Staying Updated

Indirect tax newsletter

May 2014, Volume 17 Issue 02

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- Sales and Purchase listing to be furnished in specified format along with periodical returns in Karnataka

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- Contract for manufacture, supply and installation of lifts was a works contract and not a contract for sale
- Bank liable to pay VAT on sale of goods in auction to recover loan dues
- In sale of food by a restaurant, VAT held not leviable on 40% of the bill amount that is subject to service tax

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Case law

Manufacture

- In Associates Lumbers Pvt Ltd *v* CCE (2014-TIOL-449-CESTAT-MUM), the Mumbai Tribunal held that process of chemical coating on plywood done for improving the quality of such goods did not amount to manufacture.

Valuation

- In CCE *v* Grasim Industries Ltd (2014-TIOL-573-CESTAT-DEL), the Delhi Tribunal held that optional cylinder testing charges recovered from customers, which had nothing to do with marketability of goods in ordinary course would not be includible in assessable value.

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- In Global Oil Industries Ltd *v* CCCE&ST (2014-TIOL-594-CESTAT-BANG), the Bangalore Tribunal held that eligibility of credit had to be determined with reference to the dutiability of the final product on the date of receipt of capital goods and hence, credit would not be admissible if final products were exempted on the date of receipt of such capital goods.
- In Apollo Tyres Ltd *v* CCE (2014-TIOL-555-CESTAT-BANG), the Bangalore Tribunal held that tubes and flaps were accessories for tyres and therefore the same were eligible for input credit.
- In Midi Extrusions Ltd *v* CCE (2014 (302) ELT 308), the Delhi Tribunal held that CENVAT credit on laptop used for managing the functionalities of machines could not be denied for the reason that such laptop was movable and hence not capital goods.
- In CCE *v* IPCA Laboratories Ltd (2014 (302) ELT 306), the Delhi Tribunal held that CENVAT credit of duty discharged by job worker on clearance, and subsequently reimbursed by applicant-manufacturer, could not be denied on the ground that applicant had not paid duty on such clearance.
- In Sanghi Indutries Ltd *v* CCE (2014 (302) ELT 564), the Ahmedabad Tribunal held that clinker and electricity supplied to sister unit could be treated as inputs supplied to job worker and in such case, CENVAT credit on inputs used in generation of electricity and supplied to sister unit could not be denied.
- In Priyadarshini Polysacks Pvt *v* CCE (2014-TIOL-692-CESTAT-MUM), the Mumbai Tribunal held that when inputs were temporarily stored in premises outside the factory due to shortage of space, credit taken on re-entry of such goods in factory for use in manufacture

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of final product could not be denied on the ground that no permission was taken as per rule 16 of the Central Excise Rules, 2002.

- In Deepak Spinners Ltd *v* CCE (2014 (302) ELT 132), the Delhi Tribunal held that the refund claim of unutilised CENVAT credit due of export of goods under rule 5 of CENVAT Credit rules was admissible even after expiry of one year in absence of any time limit prescribed in the relevant notification.

Others

- In CCCE & ST *v* Mutual Industries Ltd (2013 (302) ELT 237), the Gujarat High Court held that interest was payable when differential duty was paid on supplementary invoice subsequent to the date of clearance.
- In CCE *v* IOCL (2014 (302) ELT 67), the Kolkata Tribunal held that bar of unjust enrichment was not applicable where incidence of duty initially passed on to customer was neutralised by issuance of credit note to them in form of tax invoice showing excess amount collected, for adjustment against future payments.
- In Hindustan Petroleum Corporation Ltd *v* CCE (2014-TIOL-658-CESTAT-MUM), the Mumbai Tribunal held that when assessee claiming refund himself treated the refund amount due as expenditure in the books of accounts and not as 'claims receivable', then he could not be said to have passed the test of unjust enrichment.
- In Hero Motors Ltd *v* CCE (2014-TIOL-574-CESTAT-DEL), the Delhi Tribunal held that assessee was not barred from claiming interest at appellate stage even if they had given up right to claim interest before Adjudication authority since there was no estoppel in law against an assessee in taxation matters.
- In Arihant Polymers *v* CCE (2014 (302) ELT 589), the Ahmedabad Tribunal held that two separate appeals before Commissioner (Appeals) were not required when common order was passed by the adjudicating authority against two separate show cause notices.

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Service tax

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- The Bombay High Court, in CST *v* SGS India Pvt Ltd (2014-TIOL-580-HC-MUM-ST) held that the technical testing and analysis services rendered by an Indian service provider to foreign importers, to certify the import-worthiness of the goods to be exported by Indian exporters, though provided in India, were consumed outside India. Therefore, such services qualified as export of services.
- The Gujarat High Court, in CST *v* Zydus Technologies Ltd (2014-TIOL-613-HC-AHM-ST) held that the input services used before the commencement of manufacturing or, as in the instant case, before the grant of approval to commence 'authorized operations' by the SEZ unit, held eligible for CENVAT credit. A refund of the same could be claimed subject to the conditions laid under applicable provisions.
- The Madhya Pradesh High Court, in CCCE *v* MP State Cooperative Dairy Federation (2014-TIOL-691-HC-MP-ST) held that while rendering 'management consultancy services' by way of administering and managing milk unions, the federation was only fulfilling its statutory responsibility and obligations under the M P Cooperative Societies Act, 1960 towards its constituent members. This would amount to rendering services to self and could not be held liable to service tax.
- In JP Transformers *v* CCEST (2014-TIOL-664-CESTAT-DEL), the Delhi Tribunal held that in a repair and maintenance contract, where the value of goods/ material and the value of labour/ services had been separately disclosed and the applicable excise duty/VAT charged on the value of goods, service tax would be payable only on the value of labour/ service charges.
- In PSL Ltd *v* CCE (2014-TIOL-675-CESTAT-AHM), the Ahmedabad Tribunal held that where, on the basis of an audit objection, tax was paid under reverse charge on foreign agency commission charges, which was later found to be not payable, refund of the same could be claimed subject to unjust enrichment test.
- In Afcons Infrastructure Ltd *v* CST (2014-TIOL-679-CESTAT-MUM), the Mumbai Tribunal held that the 'onshore terminal' used for extraction, processing and transportation of gas through pipeline could not be held as 'transport terminal'. Accordingly, the 'commercial and industrial construction services' rendered in relation to such 'onshore terminal' would be liable to service tax.

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- In Simpra Agencies and Simpra Agencies Pvt Ltd *v* CCE (2014-TIOL-687-CESTAT-DEL), the Delhi Tribunal held that testing, commissioning and after-sale warranty services provided in India on behalf of foreign clients could be classified as 'business auxiliary services'. These services would qualify for export benefits, despite the fact that the services were rendered in India.

  The Tribunal relied upon its own orders in Paul Merchants Ltd *v* CCE (2012-TIOL-1877-CESTAT-DEL) and GAP International Sourcing (India) Pvt Ltd *v* CST (2009-TIOL-249-CESTAT-DEL).

- In Khem Sales Agencies *v* CCE (2014-TIOL-708-CESTAT-DEL), the Delhi Tribunal held that in a works contract, where the value of taxable services had been separately mentioned in the agreement as well as on the invoices, the same could not be treated as an indivisible works contract. Accordingly, service tax would be payable only on the value of the contract which pertained to taxable services.

- In Indian Oil Corporation Ltd *v* CCCE (2014-TIOL-729-CESTAT-MUM), the Mumbai Tribunal held that where the owner of the 'petroleum product outlet' has leased it out with complete control over the operations of the outlet to a dealer for sale of petroleum products, the same could not be held liable to tax under 'storage and warehouse service' category. The Tribunal held this despite the fact that the license to run the outlet and all the equipment were owned by the lessor and even the maintenance/ repair of the equipments was carried out by the lessor.

- In Gujarat Nippon Enterprise Pvt Ltd *v* CST (2014-TIOL-784-CESTAT-MUM), the Mumbai Tribunal held that where advance money was returned on cancellation of the service agreement, the amount of service tax paid at the time of receipt of advance money could be claimed as refund as the tax was paid inadvertently.

- In Anand Sales Corporation and ors *v* CCE (2014-TIOL-793-CESTAT-DEL), the Delhi Tribunal held that since the principal telecom service provider had paid the service tax on the entire value of pre-paid SIM cards and recharge coupons, the distributor/ franchisee was not liable to pay service tax under 'business auxiliary services' category on the commission received from principal telecom service provider for selling such SIM cards and recharge coupons to eventual users.

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- In Inox Air Products Ltd *v* CCE (2014-TIOL-803-CESTAT-MUM), the Mumbai Tribunal held that the electricity used to operate the oxygen generation plant was an input for generation of Oxygen. Thus, while determining the taxable value of operation and maintenance services of Oxygen generation plant, the value of electricity supplied free of cost by the client could not be added.

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VAT

Notifications and circulars

Daman & Diu

- Effective 1 July 2014, electronic generation of statutory forms E1 & E2 have been made mandatory for all dealers.

  (Circular No DMN/VAT/VATSoft/ 2013-2014/168 dated 8 May, 2014)

Karnataka

- Electronic filing of sales/ stock transfer and purchase/ receipt listing in various annexure(s) have been made mandatory for dealers having total turnover of INR 5 Mn or more during the FY 2013-14 or in any subsequent year, along with periodical returns for the tax period starting May 2014.

  (Notification No. CCW/CR 44/2013-14 dated 29 April, 2014)

Sales tax

Case law

- The Constitution Bench of Supreme Court in Kone Elevators India Pvt Ltd *v* State of Tamilnadu (Writ Petition No 232 of 2005) held that the transaction of manufacture, supply and installation of lifts was a works contract and not a contract for sale of lifts. The Supreme Court ('SC') has reversed the principles laid down by a three member bench of the SC in the case of Kone Elevator India Pvt Ltd reported at (2005-3-SCC 389). The SC reiterated the position of law that pursuant to the 46th amendment to the Constitution of India, 'Test of dominant nature'/ 'Test of degree of intention' was not applicable in case of composite contracts involving supply of goods and provision of labour/ services, which fell within the ambit of clause 29A(b) of Article 366 of the Constitution.
- The Bombay High Court in Additional Commissioner of Sales Tax *v* Kirloskar Copeland Ltd (2014-VIL-120-Bom) held that a contract for exchange of defective compressor with a repaired compressor was a cross transfer of property between defective compressor and repaired compressor and not a contract for sale of repaired compressor. In this case, the customer was required to pay repair charges wherein the customer got two options: a) wait for 60 days and get the defective compressor duly repaired; or b) take a repaired compressor of the same capacity, model and size. The Court has held that the repair charges paid by the customer for accepting the repaired compressor of the same capacity could not be treated as price for sale of repaired compressor as there was no consensual agreement of sale of repaired compressor.

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- The Orissa High Court, in State Bank of India *v* State of Odisha (2014-VIL-117-Ori), held that 'bank' was a dealer liable to pay VAT on transaction of sale of goods in an auction conducted by it to recover loan dues.
- The Andhra Pradesh High Court in NIIT Ltd *v* Deputy Commissioner (CT) (2014-VIL-109-AP) held that a contract for imparting computer education, including leasing of computer hardware, software and connected accessories on build-own-operate-transfer (BOOT) basis was a works contract transaction. The mere fact that the equipment was transferred at the end of the contract would not alter the nature of the transaction.
- The Uttarakhand High Court in Valley Hotels and Resorts *v* Commissioner of Commercial Tax (2014-TIOL-600-HC-UKhand-VAT) held that in case of sale of food by a restaurant, VAT could not be levied on 40% of the bill amount which was declared as a service and subjected to service tax in terms of the service tax valuation rules.
- The Karnataka High Court in Manipal University *v* The State of Karnataka (2014-VIL-124-Kar) held that a university engaged in imparting education qualified as a 'dealer' under the VAT laws and would be liable to pay VAT on sale of prospectus and application forms at such rate as applicable to printed material other than books.
- The Commissioner *vide* Advance Ruling in Johari Printers Pvt Ltd (2014-NTN-Vol 54-73), held that 'playing cards' merited classification as 'sports goods' under the entry description 'sports goods excluding apparels and sports footwear' and therefore would be exempt from levy of VAT.

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