAT

Notifications and circulars

Chhattisgarh

- Effective 1 April, 2014, the threshold limit for payment of tax for select dealers has been increased from INR 1 Mn to INR 2 Mn.

(Notification No. F-10-44/2014/CT/V (43) dated 4 March, 2014)

Delhi

- The requirement of filing audit report in form AR-1 has been dispensed with effective 14 February, 2014.

(Notification No. F.3(384)/Policy/VAT /2013/1307-1319 dated 14 February, 2014)

- Effective 15 March, 2014, the requirement of using electronic waybill in form T-2 in respect of inter-state procurements has been reintroduced for all categories of dealers having gross turnover of INR 10 Mn or more.

(Notification No.F.7(433)/Policy-II/VAT/2012/1332-1342 dated 28 February, 2014)

- The requirement of filing statutory forms along with reconciliation statement in form DVAT 51 on quarterly basis has been replaced with an annual

reconciliation return in form 9 to be filed within six months from the end of the relevant financial year.

(Notification No. F.3(27)/Fin.(Rev-I) /2013-14/dsVI/291 dated 5 March, 2014 and Notification No. F.3(27)/ Fin.(Rev-I)/2013-14/dsVI/292 dated 5 March, 2014)

Himachal Pradesh

- Effective 1 April, 2014, electronic payment of tax has been made mandatory for dealers having annual turnover of INR 4 Mn or more.

(Notification No. EXN-F(10)-7/2011 Vol.I dated 14 March, 2014)

Jammu and Kashmir

- Effective 1 April, 2014, the threshold limit for submission of audit report has been increased from INR 6 Mn to INR 10 Mn.

(Notification No. 04/vig/PS/V/B/ 7459-62/CCT dated 25 February, 2014)

Karnataka

- Effective 1 March, 2014, the threshold limit for registration has been increased from INR 0.5 Mn to INR 0.75 Mn.

(The Karnataka Value Added Tax (Amendment) Act, 2014)

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Uttar Pradesh

- The due date for submission of annual return for the FY 2012-13 has been extended from 29 January, 2014 to 30 June, 2014.

(Circular No. 1314135 dated 3 March, 2014)

Uttarakhand

- The time limit for completion of assessment for the FY 2010-11 has been extended from 31 March, 2014 to 31 May, 2014.

(Notification No. 302/2014/25(120)/XXVII(8)/2014 dated 20 March, 2014)

Sales tax

Case law

- The Karnataka High Court, in *State of Karnataka v Flemingo Duty Free Shop Pvt Ltd* (2014-68-VST-398-Karn), held that sales by a duty free shop situated at international airport to inbound passengers were made before the goods had crossed the customs frontiers of India. Consequently, such sales were not liable to sales tax as the same qualify as sale in the course of imports into India covered by section 5 of the Central Sales Tax Act, 1956. The Karnataka high court has relied on the Supreme Court decision in *Hotel*

Ashoka v Assistant CCT and Anr (2012-VIL-03-SC).

- The Karnataka High Court in *Prakash Retail Private Limited v Deputy CCT* (2014-68-VST-392-Karn), held that the transportation and installation charges were not to be included in the taxable turnover provided:
 - Such charges were separately mentioned on the invoice; and
 - Sale was executed on ex-works basis and transfer of title in goods took place at the place of the seller.
- The Madhya Pradesh High Court, in *Teblik Drugs Limited v State of Madhya Pradesh* (2014-68-VST-308-MP) held that a division of a company was eligible to claim benefit of concessional rate of tax on the strength of a duplicate copy of C form where the original C form had already been filed before the jurisdictional officer by another division of the same company. In this case, two divisions of the same legal entity (which were separately registered with the sales tax department) had executed sales to a single customer and got a consolidated C form covering sales made by both the divisions.

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- The Uttar Pradesh VAT Commissioner clarified in the case of **Ciscom Corporation Limited (2014-NTN-Vol 54-33)** that ‘optical finger print scanner’ which was used for scanning and transmitting documents in digital format to a computer fell within the ambit of computer peripherals. Consequently, the same would be chargeable to VAT @ 4% as applicable to computer and its peripherals.

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