

Staying Updated

Indirect Tax Newsletter

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- Supplies to special economic zone unit/Developers not be treated as exempted goods

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- Appropriation of rebate amount with the pending excise dues is illegal if stay application against such demand is pending before the Custom Excise and Service Tax Appellate Tribunal (the Tribunal)

Service Tax

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- Form ST-1 has been amended to include list of taxable services with respective accounting codes for assessee to specify while applying for registration

Case Law

- Rule 5(i) of service tax valuation rules is *ultra vires* the charging provisions laid under section 66 and section 67
- Loading and unloading of cargo within the factory premises cannot be held as 'cargo handling services'

VAT

- Works contract tax rate in Uttarakhand increased from 4% to 6%
- Due date for submission of audit reports/annual returns extended in Gujarat and Punjab

Entry Tax

- Entry tax rate on specified goods increased from 4% to 5% in Bihar

Sales Tax

- Inverters whose functions are controlled by a micro-processor are classifiable as electronic goods for levy of VAT in the state of UP
- Lizol and Harpic are disinfectants and are thus classifiable as pesticides liable to VAT at 4%

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Case Law

Manufacture

- In *Markwell Paper Plast Pvt. Ltd. v. CCE [2012] 285 ELT 76 (Tri. – Del)*, the Tribunal held that process of printing & lamination on bare polyester/metalised films amounts to manufacture as it changes the character of films in terms of end users.
- In *CCE v. Natco Pharma Ltd. (2012-TIOL-1856-Tribunal-BANG)*, the Tribunal held that packing of assorted medicaments into a single carton does render the product marketable to the consumer and that the goods are already marketable before such process and hence there is no manufacture or deemed manufacture of the goods.

Valuation

- In *CCE v. Nabulae Health care Ltd. [2012] 285 ELT 92 (Tri. – Chny)*, the Tribunal held that valuation of physician samples have to be determined on the basis of value of identical goods cleared on payment on excise duty and not based on cost construction method.
- In *Nirulas Corner House Pvt. Ltd. v. CCE [2012] 286 ELT 46 (Tri. – Del)*, the Tribunal held that fees paid by franchisee/business partner for

providing services such as setting up of restaurant, remuneration of architect/other consultant, interior and decoration, training of staff, etc cannot be said to be additional consideration for sale of confectionery, cakes, pastries by appellant to franchisee when there is no allegation that such fees is highly inflated as compared to actual value of services being provided by the appellant to franchisee.

- In *MIC Electronic Ltd. v. CCE [2012] 284 ELT 422 (Tri. – Bang)*, the Tribunal held that the value of customised software supplied separately by the appellant is not includible as impugned equipment does not become dysfunctional without such software.
- In *CCE v. Cethar Vessels (P) Ltd. (2012-TIOL-1782-Tribunal-MAD)*, the Tribunal held that general drawing and designing charges in respect of the plant which are not relatable to supply of excisable goods are not includible in the excisable value and drawing and design charges attributable towards manufactured goods are only includible in the assessable value.

CENVAT/MODVAT

- In *Hero Motocorp Ltd. v. CCE [2012] 285 ELT 218* and *Honda Motor Cycles & Scooter India P. Ltd. v. CCE [2012] 286 ELT 110*, the Tribunal held that CENVAT credit is admissible on tool

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kits and medical kits sold along with the two wheelers on the ground that such kits are supplied in accordance with statutory provisions and qualify as accessories of final product.

- In *CCE v. Wabco TVS (India) Ltd (2012-TIOL-1819-Tribunal-MAD) & Surya Roshni Ltd. v. CCE [2012] 285 ELT 518 (Tri. – Del)*, the Tribunal held that supplies to SEZ/Developers by a DTA unit shall not be considered as exempted supply and hence the provisions of rule 6 are not applicable in such cases.
- In *Garuda Cotex Shades Ltd v. CCE (2012-TIOL-1721-Tribunal-AHM)*, the Tribunal held that credit on capital goods used by job worker would be admissible if the principal manufacturer is discharging duty on final product.
- In *RR Paints Pvt. Ltd. v. CCE (2012-TIOL-1718-Tribunal-MUM)*, the Tribunal held that the demand of 10% of price of exempted goods is proper when the appellant did not reverse the proportionate CENVAT credit within six months of the enactment of the Finance Act, 2010 and the Tribunal being a creature of the statute cannot go beyond the same and condone the time limits specified.

Others

- In *CCE v. Continental Transformers [2012] 285 ELT 106 (Tri. – Del)*, the Tribunal held that exemption by way of refund of duty paid in cash available in Jammu & Kashmir would be applicable only to basic excise duty and not to education cess and secondary and higher secondary cess levied under the Finance Act.
- In *Mars International v. CCE (2012-TIOL-1868-Tribunal-MUM) & Supreme Petrochem Ltd. v. CCE (2012-TIOL-1871-Tribunal-MUM)*, the Tribunal held that it was highly inappropriate on the part of the revenue authorities to enforce recovery by appropriating the rebate sanctioned against the demand confirmed when stay application is pending and/or demand stayed by Tribunal and directed that the amount to be refunded forthwith.

Service Tax

Notifications/Circulars

- The Central Board of Excise & Customs (CBEC) has amended the form ST-1 to include a list of taxable services with respective accounting codes, which essentially means that the service provider would be required to specify the category of services for which it intends to take service tax registration. This is similar to the practice prevalent in the pre-negative list regime.

(Notification No. 48/2012-ST, dated 30 November, 2012)

Case Laws

- The High Court, in Arunachala Grounders Textile Mills Pvt. Ltd. v. CCE and ACCE (2012-TIOL-958-HC-MAD-ST) held that the export duty rebate cannot be appropriated against the service tax dues payable by the assessee, especially when an appeal against the said dues is pending before the Tribunal.
- The High Court, in Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India & Anr. (2012-TIOL-966-HC-DEL-ST) held that the rule 5(i) of service tax valuation rules is *ultra vires* the charging provisions laid under section 66 and section 67 of the chapter V of the Finance Act, 1994. As per the Court, this seeks to include reimbursement of expenses such as lodging, boarding, air travel expenses, etc incurred by the service provider in the course of providing services which goes beyond the consideration for taxable services brought to charge by the relevant provisions of the Act.
- The High Court, in Ranchi Club Ltd. v. CCCE&ST (2012-TIOL-1031-HC-JHARKHAND-ST), held that where a company runs a club based on principle of mutuality, the services rendered by the club to its members will be considered as services rendered to self and cannot be held liable to service tax.
- The Tribunal, in CCE v. Continuous Computing India Pvt. Ltd. (2012-TIOL-1659-Tribunal-BANG) and CST v. Akamai Technologies India Pvt. Ltd. (2012-TIOL-1879-Tribunal-BANG), held that where the Commissioner (Appeals) has taken a definite view on the substantive matter of the appeal, merely directing the original authority to re-quantify and allow consequential relief cannot be held as remand order, hence a valid order.
- In Alstom Projects India Ltd. v. CCCE&ST (2012-TIOL-1699-Tribunal-MAD), the Tribunal held that where the services were held to be exported out of India, the original authority cannot be right in rejecting the claim for refund of tax paid under protest, on grounds of cum-tax receipts and unjust-enrichment.

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- In *CCE v. Abbas J Chavda* (2012-TIOL-1750-Tribunal-AHM), the Tribunal held that the loading and unloading of cargo within the factory premises that too by an individual service provider cannot be held to be ‘cargo handling services’.
- In *Katrina R Turcotte v. CST* (2012-TIOL-1780-Tribunal-DEL), the Tribunal has held that where the assessee has appointed an agent to discharge the service tax liability, mere payment of service tax by the agent under wrong category of service does not mean that service tax has not been paid by the assessee.
- In *Interocean Shipping Company v. CST* (2012-TIOL-1824-Tribunal-DEL), the Tribunal held that since the ship brokers are purely intermediaries and does not act on behalf of either ship owner or the charterer, they cannot be treated as commission agents and thus are not covered by the definition of “Business Auxiliary” service.
- In *Aban Loyd Chiles Offshore Ltd. v. CST* (2012-TIOL-1874-Tribunal-MAD), the Tribunal held that the operations of ‘Floating storage and offloading’ (FSO) unit through which the crude oil from subsea wells is transported to fleet cannot be covered under ‘storage and warehousing services’. It is rather a part of operation to process and transfer the crude oil.
- The Tribunal, in *CCE v. Amar Nath Aggarwal Builders Pvt. Ltd. and Amarnath Aggarwal Investment Pvt. Ltd. v. CCE* (2012-TIOL-1881-Tribunal-DEL), held that since the addition of the explanation to the provision related to ‘construction of residential complex services’ has an effect on the taxation of services in contradiction to an already clarified position by CBEC, it cannot be applied with retrospective effect.

VAT

Notifications/ Circulars

Delhi

- The dealers with a “quarter” as tax period and having net tax liability (including VAT, CST and TDS deducted by the customer) exceeding INR 0.1 Mn. during the previous financial year or the current financial year are required to deposit tax on monthly basis within 21 days of the end of each month effective from 4 December, 2012.

(Order No. 3(11)/P-II/VAT/2012/944-951 dated 4 December, 2012 read with Circular No. 26 dated 14 December, 2012)

- The DVAT Commissioner has clarified that transfer of set top boxes to the cable user is exigible to VAT as transfer of right to use goods.

(Circular No. 25 dated 12 December, 2012)

- The time limit for filing DVAT 51 along with the statutory forms for all the quarters of FY 2011-12 has been extended to 28 February, 2013.

(Order No. F.3 (33)/P-II/ VAT/ Misc./2006/ dated 26 December, 2012)

Gujarat

- The due date for submission of annual return and audit report for the FY 2011-

12 has been extended to 31 January, 2013.

(Circular No.139/120 dated 14 December, 2012 and Circular No.140/121 dated 15 December, 2012)

Orissa

- The gross turnover limit for getting the accounts audited has been increased from INR 4 Mn. to INR 6 Mn. effective from 1 April, 2013.

(Notification No. 21115 /CT dated 12 December, 2012)

Punjab

- The due date for electronic filing of annual return in form VAT 20 has been extended to 3 January, 2013.

(Public notice dated 26 December, 2012)

Tamil Nadu

- The VAT rate on electricity generating sets has been reduced from 14.50% to 5% effective from 7 December, 2012.

(Notification No. G.O. Ms. No 154 dated 8 December, 2012)

Tripura

- The dealers are required to deposit at least 90% of the total tax payable for the month or quarter ending 31 March by 31 March of that particular year.

(Notification No. F.1-1(43)-TAX/2005 (P-I) dated 20 December, 2012)

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Uttarakhand

- The rate of tax deduction at source in respect of works contract has been increased from 4% to 6% effective from 14 December, 2012
(Notification No. 1093/2012 /181(120) /XXVII (8)/08 dated 14 December, 2012)

Entry Tax

Notifications/ Circulars

Bihar

- The rate of entry tax on specified goods such as computer hardware and software, telephone sets, iron and steel, coal, tractors, etc. has been increased from 4% to 5% effective from 27 November, 2012.
(Notification No. S.O. 215 dated 27 November, 2012)

Sales Tax

Case Laws

- The Allahabad High Court, in Birla Yamaha Limited v. Commissioner of Commercial Tax, UP (2012-NTN-Vol. 50-309), has held that the invertors whose functions are controlled by a micro-processor are classifiable as electronic goods for levy of VAT in the

State of UP.

- The High Court, in Reckitt Benckiser (India) Limited v. State of Andhra Pradesh (2012-56-VST 1 (AP)), has applied the dictionary meaning and the functionality test to determine the classification of Lizol (Floor Cleaner) and Harpic (Toilet Cleaner). The High Court has held that these products are disinfectants and thus are classifiable as pesticides liable to VAT at concessional rate of 4%.
- The High Court, in Pundhir Gram Udyog Patti Kalyana v. State of Haryana (2012-43-PHT-453 (P & H)) has held that delay in deposit of pre-deposit amount which is a pre-condition for hearing of the appeal on merits without seeking any extension of time cannot be treated as a *bona fide* mistake.

Contacts

Delhi

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

Mumbai

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

Kolkata

Somnath Ballav
Ph: +91(33) 2357 9100/ 4404 6000

Bangalore

Pramod Banthia
Ph: +91(80) 4079 6000

Hyderabad

Pramod Banthia/Ananthanarayanan S
Ph: +91(40) 6624 6394

Chennai

B Sriram
Ph: +91(44) 4228 5000

Pune

Nitin Vijaivergia
Ph: +91(20) 4100 4444

Ahmedabad

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

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